

THE REPUBLIC OF UGANDA
THE INDUSTRIAL COURT OF UGANDA HOLDEN AT MASAKA
LABOUR DISPUTE CLAIM. NO. 39 OF 2016
(ARISING FROM HCT-06-CV-CS-0014 OF 2013)

BETWEEN

OMODING SIMON..... CLAIMANT

AND

RAKAI HEALTH SCIENCE PROGRAM DEPARTMENT..... RESPONDENT

BEFORE

1. Hon. Chief Judge Ruhinda Asaph Ntengye
2. Hon. Lady Justice Linda TumusiimeMugisha

PANELISTS

1. Mr. Ebyau Fidel
2. Ms. Harriet NganziMugambwa
3. Mr. F.X. Mubuuke

AWARD

BRIEFACTS

On 1st February 2010, the claimant entered into an employment contract for 2 years between himself and the respondent beginning 8/2/2010.

According to the respondent, in October 2010, there was a process of restructuring which involved termination of several employees including the claimant. It was during the process of restructuring, according to both the claimant and the respondent, that a motor cycle belonging to the respondent was stolen and the claimant as security supervisor was suspected, arrested and charged.

According to the claimant, his termination was as a result of the false suspicion that he had been involved in the theft of the motorcycle and not because of restructuring. The cases against the claimant were withdrawn by the Director of Public Prosecution on 3/8/2011.

By letter dated 17/3/2011, the respondent terminated the employment of the claimant citing restructuring of the organisation.

Issues for the courts determination are:

- 1) Whether or not the claimant's employment contract was unlawfully terminated .
- 2) Whether the claimant is entitled to the remedies sought.

We shall now start with the first issue.

The evidence of the claimant revealed that he was employed as security supervisor of the respondent on contract for 2 years from the 8/2/2010. His contract was terminated by letter of 17.03.2016 contrary to the contractual provisions. Under this contract, the termination could be effected following provisions of the Human Resource Manual. This manual provided for not less than two weeks notice or cash payment in lieu of notice unless it was summary dismissal. It also provided for termination as a result of restructuring. The claimant's case as we understand it, is that he was dismissed under the disguise of improved technology in data collection. His case is that he was unlawfully dismissed on account of a false accusation that he had been involved in theft of a motorcycle.

The respondent's case as we understand it, is that there was a restructuring process in the organisation and as a result the claimant was terminated.

In his submission, counsel for the claimant contended that since the position of security supervisor continued to exist and one Okware was placed in the said position, it would not be said that the claimant was terminated as a result of restructuring.

Counsel for the respondent in reply contended that the replacement of the claimant was from the existing staff and was not a new recruitment. He insisted that the claimant belonged to the category of the staff whose donor grants had expired.

It is not disputed that a few months before the termination of the claimant a restructuring process had started in the respondent organisation. It is on record that the respondent had written to the commissioner of labour in respect to the restructuring process as a result of a reduction in donor funding.

We have scrutinised the evidence on record and we have carefully perused the submissions of both counsel. It is indeed true that the position of security supervisor was not made extinct by restructuring. In the words of the Director of the respondent,

“The position of security supervisor was not closed. There were other security personnel on grants that were continuing. They needed someone to oversee them. Mr. Okware served for about 1 year and left. He was among existing staff.”

We do not accept the contention of counsel for the claimant that merely because the position of security supervisor was not rendered extinct by restructuring, the claimant was not terminated through the same process. In the absence of contradicting evidence, we believe that testimony of DW1, the Director of the respondent, that the claimant was in the category of staff that did not have funding at the time he was terminated.

It is our considered opinion that as the restructuring was going on, the claimant was caught up in the investigations as to the theft of the motor cycles. Although the respondent seemed to deny that the theft case had anything to do with the termination of the claimant, we think that it was part of the reasons as to why the claimant was terminated in the restructuring process.

Considering that the respondent organisation had a deficit in donor funding, and considering that the claimant was in charge of security and motorcycles were stolen leading to suspicion that the claimant had been negligent in securing the premises of the respondent, we cannot rule out the possibility that this was a factor taken into consideration when deciding who would be terminated.

The Director said,

“To this date we have not recovered the motorcycles. We pray the case is closed because the programme lost the motorcycles for which the claimant was responsible for their security. The case is related to restructuring as well as loss of motorcycles. The loss of motorcycles occurred when restructuring was on going.”

It seems to us that the respondent had lost confidence in the claimant after this security lapse. Although the claimant may not have participated in any way in the theft of the motorcycles, he was at the same time one of those engaged by the respondent for the security of the area.

In the circumstances we do not find it inconceivable that the claimant was one of those that were eventually terminated as a result of restructuring. The story would have been different in our considered opinion, if there had been no restructuring process before the theft of the motorcycles. In this case, the respondent would have been required to subject the claimant to disciplinary proceedings in accordance with section 65 and 66 of the Employment Act.

Consequently we find that although the courts of law could not find criminal liability against the claimant, the respondent having lost confidence in the claimant as a result of the security lapse resulting in the theft of the motorcycles, and the respondent having suffered budget cuts due to donor funding leading to restructuring, the claimant was lawfully terminated. The first issue is therefore answered in the negative.

Having found that the termination was lawful, no damages arise out of the lawful termination.

In the final analysis, the claim is dismissed. No order as to costs is made.

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

PANNELLISTS

- 1.Mr. Ebyau Fidel.....
- 2.Mr. F. Y Mubuuke.....
- 3.Ms.Harriet Mugambwa.....

Dated.: 21st/10/2016