

THE REPUBLIC OF UGANDA

IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA

LABOUR DISPUTE: CLAIM NO. 58 OF 2016 ARISING FROM HCT-CS-15 OF 2016

KIZZA ERIC .....CLAIMANT

VERSUS

1. THE EXECUTIVE COMMITTEE OF MASAKA ELDERS COOPERATIVE SAVINGS AND CREDIT SOCIETY LIMITED ( SACCO)
2. MULINDWA DEO OF Mutuba /Musisi Gardens Municipality
3. NABUUMA DOROTHY of Bukomansimbi Town council
4. KATEREGA MAWANDA STEVEN of Kimaaanya B, Masaka Municipality
5. MUTYABA DAVID of Mpugwe trading Centre
6. MUSOKE DIRISA of kaggugala-Mpugwe
7. MUYIGGWA JOHN BAPTIST of Lukaya Town Council
8. NDAGIRE ESTHER of Bigando-Kkingo ..... RESPONDENTS

BEFORE

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

PANELISTS

1. Mr. Frankie Xavier Mubuuqe
2. Ms. Harriet Mugambwa
3. Mr. Ebyau Fidel

## **AWARD**

### **BRIEF FACTS**

The claimant brought this matter against the respondents jointly and severally for unlawfully dismissing him from employment as Manager of Masaka Elders Cooperative and Credit Savings Society Ltd. He was one of the Society's founder members. The Society was established in 2006. He initially worked as a volunteer until 2006 when he was formally appointed as Manager by the Executive Committee of the Society on a 5 year contract. The contract was renewed on the 31/12/2010 for another 5 years, it expired on the 31/12/2015, on the 15/03/2015 he was placed on forced leave for 1 month and the 18/03/2016 he was dismissed by the Executive Committee who represented the Society. He prayed for:

1. Judgment against the defendants jointly and severally
2. A declaration that the dismissal was null and void ab initio
3. An order reinstating the claimant as manager of the society
4. An order for payment of the claimants salary arrears calculated to the date of judgment
5. General damages estimated at shs. 80,000,000/=
6. Special damages in form of salary arrears
7. Exemplary damages
8. Costs of the suit
9. An injunction order stopping the 2<sup>nd</sup> to 8<sup>th</sup> defendants from acting as or holding themselves out as members of the committee.
10. Interest at court rate on all pecuniary

The claimant was represented by learned Counsel Pius Nyanzi and the Respondents by Learned Counsel John Matovu.

Before the commencement of the trial learned counsel for the Respondents raised a point of law on whether the 2<sup>nd</sup> to 8<sup>th</sup> respondent were properly and legally sued. Court ruled that they were properly and legally constituted. The remaining issues were consolidated into two issues as follows:

### **ISSUES**

During scheduling both counsel agreed the following issues

- 1. Whether the 2<sup>nd</sup> to 8<sup>th</sup> respondents whose term as the Executive Committee had expired had authority to dismiss the claimant and therefore whether the dismissal was lawful?**
- 2. What remedies are available to the parties?**

We shall start with the first issue:

- 1. Whether the 2<sup>nd</sup> to 8<sup>th</sup> respondent whose term as the Executive Committee had expired, had authority to dismiss the claimant and therefore whether he was lawfully dismissed?**

In his evidence in chief and in cross examination, the claimant alleged that the respondents had not told him about the allegations against him neither was he afforded a hearing contrary to the principles of Natural Justice. He claimed his dismissal was malicious, high handed, unfair, deceitful harsh, unjust and in bad taste and that he had lost earnings at a rate of Ugx.800, 000/- per month and continues to lose until the date of the Courts award. The claimant restated the facts of the case and added that he was dismissed on the basis of audit reports which were not availed to him nor was he given an opportunity to be heard.

He testified that he was put on forced leave on the 15/12/2015 initially for a month and later the leave was extended three times until 9/03/2016 to allow for further investigations.

He further testified that on two occasions, the 14/03/2016 and the 17/03/2016, he was invited for a meeting with the Executive Committee at the Patel Shamji hall but he did not attend either. He was then dismissed on the 18/03/2016 and was expected to hand over on the 22/03/2016. He insisted that his contract was still subsisting and in his opinion he was unlawfully summarily dismissed.

It was his testimony that the Executive Committee members that dismissed him were holding office illegally, their term in office having expired in March 2015.

In his submission Counsel for the claimant basing on the evidence of RW1, Mulindawa Deo, asserted that the 2<sup>nd</sup> to 8<sup>th</sup> Respondents had been elected in March 2011 and their first term expired on March 2013. The Second term expired on March 2015; therefore by the 18<sup>th</sup> of March when the claimant was dismissed the Respondents had ceased to lawfully hold the office as the Executive Committee of the Society.

He refuted RW1s assertion that the Commissioner Cooperatives had extended the executives term of office indefinitely because this had been done contrary to Regulation 24(3) of the Co-operatives Societies Act Cap 112 and the rules and regulations there under and specifically the Society's Bye-laws. He quoted Regulation 24(3) of the cooperatives Societies Regulation 1992 which provides that:

***"Members of the Committees shall hold office for two years but shall be eligible for re-election. Provided that no member of a tertiary or apex Cooperative Society may be re- elected for more than two terms."***

He also referred to Article 33 of the Masaka Elders Cooperative and Credit Savings Society Ltd bye – laws which provides that:

*“(i) subject to the provisions of the Act and the regulations the committee shall hold office for two years term, the outgoing committee members are eligible for re-election provided that no committee members shall serve for more than 2 consecutive terms.*

*(ii) however once a period equal to the time already served has a lapsed they may be elected”*

His *interpretation* of the provision was to the effect that once a person was elected Executive Committee member of the Society; he or she could only serve two consecutive terms of two years each and be eligible for re-election 4 years after serving the second term.

Counsel contended that the minutes of the Assembly which the respondents alleged had extended their term of office did not have any provision to that effect.

Counsel for the respondents on the other hand insisted that the 2<sup>nd</sup> to 8<sup>th</sup> respondents were lawfully in office, their term having been extended by the Commissioner Cooperatives. He did not dispute the fact that the Society was governed by the Cooperatives Societies Act cap 112. He however contended that the claimant had not exhausted all avenues for redress before coming to Court. Counsel submitted that Section 73 of the Cooperative Societies Act, which required persons with disputes relating to the business of a Cooperative Society to go for arbitration was mandatory before going to Court.

He further contended that the respondents were rightfully in office, the Society having failed to elect new office bearers to replace them. He insisted that the

District Cooperatives Officer authorized them to continue holding office until a new executive was put in place. He argued therefore that they had authority to dismiss the claimant.

Counsel argued the claimant's contract had expired on the 31/12/2015 and it had not been renewed by the time the respondents' term of office had expired. He refuted the claimant's assertion that his contract had been renewed on the 25<sup>th</sup> November 2015 in a joint meeting of the executive Committee and the loans Committee because he did not prove it with written evidence. Counsel was of the opinion that the said contract did not take effect because the claimant had admitted that he did not return to office after December 15<sup>th</sup> when he went on leave.

Counsel was also of the opinion that the correspondences from the respondents to the claimant after the 15 December were made out of ignorance of the legal position that the claimant had ceased to be their employee when his contract expired on the 31/12/2015. In his opinion the purported dismissal could not constitute a cause of action and in the alternative he considered that the dismissal was lawful.

He further argued that the audit reports instituted by the Committee found large sums of money belonging to the 1<sup>st</sup> respondent unaccounted for and the claimant as manager was liable for the losses, which called for disciplinary action against him. It was his submission that the respondents attempted to call the claimant for meetings which he declined to attend. Counsel insisted that a Special General meeting had been held to give the claimant an opportunity to defend himself but he refused to attend the meeting through his lawyer's letter protesting the invitation. The General meeting then resolved to dismiss him.

Counsel was of the opinion that the claimant should not have come to court but rather should have gone for Arbitration which was mandatory under Section 73 of the Cooperatives Societies Act.

## **RESOLUTION**

We have carefully perused the record, the evidence of both parties on and both Counsels submissions and found as follows:

The claimants' contract expired on the 31/12/2015 and although there is no evidence of its renewal on the record, it is not disputed that the Executive Committee sent the claimant on forced leave on the 15/12/2015 which leave was extended until 18<sup>th</sup> March 2016, when he was dismissed. We do not agree with Counsel for the respondent that the correspondences to the claimant after 15<sup>th</sup> December 2015 were done in ignorance. This court finds it difficult to believe that the respondents who claimed to get their advice from persons such as the Registrar /Commissioner Cooperatives Development could have operated in ignorance for so long. The respondents did not even adduce any evidence to substantiate this claim. ~~We~~ do not agree that they were ignorant about the claimant's employment status.

If indeed the claimant's contract had expired on the 31/12/2015, then the Executive Committee had no business inviting him for disciplinary meetings on the 14<sup>th</sup> and 17<sup>th</sup> March 2016 and dismissing him on 18<sup>th</sup> March 2016. The conduct of the Executive Committee leaves us with no doubt that the Executive Committee still considered the claimant an employee of the Society and thus exercised their authority over him as such.

**We shall now address the question whether the 2<sup>nd</sup> to 8<sup>th</sup> Respondents were lawfully in office and whether they lawfully dismissed the claimant.**

It is clear from the submission of counsel for the claimant that according to Regulation 24(3) of the Cooperatives Societies Act (Supra) and Article 33 of the Society's Bye-laws (supra) once a person is elected Executive Committee member they can only hold office for two consecutive terms of two years each and are only eligible for re-election 4 years after their 2<sup>nd</sup> term. In the instant case the Executive Committee had served the two consecutive terms which had expired in March 2015 and were therefore not eligible for re-election until 2019. They however claimed that their term had been extended by the Commissioner Cooperatives Development and the Society's General Assembly. We have perused the minutes of the Assembly on the record and find no minute to that effect. We have also studied the Cooperatives Act and find no Proviso authorizing the Commissioner Cooperatives Development to grant such an extension.

In the absence of such a proviso we hold that the extension was unlawful and the 2<sup>nd</sup> to 8<sup>th</sup> respondent were in office illegally, because their term as Executive Committee members of the Society had expired in March 2015. Having found that they were in office illegally they had no authority therefore to dismiss the claimant. The Claimant's dismissal was therefore void abinitio.

On the mandatory invocation of Section 73 of the Cooperative Societies Act. Counsel was given opportunity to raise points of law at the commencement of the trial but he did not raise this point then. Counsel brought it to the attention of Court very late during submissions. Had he brought it before we had reached the stage of writing the award maybe we could have considered the case in a different light. None the less we have carefully considered Section 73 and we agree with counsel for the Claimant who in his submission in rejoinder stated that Section 73(supra) does not preclude this Court for hearing the matter.

On whether the claimant was given an opportunity to be heard, Counsel for the claimant quoted Article 28(1) and 44, 55 and clause 2.1 of the Masaka Elders SACCOs Human Resource Operational Policies and Procedures as the basis for the fundamental right to be heard. According to him the claimant was not given an opportunity to be heard. He asserted that the letters that invited the claimant for the meetings of the 14<sup>th</sup> and 17<sup>th</sup> did not clearly mention the allegations against him and therefore the assertion by the respondents that he knew the allegations against him and he was invited for a hearing and he declined to attend could not stand.

We have studied the letter inviting the claimant to appear before the committee

***“ ...Following an audit of Masaka Elders SACCO, you are summoned to appear before the committee of Masaka Elders SACCO.***

***The will take place on the 17<sup>th</sup> March at 9.00 am exactly at....”***

The letter dose not state that it was a hearing notice, neither did highlight any allegations against the claimant. It only required the claimant to appear. It could be argued that he was placed on forced leave to enable the carrying out of an investigation and therefore he must have been aware that the meeting was related to the investigation. However it is our view that the letter was vague and it created speculation. If the meeting was intended to give the claimant an opportunity to defend himself it should have clearly stated so. If he was expect to answer queries raised in the Audit report the letter should have stated so and in addition the claimant should have been provided with the report to enable home prepare his responses. This court has already decided in the case of **CHRISTOPHER KAGIMU VS UGANDA ELECTIRICTY DISTRIBUTION CO. LTD (UEDCL) LD No.007/2014** that:

***"... that where the Disciplinary proceedings are hinged on an investigation report against an employee, such employee is entitled to such investigation report so as to be able to examine and respond to it. Only then would one say that such an employee had a fair hearing..."***

In the instant case the claimant did not have a clear statement of the charges levied against him, he was not provided with the audit report to enable him prepare a response to it and the committee which invited him to appear before it is the same committee that had commissioned the investigation which made them partial. We have already found that the committee did not even have legal basis to institute the hearing in the first place. This notwithstanding the Committee did not apply the principles of Natural Justice further rendering the dismissal unlawful.

**What remedies are available to the parties ?**

1. The claimant sought a declaration that his dismissal was null and void because he was dismissed by the body whose term had expired and was therefore in office illegally. We have found that indeed the Executive Committees term had expired in March 2015 and they were illegally in office. The claimant's dismissal by this committee was therefore void ab initio.
2. He sought a declaration that he should be reinstated as manager of Masaka Elders SACCO Savings and Credit Cooperatives Society Ltd. It's our considered view that the trust and confidence which was the basis of the employment relationship between the claimant and the respondents has been fundamentally broken and therefore reinstatement would not be tenable. In the alternative claimant is awarded General damages. Damages are intended to restore the wronged party to a position he or she would have been in but for the wrong, ***Gulaballi Ushillani Vs Kampala***

*pharmaceuticals SCCA No.6 of 1998.* In the case **ISSA BALUKU VS SBI HOLDINGS (U) LTD HCCS NO. 792 OF 2005**, Justice Kasule held that:

*"... however, another additional principle has been developed by courts over time in cases of unlawful dismissal. This is the principle that courts, where appropriate in exercise of their discretion may award damages which reflect the courts disapproval of a wrongful dismissal of an employee .The sum that may be awarded under this principle is not confined to an amount equivalent to the employees' wages ..."* we therefore award the claimant damages of Ugx. 10, 000,000/- for the unlawful dismissal.

3. The claimant prayed to pay his salary arrears at a rate of UGX.800,000/ per month from the date of termination to the date of Judgement. In the case of **FLORENCE MUFUMBO VS UDC LDC 138/2014** ,this Court awarded the Claimant Florence salary arrears from the date of her termination to the date of judgement, we have no reason for departing from the decision. The claimant is therefore awarded salary arrears from 18/03/2015 to the date of judgement at an interest rate of 8% until full and final payment.
4. In view of the principles of law regarding the award of special damages we have no basis to award Special Damages because the Claimant did not adduce evidence to prove them. The elements of Special Damages must be specifically pleaded and proved.
5. Based on the Principles governing the award of Exemplary Damages, as laid down in the case of **ROOKES VS BARNARD** we are not satisfied that the claimant suffered such damage as to warrant the award of Ugx, 80,000,000 prayed for. The claimant did not adduce evidence to prove exemplary damages and therefore the prayer fails.

6. No order as to cost is made

In the final:

1. A declaration that the claimant's dismissal by this committee was void ab initio.
2. General Damages of Ugx. 10, 000,000/- for the unlawful dismissal.
3. Payment of salary arrears from 18/03/2015 to the date of judgement at an interest rate of 8% till full and final payment.
4. No order as to costs

Signed:

1.The Hon. Chief Judge, Asaph Ruhinda Ntengye

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2. The Hon. Judge, Linda Lillian Tumusiime Mugisha

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PANELISTS

3.Mr. Frankie Xavier Mubuuke

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4.Ms. Harriet Mugambwa

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5.Mr. Ebyau Fidel

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DATE.....