

1 THE REPUBLIC OF UGANDA
THE INDUSTRIAL COURT OF UGANDA HOLDEN AT KAMPALA
LABOUR DISPUTE CLAIM NO. 009/2015
(Arising from LDC No. 106 of 2013)

BETWEEN

ONGUKO JIMMYCLAIMANT

VERSUS

UMEME LTD.....RESPONDENT

BEFORE

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

PANELISTS

1. Mr. Ebyau Fidel
2. Ms. Julian Nyachwo
3. Mr. Filbert Baguma

AWARD

BACKGROUND FACTS

By an offer of employment dated 9/2/2005, the claimant was an employee of the respondent as a cashier. By the time of this claim the claimant was stationed at Lira.

On 12/12 2011, the claimant was put under suspension on allegations of failure to manage the cash office. On 28/2/2012 the suspension was lifted but on 29/ 2/2012 following an audit in his office he was required to give an explanation, concerning being negligent and failing to properly maintain cash results allegedly leading to loss of 23,232,730 Uganda shillings.

On 07/03/2012, in his explanation, the claimant denied the allegations and questioned why he had not been availed the audit report.

On 20th March the claimant attended a disciplinary hearing which found him culpable and recommended to terminate his employment for gross misconduct.

The issues agreed upon by both parties as evidenced in the joint scheduling memo are:

- 1) Whether the claimant's dismissal from the respondent's employment was unlawful.
- 2) Whether the claimant was entitled to any reliefs.

We will begin with the first issue;

The claimant was dismissed/terminated for breaching regulations 40 paragraph 2 and regulation 42 paragraph 1 of the respondent's employees.

Regulation 40 is about the role of the employee and paragraph 2 provides.

"Employees of the company must perform their duties with honesty, dedication, diligence, integrity and justice."

Regulation 42 (1) is about improper conduct and provides for conduct of employee that raises doubt as to the employer's honesty, integrity; impartiality or reputation.

The claimant was employed as a cashier and as such he was responsible for receiving cash and banking the same.

According to the respondent, there were discrepancies in the management of cash and because of this the claimant was suspended, investigations were carried out and an audit report revealed these discrepancies. The claimant denied having been the cause of these discrepancies.

The only evidence adduced against the claimant was the Audit report. This report showed that at its first inception the claimant had no input. The auditors visited his station in his absence and found that there was an estimated monetary loss of 23,232,730. This report recommended disciplinary action against the claimant, one Patrick Ebong (the Commercial Officer) and one Geoffrey Muhinda (District Engineer). At the disciplinary hearing the claimant raised concerns of having not been involved at the inception of the Audit report.

Another audit was sanctioned so as to involve not only the claimant but the other culprits. This second audit report of March 2012 specifically states on page 2, 2nd column that the Commercial Officer was interviewed.

We have not seen any evidence, either in the report or in the witness statement or any other documentary evidence that the claimant was interviewed or in any way involved in the inception of the second report save that the report says:

"All the above findings were discussed with the cashier, Commercial Officer and the District Manager. The minutes for the 2nd meetings held on 23rd March 2011 and 27th March 2011 are attached".

First of all the report is not authenticated. No one knows who made the report or who audited the books. Both reports allege to have been generated by **"the Internal Audit Supervisor"**. The only minutes available on the court record are minutes of 20th March 2012 which point to a disciplinary hearing in which an audit report was presented and the claimant objected to it for not having been interviewed.

It is therefore safe for this court to conclude that although there was a second audit report which reduced the deficit, the claimant was not given an opportunity to react to the same by way of explanation.

Although the claimant was not represented, in our view he made the point that there was no evidence that he was heard either during or after the audit.

In his own words he submitted:

"My Lord the claimant's requesting the respondent's penal for the 2nd audit conducted in his presence was consistent with the conduct of a person who was not interviewed or heard in the 1st audit conducted during his absence and wished to go for interview and vigorously content. The claimant direct evidence that he was not interviewed on 2nd audit is clear by presumption that the respondent presented witness who was not part of the team that went for 2nd audit review which was a very grave omission and amounted to deliberate withholding of information which is fraudulent....."

Indeed the only witness produced by the respondent was one Emmanuel Nume who was not part of the audit team and who did not attempt in his evidence to clearly identify the report as the one originating from the internal audit of the respondent since it was not signed by anybody.

Despite the findings above, the claimant in his evidence in cross examination seemed to accept laxity on his part leading to discrepancies in the cash office. He admitted that it was his duty to fill control forms. He also admitted that receipts and banking slips were carelessly stored and sometimes not filed as required. In fact he admitted all the observations and findings of the disciplinary committee in the disciplinary hearing exhibited as "F".

We do not accept the contention of the claimant that the fact that the Commercial Officer and the District Engineer were not punished by dismissal should exonerate him. Even if it were true that he was the only one punished,



the fact would remain that he did not comply with procedures in handling cash and he admitted to the fact. Every person is responsible for his own actions.

Since by his own admission, the claimant did not follow procedures expected to streamline the cash office, it is our finding that he was culpable even though the rest of the evidence is not sufficient.

Regulation 40(2) under which he was charged provided that the employee was to execute duties with, among other attributes, diligence. We think that by admitting, among other things, the existence of erroneous posting of cash in the system leading to under banking, the claimant admitted not having been diligent contrary to the said section of the regulations. We are also of the considered opinion that the same admission, was an indication that he had fundamentally broken his obligations as cashier as provided for under Section 69(3) of the employment Act which provides:

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

In conclusion, as already pointed out, evidence as to whether the claimant was allowed to have an input into the Audit was too scanty and therefore we reiterate our findings that he was not given an opportunity to react to the findings of the audit after having not been interviewed.

Nonetheless, and most probably because he had no legal counsel, he, in cross examination admitted having failed to properly keep records necessary to

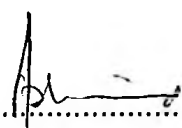
track cash transactions yet this was the basis of his contract of service. The story could have been different had he instructed and retained legal counsel. For the above reasons it is our finding that issue number one is resolved in the affirmative.

The second issue relates to damages.

The claimant was paid all his dues. According to the memorandum of claim, the damages claimed relate to and are a consequence of unlawful termination of employment which has not succeeded. None of the damages claimed are therefore awarded.

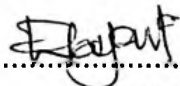
However, under section 66(4) of the employment Act an employee who is denied an opportunity to be heard in accordance with section 66(1), (2) and (3) is entitled to a sum equivalent to four weeks net pay. We have found no evidence of such hearing and therefore we award the claimant the said net pay. No order as to costs is made.

SIGNED

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

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

PANNELISTS

1.Mr. Ebyau Fidel.....

2.Ms Julian Nyachwo.....

3. Mr. Filbert Baguma Bates.....

Dated : 30/05/2016