

THE REPUBLIC OF UGANDA
THE INDUSTRIAL COURT OF UGANDA HOLDEN AT KAMPALA
LABOUR DISPUTE CLAIM. NO. 041 OF 2014
(ARISING FROM CS NO. 163. OF 2013)

BETWEEN

WAKIBI FRED..... CLAIMANT

AND

BANK OF UGANDA & ANOR..... RESPONDENT

BEFORE

1. Hon. Chief Judge Ruhinda Asaph Ntengye
- 2 .Hon.Lady Justice Linda Tumusiime Mugisha

PANELISTS

- 1 MrBaguma Filbert.
- 2 Mr Ebyau Fidel.
- 3 Ms Nyachwo Julian.

BRIEF FACTS

The claimant was employed by the respondent on 5/3/1991 on a temporary basis and in 1999 he was given a job on permanent and pensionable terms.

He was on 29/06/2010 charged of financial embarrassment before a disciplinary committee of the respondent and on 19th July dismissed having been convicted of the same charges.

According to the respondent, the claimant had grossly mismanaged his own financial affairs and as a consequence had breached clause1.15 in the Bank of Uganda Administration Manual and in accordance with this provision was dismissed after being heard.

The claimant in a memorandum of claim contended that his dismissed was unlawful since he was not provided with details of the charge against him and had no sufficient time to prepare for his defence. He also claimed that his dismissal was a design to deprive him of benefits under early voluntary retirement policy which had been communicated to all staff.

He prayed for:

- (a) A declaratory order that the Defendant/Respondent breached the provisions of the Employment Act.

- (b) Payment in lieu of notice
- (c) Declaration that the claimant was unlawfully dismissed.
- (d) Payment of compensatory awards for breach of the Employment Act.
- (e) Interest on (b), (d) & (e) at 24% p.a from 19th July 2010 till payment in full
- (f) General/aggravated damages for unlawful dismissal.
- (g) Costs of the suit.

Both parties agreed that the issues for determination would be:

- a) Whether the claimant's contract was lawfully brought to an end.
- b) Whether the claimant was entitled to the remedies.

We shall go straight to determine the first legal issue.

It was the evidence of the claimant that the bank policy on early retirement was in the offing and that therefore he should have been considered for this arrangement.

The evidence (especially in cross examination) reveals that the claimant had prior to his dismissal been remanded by court as a civil debtor for more than once in respect to different debts. The employer also received a complaint from another debtor relating to the claimant's failure to pay.

It was the submission of the claimant that the respondent did not follow the right procedure of termination because he, the claimant, was dismissed without a fair hearing in the sense that:

- a) He was not informed of the charges preferred against him prior to the disciplinary hearing.
- b) He was not given adequate time to prepare his defence.
- c) He was not informed of his rights to appear with a person of his choice.
- d) He was deprived of the opportunity to hear the testimony of his accusers and therefore he did not cross examine them.

The claimant, relying on the decision in **GENERAL MEDICAL COUNCIL Vs PACKMAN (1943) AC. 627, & HYPOLITO CASSIANO DESOUZA VS CHAIRMAN AND MEMBERS OF THE TANGA TOWN COUNCIL (1961)1 EA 377** argued that the respondent was liable for unlawful dismissal for having disregarded the right of the claimant to a fair hearing. He also submitted that by treating people with the same issue differently the respondent was discriminative.

The respondent on the other hand argued strongly that the claimant was terminated for financial embarrassment contrary to clause 1.15 of the Bank's Administration Manual which was a fundamental breach of the contract of employment by the claimant.

The respondent relied on section 69(1) and 69(3) of the Employment Act. The respondent also argued that the claimant was informed of the charges against him and was given time to respond to the charges at the disciplinary hearing. He argued that whereas the claimant had a right to

appear at the hearing with a person of his choice, there was no legal duty on the part of the employer to inform the employee of the existence of this right. He contended that since there were no witnesses called at the disciplinary hearing, the right to cross examine such witness could not arise.

The respondent argued strongly that there was no evidence adduced to show that the claimant was discriminated against.

Section 69(1) of the Employment Act provides

“Summary termination shall take place when an employer terminates the service of an employee without notice or with less notice than that is entitled by any statutory provision or contractual term”.

Section 69(3) of the same Act provides

“An employer is entitled to dismiss summarily and the dismissal shall be termed justified, where the employee has, by his or her conduct indicated that he or she has fundamentally broken his or her obligation arising under the contract of service”.

It is not disputed that the claimant was arrested and remanded at Luzira by a court of law on account of unpaid debts. It is not disputed that the claimant issued a cheque that was returned unpaid for insufficiency of funds on the account.

Clause 1.15 of the respondent’s Administration Manual provides

“Employees of the Bank shall not become financially embarrassed. Any person infringing this regulation will be liable to dismissal. All employees of the Bank shall be mandatorily required to sign a solemn declaration to this effect”.

It is the position of this court that Bank of Uganda being the overseer of all commercial banks has a duty as well to maintain financial discipline of its employees. Therefore the inclusion of clause 1.15 about financial embarrassment in the Bank manual was necessary as well as strategic so as to enhance the role of the Bank as a regulator in the financial sector.

We agree with the respondent that once the claimant was remanded to prison by a court of law on two accusations for two different civil debts, it amounted to financial embarrassment. It is our considered opinion that once one is remanded by a court of law on a civil debt, the presumption is that such a person is living beyond his/her means of survival until the contrary is proved. And this constitutes not only financial embarrassment of the employee but that of the employer, especially if such employer is a Central Bank.

The fact of being remanded by a court of law was compounded by the fact that the claimant issued a cheque which was returned unpaid for a debt of 820,000/= and also by the fact that the respondent received a complaint regarding failure of the claimant to clear a debt of 2,630,443.39/= belonging to Equity Bank. Given these glaring facts we hold that the respondent was entitled not to consider the claimant under any of the retirement benefits available to employees.

In our considered opinion no competent tribunal or court can hold that all the above incidents do not constitute financial embarrassment.

Given the role of the respondent and the nature of charges which in our view were proved, it is our holding that the respondent acted lawfully under section 69(1) and 69(3) of the Employment Act to terminate the services of the claimant.

FAIR HEARING

The evidence adduced from the claimant shows that he received a notification to appear before the disciplinary committee on 27th June 2010 but he was required to appear on 28th June 2010 which he in fact did. However, the record of the minutes of the disciplinary committee meeting shows that the meeting happened on 5th July 2010.

It is therefore more probable that the letter inviting the claimant was received on 28th June 2010 as counsel for the respondent contended in his submission. This means that the claimant had 6 days to prepare for his defence. It is our considered opinion that in the circumstances of this case, this was such a short time that the claimant could not have been able to comprehend later on prepares to defend the charges. It was not adequate time for him to arrange for either a lawyer or any other person to appear with him in accordance with his rights.

We therefore fault the respondent on having breached this tenet of hearing. We do not accept the contention of counsel for the respondent that the law did not impose upon the respondent the duty to inform the claimant about his rights to appear with somebody at the disciplinary hearing. We take the position that it is in the interest of justice and equity that the employer informs the employee of his right to have another person present during the disciplinary hearing. We think that section 66(1) (2) and (3) creates an entitlement by the Employee to a person of his choice to represent his (employee's) interests. This being an entitlement, in our view, ought to be embedded in the contract of employment. In the alternative the said entitlement ought to be communicated to the employee in the notice of the disciplinary hearing. In the absence of either of the two, in our view, the legal provision would be in the abstract and of no legal consequence since the entitlement is not obvious. Since there was no evidence that either the entitlement was echoed in the notice of disciplinary hearing or in the contract of employment, we hereby fault the respondent on this tenet of fair hearing.

However, we agree with the submission of the respondent that in this case there were no witnesses called and therefore the question of the right to cross examination could not arise.

We also agree that there was no evidence established against the respondent for being discriminative. The claimant ought to have called evidence to support the allegation that one Muhindo and one Musomali had been treated differently from the claimant.

REMEDIES

We have already ruled that the dismissal of the claimant was lawful and therefore we decline to grant any form of damages.

However, section 66(4) of the Employment Act states that **“Irrespective of whether any dismissal which is a summary dismissal of the employee is fair, an employer who fails to comply with this section is liable to pay the employee a sum equivalent to four (weeks) net pay”**.

We have already faulted the respondent on the various tenets of a fair hearing embedded in section 66 of the Employment Act. Accordingly we order that the respondent in compliance with section 66 (4) (supra) pays to the claimant a sum equivalent to 4 weeks net pay.

This sum will attract interest at 20% from the date of this award till payment in full. No order as to costs is made.

SIGNED

1.The Hon. Chief Judge, Ruhinda Asaph Ntengye.....

2.The Hon. Lady Justice Lillian Tumusiime Mugisha.....

PANELLISTS

1. Mr.Ebyau Fidel.....

2. Mr. Baguma Filbert.....

3. Ms. Julian Nyacwo.....

Delivered on 22nd December 2015