

THE REPUBLIC OF UGANDA
AT THE EQUAL OPPORTUNITIES COMMISSION
HOLDEN AT BUGOLOBI, KAMPALA
COMPLAINT NO: EOC/CR/128/2016

AGABA JAMES & 2 OTHERS -----COMPLAINANTS

VERSUS

UGANDA BROADCASTING CORPORATION-----RESPONDENT

BEFORE HON. MEMBER WAFULA SIRABO PATROBAS

DECISION

The Complainants Agaba James, Muhwezi Benjamin and Nkundukozera Peter, jointly and severally instituted this action for discrimination against the Respondent, Uganda Broadcasting Corporation (UBC) under the provisions of Section 23(1) and (2) of the Equal Opportunities Commission Act, 2007 seeking redress for:

- A. None remittance of their National Social Security Fund (NSSF) contributions
- B. Failure by the Respondent to issue Employment Contracts,
- C. Denial of leave,
- D. Denial of Salary increment of Uganda Shillings two hundred thousand (200,000/-),
- E. Denial of extra allowance of Uganda Shillings Ninety thousand (90,000/-) per month for Agaba James (the 1st complainant) in particular.

In line with Section 14 (3) of the Equal Opportunities Act. The issues to be determined were whether the alleged individual complaints A-E where indeed acts of Discrimination on the part of the Respondent against the Complainants and if there any remedies available to the Complainants.

A.

On the 11th November 2016, the three Complainants and Counsel Emong Christine on behalf of the Respondent before me had an opportunity to air out their complaints. The 1st Complainant asserted that he joined UBC in 2008 while the 2nd and 3rd Complainants joined in 2007, and they were each issued Temporary Appointment as security guards. They also said the UBC had withheld

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their NSSF Contribution to the Fund. They also claimed that there had been increment of staff salaries except them.

Counsel representing the Respondent did acknowledge that UBC had indeed issued Temporary Employment to these security guards together with their colleagues and that this was not unique to the three Complainants.

She put it on record that UBC was undergoing a restructuring process and thus all contracts were in review as well as a hold on the NSSF contributions of staff pending the completion of the restructuring process. She therefore denied any form of discrimination against the three Complainants specifically.

Article 21(1) of the Constitution of the Republic of Uganda 1995 (as amended) provides that *"all persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law"*.

The same Article under Clause 3 defines *"to discriminate"* to mean *"giving different treatment to different persons attributable only or mainly to their respective descriptions by sex, race, colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability"*.

Under the Equal Opportunities Commission (EOC) Act, 2007 Section 1, 'discrimination' is further defined as *"any act, omission, policy, law, rule, practice, distinction, condition, situation, exclusion or preference which, directly or indirectly, has the effect of nullifying or impairing equal opportunities or marginalizing a section of society or resulting in unequal treatment of persons in employment or in the enjoyment of rights and freedoms on the basis of sex, race, colour, ethnic origin, tribe birth, creed, religion, health status, social or economic standing, political opinion or disability."*

The same section of the EOC Act 2007 defines *"equal opportunities"* as *"having the same treatment or consideration in the enjoyment of rights and freedoms, attainment of access to social services, education, employment and physical environment or the participation in social, cultural and political activities regardless of sex, age, race, colour, ethnic origin, tribe, birth, creed, religion, health status, social or economic standing, political opinion or disability"*

The Respondents' Human Resource Manager M/s Barbara Kyomugisha, on the 10th April 2017 informed that meeting that most staff at UBC did not have contracts; she further mentioned that even she did not have a Contract letter with UBC. However, she did assert that it was a decision of the Board put in effect, and that the status quo was to remain until the ongoing review and restructuring at the Corporation was complete.

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It is therefore my reasoning that in as much as it is true that the Complainants do not have Contracts letters, it is not a fact exclusive to just them but rather all the staff of UBC. Furthermore, in a letter dated 13th February 2017 (R20) from the Acting Corporation Secretary, Solomon K. Musoke did allude to the fact that in as much as there is no written contract the parties conduct reflect existence of one, as the Complainants continue to be deployed and the Corporation continues to pay them a Salary.

I therefore see no specific act of discrimination against the Complainants on the part of the Respondent in as far as issuance of Employments Letters of Contract.

B.

The Complainants further informed this tribunal that their NSSF contributions were not being remitted by the Respondent. Documents marked R3 indicating NSSF remitted in respect of the Respondents for three months save for Benjamin (2nd Complainant) who had a remission of two months.

Counsel for the Respondent while appearing before the tribunal on 11th November 2016 informed the tribunal that UBC last remitted NSSF in 2007 for all the staff and not the security guards alone. Furthermore in the Letter Marked R-20 already mentioned earlier, the Acting Corporation Secretary did acknowledge that NSSF contributions are mandatory, however mentioned that UBC has had several setback and thus the remittance of this contribution is hinged on availability of resources, but emphasised that this cut across all staff and not just the three Complainants.

I therefore find no discrimination against the Complainants as far as remission of NSFF contribution is concerned. For discrimination to suffice there should be special or preferential treatment given to different person(s) in exclusion of others.

There had been a complaint of no gratuity paid to the three Complainants; however, this lapsed, as there was no mention of the same in the Employment Letter. That being the case, there was no ground to proceed.

C.

Section 54 of the Employment Act, 2006 provides for annual leave as a mandatory entitlement to an employee. The Respondent tendered to the tribunal a copy of the Human Resource Policies and Procedural Manual 2015, as well as, the Human Resource Regulations, 2006 which provide for leave for all staff of the Respondent and the same being applied for in accordance with the third schedule to the regulations respectively.

During the meeting of 10th April 2017, Peter (3rd Complainant) confirmed that he had requested for days off and they were granted by the Human Resource. The Respondents' Human Resource

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Manager challenged the other Complainants to give evidence of their request and denial of leave; however, none was brought forward.

In a letter dated 5th April 2017, marked R-38, the Acting Corporation Secretary did attach sample leave applications made by other Security Guards as evidence of leave being granted to Security Guards.

I must emphasise that it's a cardinal rule of law that whoever alleges the existence or nonexistence of a fact in issue must prove that the fact is either existent or none existent (see sections 101 and 102 of the Evidence Act Cap. 6). In the current complaint, with no evidence to the contrary, I am inclined to conclude that there was no discrimination against the Complainants premised on this ground.

D.

Regarding salary increment, the Respondents' Human Resource Manager and Counsel submitted that Salary increment is a preserve for or of the Board of Directors and this is in phases. Evidence was adduced in form of payrolls for November 2006 and January 2010 respectively, on the assertion of the Complainants that the Drivers, Assistant Technicians and Receptionists did receive this increment to their salary. On scrutiny of the evidence adduced, it was revealed that varying amounts depending on the cadre; Drivers, Receptionist and Assistant Technicians, were received, notably, Uganda shillings one hundred and fifty thousand (150,000/-), two hundred thousand and two hundred thousand (200,000/-) respectively.

The Respondents' Counsel and Human Resource Manager emphasised that the Board did this. They adduced evidence within the same payroll indicating stagnant salary for other cadre despite the pronouncement and a signed statement from an employee a one Bob Rich Mwecumi Muhereza who joined UBC in 2008 stating the same.

However, they asserted that the increment and standardisation of the security guard salary in 2014 to Uganda shillings two hundred thousand (200,000/-) was in the same spirit.

The Complainants did acknowledge that prior to 2014 they had been earning variently and that the increment in salary of some was to bring them to the same level as their comrades; with exception of Agaba James and Arinaitwe James who were already earning Uganda Shillings Two Hundred and ten thousand (210,000/-) as well as two other supervisors who earn Uganda Shillings three Hundred and sixty thousand (360,000/-).

Careful scrutiny of the payrolls on record for the security guards at the Corporation indicated that from March 2012: specifically March, July, August, November of 2012 and February, April, June, August, September, October, November and December 2013; the Complainants Benjamin Muhwezi and Peter Nkundukozeru earned Uganda Shillings One hundred and Twenty Thousand (120,000/-), while Agaba James earned Uganda Shillings Two Hundred and Ten Thousand (210,000/-).

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The same pay rolls establish that other Security guards earned Uganda Shillings Ninety Thousand (90,000/-), while others Uganda Shillings One Hundred and Fifty Thousand (150,000/-) and even others earned Uganda Shillings Two Hundred and Twenty Thousand (220,000/-).

Payrolls on record for May and June 2015 as well as January 2017 indicated that all security guards earned Uganda Shillings Two Hundred Thousand (200,000/-) with exception of Bizimungu Gracious and Hamala Samuel Baker who earned Uganda Shillings Three Hundred and Sixty Thousand (360,000/-) as well as Agaba James and Arinaitwe James who earned Uganda Shillings Two Hundred and Ten Thousand (210,000/-) because of their extra duties and varying levels of seniority.

I will refer to the letter from the Acting Corporation Secretary marked R-20 "It is true that the then Minister of Information in 2008 in line with the restructure announced that the salary of security guards be raised to Ugx 200,000/=. This directive only came to reality in 2014 when the funds became available and the same has been consistent."

The letter goes on to refer "With specific reference to Agaba James, it suffices to note that the directive did not affect him since he was already earning Ugx 210,000/=. This therefore explains why he was not issued a letter indicating salary increase from Ugx 120,000/= to Ugx 200,000/= respectively. It was thought wise that his salary is maintained at Ugx 210,000/= and not reduced by the extra Ugx 10,000/="

It is my consideration that indeed the salary of the security guards did increase in line with the pronouncement of the Minister and affirmed by the Board when the funds did become available, therefore, no intended discrimination on the part of the Respondent.

E.

Mr Agaba James in particular claimed extra Uganda Shillings ninety thousand (90,000/-) on top of his salary in arrears for extra duty assigned to him at the station where he guards. He claimed this as an entitlement in perpetuity based on a letter signed by S.K Batanda (R-11) which was addressed to the then Managing Director dated 9th August 2011 over the duties that the 1st complainant and a one Arinaitwe James had received training to carry out extra tasks at their stations.

The Respondents' Human Resource Manager did write to Engineer Sam Batanda, and Engineer Julius Aluma regarding the same in correspondences dated 11th April and 18th April, 2017 marked R39 which were tendered before this tribunal respectively.

Engineer Sam Batanda replied on the 12th April 2017, highlighting that the two guards had been trained by Engineer Aluma and that the request of Uganda Shillings ninety thousand (90,000/-) had been a token of appreciation at the discretion of the then Managing Director which had been discontinued when the transmitters developed faults and become non-functional.

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Engineer Julius Aluma replied on the 18th April 2017, highlighting that there were other sites operated in the same manner across the country with specific examples given. He acknowledged that he was aware of the extra allowances that began in 2011, however, mentioned that these duties stopped in 2014 for Short wave and June 2016 for Medium Wave hence no entitlement of the said extra duty allowance.

Furthermore, the Ag. Corporation Secretary; Mr. Solomon K. Musoke in a letter to the Commission dated 25th September 2017, highlighted that the security guards salaries were regularised in 2014 in consonance with the directive by then Minister of Information and National Guidance.

It is therefore my finding that Mr Agaba James is already earning and has earned an extra Uganda Shillings ten thousand (10,000/-) over and above his fellow staff at the same rank and therefore cannot claim extra allowance for duty that he no longer performs.

Conclusion:

It is based on the above evidence and the submissions by the Complainants and the Respondent that I do not find proof of discrimination against the Complainants specifically. The Complainants' evidence falls short of the required standard to prove to this tribunal their allegations of discrimination based on the above grounds. In the circumstances, the claims against the Respondent do not succeed.

The Tribunal holds thus that the acts of the Respondents towards the Complainants complained of were not discriminatory. Careful scrutiny of evidence in this complaint establishes no discrimination proved on the balance of probabilities by the Complainants. It is my finding that the issues complained of by all the Complainants generally affected all the employees of the Respondent and not the three Complainants specifically.

In conclusion, therefore, there is no clear or intended discrimination proved in this matter by the three complaints against the Respondent. However, the Complaint has exposed glaring matters that the Corporation needs to consider whilst conducting the restructuring exercise. This process should be hastened and completed to prevent future adverse actions by employees of the Respondent.

Issue 2

Much as the Complainants did not prove their allegations of discrimination and as such are not entitled to any remedies, the tribunal is mandated under Section 15 (4) (b) of the EOC Act to make recommendations, or to order any institution to take particular actions which in its opinion will promote equal opportunities.

It's against this background that I make the following orders;

- a. The Respondent to expedite the restructuring process which has been ongoing for a while.

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- b. The Respondent to remit the NSSF contribution for all the staff and gratuity if any be paid.
- c. The Respondent to file a detailed report updating this tribunal on the progress of the restructuring exercise and the steps being taken by the Respondent to address the concerns raised by this tribunal within a month from the date of this decision.
- d. The Respondent to avail a copy of the report by the visiting Committee to the Minister as defined in Section 1 of Equal Opportunities Act 2007 whenever the same is ready.
- e. Each Party to bear its own costs

Delivered this 19th day of January, 2018



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WAFULA SIRABO PATROBAS
MEMBER OF THE COMMISSION

