

THE REPUBLIC OF UGANDA

THE INDUSTRIAL COURT OF UGANDA HOLDEN AT KAMPALA

LABOUR DISPUTE CLAIM NO. 080 OF 2014

ARISING FROM LABOUR DISPUTE CLAIM NO. 164 OF 2014

BENON H. KANYANGO & ORS-----APPLICANT/CLAIMANT

VERSUS

BANK OF UGANDA-----RESPONDENT /DEFENDANT

BEFORE

1. The Hon. Chief Judge, Asaph Ruhinda Ntengye
2. The Hon. Judge, Linda Lillian Tumusiime Mugisha

Panelists

1. Ms. Nganzi Harriet Mugambwa
2. Mr. Frankie Mubuuke
3. Mr. Ebyau Fidel

AWARD

This award arises from a consolidation of Claim No. 37/2014 of one Issa Kawuma; Claim No.76/2014 of one Kananura Gideon; Claim No.78/2014 of Peter Isingoma, Claim No. 178/2014 of one David Epune; Claim No. 181/2014 of one Micheal Abatiti; Claim 186/2014 of one Betty Nanozi; Claim No. 40/2014 of one Claver Sezazungu Claim No. 77/2014 of one Unenboth Ukaba and 080/2014 of one B. Kanyangoga.

The facts briefly are:

The claimants were employees of the Respondent Bank for who had been in employment for over 10 years and whose employment was terminated between the months of July and August 2010.

Prior to termination of employment, save for the claimant, one Kawuma, the claimants appeared before the Respondent's management disciplinary committee for allegedly breaching the "financial embarrassment clause of their employment contracts.

Subsequent to the disciplinary hearings, the claimant's contracts were terminated and each of them was paid one month's salary in lieu of notice although subsequently another 2 months' salary in lieu of notice was paid to them.

The following issues were agreed upon by both parties:

- 1) Whether the claimant's employment contracts were lawfully brought to an end.
- 2) Whether the claimants are entitled to the remedies sought.

Five witnesses adduced evidence for the claimants and the respondent called only one witness in support of her case.

We now proceed to discuss the first legal issue.

It was the contention of the respondent that the claimants' employment was terminated lawfully in accordance with their employment contracts by way of payment of 3 months' salary in lieu of notice. Secondly, it was contended on behalf of the respondent that the claimants had appeared before a disciplinary hearing on charges of "financial embarrassment" and subsequent to this hearing their contracts were lawfully terminated.

The claimants on the other hand contended that the contracts of the claimants could only be terminated with both notice and reasons. They denied having been "financially embarrassed" and argued that they did not obtain a fair hearing when they were charged.

We propose to start with the question of the right of the employer to terminate the contract.

It was the respondent's case that termination by payment in lieu of notice was (is) a permissible contractual method of ending an employment contract in law.

Counsel for the respondent strongly argued that termination of contract was not a disciplinary act but merely a contractual exit arrangement available to either an employee or employer and can be exercised by either for a reason or for no reason at all.

He relied on the cases of STANBIC BANK LTD. VS KIYEMBA MUTALE SCCA NO 02/2010 and BARCLAYS BANK OF UGANDA VS GODFREY MUBIRU SCCA NO 1/1998. Counsel for the claimant contended that termination of employment could only be for justifiable reasons. He relied on MARY PAMELA SOZI VS PPDA HCCS 63/2012, section 2 of the Employment Act and FLORENCE MUFUMBA VS UDB LABOUR CLAIM 138/2014. Section 2 of the Employment Act 2006, which is the interpretation section provides; Dismissal from Employment" means the discharge of an employee from employment at the

initiative of his or her employer when the said employee has committed **verifiable misconduct**".

The same section provides:

"Termination of employment" means the discharge of an employee from employment at the initiative of the employer for **justifiable reasons other than misconduct**, such as expiry of contract, attainment of retirement age, etc.

This court in the case of **FLORENCE MUFUMBA VS UGANDA DEVELOPMENT BANK - LABOUR CLAIM 138/2014**, while discussing the above section pointed out:

"It is our firm conviction that in TERMINATING the employment of an employee there must be circumstances that are justifiable but which may have no bearing on the fault or misconduct of the employee. Such circumstances include but are not limited to expiry of contract, non-existence of the position due to restructuring, bankruptcy or dissolution of the employer, attainment of a retirement age and instances provided for under section 65"

On the other hand in DISMISSING an employee, the employer must establish that there is verifiable misconduct on the part of the employee. It is our view that verifiable misconduct includes but is not limited to abuse of office, negligence, insubordination, and all those circumstances that impute fault on the part of the employee which include incompetence.

In our opinion whether the employer chooses to "terminate" or dismiss an employee, such employee is entitled to reasons for the dismissal or termination. In employing the employee, we strongly believe that the employer had reason to so employ him/her. In the same way, in terminating or dismissing the employee there ought to be reason for the decision"

We have no reason and we are not convinced by counsel for the respondent to depart from the above decision. We do not accept the contention that by requiring the employer to give reasons for terminating the employment of the employee, this court would be contradicting the decision in **BARCLAYS BANK UGANDA VS GODFREY MUBIRU** (supra.)

In the case of **STANBIC BANK LTD VS KIYEMBA MUTALE** (supra) relied upon by counsel for the respondent, the unlawfulness of the dismissal of the respondent was never an issue. This issue was settled by the High court and it never came up in the court of Appeal or the

Supreme Court. The issue in the Supreme Court was whether the respondent (having been dismissed unlawfully) was entitled to terminal benefits in accordance with the terms of the contract of employment.

Secondly, in the above case the respondent had been dismissed summarily and yet there was no allegation that he had committed any serious crime to attract summary dismissal.

We therefore do not subscribe to the contention of counsel for the respondent that the decision in the above case is to the effect that in all situations and circumstances the Employer will be at liberty to dismiss the employee without giving him any reason and without the employee being in any way at fault. The notice provided for in the **Employment Act** and the **Labour Disputes (arbitration and Settlement) Act** and in almost all employment contract agreements are only supplementary and additional to the need to provide a reason for dismissal. It is not an end in itself. Thus in the case of **MARY PAMELA SOZI VS PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS AUTHORITY, CIVIL SUIT 063/2012**, the court pointed out that an employer cannot unreasonably and without justification terminate the contract of an employee just because there is a clause in the employment contract that allows for payment in lieu of notice.

Having dealt with the question of the right of the employer to terminate the contract, we now proceed to discuss, the question whether the claimants contravened clause 1.15 of the Bank's Administration Manual (exhibit D1) which provides "Financial embarrassment. Employees of the Bank shall not become financially embarrassed. Any person infringing this regulation will be liable to dismissal".

In his submission, counsel for the respondent contended that the claimants were in breach of the above provision and that except claimant No. 7, they were afforded a hearing. He also in his submission argued that the respondent was at liberty upon conclusion of the disciplinary hearings to instead of exercising punishment by way of dismissal opt to merely exit the employment relationship by way of termination.

Evidence led by both the claimants and the respondents show that except one Isa Kawuma , all claimants were indebted to the various creditors who brought this fact to the attention of the respondent. Some of the creditors had taken the matters to court although some of the claimants denied knowledge of the court proceedings. Some of the claimants had issued bank cheques which were received uncleared.

We are convinced that the claimants' employment was terminated following a disciplinary hearing and the reason for the termination was clearly spelt out in the termination letters which stipulated:

"Following the management disciplinary committee meeting on 28th June 2010 at which you were given an opportunity to respond to the allegations relating to financial embarrassment, which is in violation of section 1.15 of the staff regulations in the administration manual, management has decided that you be terminated from the services of the Bank with immediate effect."

Given that the obvious reason for termination was violation of section 1.5 above, it is very difficult for this court to believe the assertion of counsel for the respondent in his submissions at page 4 that **"it follows accordingly that the whole analysis of the fairness or otherwise of the financial embarrassment disciplinary hearing including the questions of whether adequate notice of the alleged wrongs was given, whether there was an opportunity to cross examine the accusers and whether the claimants were permitted to have in attendance a person of their choice, are totally irrelevant in the circumstances of this case as the respondent instead opted to terminate the employment relationship and pay the claimants their contractual entitlements being three (3) month's pay in lieu of notice."**

We think that this court can only do Justice to both parties by considering the question whether in the circumstances the respondent acted fairly in terminating the claimants *or contravening clause 1.15 of the Administration Manual (Exhibit D1).

We reiterate the position put by this court in **WAKABI FRED VS BANK OF UGANDA CLAIM NO. 041/2014** that the inclusion of clause 1.15 in the Bank manual was necessary as well as strategic to enhance the role of the Bank as a regulator in the financial sector. The question therefore is: Were the claimants financially embarrassed?

We think that living beyond one's means of survival is an indicator that one is financially embarrassed. We also think that being financially indisciplined is an indicator of financial embarrassment once the acts of indiscipline spread over to affect third parties. Another indicator of financial embarrassment is failure to pay one's debts.

This court in WAKABI FRED VS BANK OF UGANDA (supra) expressed the 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".

In our considered opinion one of the purposes of the provision of financial embarrassment in the Administration Manual of the respondent was to inculcate the principle of financial discipline in

the employees so that as a financial regulator the respondent would gain confidence of all financial sector institutions including commercial banks.

The provision was to emphasize the fact that the employees of the respondent were a reflection of the respondent's outlook in as far as financial matters were concerned and therefore its breach was a fundamental breach.

We agree to the proposition of counsel for the claimants that being indebted perse does not amount to financial embarrassment.

However, we do not accept the insinuation that one has to be declared bankrupt or detained in a civil prison by a court of law in order to be declared "**financially embarrassing**". We think each case has to be decided on its merits.

The claimants were working with a central bank. We believe that they knew the worth of the cheques they issued to their creditors. We are of the considered opinion that once a cheque is issued by a debtor such debtor is presumed to know that such a cheque shall one time be presented to the bank for payment. This is especially so if the drawer of the cheque is a person who has knowledge about bank operations relating to cheques which all the claimants were aware of. Therefore we do not accept the contention that the claimants were victims of money lenders who intended to cheat them.

Cheques are instruments of the bank that ought to be respected and used as a means of payment for services rendered. For a person who is aware of this purpose, to issue a cheque which on presentation is dishonored, in our view is to be financially disciplined. One could avoid this by convincing the creditor not to present the cheque for payment till the account is credited which did not happen in this case. It is our firm conviction that this indiscipline becomes financially embarrassing once third parties are aware of the dishonor.

In the instant case, it was not disputed that the claimants issued the various cheques which were dishonored for non availability of funds.

Neither was it disputed that the creditors went to the respondent to assist in the recovery of the debts of the claimants.

It is our holding therefore that the claimants having been employees of the central bank that regulates all other banks and other aspects of the financial sector, should have known that issuing cheques without being sure of the cash resources would result in the possible dishonoring of the cheques. They were under a duty to protect the worthiness of bank instruments especially the bank

cheques, meant to ease bank transactions. In the circumstances, we find that it was an aspect of financial indiscipline for the claimants to pay their debts by cheques well knowing that there would be no sufficient funds to honour them.

It was indeed financial embarrassment once those in whose favour the cheques were drawn complained to the respondent. Accordingly the claimants breached clause 1.15 of the Bank's Administration Manual and their employment contracts save for claimant 7, Issa Kawuma, were lawfully terminated.

FAIR HEARING

We agree with the submission of counsel for the claimant that tenets of a fair hearing were not complied with. Evidence on the record is to the effect that the claimants were summoned and required to appear for disciplinary proceedings within one day. They were not informed of the charges before hand and therefore they appeared while not prepared to defend themselves. They were not given an opportunity to have other persons to appear with them as provided for under section 66(1)(2) and (3) of the Employment Act.

We therefore fault the respondent as we did in the case of WAKABI FRED VS BANK OF UGANDA LABOUR DISPUTE CLAIM No. 004/2014.

However, we take the position that whereas a fair hearing ordinarily precedes a finding for or against either party, in this particular case the hearing established enough facts to constitute breach of clause 1.15 of the Administration Manual of the Bank. As was put in the case of **GENERAL MEDICAL COUNCIL OF MEDICAL EDUCATION AND REGISTRATION OF THE UNITED KINGDOM (1943) ALLER 340 AND CAROLINE KARISA GUMISIRIZA VS HIMA CEMENT LTD. NO. 84/2015** which cases were cited with approval by this court in the case of **GRACE MATOVU VS UMEME LTD LABOUR CLAIM 004/2014** a disciplinary committee need not follow the procedure as applied in the courts of law but is required to merely give opportunity to the employee to defend himself/herself without the standards of a court of law.

In the instant case the claimants were called to the disciplinary committee and they admitted having issued the cheques that were dishonored for non-availability of funds which action this court has already considered as constituting a breach of the provisions of clause 1.15 of the Bank's Administration manual.

Therefore although the disciplinary committee fell short of the High Standards of a court of law as far as a fair hearing was concerned, this could not amount to an illegality or nullification of the decision that the committee took. It could only amount to a penalty on the part of the employer.

CLAIMANT 7, ISSA KAWUMA

Earlier on in this award, we mentioned that an employee is entitled to reasons as to why he/she is terminated and we discussed this fact in detail. Since claimant No. 7 was terminated without any reason, his termination was not only unfair but unlawful as well.

REMEDIES

The claimants prayed the court to grant various remedies. The respondent argued that the claimants were not entitled to any of the remedies prayed for. We partly agree with the respondent since the award is in favour of only one of the claimants.

Issa Kawuma was unfairly and unlawfully terminated. He had worked for 18 years and we agree with him when he says it was a shock to him since there was no reason given and he was not subjected to any disciplinary action. He was psychologically tortured for being terminated in this manner. We therefore think that he is entitled to general damages of 75,000,000. He is just like the rest of the claimants also entitled to interest at the rate of 21% from the date of termination to when the amount for two months in lieu of notice was finally paid. The same interest rate will apply to the damages granted to Issa from the date of the award till payment in full. Under section 66(4) of the employment Act, for failing to comply with the whole section, the respondent shall pay to each of the claimants four weeks net pay. Under section 78(1) of the same Act, the respondent shall in addition pay to the 7th claimant compensation of four weeks wages.

No order as to costs is made.

SIGNED

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

PANELLISTS

1. Mr. Frankie Mabuuke

2. Ms. Nganzi Harriet Mugambwa

3. Mr. Ebyau Fidel

Dated 23th – June- 2016