THE REPUBLIC OF UGANDA

IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA

LABOUR DISPUTE NO. 123/2015

ARISING FROM MGLSD 232/2015

UGANDA BUILDING CONSTRUCTION CIVIL ENGINEERING

CIVIL ENGINEERING CEMENT & ALLIED WORKERS UNION .....CLAIMANT

VERSUS

SBI INTERNATIONAL HOLDINGS AG (UGANDA) ..... RESPONDENT

BEFORE:

1. **THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE**
2. **THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA**

PANELISTS

1. MR. EBYAU FIDEL

2. MR.ANTHONY WANYAMA

3. MS. MICHEAL MATOVU

AWARD

BRIEF FACTS

On the 29/08/2002, the parties executed a recognition agreement. In 2004 after the Recognition Agreement, both parties negotiated a Terms and Conditions of Employment and Rates of Wages Pay Memorandum of Agreement which was co

negotiated on 11/06/2004, 20/09/2005, 25/04/2007, 4/02/2009, 7/03/2011 and 2/04/2013. When the agreement expired in 2015, the Respondents failed and or refused to re-negotiate and renew it. They issued 3 months' notice to terminate it and actually terminated it on the 20/1/2015. Following failed intervention by the Commissioner Labour, the matter was referred to this Court by the Claimant Union under Rule 3(2) of the Labour Disputes (Arbitration and Settlement)(Industrial Court procedure) Rules 2012).

ISSUES:

a. **Whether the respondent in declining to re- negotiate the terms and conditions of Employment and rates of wages pay memorandum of Agreement are a violation of the recognition Agreement and claimant's membership Constitutional right to collective bargaining?**
b. **Whether the Respondent is duty bound to re-negotiate the terms and conditions of Employment, Rates of wages pay memorandum of Agreement with the Claimant.**
c. **Whether the Respondents lawfully withdrew from check off remission of union dues.**
d. **Whether the respondents are liable to pay union dues to the claimant effective 20th January, 2015 up to the date of determination of this claim, if so how much is it.**
e. **Whether there were any strikes at the Respondents work place, if so whether the said strikes were instigated by the claimant.**
f. **Whether the parties are entitled to reliefs thought.**

EVIDENCE

The claimant adduced evidence through one Oloka Mesilamu, the General Secretary of the Claimant Union, who stated that the Trade Union was registered in 1974 and the recognition agreement executed in August 2002. He said that the recognition agreement was a representation of the members economic, social rights and collective bargaining and according to Article 7 -14 of the agreement all the members had consented to the deduction of the Union dues if they were more than 50%. He however was not able to ascertain the number of registered members of the Union as at 2015. He however insisted that more than 90% of the employees are with the Respondents. It was his testimony that the terms and conditions of Employment and rates of wages pay memorandum of Agreement expired on the 20/01/2015, but the Collective Bargaining Agreement remained in force. He said that they did not renegotiate it because management terminated the contract before negotiations could take place in December 2014, as was provided in the **terms and conditions of employment and rates of wages pay memorandum of Agreement.** According to him the Respondents made a decision not to renew the Memorandum of Agreement in January 2015 and there was no reason advanced for the refusal. He denied any Knowledge about any strikes or complaint about them by the Respondent, although he said he was aware about a meeting convened by the Commissioner Labour regarding the workers complaints.

The Respondents on the other hand relied on the written testimony of RW1, one Dotan Hameiri who did not appear for cross examination. Both Counsel agreed to admit the written evidence of RW1 sworn on the 28/11/2017 and filed in Court on 30/11/2017, without cross examination.

According to the testimony, on 29/08/2002, the Respondent entered into a memorandum of Recognition and Procedural Agreement with the claimant Labour Union marked CD2. He stated that on 22/04/2004, both parties agreed that the recognition agreement would remain in force provided 50% of the Respondents employees agreed to join the Union. Subsequently on 11/06/2004, 20/09/2007, 4/02/2009 7/03/2011 and 2/04/2013 the parties executed various **terms and conditions of employment and rates of wages pay Memorandum of Agreements.** He also stated that the 2013 agreement expired on the 20/01/2015 and was never renewed because the workers declined to continue being members of the Union and to date none of the workers in the Respondent Companies is a member of the Union. He stated that the employees chose to enter into new employment contracts in January 2015 and they expressly informed the Respondent not to deduct Union dues from their salaries or to remit Union dues to the Claimant. It was his testimony that as a result of the workers withdrawal from the Union, its leaders between September 2014 and January 2015 instigated strikes at the Respondents various sites in the country causing colossal losses to the Respondent. He said that the Union Leaders were reported to the Commissioner Labour, Industrial Relations and Productivity and subsequently the Ministry of Gender Labour and Social Development through its Permanent Secretary, undertook to restrain them. It was also his testimony that, after convening a meeting with the workers the strikes were declared illegal. He reiterated that all the employees are serving under performance based contracts and have never complained about the Respondents declining to renew the **terms and conditions of employment and rates of wages pay Memorandum of Agreement,** since January 2015 as claimed and it should not be imposed on to the Respondents.

SUBMISSIONS

The Claimants were represented by Mr. Richard Mwebaze of Amanyire &Mwebaze Advocates and the Respondents by Mr. Raymond Nyagambaki of M/S Verma Jivram& Associates. Mr. Mwebaze for the Claimant submitted on issues (a) and (b) concurrently.

Issue a. Whether the respondent in declining to re- negotiate the terms and conditions of Employment and rates of wages pay memorandum of Agreement are a violation of the recognition Agreement and claimant's membership Constitutional right to collective bargaining?

Issue b. Whether the Respondent is duty bound to re-negotiate the terms and conditions of Employment, Rates of wages pay memorandum of Agreement with the Claimant?

He submitted that Collective Bargaining was a Constitutional right provided for under Article 40(2) and (3) of the Constitution of Uganda, which gives every worker a right to form a trade union to collectively bargain and to be represented on their social economic interests. He asserted that where an employee joins a trade union and the employer declines to negotiate, the employer is violating the employee's constitutional rights.

He argued that in the instant case, the recognition agreement between the parties was still valid and according to Article 5 of the agreement the subjects for negotiation under it included, hours of work, rates of pay, overtime, rest and public holidays. He submitted further that declining to re- negotiate would be violating the workers Constitutional rights to collectively bargain as provided under Article 40(2) of the Constitution of Uganda. He cited **MACDONALD'S TRANSPORT**

UPINGTON PTY LTD VS ASSOCIATION OF MINE WORKERS AND CONSTRUCTION UNION AND OTHERS CASE NOJA 10/2016 to support the argument that a demand for organizational rights such as a collective bargaining agreement by a union must be granted. He also cited **TRANSPORT AND ALLIED WORKERS UNION SOUTH AFRICA VS PUTCON LIMITED CCT 94/2015 AND SAM LYOMOKI & ORS VS ATTORNEY GENERAL, CONST.PETITION No. 08/2015** to affirm his argument.

He contended that the reasons advanced by the Respondent for declining to re-negotiate the agreement could not hold water and were illegal. He contended that whereas RWI testified that, it was because the workers had declined to be members of the Union, according to Regulation 3 of the Labour Unions (check off) Regulations Statutory Instrument No. 60/2011, the procedure for withdrawal from a Union does not involve the employer and communication of the withdrawal of members is the responsibility of the employees and not the employer. He was of the view therefore that by making such communication the employer was actually interfering with the membership and the Independence of the Union. He cited **MACDONALD'S (supra).**

Counsel further contended that the fact that the employees preferred new contracts of employment as asserted under paragraph 9 of RW1's witness statement did not preclude the implementation of Article 40 of the Constitution of Uganda. According to him the said contracts would form part of the collective bargaining agreement as provided under Section 39 of the Labour Disputes (Arbitration and Settlement) Act, 2006. He also cited **VLABOUR BOARD 321 US 332(1944)** to support the assertion that an employer's individual contract of employment, covering wages, hours of work and working conditions does not

precluded exercise by employees of their right under the law to choose a representative for collective bargaining nor warrant refusal by the employer from bargaining with such a representative in respect of the terms covered by the individual contract.

He also contended that the 50% rule raised by Dotan Hameiri under paragraph 4 of his statement is no longer law, the **TRADE UNIONS ACT CAP 223** having been repealed by section 60 of the **LABOUR UNIONS ACT NO 7 OF 2006.** He pointed out that according to Mr. Oloka's testimony, at time of the termination of the collective bargaining agreement, the Claimant Union had over 90% of the employees in the Respondent industry.

He invoked Article 50 of the Constitution of Uganda, to assert that a violation or infringement of a person's fundamental or other human rights must be compensated and therefore the violation of Claimants' right to collective bargaining should be compensated. He prayed for Ugx. 100 million as compensation.

In reply Mr. Nyagambaki, Counsel for the Respondents submitted that the recognition and collective agreement expired and were not renewed. He did not dispute the employees' right to collectively bargain as provided for under Article 40 of the Constitution and Section 3 of the Labour Unions Act. He contended however that the recognition agreement was invalid having been signed on 29/08/2002 and expired on 28/08/2004. He referred to Article 20 of the agreement. He also quoted Article 1 of the Collective agreement (exhibit CD3) which provided that its duration was 2 years from 21/01/2013 to 20/1/2015. Therefore the Collective Agreement terminated on the 20/1/2015 unless the same

had been renewed or renegotiated. According to him, in accordance with Article 2 of the Collective Agreement and Article 18 of the Recognition Agreement which required 30 days' notice, the Respondent's letter 18/09/2014, gave the Claimant 3 months' notice for none - renewal.

Counsel cited Section 38 (1) 38(4) and 38(5) of the Labour Disputes (Arbitration and Settlement) Act, 2006, which state as follows:

38(1) a copy of a collective agreement and any agreement or variation to the agreement shall be registered with a Labour Officer.

Section 38(4), "...the terms of a collective agreement shall be in writing and every collective agreement shall contain a reference to the manner and date when it may be reviewed."

Section 38(5) "... where a collective agreement in existence at the commencement of this Act does not contain a reference to the date on which it is to be reviewed or where the date for its review has passed without revision being made or further agreement being reached the agreement shall unless it is brought into compliance with subsection 4 remain valid for only a period not exceeding 2 years after the commencement of this Act.

He asserted that the collective agreement was never registered with a Labour Union and there was no evidence that it was successfully re-negotiated and the only evidence was that both the recognition agreement and collective agreement expired and were therefore invalid. It was his prayer therefore that issues a and b are answered in the negative. He was of the view that the Respondents in declining to negotiate the terms and conditions of the Collective Agreement are not in

violation of any Constitutional rights and the Respondent is not duty bound to re-negotiate a Collective Agreement.

RESOLUTION

Issues a and b.

Article 40(3) of the Constitution of Uganda (as Amended) provides that:

> ***"Every worker has a right –***
>
> ***a) To form or join a trade Union of his or her choice for the promotion and protection of his or her economic and social interests.***
>
> ***b) To collective bargaining and representation; and***
>
> ***c) To withdraw his or her labour according to law."***

It is not disputed that the Claimant Union signed a Recognition Agreement on 29/08/2002 and Collective Bargaining Agreements(CBA) with the Respondents on 11/06/2004, 20/09/2007, 4/02/2009, 7/03/2011 and 2/04/2013. The CBA, the Terms and conditions of employment and rates of wages pay memorandum of Agreement, signed on the 2/04/2013 was for a duration of 2 years. Article 1(a) of memorandum of Agreement provides that:

> ***"a) all the Terms and General Conditions of Service and rates of wages pay as contained herein this Agreement shall be binding on all Parties for a period of 2 years and shall be deemed to be commencing effective from the 21/01/2013 and terminating on the 20th day of January 20 15. However the existing Memorandum of Agreement shall continue to remain in force until another one is renegotiated and signed. Next Negotiations shall be commenced in December 2014. ..."***

When this agreement expired, the Respondents declined to re-negotiate and renew it, on the grounds that the workers had opted out of the Union and undertaken to enter new contracts of employment. Article 30 of the Agreement also provided for voluntary check off system. It states that:

> ***"After Submission of a written consent of every eligible Unionisable worker, the Company shall deduct Union dues from all Union members' monthly basic wages and thereafter remit it to National Union headquarters as in accordance with the provisions of the laws of Uganda- Section 49 of the Employment Act No. 6 of 2006 and statutory Instruments –the labour unions check off regulations No.60 of 2011.***

The fact that the Respondents applied the check off system was not in dispute given the number of agreements they had already executed with the Claimants and the fact that they remitted the said deductions until 20/1/2015. However by their letter dated 28/1/2015, the Respondents made reference to another ref: SBI/HO/WU/0914/10 dated 18/09/2014 in which they gave the Union 3 months' notice terminating the CBA with effect from 20/1/2015. Evidence on the record shows that there were a number of attempts by the Commissioner labour to try and settle the matter in vain.

The assertion by the Respondents that they declined to renew the CBA on grounds that the workers had withdrawn from the Union were not backed by any evidence indicating that the workers had withdrawn from the check off system in accordance with Regulation 3 of the Labour Unions (check off) Regulations, Statutory Instrument 2011 No.60 which provides that:

1) ***An employee may withdraw from participating in the check off system by giving 30 days' notice in writing to the Secretary General and a copy to the Labour officer.***
2) ***The Secretary General shall within 30 days from receipt of the notice in writing inform the employer in writing.***
3) ***An employer on receiving notice shall stop deducting money from the employee's salary or wages.***
4) ***Where an employee withdraws from participating in the check off system he or she shall cease to be a member of the labour union.***

The Respondents did not produce any evidence to show that the workers had withdrawn and or ceased to be members of the Union in accordance with regulation 3 of the Labour Unions check off Regulations. In **UGANDA ELECTRICITY ALLIANCE WORKERS UNION VS UGANDA ELECTRICITY TRANSMISSION COMPANY LTD LDR. No.094/2015,** this Court held that,

> ***"... Our interpretation of Regulation 3 of the Labour Union check off Regulations 2011, an employee ceases to be a member of a labour Union only after properly withdrawing from the check off system by notifying the Secretary General who in turn informs management."***

The Secretary Generals notification to management about the purported withdrawal of the employees' from the membership of the Claimant Union was not adduced as proof of their withdrawal nor were any of the purported new personal employment Agreements attached to enable us ascertain that the said agreements were not subject to the **terms and conditions of employment and rates of wages pay Memorandum of Agreement** which was the Collective Bargaining Agreement.

Even if the workers opted to enter personal employment Agreements, they could only do so after properly withdrawing from the Union in accordance with the provisions of Regulation 3(supra). There is no evidence to show that the workers actually complied with the procedures for withdrawal under regulation 3(supra). We therefore have no doubt in our minds that the workers are still members of the Union.

We also respectfully do not agree with the Respondents assertion that the fact that the Collective Bargaining Agreement was not registered in accordance with Section 38 of the Labour Disputes (Arbitration and Settlement) Act, 2006(supra), it was unlawful. The registration or none registration of the Union did not arise before this dispute, therefore it cannot arise now. Even then, Section 38(2) provides that ***"notwithstanding subsection (1), a collective agreement that is not registered remains enforceable between the parties to the agreement."*** We therefore do not consider none registration of the Collective Bargaining Agreement (CBA), as a justifiable reason for refusing to re-negotiate it.

After carefully scrutinizing the evidence in support of the claim that, the Union Leaders instigation of "illegal" industrial action, was another reason why the Respondents refused to re-negotiate the Collective bargaining agreement, we found that; the Respondents various site managers wrote letters between 15/09/2014, and 22/01/2015 to their managing director about the alleged strikes. Each of the letters indicated that each of the site managers met with the workers to establish the cause of the strikes and found that the strikes had no basis. However, the minutes of the said meetings by were not attached. The Commissioner Labour letters marked CD8 and CD9, calling for 2 meetings

scheduled for 14/1/2015 and 30/1/2015 show that he made an effort to mediate between the parties, and given their letter dated 29/1/2015, marked R3, apologizing for none attendance, the Respondents did not attend the meetings. The Commissioners letter dated 18/09/2015, marked R7, which declared the strikes illegal, made reference to an anonymous letter dated 11/08/2015 and to the Respondents lawyers letter Ref: VJ/SBI-RCC/660/12 dated 14/10/2015 regarding the workers attention to strike. The said letters were however not attached as evidence nor was the one purporting to have called a meeting for 24/09/2015 regarding the same subject. It is therefore not clear to us, what the Commissioner based himself on to declare the strikes illegal, in the absence of minutes of a meeting between him and the parties or a report of any investigation carried out regarding the said strikes. The evidence on the record is not sufficient in the absence of any minutes of the meetings purportedly held by the various site managers and the workers, or an investigation report by the commissioner on the alleged strikes, to enable us decide without a doubt that the alleged strikes actually occurred and they were instigated by the Leaders of the Claimant Union.

In the circumstances we find that claim that the leaders of the Union instigated strikes, as reason for the Respondents refusing to re- negotiate the Collective bargaining Agreement as untenable.

Further the Respondents reliance on the Permanent Secretary's letter dated 12/02/2015 Marked R5, in response to the letter by Respondent Lawyers dated 29/01/2015 to the Ministry of Gender, labour and Social Development requesting for among other things, that the Claimant Union is restrained from conducting itself unprofessionally to the detriment of the Respondents business, was also untenable

because it did not grant them the right to regularize/ legalize the termination of the Collective Bargaining Agreement. On the contrary the letter advised that the matter of Collective Bargaining is resolved amicably. It stated in part as follows:

"... I wish to clarify on the issues raised in your letter as follows:

1. ***Pursuant to Section 24(4) of the Labour Unions Act, 2006, my Ministry will restrain the union from unprofessional conduct which is adversely affecting your clients business.***
2. ***The existence of the Union does not water down management's powers to hire and fire workers.***
3. ***Industrial action /strikes shall not be conducted in contravention of sections 28,29,33 and 34 of the Labour Disputes(Arbitration and Settlement) Act, 2006***
4. ***The strikes mentioned in your letter were not cleared by this Ministry.***
5. ***Your client is at liberty to seek Justice at the Industrial Court in accordance with Section 24(7) of the Labour Unions Act, 2006 and the collective Bargaining Agreement must not be imposed but amicably agreed upon between the employee and the Labour Union...."***

None of the parties adduced any evidence regarding the amicable resolution of the Collective bargaining Agreement or the resolution of the "illegal" industrial action as advised by the letter. Instead the matter was referred to this Court in accordance with section 24(7) of the Labour Unions Act for resolution.

Therefore having established that the withdrawal of the Respondents workers from the check off system of the Claimant Union was not done in accordance with Regulation 3(supra) and there was no other justifiable reason advanced by the

Respondents for the termination of the terms and conditions of Employment and rates of wages pay memorandum of Agreement, the Respondents violated the recognition agreement and the Union members right to Collective Bargaining. Therefore the termination of the Agreement on the 20/1/2015

was contrary to Article 40(3)(b) of the Constitution of Uganda 1995, as Amended(supra) and Section 24 of the Labour Unions Act, therefore it was illegal.

Therefore in accordance with Section 24(7)(a) of the Labour unions Act, which provides that:

> ***"(7) The industrial court after hearing the parties in respect of subsection (6) may-***
>
> > ***a) Order that the registered organization and the employer shall deal in good faith, in respect of all matters concerning the relations of the employer and his or her employees who fail within the scope of the membership rule of the registered union ..."***

The Respondents are hereby ordered to re-negotiate the ***Terms and Conditions of Employment, Rates of Wages pay Memorandum of Agreement*** (Collective Bargaining Agreement)with the Claimant, and to resume the check off system and remission of check off fees to the Claimant Union within 21 days from the date of this award.

Compensation in accordance with Article 50 of the Constitution

The Claimants' citing Article 50 of the Constitution of Uganda, prayed for an award of damages of Ugx.100 million for the violation of their fundamental right arising

from the Respondents violation of their right to Collective Bargaining and representation on social economic interests.

Having established that the Respondents violated Article 40(3), we believe the Claimant Union is entitled to compensation in form of damages. Although the Respondents admitted that they remitted to the Union between Ugx.18-20 million per month, the Union did not show us the extent of their loss to warrant the award of Ugx. 100 million as compensation, nor did they ascertain the actual number of registered members as at 20/1/2015. In the premises we think an award them Ugx. 25,000,000/- as general damages for the illegal termination of the Collective Bargaining Agreement is sufficient. The damages shall accrue interest of 12% per annum until full and final payment.

Issue c. Whether the Respondents lawfully withdrew from check off remission of union dues.

We already established that in the absence of evidence to indicate that regulation 3 of the Labour Unions Check off Regulations was complied with before withdrawal from the Union, the Respondents unlawfully withdrew from the check off and remission of Union dues.

Issued d. Whether the respondents are liable to pay union dues to the Claimant effective 20th January, 2015 up to the date of determination of this claim, if so how much is it.

It is a fact that the Collective bargaining agreement was terminated on the 20/1/2015 and it was not renegotiated or renewed. Even though Section 49(3) of the Employment Act 2006,and Regulation 2 of the labour Unions Regulations, provide for the statutory deduction of union dues once notified, and that Article 2

of the CBA (supra) provided that if it was not re- negotiated after expiry it would remain in force, we do not agree with Mr. Mwebaze that this entitled the Claimant Union to the payment of the dues that should have been deducted and remitted between 20/1/2015 to the date because the CBA was terminated by the Respondents on the 20/1/2015. Although we have already established that the termination was illegal, there is no evidence to show that the Respondents continued to deduct any Union dues from the workers from the 20/1/2015 when it was terminated. The Claimant also did not provide the number of employees who were registered members of the Union as at 20/1/2015. Given that the Variations in the remissions made to the Claimant, in the absence of the actual number of members of the Claimant Union, we cannot rely on an estimate to make such an award. We would have expected the General Secretary to have been conversant with the number of members in the Union but he was not.

We strongly believe that when the CBA was terminated the Respondent ceased to make any deductions of dues and therefore ceased to make any remissions to the Claimant Union. Therefore, we have no basis for making an award for the payment of dues between 20/1/2015 and the date of this award, or to determine the quantum of dues to be paid. The award of general damages in our view is sufficient. This prayer is therefore denied.

Issue e. Whether there were any strikes at the Respondents work place, if so whether the said strikes were instigated by the claimant.

We have already found that the evidence on the record was not sufficient to enable us determine whether there was a strike or not or who instigated it.

Issue f. Whether the parties are entitled to reliefs thought.

The claimants under paragraph 7 of the memorandum of claim, sought the following reliefs:

a) An order to renegotiate a collective bargaining Agreement.
b) An order to resume the check off and remission of check off fees
c) An order to pay union dues effective 20/1/2015.
d) Costs of the claim.

Having found that the Respondents' refusal to re-negotiate the terms and conditions of Employment, Rates of wages pay memorandum of Agreement with the Claimant (Collective Bargaining Agreement) was illegal, we have already awarded the Claimant Union some of the remedies claimed as follows:

a) An order to re-negotiate a collective bargaining Agreement.
b) An order to resume the check off and remission of check off fees.

In conclusion an award partially succeeds in the following terms:

1. **A declaration that the Respondents refusal to re-negotiate the terms and conditions of Employment, Rates of wages pay memorandum of Agreement with the Claimant (Collective Bargaining Agreement) was a violation of the Recognition Agreement and a Violation of the Claimants members' right to Collective bargaining.**

2. An award of Ugx. 25,000,000/- general damages for the violation of the right to collective bargaining.

3. An order to re-negotiate the terms and conditions of Employment, Rates of wages pay Memorandum of Agreement with the Claimant (Collective Bargaining Agreement) within 21 days from the date of this award.

4. An order to resume the check off and remission of check off fees to the Claimant.

4. Interest of 12% per annum on 2 above until full and final payment.

5. No order as to costs is made

Delivered and signed by:

1.THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE .....

2.THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA .....

PANELISTS

1. MR. EBYAU FIDEL .....

2. MR.ANTHONY WANYAMA .....

3. MS. MICHEAL MATOVU .....

DATE: 5/06/2019