

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
CIVIL SUIT NO. 150 OF 2012

JAMES LULE APOLLO LTD (MDI) ::::::::::::::: PLAINTIFF

VERSUS

PRIDE MICRO FINANCE ::::::::::::::: DEFENDANT

BEFORE: HON.JUSTICE STEPHEN MUSOTA

JUDGMENT

Through M/s G M Kibirige & Co. Advocates, the plaintiff James Lule Apollo filed this suit against the defendant Pride Microfinance Limited represented by its Legal Department for general damages, special damages, punitive damages and costs of the suit arising out of breach of contract by the defendants.

According to the facts revealed during scheduling, the plaintiff was employed by the defendant since 3rd February 2010. He was dismissed on 20th June 2011 after being accused of having perpetuated a fraud involving UGX 145,000,000= . The plaintiff was employed as a Network Administrator in the IT department and as such he had access to the passwords which were allegedly changed to perpetuate the fraud.

The agreed issues for determination were:

1. Whether there was a breach of contract when the plaintiff was terminated.
2. Whether the termination was lawful.
3. What remedies are available?

The agreed documents for the plaintiff were:

1. Appointment letter dated 10th February 2015 - Exh. P1
2. Dismissal letter dated 10th August 2011 - Exh. P2, and
3. Human Resource Manual dated 24th March 2011 - Exh. P3.

The agreed defence documents were:

- (i) They relied Exhs.P1, P2, and P3 as well.
- (ii) Letter for investigative suspension - Exh. D1
- (iii) Summons to attend disciplinary hearing dated 1st August 2011 - Exh. D2
- (iv) Minutes of the disciplinary hearing dated 9th August 2011 - Exh. D3.
- (v) Forensic investigation report dated 13th January 2011 - Exh. D4.
- (vi) Administration notification to the plaintiff dated 1st September 2010 - Exh. D5.

The defence also relied on the snap shots in the report.

At the hearing of the suit, Mr. Kibirige appeared for the plaintiff while Mrs. Sentomero Harriet appeared for the defendant.

PW1 was the plaintiff himself James Lule Apollo an IT professional who was in employment with the defendant. He testified that he was terminated from duty in August 2011. He was not initially served with a termination letter but he was later served. He verbally knew that he was terminated after the disciplinary proceedings on allegations that he changed the password. He learnt this verbally from the Head Human Resource, Mrs. Mutazindwa. That the charge against him was that he changed the password although his dismissal letter had different charges. The

reasons in the investigative summons were also different but the dismissal letter says he created an account, modified it and used it to do unauthorized transactions. PW1 further testified that during the time of disciplinary hearing, changing the Systems Administrator password came up but the same is not contained in the summary dismissal. Further PW1 explained that he used his usual account Id Jlule in order to do end of month processing with full knowledge and acceptance of his supervisor like was the case before.

At the disciplinary hearing, he was told that he caused a financial loss of UGX 145,000,000=.

That when he looked at the forensic investigation report and compared it with the internal report, he found that the two had gaps. PW1 contends that there was a breach of his employment contract by the defendant and he was never paid 1,611,308/-. Therefore court should pay him special and punitive damages and costs as well as interest on all the damages and costs. He computed the special damages as amounting to 525,408,797/- comprising the total benefits. That this is so because he was to be employed up to retirement age of sixty years.

At the time of termination the plaintiff was only 33 years old earning a salary of 1,313,806/- per month. In addition he had end of year bonus comprising 5% of the monthly salary. He was also entitled to airtime of 50,000/- per month and a handset phone.

When cross examined by Mrs. Sentomero, PW1 testified that at the time of dismissal he had worked for two years as Network Administrator. That he was given notice of the investigative suspension and a notice to attend the disciplinary hearing as per Exh. 'D2' which he attended and got the evidence implicating him. That he was summoned because he modified the System Administrator password which led to manipulation of clients' identities and replication of transactions which led to a loss of 145,595,000/-

PW1, further in cross examination testified that he accessed the system using his username and password Jlule. That modifying the system cannot be done unless one has access which is the user ID Jlule. That he was unlawfully terminated because the case labeled against him was the case at the hearing which left many questions unanswered and there was no evidence of change of Super Account password on the production server. That there was no evidence his user account connected to the production server and the Super Account password cannot be changed from the front end as alleged. PW1 admitted to signing the Human Resource Manual and knew the Human Resource Policy. That his appointment letter (contract) was open ended and did not mention annual bonus. That although he was given a hearing, the atmosphere was not conducive.

This was the close of the plaintiff's case.

DW1 was Rebecca Magezi Bukenya, the Human Capital Resource Manager who had worked for 17 years. She knows the plaintiff and acknowledged that he was an employee of the defendant but his employment was terminated by summary dismissal. The plaintiff's role was to support users of computer Hardware and Maintenance of the hardware systems. That the Human Resource Manual was part of the contract. She identified Exhibits D1, D2 and D3. DW1 further testified that while in employment the plaintiff was asked to work as acting network administrator in August 2010 with effect from 31st August 2010 and he acted until the substantive administrator was recruited. The witness identified exhibits D4 and D5. That soon after the plaintiff was suspected to be involved in ICT fraud and was sent on investigative leave suspension in June 2011. He was notified of the suspension by letter dated 20th June 2011 Exh. D6. That on completion of investigations the plaintiff was called for hearing as per Exh. D7 to which he responded as per Exh. D8 dated 5th August 2011. That the plaintiff attended the hearing on 9th August 2011 and was given a chance to defend himself with a lawyer Mr. Kibirige as evidenced in the minutes in Exh. D9.

That during the hearing all issues about the case were discussed and a decision was made and communicated to the plaintiff verbally during the hearing and thereafter in writing. DW1 further testified that the reasons for dismissal was that the plaintiff used his banker's tracking user ID Jlule to create an account jlule which he modified by giving it Administrative privileges. He later

used that account to perform unauthorized transactions in the system. However the plaintiff has not picked his letter of 10th August 2011 because he has not cleared and reported to the Human Resource department which gives the end of service letter. That the plaintiff was aware of that procedure. The letter was exhibited as D10.

DW1 explained that on termination the defendant is obliged to give an end of service letter specifying the end of service. It tells the entitlements and obligations and requests the employee to return property, identity card, and not to conduct any business on behalf of the defendant and the consequences of default. The letter was exhibited as D11. That after hearing, if one is dissatisfied, he/she can appeal in five days to the Managing Director but in this case the plaintiff did not appeal. DW1 further testified that upon summary dismissal, one is entitled to contribution of 50% by the company, then the staff adds on that but in this case the plaintiff did not make any contribution because his name had only contribution by the company. That annual bonus is determined annually subject to performance of the organization and it is not automatic. It is approved by the board and the percentage is determined by the board depending on profit. If one is a poor performer, you do not get bonus. Regarding the claim for airtime for 29 years, the witness said that it is given to selected staff depending on the nature of an employee. It is not automatic.

Regarding the claim for a handset (phones) this is given once for all. If it is proved that it was no longer functional then replacement is approved but it is not mandatory. On departure, the phone is handed back because it is the property of the company. DW1 further testified that on departure, the employee is not entitled to benefits.

In cross examination, DW1 testified that because of the dismissal the plaintiff was not paid terminal benefits because he was not entitled. That she was not aware that the fraud was reported to the police.

DW2 was Richard Emuye an employee of EFS Consult Limited, an ICT consulting firm. He did a forensic audit for the defendant of an alleged fraud to confirm if any employee was directly or indirectly involved in fraud and to undertake forensic tests across the banking platform to ascertain the fraud schemes and how it was conducted, the people involved and amounts that were involved. He was to provide detailed findings on how fraud was conducted and make a detailed report. The witness made a detailed explanation of how he went about the work in the contents of the report which he tendered in court as Exh. D8. He established that the total amount defrauded was 145,000,000/- and in this the Jlule account featured prominently. The firm drew the conclusion that it is Lule who did it in the logs and page 24 of the report has the image where there are tools used. The logins from each machine were traced and the forensic analysis of the same was done. The owner of the user ID is James Apollo Lule.

DW2 finally explained that the account Id Jlule started the whole process as per the screen shot at page 11, 12 and 13. Page 11 shows the user time when Lule was in the system. Page 12 shows that he started another activity at 8:55am to get access to the production server and page 13 shows that the production server was in a waiting state and the port is 1433 and default used by Ms SQL. Page 14 is a continuation of page 13 arising out of the same account of Jlule. Further that this is enough evidence that Jlule tampered and triggered access to the system and page 18 explains Jlule account change to the super account.

DW3 was Filly Lawrence a business systems manager with the defendant who looks after all business applications. This entails setting, designing and implementing network systems that link Pride offices across the country. That the SA is a login Id which comes in the Data Base Management System Server. That this comes in automatically and to set in other systems used by other users. Not everybody touches the SA. That the Supper Account (SA) is used only once and left alone and not to be used again. If it is used again it can be used to manipulate data. DW3 explained that the plaintiff was dismissed but before he had no right to touch the Super Account (SA). He was also not supposed to touch the line Data Base. DW3 further said that at the time he joined, he was in charge of data base and did not give the plaintiff a password to access the data

base. That only authorized people can access the data base. That a password is a personal credential for a particular login and Jlule should have had a password to identify him on login. It was his key gateway. If Jlule logged in then he must have had a password known to himself.

That was the defence case.

Both learned counsel were allowed to file written submissions which are on record.

I have considered the evidence adduced by both the plaintiff and the defence. I thoroughly studied the submissions by respective counsel. I will go ahead and resolve the issues as framed starting with:

Issue 1: Whether there was a breach of contract when the plaintiff was terminated.

In his submissions, learned counsel for the plaintiff said that termination of the plaintiff's employment was unlawful and amounted to a breach of contract for which he is entitled to damages. That the defendant failed to substantiate the alleged plaintiff's complicity in the fraud. That the plaintiff was never issued with a termination letter meaning that the reasons for termination were not brought to his attention. That at the disciplinary meeting, the members simply verbally and summarily dismissed the plaintiff alleging that the plaintiff irregularly changed the password for username Jlule. That it was not shown how the changing of the password occasioned the alleged monetary loss. That the issue of loss of 145,000,000= was not raised in the meeting and it was not explained why the fraud was not reported to police. That in the very least, the defendant should have demanded that the plaintiff refunds the money or part of the money defrauded.

After a lengthy analysis of the case, learned defence counsel concluded that the defendant has no viable defence to the plaintiff's claim and therefore clearly the plaintiff suffered loss and damage and is entitled to damages set out in the plaint.

Learned counsel for the defence submitted to the contrary.

As rightly submitted by learned counsel for the defendant, the plaintiff's appointment letter (D1), the Defendant's Human Policy (D2), the statement of understanding the policy (D3), the notification of acting position letter dated 31st October 2010 (D4) and job description (D5) basically constituted the contract between the parties. From the testimony by DW1 Ms. Rebecca Magezi Bukenya DW1, I am satisfied that due process was followed when the plaintiff was summarily dismissed and for good reason. The plaintiff was sent on investigative suspension vide letter dated 20th June 2011 (D6) and this was in accordance with Section 63(1) of the Employment Act 2006 and Clause 134.2 of the Human Resource Manual. He was invited for a hearing vide letter dated 1st August 2011. This letter contained a summary of the allegations against the plaintiff and their effect. Evidence has revealed that the plaintiff's login Id was given administrator privileges which enabled the modification of the defendant's Super Account (SA) which enabled the plaintiff perform unauthorized transactions in the system which was in contravention with the company policy and the fundamentals of the plaintiff's terms of employment.

The evidence of DW2 Emuye Richard further pinned the plaintiff in his mischief which showed that using his user Id Jlule, the plaintiff logged into the system whereupon he was able to access the production server which stored all clients' information, accessed the back end and since the server required authentication, he logged in using super user account (SA) which had a lot of privileges. After that it was noticed that some accounts which had zero balance in the dump data base were given new balances in the live data base. For example, the case of one Teddy Nabbasa on page 20 on Exh. D10 got a new balance of 11,059,350/- in the live data base yet she had zero in the dump data base.

The testimony of DW2 was consistent and impressive in as far as proving the involvement of the plaintiff in the scam. His testimony was minutely corroborated by that of DW3 especially in regard to the use of user Id JIule which connotes James Lule to orchestrate the loss of 145,590,000/-. The plaintiff was satisfactorily linked to this loss in my view. The actions by the plaintiff were clearly prohibited by the terms of employment and when found out like it was done in this case warranted summary dismissal. The fact that the defendant has not yet been prosecuted does not render the dismissal a breach of contract. The disciplinary proceedings were commenced in line with the terms of contract. The plaintiff was guilty of fundamental breach of duty.

I am equally satisfied that the summary dismissal was in line with the law and the defendant's policy which formed part of the contract. Under Section 69(1) and (3) of the Employment Act 2006, an employer is entitled to dismiss summarily and the dismissal shall be termed justified where the employee by his or her conduct indicated that he or she fundamentally broke his/her obligations arising under the contract. This provision of the law is echoed by Clause 13.42 and 40 of the Manual. It was the duty of the plaintiff employed as acting administrator to monitor the performance of the network. He had no business with the data base management where he manipulated the client data and information and/or changed passwords. Therefore the summary dismissal was justified in the circumstances due to fundamental breach of duty i.e performing acts which were out of his jurisdiction as a Network Administrator.

It is trite law that summary dismissal under the Employment Act can be without notice or can be with lesser notice. It was held in the case of **John Eletu Vs Uganda Airlines Corporation [1984] HCB 40** that:

“Summary dismissal is without notice. At common law to justify summary dismissal the breach of duty by an employee must be a serious one. A breach amounting to a liquidation by the servant of his contract of employment such as disobedience of lawful

orders, misconduct, drunkenness, immorality, assaulting fellow workers, incompetence and neglect”.

I therefore agree with learned counsel for the defence that in the instant case, the plaintiff was summarily dismissed for gross misconduct. He misused his privileges which resulted into serious damage to the defendant rendering the dismissal justified.

Being an employee of a Banking Institution, the plaintiff ought to have exercised a high standard of conduct required of a banker or a person employed in a financial institution. It was held in the case of **Ladislaus Mukasa Vs Uganda Commercial Bank, HCCS No. 920 of 1993, (1994) 1 KALR 21.** That:

“Banking duties call for a high standard of conduct from bank officials since their position is one of particular trust and responsibility”.

In the circumstances of this case, I am unable to find that any breach of contract was committed by the defendant. The dismissal of the plaintiff was in line with the legal contractual and policy provisions. The decision was communicated to the plaintiff during the hearing and in writing although for reasons best known to him he had not gone to the defendant for clearance to get his copy of the letter.

Issue 2: **Whether termination was lawful?**

As rightly submitted by learned counsel for the defendant, unlawful or wrongful dismissal refers to dismissal without due regard to procedure and process under the law and/or terms of the contract of service.

In the instant case, the defendant complied with the disciplinary procedures under the law and Human Resource Manual before dismissing the plaintiff. The rules of natural justice were followed because the plaintiff was informed of the charges and was afforded the opportunity to be heard in the presence of his advocate. It is farfetched for learned counsel for the plaintiff to suggest that instead of dismissal the plaintiff should have been given opportunity to refund the defrauded money.

I will therefore find that the summary dismissal of the plaintiff was lawful.

Issue 3: Remedies available to the parties

Having found that there was no breach of contract on the part of the defendant and that the dismissal of the plaintiff was lawful, it follows that the plaintiff is not entitled to any of the claims in the suit.

Consequently I will order that this suit be dismissed with costs.

Stephen Musota

J U D G E

22.03.2016