

**THE REPUBLIC OF UGANDA  
THE INDUSTRIAL COURT OF UGANDA HOLDEN AT KAMPALA  
LABOUR DISPUTE CLAIM. NO. 041/2016  
(ARISING FROM HCT-06-CV—CS-0069-2014)**

**BETWEEN**

**AKANKUNDA ANNE.....CLAIMANT**

**AND**

**SALAM VOCATIONAL EDUCATION CENTRE LTD.....RESPONDENT**

**BEFORE**

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

**PANELISTS**

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

**AWARD**

By a contract of service dated 1/2/2014, the claimant was employed by the respondent as a school nurse and matron for a contractual period of 2 years.

According to the claimant, while on her maternity leave her employment was terminated without being given a hearing. According to the respondent, there was no need of a hearing, since the termination was based on grounds of breach which according to them, documentary and oral evidence was adduced in court to prove the breach and warrant the termination.

The legal issues for determination as agreed (and submitted upon) are:

- 1) Whether or not the termination of the claimant was lawful.
- 2) Whether the claimant was entitled to the remedies sought.

Whereas the claimant adduced evidence from herself only, the respondent adduced evidence from six witnesses. There were various documents also tendered by both parties in an attempt to prove their case.

The case for the claimant is that having been employed by the respondent, effective 1/2/2014, on 15/7/2014 she went in labour pains and while being admitted in a health facility, she on 16/7/2014 requested for maternity leave. She delivered by caesarean section and got discharged on 21/7/2014 but while still on her maternity leave she was on 2/08/2014 terminated. She was never given any form of hearing and she protested her termination through legal counsel. According to her as far as the Human Resources Guidelines of the respondent were concerned the termination was unlawful. counsel submitted that the

allegations against the claimant (through evidence in court) were not brought to the attention of the claimant. The allegations, according to him, were of a serious nature that should have called for either disciplinary action or police intervention.

In his submission, counsel for the respondent argued that the testimonies of the respondent's witnesses in this court regarding wilful neglect of duty, incompetence, dishonesty, poor record keeping, verbal abuse (of students) reporting late to work, entertaining male visitors at female residences and other breaches mentioned in evidence were in proof of the reason of termination of the claimant's contract.

There is no doubt in our minds (and in the minds of both counsel) that termination of employment always bears reasons as to why the employer terminated the contract. In our understanding, the inadequacies pointed out by the respondent ought to have been before termination and not after and during hearing in this court.

The case for the respondent on the other hand is that the claimant had been warned before on her performance; she had been accorded ample opportunity to improve which she failed as testified to by the students to whom she was administering her nursing skills.

According to the respondent, the claimant was terminated while still on probation and this having been the case, she had no claim against the respondent.

Relying on section 2 of the Employment Act, Barclays Bank Vs Godfrey Mubiru SCCA 1/1998, Okello Vs Rift Valley Railways (U) Ltd HCCS 195/2009, clause 12.1 and 12.2 of the contract, as well as chapter 4 of the Human resources guidelines of the respondent, counsel for the claimant submitted that the respondent's termination of the contract was unlawful.

We agree with counsel for the claimant that the testimonies of the respondent's witnesses contained allegations of a serious nature that should have called for a disciplinary action, in this case a hearing to which the claimant would have been offered an opportunity to reply in accordance with section 66 of the Employment Act. For avoidance of doubt the said section provides: -

- (1) **“Notwithstanding any other provision of this part, an Employer shall, before reaching a decision to dismiss an employee, on the grounds of misconduct or poor performance, explain to the employee in a language the employee may be reasonably expected to understand, the reason for which the employer is considering dismissal and the employee is entitled to have the person of his/her choice present during this explanation.”**
- (2) **Notwithstanding any other provision of this part, an employer shall, before reaching any decision to dismiss the employee, hear and consider any representations which is employee on the grounds misconduct or poor performance, and the person, if any chosen by the employee under subsection (1) may make.**

It is obvious that the hearing mentioned in the above sections of the law is **BEFORE** and not **AFTER** dismissal or termination.

In the instant case, the claimant was dismissed first and her evidence was led in this court to justify the termination. The spirit of the law is that an employee is subjected to a hearing before a disciplinary tribunal , and the respondent in court simply proves that such a hearing occurred and the decision to dismiss the employee was based on the facts before the committee.

It is our position that failure of the respondent to afford a hearing to the claimant about the allegations before termination was a violation of her right to be heard as provided for under **Article 28 of the constitution** and **section 66(1) of the Employment Act** both of which envisage the right of an accused or a defendant to know the nature of the charges against him or her and to be availed the opportunity to defend herself or himself before an independent tribunal. The proceedings before this court as far as fair hearing is concerned are equivalent to a medical post mortem report about what could have killed the deceased and in our view this does not help the case of the respondent.

It is a misdirection on the part of the respondent to contend that by adducing evidence in this court not adduced before termination of the contract of service, such evidence would be useful in determining whether termination of the said contract was unlawful.

Whereas we agree with the submission of the respondent that the claimant was liable to termination if she was guilty of any gross misconduct or wilful neglect of her employer's duties, it is at the same time very clear as already discussed that such gross misconduct must be proved in a disciplinary hearing before termination which was not the case and in our view this was in contravention of section 66 and Article 28 of the Employment Act and the Constitution respectively.

It was the case for the respondent that the claimant was terminated while on probation. counsel argued that the decision to terminate the claimant was made within the probation period but that communication of this decision was delayed because the claimant was pregnant and expecting.

The respondent's **Human Resources Guidelines clause 2.5** provided:

**“All employees shall be hired on a probationary period of three to six months, determined at the time of hire and set out in the employment contract.....”**

The Employment contract between the claimant and respondent in clause II provided:

**“Probationary period. If the employee is a new staff member, or if the position with the Employer has changed substantially, the employment is subject to the satisfactory completion of an induction period of three months. If the Employee fails to complete**

**the induction period satisfactorily, then the employment by the employer will be terminated and the usual periods of notice will not apply”.**

In our understanding, the contract of employment ought to have stipulated the probation period. The option was for the respondent, according to the above clause of the Human Resource Guidelines, to put the said probation period at either three or six months. The period was to be determined at the time of hire of labour. The assumption in this case is that the claimant was a new staff member and therefore subject to 3 months probationary period as stipulated in the contract of service.

Once again we consider it a misdirection for counsel for the respondent to contend that the contract having been terminated six months later, the probationary period was still running.

On the contrary it is our considered opinion that since there was no evidence of the claimant failing to complete the induction period of 3 months satisfactorily as provided for in the contract, the respondent as employer was deemed to have been satisfied with the performance of the claimant.

**Section 67 of the Employment Act** provides:

**"1.....**

**2.The maximum length of a probationary period is 6(six) months, but it may be extended for a further 6 months with the agreement of the employee"**

Since the Employment contract in the matter before us provided for 3 months probation and there appears to have been neither extension of the period nor dissatisfaction of the employer, the employer is estopped to deny that the employee satisfied probation. This was the gist of the decision in **NYAKABWA J. ABWOLI vs SECURITY 2000 LMT LDC NO.108/2014** when this court stated:

**"Probation is meant for the employer to observe and asses the employee with the latter's suitability. The employer has a right to extend the same, terminate the employment or confirm the same. Delaying confirmation of an employee to his detriment without any reasons is not acceptable"**

We do not accept the contention of counsel for the respondent that delaying communication of the termination of employment was for justifiable reason. For whatever reason it was, such delay could not in any way extend the probationary period. There was no need to delay communication about the failure of the claimant to satisfy the respondent during the induction.

The claimant had been under the supervision of the respondent for the 3 months as stipulated in the contract and the fact the claimant was pregnant was not good enough reason to delay the communication for another 3 months. Neither was the fact that the respondent was fishing out there for a replacement. The time spent by the respondent fishing for a

replacement cannot by any stretch of imagination be used to the disadvantage of a claimant who has lost her job!! This court can never be party to the proposition that the respondent was justified in delaying communication of the fact of dismissal to the claimant because of failure to immediately get a replacement for the claimant's job. It was entirely up to the respondent to determine the convenient, appropriate and legal means of disengaging the claimant. Consequently we find that the claimant's termination was outside the probationary period.

Having found that the respondent contravened **section 66(1) and (2) of the Employment Act** and having found that the termination of the contract was outside the probationary period, it follows that the said termination was unlawful.

The next issue is about the remedies sought by the claimant.

- (a) It was the submission of the claimant that she was entitled to 9,724,000/= being the total emoluments she would have earned up to 31/01/2016.

Counsel for the respondent submitted that following **WAKABI FRED VS BANK OF UGANDA & ANOR LDC 041/2014** the remedy of the claimant lay in **Section 66(4) of the Employment Act** which provides for a penalty of 4 weeks' pay. With due respect to the respondent, whereas in the case of **WAKABI FRED** this court found that in dismissing the claimant, the respondent acted lawfully, in the instant case, this court has already found that the respondent acted unlawfully. This court in the **WAKABI** case applied section 66(4) in the peculiar circumstances where the respondent was faulted for being in breach of an aspect of fair hearing but the hearing itself having proved breach of the charges on the part of the claimant. In the instant case, there was no hearing and therefore no breach of anything was proved against the claimant and the termination has been declared unlawful.

Consequently since the contract was expected to be ending by 1/2/2016, and given that this expiry date of the contract has been outlived by proceedings of this case, in accordance with **FLORENCE MUFUMBA VS UGANDA DEVELOPMENT BANK LDC 138/2014**, the claimant will be entitled to salary arrears from the date of the termination of the contract to 1/2/2016.

In the claimant's submission, the claimant ought to get 50,000,000/= general damages.

In the submission of counsel for the respondent. This court should invoke **section 78(2)(9),(h) and (i) of the Employment Act** to find direction on compensatory orders.

As this court has held before, section 78 mentioned above refers to compensatory orders awardable by the Labour Officer but judges appointed by the judicial service commission and panellists appointed in accordance with the **Labour Disputes(Arbitration and Settlement) Act 2006**, cannot invoke the said section.

The court is mandated to grant general damages and in this case, the claimant having been terminated during her maternity leave we think this put her in great pain and given that she earned 1m/= per month and her contract was terminated only after 6 months leaving her with 18 months of anticipated job, we think 5,000,000 is sufficient for general damages for wrongful dismissal and breach of contract.

Counsel for the claimant also submitted that the respondent should be condemned to punitive and exemplary damages. The reason counsel gave for this submission was that the claimant had not gotten a job since the unlawful termination. We are not convinced by this submission and we reject it.

All in all we enter an award in favour of the claimant with a declaration that her termination was unlawful and unfair and an order that she be paid 5,000,000/ as general damages with interest of 20% from the date of the award till payment in full. No order as to costs is made.

**SIGNED**

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

**PANELISTS**

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

Dated 6th day of March 2017