

THE REPUBLIC OF UGANDA

IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA

**LABOUR DISPUTE: CLAIM NO.023 OF 2015 ARISING FROM KCCA LD/CB/021
OF 2015**

OKIROR FRANCIS.....CLAIMANT

VERSUS

INTERNATIONAL ALERT RESPONDENT

BEFORE

- 1. THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE**
- 2. THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA**

PANELISTS

- 1. MS. ROSE GIDONGO**
- 2. MR. MUVUNWA EDSON HAN**
- 3. MR. EBYAU FIDEL**

AWARD

SUMMARY OF FACTS

The claimant was the respondents Senior Finance officer at the time of his dismissal.

Around January 2014 the Executive Director of Bulisa Rural Development Organisation (BIRUDO), a partner organisation of International Alert informed the claimant that BIRUDO had received funding from American Jewish World Services (AJWS) and in February 2014 requested him to identify Accounting software that would address BIRUDOs financial reporting requirements. He

accepted to purchase the software upon assurance from BIRUDO. He identified a company known as PEARL Accounting Solutions who offered to supply the software to BIRUDO at a cost of UGX 3,000,000/- (Annex "C"). BIRUDO remitted UGX 749,000/- on to the Claimants mobile money Account purportedly as part payment for the customized Accounting software. The claimant did not declare or receipt the money. He was subjected to a disciplinary hearing and later summarily dismissed. The claimant asserted that his dismissal was founded on malice, was wrongful and unfair and led to loss of his source of livelihood, caused him to suffer mental anguish and embarrassment and he had since failed to secure alternative employment. He prayed for judgment to be entered against the respondent and for general, special and punitive damages for unlawful and wrongful dismissal and interest and costs of the suit.

The respondent on the other hand stated that they had experienced a burglary in March 2014 and anonymous threats were issued against its Finance and Administration Manager, prompting them to institute an internal investigation in June 2014 which they also reported to Police. The police investigations found that among other findings the transfer of money from BIRUDO to the Claimants Phone mobile money Account.

According to the respondent the investigation led to the conclusion that the claimant had received a bribe from BIRUDO. The claimant was then suspended to enable further investigation on this matter and later he was subjected to a disciplinary hearing which found that he had violated the respondent's anti-bribery and transparency Policies. The respondent then summary dismissed him.

The respondents on the other contended that the claimant had neither declared nor receipted the money he received from BIRUDO in breach of their anti- bribery and transparency of personal connections and conflict of interest

policies and therefore he had to be subjected to disciplinary proceedings in which he was found guilty and subsequently dismissed. The respondents contend the dismissal was lawful.

AGREED ISSUES

The issues below were framed at the joint scheduling conference;

- 1. Whether the claimant's actions were in violation of any law or human resources policies of the respondent?**
- 2. Whether the respondent's dismissal of the claimant was lawful?**
- 3. Whether the claimant is entitled to the remedies sought?**

The claimant was represented by Mr. Ejoku Oonyu and the respondent by Mr. Muhebwe Perry. Both counsel made their submissions in writing for which this Court is grateful.

We think that the resolution of issue No.2 will essentially resolve the issue No. 1 and 3. We now proceed to resolve issue No.2.

Whether the respondent's dismissal of the claimant was lawful?

In his evidence in chief and in cross examination the claimant stated that he was the respondents Senior Finance Officer and his major duty was financial monitoring and supporting partners of International Alert and specifically putting payment systems in place, preparation of financial documents and reports, and participating in all the processes relating to financial matters in the organisation in accordance with the company policies.

He admitted receiving UGX 750,000/- on his Mobile Money Account, from BIRUDO on the 25th March 2014 and that he had also processed UGX 38,420,000/= and transferred it to BIRUDO on the same day. He told this court that he was aware of the anti-bribery and transparency policies of the

Respondent Company and that he knew them by heart. He also acknowledged that he had undertaken to abide by them.

He did not deny that BIRUDO had requested him to assist them to identify a supplier for accounting software which he had accepted to do on condition that the funds for its purchase were not from International Alert. He said he did not consult with International Alert before helping BIRUDO because it was personal. He said:

"I was contacted on a personal level and funds were not from international Alert and therefore I found no basis to consult them."

It was not disputed that there was no formal communication between him and BIRUDO. The claimant said he had identified Pearl Accounting solutions and negotiated with them to provide the software, although they had not given him a quotation. That he had requested BIRUDO for a deposit to enable Pearl Solutions start the procurement process. He said that on the 12th/04/2014 (Annex "c") Pearl Accounting Solutions, channeled a quotation for the software to BIRUDO through him and the terms of payment were an initial 50% at the start of installation and 50% on completion. He however said he did not produce the quotation at the disciplinary hearing because, he did not think it was necessary to do so.

"I did not consider it important at the hearing"

He also testified that this was not the first time he had received money from other partners on his Mobile Money Account. He gave an example of RICE West Nile which had previously remitted money to him via Mobile Money, which he declared to the office and receipted as part of the organisations funds.

He further testified that procurement of Accounting Software for partner organisations was not part of his duties and he had only assisted BIRUDO as a personal engagement. He also said:

“I did not have authority from International Alert and I did not think I needed authority when engaging in personal matters.”

He admitted that he was subjected to a hearing which he claims was unfair and biased. He contended that he was not given adequate time to prepare his response to the allegations and that the disciplinary panel was not properly constituted because it comprised of non-members and none employees of International Alert, contrary to the International Human Resources Policy.

It was the respondent's submission that the claimant had breached the respondents anti -bribery and transparency policy by accepting and not declaring receipt of cash that was worth more than the US\$25 threshold, from another partner organisation.

The respondent adduced evidence through the testimony of two witnesses one Richard Businge the Country manager International alert and Ms Gizamba the Finance and Human resource Manager of respondent.

RW1 Mr. Richard Businge, in his testimony, reiterated that the claimant had received UGX 749,000 on his Mobile Money on the 25th of March 2015, the same day on which he processed a payment of UGX 38,420,000/- to BIRUDO for implementing its project activities. He stated that neither the claimant nor BIRUDO had said anything about this Mobile Money payment to the respondent nor was the money receipted or kept in the respondent's safe as was the usual practice. RW1 also stated that during the disciplinary hearing the claimant had not denied receipt of this money from BIRUDO purportedly for the purchase of an Accounting Soft ware. He said the claimant had told the

committee that this was part of his official duties but he did not receipt the money or disclose it to his immediate supervisor.

RW1 also stated that by the disciplinary hearing, which was held 4 months and 17 days after the claimant had received the Mobile Money payment, the software had not yet been purchased and there was no official communication from BIRUDO inquiring about the delay of the purchase of this software or seeking an explanation from the claimant for the delayed purchase.

RW2 Ms. Juliet Gizamba, testified that the claimant had received UGX 749.000/ from Mr. Robert Businge the project manager of BIRUDO on the 25th March 2015, but he had neither declared it or receipted it contrary to the respondents anti- bribery and Transparency of personal connections and conflict of interest policy of which he was fully aware and had undertaken to abide with. She said the claimant had previously complied with this provision in similar circumstances. She told this court that it was the claimant's responsibility to transfer funds to partners and ensure that it is accounted for and that the organisations uphold all relevant policies. He therefore had significant authority over the partner organisations.

She said that the claimant had not furnished the disciplinary committee with any evidence in his defence save for a business card of a company he claimed was to supply the software, which led the committee to believe that the funds received by the claimant was a kickback sent on the same day that the claimant had transferred money to BIRUDO.

The respondent further argued that the claimants assertion that he had obtained a quotation for the purchase of the software from Pearl Accounting Solutions but had not produced it at the disciplinary hearing because he had already submitted it to BIRUDO and had not kept a copy was untenable. It was

their case that in the absence of any evidence in the defence of the claimant at the hearing, the disciplinary committee could not be faulted for coming to the conclusion that the claimant had breached the respondent's anti- bribery and Transparency of Personnel Connections and conflict of interest Policies hence dismissing him. .

We have found that the evidence on the record shows that Mr. Onencan Paolyel the Executive Director BIRUDO, initiated payment of UGX 750,000/ to the claimant on the 24th March 2014, (annex PO2) the money was withdrawn from Barclays Bank Masindi District Branch and it was acknowledged by Okiror Francis, the claimant, on the 25th March 2014 on an acknowledgement receipt (annex PO4) belonging to BIRUDO but prepared by the claimant. The said installment was for onward transmission to the service provider Pearl Accounting solutions, as a commitment fee. Pearl solutions acknowledged receipt of the same on the 7th October 2014 (annex PO5). We note that the funds were requisitioned without a quotation from Pearl Accounting Solutions the service providers because they submitted a quotation on the 12th April 2014(annex C). The quotation was for the installation of an Accounting Software to BIRUDO at a cost of UGX 3,000,000/=.

In his testimony Mr. Onencan said he approved the payment of UGX 750,000 on the 24th March 2014, and the money was withdrawn from the Bank in Masindi on the 25th March 2014 and sent by Mobile Money to the claimant official phone on the 25th March 2014, it was received by the claimant who was Kampala on that day and he acknowledged receipt on the same day. He signed and gave an acknowledgment receipt that had been checked and signed by BIRUDO staff to Mr. Onencan in Kampala on the same day.

After perusing the record, we find it hard to believe this sequence of events and particularly the fact that the person who withdrew money from an account

in Masindi District on the 25th March 2014 and sent it to the claimant via Mobile Money on that day was able to go to Kampala to check and sign a receipt prepared by the claimant in Kampala on the same day. Mr. Mujuni Stephen, the project officer checked the requisition for withdrawal of funds from a Bank in Masindi District dated 24th March 2014, (Annex PO2) and checked and signed the receipt prepared by the claimant of the funds sent via Mobile Money on the 25th March 2014 in Kampala. This is further compounded by the fact that the Service providers issued a quotation for the supply of accounting software on the 12th April 2014 1 month after the payment for the services had been made and only acknowledged receipt of the same payment on the 7th October 2014. This installment was supposed to cater for 50% commitment fee before commencement of the installation of the software, but what was processed was 25%.

In the absence of a clear explanation which the claimant did not provide to this court, we find it difficult to fault the disciplinary committee who found that the sequence of events clearly showed that the claimant had breached the anti-bribery and transparency policies of the respondent.

Mr. Onencan also testified that the funds in dispute were obtained from the American Jewish World Services (AJWS) and not from the respondents. He however failed to provide evidence to prove that the funds were actually drawn from AJWS. Even then if the money had been drawn from funds from AJWS, the claimant still had an obligation to declare his engagement with BIRUDO to the respondents as was required under the respondents **Transparency of Personal Connections and Conflict of Interests Policy** set out in the **INTERNATIONAL ALERT (LOCAL STAFF) HANDBOOK**. The handbook on page 59-60 , provides among others a warning to staff about the dangers of any of them working in a professional context with any friend, friends or

current or past business associates because this could compromise their own, the other persons or organisations reputation. The policy also requires any staff with such a personal connection, personal interest or any other circumstances which might lead to a conflict of interest declare it to their line manager as soon as it is known.

The claimant did not declare his personal engagement with BIRUDO, the respondent's partner organisation nor did he seek for permission from the respondent before assisting BIRUDO. He testified that he found no reason to make this declaration because in his opinion it was a personal matter.

The claimant's in his position as Senior Finance officer in the respondent company ought to have recognized that dealing with a partner organisation on a personal level on matters related to his profession, could create a conflict of interest. He was therefore expected to declare such dealings in accordance with the staff Hand Book. He did not declare this relationship to his employer, the respondent, thus breaching the **Transparency of Personal Connections and Conflict of Interests Policy**. The breach amounted to an act of gross misconduct which called for disciplinary action to be taken against him. The claimant had insisted that his engagement with BIRUDO was purely gratuitous with no personal benefit. If that was the case, then why didn't he declare this engagement to the respondents, especially in light of the requirement for him to do so?

We find that the claimant had indeed violated the company policies and therefore that the committee were right to summarily dismiss him.

The claimant also alleged that he was subjected to an unfair hearing before a maliciously constituted and illegal disciplinary committee in breach of the principles of natural justice. He said he was not given adequate opportunity to

prepare his response to the allegations, the committee comprised of non members of the respondents disciplinary committee, he was intimidated by the inclusion of a Police officer on the panel which was contrary to the Human resources Policy and inclusion of members of the appellate committee on the disciplinary committee thus denying him a right of appeal, denying him the right to attend with the support of a companion /advocate and referring him to a non-existent appeal process.

The respondents contended that the claimant had been given sufficient time notice and the hearing was undertaken before a properly constituted panel in accordance with the respondent's local staff handbook. They said the claimant had been duly informed of his right to attend the disciplinary hearing with a companion or representative. They argued that the other persons present at the disciplinary hearing held on the 8th August 2014 were the respondent's witnesses and legal counsel. The claimant was also informed of his right of appeal. They contended that the claimant was given adequate opportunity to prepare his response to the allegations against him.

In cross examination the claimant stated that he had received an SMS notifying him about an e-mail inviting him for the disciplinary hearing. He also said the email was received about 5 to 6 days before the hearing and according to him that was sufficient time of notice. He said:

"I cannot remember but I think it was about 5 to 6 days to the hearing ... yes it was sufficient time of notice, the hearing was on the 8th August 2014, I raised no objection, no I did not request for representation..., yes I was allowed to explain about how I received the money from BIRUDO..."

He also said that the respondent had not indicated the charges in the notice and that the charges were read to him at the hearing by legal counsel Mr. Owor. He said:

“...I only read the charge sheet. I had no time to read through... there was no mention of charges except the questions I was supposed to answer....”

The claimant also disputed the authenticity of the disciplinary committee proceedings presented by the respondent in court and offered to provide the necessary machinery to transcribe the audio version of the minutes for this Court. This was however not done.

We examined Section 66 of the Employment Act 2006, which provides that before an employer reaches a decision to dismiss an employee he or she should explain to the employee the grounds for the dismissal and the employee is entitled to have a person of his choice present during the explanation, the employee and the person so chosen have a right to be heard or to respond to the grounds against the employee within a reasonable time.

We also looked at the principles underlying the respondents disciplinary procedure, and found that it provides that an employee would not be disciplined until thorough investigations had been completed, he or she would be informed of the charges against them in writing, he or she would be invited for a hearing, and would be given a reasonable opportunity to respond and for their response to be considered. He or she would be entitled to be accompanied by a work colleague or friend or have legal representation and would have a right of appeal and an employee would not be dismissed for a first breach of discipline except in the case of gross misconduct. The disciplinary committee as provided in the handbook comprises the line manager and the

country manager and in cases where the country manager is the line manager an additional member of International Alert staff or an external representative of International Alert may be asked to join the panel.

In the instant case the claimant stated that he had been given ample notice and a fair opportunity to challenge the allegations against him. The suspension letter clearly stated the basis of his suspension and thus an invitation to a disciplinary hearing was not a surprise. The claimant said he was fully aware of the provisions of the respondents local staff hand book which provided for the disciplinary procedure, yet he did not provide this court with evidence that he had been denied the opportunity to invite a representative to the hearing by the respondent.

We do not think that the composition of the committee was in any way prejudicial to the claimant because the Country Manager and the Line Manager who had the authority to decide to dismiss an employee were present and they made the decision to dismiss the claimant. The committee was not expected to conduct itself as if it were a court. In **GENERAL COUNCIL OF MEDICAL EDUCATION AND REGISTRATION OF THE UNITED KINGDOM VS SPACKMAN (1942) 2 All E. R 150**, it was held that a disciplinary committee in exercising its disciplinary role is not a judicial body in the ordinary sense. It is not required to conduct itself as a court. It is governed by its own procedure and is not bound by the rules of evidence. The important thing is that its decision must be arrived at "after due inquiry", that is to allow the employee to challenge the facts against him or her, giving the accused a fair opportunity of meeting the accusation. **LORD LOREBURN, L.C in Board of Education Vs Rice (1) at page 182**, where dealing with the decision of an Administrative body he said:

"... they must act in good faith and fairly listen to both sides for that is the duty lying upon everyone who decides anything. But I do not think

they are bound to treat such question as though it were a trial... They can obtain information in any way they think best, always giving a fair opportunity to those who are parties in controversy for correcting or contradicting any relevant statement prejudicial to their view."

The claimant was given the opportunity to meet his accusation; he also had a right of appeal which he did not exercise. According to the staff hand book an appeal had to be addressed to the country manager and in cases where the country manager was the line manager and the case of appeal against dismissal, a panel comprising staff and external representatives would be convened. All the claimant had to do was to address the appeal through the country manager for an appropriate committee to be convened. He did not do so. His argument therefore that there was no procedure for appeal is untenable.

In conclusion we find that the claimant by receiving and not declaring to his employer money he had received from BIRUDO, a partner organisation, by not declaring the personal engagement he had with BIRUDO in a matter related to his profession and by not seeking the consent of his employer before undertaking in a personal engagement with BIRUDO, were in breach of the employers established **Transparency of personal connections and conflict of interest** policy as prescribed in the local staff hand book and this amounted to gross misconduct whose penalty was dismissal.

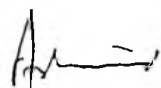
The decision to summarily dismiss the claimant was arrived at in accordance with Section 66 of the Employment Act 2006 and the respondents Local staff hand book and was therefore lawful.

The claim fails.

REMEDIES


We have already decided that the claimant's summary dismissal was lawful; therefore the claimant is not entitled to any remedies. No order as to costs is made.

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


1. MRS ROSE GIDONGO


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2. MR. MUVUNWA EDSON HAN


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3. MR. EBYAU FIDEL


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Date.....2/02/2016.....