

**THE REPUBLIC OF UGANDA  
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA  
LABOUR DISPUTE NO. 050 OF 2015  
[ARISING OUF HCT-CS NO. 11 OF 2014]**

**BETWEEN**

**LEVI MALINZI .....CLAIMAINT**

**VERSUS**

**UGANDA PRINTING & PUBLISHING  
CORPORATION.....RESPONDENT**

**BEFORE**

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

**Panelists**

1. Mr. Ebyau Fidel
2. Mr. F. X. Mubuuke
3. Ms.MugambwaNganzi Harriet

**AWARD**

By a memorandum of claim filed in this court on 21/ 4/ 2016, the Claimant lodged a claim for wrongful/unlawful dismissal, special damages, terminal benefits, salary and other allowances, aggravated and general damages, interest and costs of the suit.

**BRIEF FACTS**

The Claimant was employed by the respondent as a Finance Manager and subsequently he was appointed as Managing Director on 6 / 09 / 2012. In the course of his duty as Managing Director, issues of mismanagement arose and the Auditor General carried out a forensic audit and produced a report that contained numerous allegations against the claimant which (according to the claimant) were answered before the Board.

According to the claimant, when a new Board was sworn in, it required the claimant to once again respond to the same allegations but gave him insufficient time to prepare for his defense and so he did not attend the disciplinary proceedings called for 19/ 09/ 2013 prior to which he had been suspended. Thereafter his services were terminated.

According to the respondent and in a memorandum in response, the claimant was given an opportunity to defend himself against the allegations in the Auditor General's report which he declined. After considering the report, the Claimant was dismissed lawfully and therefore he was not entitled to the reliefs he Claimed.

The issues that were agreed for trial are:

**1) Whether the respondent's summary dismissal of the claimant was unlawful, wrongful and unfair.**

**2) What remedies are available to the facts?**

When the matter was called for hearing on 22/ 06/ 2017 the Attorney General was not represented and this court was satisfied that the Attorney General was aware of the date. This Court allowed the proceedings to go on ex parte which resulted in putting on record the evidence of the claimant who closed his case and the matter was adjourned for submissions and Award of the Court.

It was submitted for the claimant that the summary dismissal was based on an incomplete report since the report stated:

**“ More evidence of this expected from Stanbic Bank.....had we performed additional procedure, other matters would come to light. We reserve the right to amend the report should further information come to light”.**

He also submitted that the summary dismissal was based on facts allegedly committed before he took up the office , and facts that had been received and discredited by the Board in place at the time. According to counsel this having been the case, the dismissal was wrongful and unlawful.

Counsel argued strongly that his client was not given any opportunity to be heard , the respondent having extended the disciplinary hearing to a date that was not communicated to him and on which date the decision to dismiss him was made.

It seems to us that the Claimant in a submission to the Board on 28/ 06/ 2013, was not answering disciplinary issues but rather making a management reaction to the forensic audit of the Attorney General. A management answer to queries raised by the Auditor General cannot by any stretch of imagination be called a personal answer to disciplinary issues. In the same vein, the minutes of the 4<sup>th</sup> Extra Ordinary Board meeting of 28/ 06/ 2013 did not constitute exoneration of the claimant from disciplinary issues. In our view that the Board's meeting of 28/ 06/2013 considered the Audit report and advised the claimant on the steps to take in rectifying certain queries raised by the Auditor General. We do not therefore accept the contention of the Claimant that the previous board had cleared him of the disciplinary issues raised and that therefore the new board had no mandate to commence disciplinary proceedings against him.

We are not convinced that the decision to commence disciplinary proceedings against the claimant was based on an incomplete Auditor General's report. The claimant did a disservice to this court by failing to quote the page of the detailed and huge report where it was stated that more evidence was expected from stanbic bank and that the Auditor General reserved the right to change the report after getting additional information. We could not take time to read the whole report to access the said paragraph since the summery of the report did not include anything to do with its incompleteness.

On the contrary, among the recommendations made in the report is that disciplinary action be taken against the claimant and one Bakaawa and that the claimant be accountable for obtaining by false preferences. It is our finding therefore that the New Board had a right and mandate to institute disciplinary proceedings arising out of the Auditor General's report. The question for the court is whether the Claimant was afforded a fair hearing.

We applaud counsel for the claimant for rightly pointing out the fundamental of tenets of a fair hearing which include;

- 1) Notice of allegations against the employee having been served on him/her and sufficient time having been allowed for him/her to prepare a defense.
- 2) The notice having set out clearly what the allegations against the employee and his rights at the oral hearing were, which rights include the right to respond to the allegations, the right to be accompanied at the hearing and the right to cross examine the defendant's and call his own witnesses.
- 3) The right for the employee to present his case before an impartial committee in charge of disciplinary issues of the defendant.

The above aspects of the hearing were clearly spelt out in the cases of **EBIJU JAMES Vs UMEME LTD. HCCS 0133/ 2012**; **Augustine Kamegero Vs Rwenzori Bottling Company HCCS 027/2012**. **The same are in section 66 of the Employment Act.**

In the instant case, the claimant was informed by letter dated 16/ 9/ 2013 that the disciplinary hearing would take place on 19/ 09/ 2013. On 17/ 9/ 2013, Senkeezi Ssali advocates and legal consultants wrote on behalf of the claimant to the Board Chairman of the respondent protesting the inadequacy of time for the claimant to prepare his defense and the Board rightly postponed the hearing to 26/09/2013 in the absence of both the claimant and his advocate or representative. According to the respondent, this date was communicated through one Philli, although the claimant denied having been in the know of this subsequent date. We have seen a letter dated 19/9/2013 addressed to the claimant and informing him of the second opportunity for him to appear before the disciplinary committee on 26/09/2013 at 9.00am. It is indeed received by one Philli.

There was no evidence adduced to suggest that this Philli was either a very close associate of the claimant or that in fact he delivered the letter to the claimant which was critical since in law he who alleges must prove.

We resolve the doubt as to whether the letter was delivered to the claimant in favor of the claimant. The conclusion of this court is that the chairman of the Board and the disciplinary committee assumed that Philli delivered the letter indicating the date of the hearing and the claimant having been aware opted not to attend. Whereas this could have been possible, there is no evidence on the record to support it despite the minutes of the Board of 26/09/2013 showing that the Board Administrator called the claimant on phone on 25/09/2013 and he opted not to attend. This evidence was not adduced before this court and it is not helpful to the respondent.

Accordingly it is our decision that the claimant was not given opportunity to defend the allegations leveled against him in the Auditor General's report and consequently his termination was not only unfair but unlawful as well.

### **The second question relates to damages**

#### **(a) Special damages**

It is trite law that special damages have to be specifically proved before they are awarded. In his evidence the claimant told court that under the contract he was entitled to a package of 9.8 million, a monthly vehicle maintenance of 800,000/= and a monthly allowance of 700,000/=. **Clause 5 of the claimants contract** in our understanding provide for a salary and other allowances to assist him in performance of duties of the employer. Monthly allowances of 300,000/- in our view as expected to be paid for Board matters i.e. as long as he was MD and performing duties on behalf of the Board. The allowance of 800,000/= for vehicle maintenance was to be paid to the MD for as long as he was performing duties of the Board. Those allowances were not part of the salary but were provided for differently for purposes of assisting the MD to perform duties. We accordingly decline to award them as they were so much of an entitlement as salary.

#### **(b) Salary**

This was an entitlement as an employee of the respondent. He was employed as MD beginning 15<sup>th</sup> April 2013 and he was terminated on 7/10/2013 and from then he was only paid ½ of his 9.8 million. He was employed on a fixed term contract of 2 years which would have ended on 1/4/2015. The expectation of both parties was that unless there were performance issues, a resignation or a death, the claimant was to keep employed by the respondent up to 1/4/2015.

Clause 13 of the contract provides for termination upon either party giving notice of 4 months in writing or payment in lieu of notice. This being a fixed term contract for 2 years, it is our opinion that unless there were performance issues and in that case provisions of **section 66 of the Employment Act** relating to a fair hearing would come into play, 4 months notice or payment in lieu of notice perse would not extinguish the contractual relationship. It follows therefore that since the disciplinary process was lacking in all the tenets of a fair hearing and as such the termination of the claimant was unlawful, it is the decision of this Court that the claimant would be entitled to his salary up to the end of his fixed contractual term and it so ordered.

#### **(c) Gratuity**

Clause 8 of the contract provided:

**“You shall be entitled to gratuity amounting to 20% of the consolidated package for the period worked. However you will not be entitled to gratuity or terminal benefits in case of a dismissal or resignation.”**

The dismissal of the claimant has been declared unlawful by this court and so it is as if it never happened. Consequently we hold that the claimant is entitled to gratuity as provided for in **clause (8) of the contract of employment.**

(d) **Unpaid leave**

Although under **section 54 of the Employment Act** and **clause 7 of the contract of employment**, the claimant was entitled to leave days in the course of every calendar year; this leave was expected to be applied for and approved by the relevant authority in the course of employment. In the event that the relevant authority thought the claimant's schedule would not allow him to take leave, then the respondent would offer the claimant payment in lieu of leave. An employee ordinarily proposes dates on which to take leave and the employer approves the dates. In the absence of evidence that the employee proposed the dates for leave and the employer refused him/her to go on leave, the claim for payment in lieu of leave necessarily will fail. In the instant case no such evidence was laid and therefore the claim is disallowed. (See **Kangaho Silver: labour dispute claim 276/2014**)

(e) **Honoraria**

Although in his evidence the claimant testified that he was entitled to 300,000/= as honoraria for the month of September 2013, his memorandum of claim alleges honoraria of September and 7 days of October at 220,000/= and his contract of /employment provides for 300,000/= per month for Board matters.

As pointed out earlier in this Award, the provision of 300,000/= per month for Board matters in the contract of employment presupposed that for as long as the claimant was a Managing Director of the respondent, within every month he would attend to Board matters. Accordingly irrespective of the contradiction in his evidence and what he claimed in the memorandum of claim, it is our decision that the claimant would be entitled to 300,000/= for every month he was employed as Managing Director and therefore we allow the claim of 300,000/= for September 2013.

(f) **Severance Pay**

**Section 87 of the employment Act** provides for payment of severance where a person has been in employment for a continuous period of 6 months and where the claimant was unfairly dismissed. In accordance with **DONNA KAMULI VS DFCU L.D.C 002/2015** which provided for a month's salary per year worked, we hereby grant that the claimant be paid ½ of his salary as severance since the period he worked for the respondent was about ½ a year.

(g) **4 Months In Lieu Of Notice**

Although the claimant's contract was terminated without notice, we decline to order payment of 4 months' wages in lieu of notice. This is because we have already ordered payment of the whole contract salary, leaving the claim for notice redundant.

(h) **General Damages**

We consider the inconvenience suffered by the claimant and the mental anguish he sustained after being rendered jobless.

We consider that he has already been awarded salary for the remainder of his contract. We think 15,000,000 will be sufficient for general damages.

(i) **Aggravated Damages**

We have not been convinced that this is a case that deserves exemplary damages. We therefore disallow this claim.

- (j) **Interest:** We allow interest of 20% on all the sums allowed from the date of this Award till payment in full.

In conclusion, an award is granted in favor of the claimant in the above terms. No order as to costs is made.

**Signed by:**

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

**Panelists**

1. Mr. Ebyau Fidel .....
2. Mr. F. X. Mubuuke .....
3. Ms.MugambwaNganzi Harriet .....

Dated: 22/9/2017