

**THE REPUBLIC OF UGANDA  
THE INDUSTRIAL COURT OF UGANDA HOLDEN AT MASAKA  
LABOUR DISPUTE CLAIM. NO. 038 OF 2016  
(ARISING FROM HCT-06-CV-CS-0040 OF 2014)**

**BETWEEN**

**DAVID KALYANGO ..... CLAIMANT**

**AND**

**RAKAI HEALTH SCIENCES PROGRAMME..... RESPONDENT**

**BEFORE**

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

**PANELISTS**

1. Mr. Ebyau Fidel
2. Ms. Harriet Nganzi Mugambwa
3. Mr. F.X. Mubuke

**AWARD**

This is a labour claim dispute filed by the claimant against the respondent for unlawful dismissal.

Briefly the facts of the case are:

The claimant by letter dated 20/1/2009 was offered employment as a motorcycle Mechanic of the respondent.

Following his completion of probation he was by letter dated 18/05/2010 confirmed in employment. According to the respondent in October 2010, there was a process of restructuring whereby several employees including the claimant were subsequently laid off. During this process, according to the respondent, there was theft of motorcycles and the claimant was one of the suspects who were arrested, charged and prosecuted. On 25/02/2014, the claimant was acquitted of the charges of theft, although he had by letter dated 7/2/2011 been terminated "due to restructuring".

The claimant's case as we understand it is that on 24/11/2010 he took out a motorcycle for repair and later on brought it back to the parking yard but the next day as one doctor sought to use the motorcycle this very one was missing and he reported the same upon which he was arrested and prosecuted. According to him, when he was released on bail and he came to report on 6/01/2011 he was asked to keep at home only to be summoned to be served with a dismissal letter.

His case is that the dismissal was malicious, resulting from the theft allegations and not because of restructuring.

The agreed issues are:

- 1) Whether the termination was lawful
- 2) Whether the claimant's prosecution was malicious
- 3) Remedies available to the parties.

The fact that the respondent was undergoing restructuring long before the allegations of theft of motor cycles were brought against the claimant was not disputed. Evidence of the respondent that the programme Director on 12/10/2010 wrote to the Commissioner of Labour Gender and Social Development about the impending restructuring was not challenged.

The letter (among other things) stated

**“.....This year, there has been a reduction in the donor funds.....This has had a very grave impact on the finances of the programme.....Some programmes are coming to an end rendering some employment redundant. In light of the above and pursuant to section 81(b) of the Employment Act 2006, we would like to notify you that ..... the entire project has found it necessary to lay off one hundred (100) employees.....”**

We have perused and internalized the **“Proposed phasing of restructuring process 2010 marked as “B2” to “B13”** and we are satisfied that the respondent was undergoing and in fact underwent restructuring resulting into phasing out of certain job descriptions. The existence of this restructuring process before the theft allegations in our view disputes the allegations that the dismissal of the claimant was precipitated by malice or his prosecution in the courts of law for theft of motorcycles.

The evidence of the respondent that the termination of service was as a result of restructuring is more plausible and believable, although the arrest and subsequent prosecution of the claimant could have been a factor in the management's decision to pick on him as a target in the process since by being a suspect in the theft of the motorcycles belonging to the employer, there was no longer the trust required between employer and employee.

Under the Employment Act, as this court has always held, every employee is entitled to a reason for termination of his employment.

In **Joseph Kibuuka & Others Vs Bank of Uganda (Labour Dispute No. 184/204)** this court had this to say

**“The notice provided in the Employment Act and the Labour Disputes (Arbitration & Settlement) Act and in almost all Employment Contract agreements are only supplementary to the need to provide a reason for dismissal”.**

In yet another case, **Florence Mufumba Vs Uganda Development Bank (Labour Dispute No. 138/2014)** this court said

**“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”.**

The above two cases were in effect in compliance with section 68 of the Employment Act which states

**“(i) In any claim arising out of termination, the employer shall prove the reason or reasons for the dismissal, and where the employer fails to do so, the dismissal shall be deemed to have been unfair within section 71.”**

This section describes circumstances under which an employee may lodge a complaint over unfair termination and if the court is satisfied what action it can take.

Section 2 of the employment Act, defines termination of employment as:

**“discharge of an employee from an employment at the initiative of the employer for justifiable reason other than misconduct such as expiry of contract, attainment of retirement age, etc”.**

It is our strong opinion that restructuring is one of the justifiable reasons envisaged under the above section. It is certainly a reason given by the respondent in accordance with section 68 of the Employment Act cited above as well as in accordance with the decisions of this court cited above.

The letter of termination of employment stated (among other things) that:

**“This is due to your position having been redundant as a result of improved technology in data collection, ending activities and grants and budget cuts in on-going grants.....”**

In cross examination the Programme Director, RWI explained that because the motorcycles were originally used to transport officers to collect data, given the technological advancement employed by use of computers, it was not necessary with the use of technology to keep a large fleet of motorcycles or the mechanic. We believe his evidence that it became cheaper to outsource collection of data than to maintain motorcycles and a mechanic. We reject the evidence of the claimant that he had nothing to do with data collection as a mechanic. We do not accept the submission of counsel for the claimant that the position of the claimant had not become redundant due to improved technology.

On the contrary we agree with counsel for the respondent that by the time the employees to be laid off were categorised into different codes/colours as evidenced in exhibit **“B2” – “B13”** attached to RW1’s testimony, no motorcycles had been stolen.

We are of the view that it was not necessary, as counsel for the claimant seems to suggest in his submission, for the respondent to require the claimant to explain himself in disciplinary proceedings or otherwise about the theft allegations since restructuring begun before theft allegations.

Given all the foregoing and the fact that both claimant and respondent in a Joint Scheduling Memorandum signed by both counsel agreed that between October 2010 and March 2011, the respondent carried out restructuring exercise that laid off 100 employees, we find that the termination having been as a result of restructuring, it was a lawful termination and the first issue is answered in the affirmative.


As this court held in the case of **Beinomugisha Vs Rakai Health sciences Programme, (Labour Dispute Claim No. 57/2016)** the mandate of this court does not extend to determining whether or not a prosecution was malicious, this being a distinct and separate cause of action from unlawful termination. The third issue therefore cannot be derived into by this court.

Since the claimant was lawfully terminated, we hold that there are no remedies available to him except as provided for in the termination letter.

No order as to costs is made.

Signed by:

Hon. Chief Judge Ruhinda Asaph Ntengye

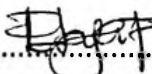
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Hon. Lady Justice Linda Tumusiime Mugisha

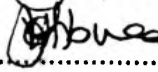
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#### PANELISTS

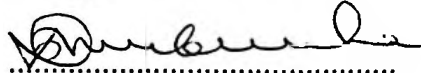
1. Mr. Ebyau Fidel

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Date signed: 13<sup>th</sup>/09/2016