

THE REPUBLIC OF UGANDA
THE INDUSTRIAL COURT OF UGANDA HOLDEN AT KAMPALA
LABOUR DISPUTE CLAIM NO. 52 OF 2014
(ARISING FROM HCT-CS NO. 338 of2013)

BETWEEN

EMAZUMVI MICHEAL..... CLAIMANT

AND

NATIONAL CURRICULUM DEVELOPMENT CENTRE..... 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. Harriet Nganzi Mugambwa

This is a labour dispute claim filed by the above claimant claiming that he was unlawfully dismissed from the respondent's service and as a result he claims special, aggravated and general damages plus interest and costs of the suit.

BRIEF FACTS

The claimant was an employee of the respondent with effect from 1/10/2007. A dispute arose between the claimant and one Obeke Tom at the place of work. The dispute was reported to management which held a disciplinary session and eventually decided that the claimant be terminated having found him culpable and having suspended him in the first place.

AGREED ISSUES

- 1) Whether the decision to terminate the claimant's services made by the respondent's council in the 63rd meeting was valid.
- 2) Whether the claimant is entitled to unpaid salary since termination of his services.
- 3) Whether the respondent's obligation to pay the retirement benefits for the claimant to NIC came to an end.
- 4) Whether the claimant is entitled to housing allowance as per the NCDC standing orders, and if so how much?
- 5) Whether the claimant is entitled to unpaid transport allowance for leave.
- 6) Whether the claimant is entitled to pay in lieu of untaken leave.
- 7) Whether the claimant is entitled to coordination allowance.
- 8) Whether the claimant is entitled to half salary withheld.
- 9) Whether the claimant is entitled to terminal benefits under the respondent's financial regulations and guidelines.

SUMMARY OF EVIDENCE

According to the claimant, in July 2011, he was alleged to have assaulted a colleague and he appeared before some members of staff to explain himself and later on he received a warning letter containing certain allegations to which on 8/3/2011 he replied maintaining his innocence. He later on appeared before the Appointments sub-committee of the respondent's governing council. He was eventually terminated in February 2012 on grounds of indiscipline. According to him he was not allowed to defend himself and the Council meeting that terminated him was not properly constituted. He was denied various entitlements which he sought from court.

One Stevens Kasirye Bakulu testified as a Finance Secretary of the respondent. In his evidence in chief he testified that the claimant was not entitled to benefits or any allowances except the month of October 2011 when he was paid 534,500/= less because of suspension.

According to one Habiyalemye, the management of the respondent on 4/7/2011 received information that the claimant had assaulted one Obeke. On 8/7/2011 management constituted itself into a disciplinary committee and heard both Obeke and the claimant. The committee found that the claimant deliberately moved to Mr. Obeke's office to annoy or harm him and therefore a warning letter to the claimant was written advising him to take leave, demoting him and asking him to apologize to Obeke. The claimant instead wrote to the Director challenging the decision of the committee whereupon a special meeting of the Appointments sub-committee was called on 1/9/2011 to which the claimant was once again asked to apologize to Mr. Obeke and upon his refusal to do so, the Director suspended him.

The witness also told court that the appointments sub-committee reconvened on 6/10/2011 and it forwarded the matter to the Governing Council which decided that the employment of the claimant be terminated.

SUBMISSIONS

In his submissions, counsel for the claimant contended that the claimant's services were unlawfully terminated because principles of natural justice were violated, the disciplinary procedures enshrined in the standing orders were violated and the decision was effected by a body not properly constituted. He argued that this having been the case, the termination was void and the claimant was therefore entitled to unpaid salary since the termination.

He argued that since the claimant at the time of appointment was not notified about the closure of the National Insurance retirement scheme, yet his appointment was subjected to the National Curriculum Development Centre (NCDC) Act and NCDC standing orders, he was entitled to the benefits of the scheme.

He argued that his client was entitled to all the reliefs that he claimed. In reply counsel for the respondent submitted that **under section 16(1)a of the National Curriculum Development Centre Act Cap 135**, a sub-committee was constituted and it therefore proceeded to handle the case properly under the provisions of the law. According to counsel, the claimant properly appeared before a properly constituted committee and gave his defense. He argued that there was no need for the claimant to appear before the Governing Council after appearing before a sub-committee of the same council twice which made a recommendation to the council.

He strongly submitted that officers and institutions represented on the council had changed titles/positions and names, although membership of the council remained the same. According to him most members of the council were high government officials who could ordinarily delegate their functions and which they did and whoever attended did so in a representative capacity. He further argued that the council that had approved appointment of the claimant at its 52nd meeting also had representative members which if the claimant was to be believed would make his appointment invalid.

It was the submission of counsel for the respondent that it was not necessary to inform the claimant about the abolition of the NIC retirement scheme since it had long been abolished before he was employed .. he relied on **Iragana John Vs NCDC, HCCS No. 508/2007 and Tabaro Vs NCDC HCCS No. 132/2010.** He vehemently submitted that the claimant was not entitled to the reliefs he claimed.

EVALUATION OF EVIDENCE AND COURT'S DECISION

The first issue is whether the decision to terminate the claimant's services made by the respondent's council in the 63rd meeting was valid.

This issued can be sub-divided into several other issues before deciding it.

- a) Whether the council was properly constituted.
- b) Whether the council afforded the claimant a fair hearing.
- c) Whether the council reached a correct decision.

It is not disputed that in order to be effective, the termination of an employee of the respondent must have been done by the council as defined in Section 1(a) and Section 7 of the National Curriculum Development Centre Act.

Section 7 of the said Act provides:

"7 membership of the council of

(1) The governing body of the centre shall be the council consisting of:

(a) The following ex officio members

- i) The Permanent Secretary of the Ministry responsible for education;**
- ii) The Permanent secretary of the Ministry responsible for culture and community development;**
- iii) The Permanent Secretary of the Ministry responsible for finance, planning and economic development;**
- iv) The chief education officer**
- v) The chief inspector of schools;**
- vi) The principal of the Uganda Technical College**
- vii) The principal of the Uganda College of Commerce;**
- viii) The principal of the Uganda Management Institute**
- ix) The Registrar, Makerere University;**
- x) The Dean of the faculty of Education;**
- xi) The Director of the National Institute of Education Makerere University;**
- xii) The Director of the national Institute of Education, Makerere University;**
- xiii) The Director of the Centre for Continuing Education, Makerere University;**
- xiv) The secretary, Uganda National Examinations Board;**

- xv) **The Director of the National Teachers College, Kyambogo;**
 - xvi) **The chairperson, Headmasters Association;**
 - xvii) **The president of the Association of Principals of Teacher training colleges;**
 - xviii) **A representative of the East African Academy;**
 - xix) **A representative of the National Federation of Uganda Employees; and**
 - (i) **Not more than three members appointed by the minister who shall be persons appearing to the minister to be qualified as having experience in the practice and administration of education.**
- 2. The Director shall be the secretary of the council and shall attend all meetings of the council, but he or she shall not be a member of the council.**

The claimant attacked and criticized the inclusion of one Lubwamna, one Kalya, one Nantale, one Myinda, one Wamani, one Kayondo and one Kagoda who attended the council representing various institutions named in the above section of the law. He argued that these members were not authorized by virtue of section 7 above mentioned to attend the council and therefore the decision reached was illegal.

Section 13 of the above Act provides for the Procedure of the meetings of the council and for a minimum of 15 members as proper constitution of the quorum.

We have perused the minutes of the 63rd council meeting. Indeed the persons attended the council representing the various institutions. The total number of members present was 16.

The constitution of membership under section 7 of the Act was in our considered view intended to have a representation of the institutions with a stake in the respondent. These institutions included Ministry of Education, Ministry of Finance, Planning and Economic Development, Uganda Technical college, Uganda Management Institute, Makerere University, National Institute of Education, Uganda National Examinations Board, National Teachers College (Kyambogo), Uganda National College of Commerce, Post primary (Secondary Schools) Institutions and others. The section also grants the Minister (we believe of education) to appoint three or less members to the council.

We have internalized the minutes of the 63rd council meeting and there is no doubt that various personalities appeared in a representative capacity of the various institutions. As already intimated in the selection of personalities on the governing council, it was the intention of the legislature that the various stakeholders as institutions be represented. We do not subscribe to the view that the persons on the governing council were selected as individuals in their personal capacities. They were representatives of the institutions that they were leading. This being the case, it is our considered opinion, that principles of the various institutions have capacity to delegate capable personalities as representatives of the said institutions. We agree with the submission of counsel for the respondent that it is common practice (deserving of judicial notice) that most institutions because of the nature of the work of principles, the said principles delegate attendance of various committees. We agree that insisting on personal attendance of members in all circumstances, would bog down holding of meetings because a member may not be able to attend in person due to other commitments.

In the instant case, according to section 7 of the National Curriculum Development Centre Act all members of governing council except 3 are ex-officio members. This means that these members at the same time hold other offices. They were appointed to the governing council by virtue of the positions they already were holding. This is the reason that the Act mentions heads of institutions and not their personal names. Having been declared to be members by virtue of section 7 of the said Act and by virtue of their official positions, they were entitled to make decisions on any matter affecting the Centre and as already said they were entitled to delegate capable representatives. The only question would be whether the delegates had capacity which the claimant did not question.

Neither did the claimant dispute the fact that at its 52nd council meeting when he was appointed as assistant specialist (Technical Education) the same governing council constituted 12 of the members representing the institutions not as official holders of office but as delegates representing those offices. We agree with the submission of counsel for the respondent that if this court was to agree with the claimant's submission about representation of the governing council, then the appointment of the claimant would as well be invalid for not having been done by a properly constituted council which would be most unfortunate.

Although under section 13 of the NCDC Act the quorum of the meetings is stated to be 15 members, **section 15 of the same Act** provides:

“Validity of proceedings.

The validity of any proceeding of the council shall not be affected by any defect in the appointment of any member or by the absence of any member from the meeting at which the proceeding occurred or by any vacancy among the members of the council”

In our understanding this section goes a long way in buttressing our interpretation that the official members described under section 7 above may not necessarily be the members of the council every time the council appears to convene and take a certain position. The fact that for example an Under Secretary in the Ministry of Education attends a council meeting representing a permanent Secretary in the same Ministry, would not invalidate the proceedings.

Consequently it is our position that the 63rd council meeting was properly constituted and the decisions arrived at could not be impeached by reason that some members who participated were not authorized to participate in the proceedings. The authority from their principles was not challenged and so they on behalf of the various institutions validly took decisions.

It was argued on behalf of the claimant that the members having agreed to abide by the court order, termination of the claimant's services was halted and therefore there could have been no termination by the 63rd meeting of the council.

It is not in dispute that by a High Court order dated 28/10/2011 the respondent was restrained from terminating the services of the claimant **“for 90 days subject to extension within which the application for Judicial review shall be fixed for hearing”** (See respondent's trial bundle page 101).

In cross examination, claimant's evidence revealed that although he renewed the above interim order, he was terminated before he served his order onto the respondent. He testified **"my services were terminated on 8/2/2013. We were in the process of serving the order. We had intentions to serve the order"**.

It is clear from the claimant's own words that the respondent did not breach any court order known to them. They had religiously followed the terms of the order and when the period of the order expired they had nothing left to prevent them from executing duties concerning disciplinary action against the claimant. We therefore do not subscribe to the assertions of counsel for the claimant in his submission that the termination of the claimant was halted by a court order.

The next question is whether the claimant was accorded a fair hearing.

The claimant's submission as regards this point, was hinged on the fact that the governing council that took the decision to terminate the claimant comprised of non-members which affected the legality of the decision and therefore violated the claimant's right to a fair hearing. With due respect to counsel for the claimant, we have already decided that there were no non-members in the council. **Were other factors leading to a fair hearing complied with?**

A hearing is said to be fair when allegations leading to the hearing are clearly put to the culprit who is given sufficient time to respond to the same and who later on appears before a competent, impartial tribunal to explain himself/herself after which the tribunal makes a decision. (see **MUDDU HENRY VS CIVIL AVIATION AUTHORITY**), **Article 28 of the Constitution and section 66 of the Employment Act**).

The cases of **GRACE MATOVU VS UMEME LIMITED LDC 004/2014; MUGISHA JOHN BOSCO VS CENTENARY BANK HCCS 62/2008 AND GUMISIRIZA CAROLINE VS HIMA CEMENT HCCS 089/2016** are all of the legal proposition that a disciplinary committee of an employer is not a court of law and is not expected to operate at the standards of a court of law.

In the instant case the claimant was alleged to have entered the office of one Obeke and assaulted him there from. Management constituted itself into a disciplinary committee on 8/7/2011 and invited both the claimant and Obeke to ascertain the truth. Some other persons were also invited after which the committee found the claimant culpable and reprimanded him, by letter dated 12/07/2011.

From the evidence available, it is clear that immediately the management constituted itself into a disciplinary committee, it suddenly called the claimant and one Obeke to establish the truth. It started as an investigation machinery but thereafter found the claimant culpable and reprimanded him. We think that the committee should have merely investigated and forwarded a report to the Appointments committee without necessarily reprimanding the claimant. This is not to say that the said committee had no powers to reprimand the claimant. It is only to distinguish in such circumstances, an investigation and an impartial tribunal.

Secondly, it seems to us that the claimant in the management disciplinary committee was not given the particulars of the charge as it were as well as sufficient time to prepare for his defense.

Nonetheless these two technical issues were not a matter of concern to counsel for the claimant in his submission. Neither were they the concern of the claimant in his evidence. The claimant's concern in his evidence was lack of a hearing prior to the governing council taking a decision to terminate him.

In the management disciplinary committee the claimant denied having assaulted one Obeke and claimed that it was instead Obeke who picked a chair and threatened to hit him but he withdrew and walked out. The claimant admitted having moved from his office to the office of Obeke but only to inquire about a rumor that according to him, he, Obeke was generating.

We find as a fact that as a result of the claimant moving to Obeke's office for reasons of establishing a rumor allegedly generated by Obeke himself, there occurred a scuffle in the office of Mr. Obeke. It is our considered opinion that the burden lay onto the claimant to prove that he did not assault Mr. Obeke since it was he who had crossed over to the office of Mr. Obeke. Mere denial, would not discharged this burden. The fact that the claimant went to the office of Obeke believing that Obeke was the generator of the rumor in our view sprinkles some level of anger on the claimant to raise a balance of probability that it was he who started the scuffle and probably assaulted Mr. Obeke.

We have no doubt therefore that the management disciplinary committee properly found the claimant culpable.

The record also shows minutes of a special appointments sub-committee which sat on 6/10/2011 to deliberate on the same disciplinary matter which (inter alia) observed.

“Investigations of the charges were exhaustively carried out and there was sufficient circumstantial evidence to implicate Mr. Emazumvi to the alleged charge. The committee was convinced that Mr. Emazumvi did assault Mr. Tom Obeke and to the astonishment of the committee, he even threatened to beat him up in their presence.”

The claimant appeared before this committee which heard both Emazumvi and Obeke as well as one Kasirye. The same committee had earlier on 1st September 2011 reviewed the disciplinary committee's proceedings and also heard both Emazumvi and Obeke as well as other persons on the same matter. It had agreed with the decision of the disciplinary committee to (inter alia) ask the claimant to apologize to Mr. Obeke and issue a last warning letter to the claimant.

On perusal of the evidence as a whole, it occurs to us that the first disciplinary committee in fact was the first management decision. Management took a decision to administratively warn the claimant and ask him to take leave prematurely as well as to apologize to Mr. Obeke which the claimant objected to by letter causing management to forward the matter to the appointments sub-committee which fortunately for the claimant did the same as the first management committee. The claimant once again objected and the matter was handled for the second time by the same sub-committee which forwarded it to the governing council.

It seems to us that initially both management and the appointments subcommittee wanted reconciliation between the parties but the claimant was bent on maintaining that both committees were wrong in finding him culpable and he could therefore not accept the administrative reprimands imposed on him. However, as already noted it is our finding that both the management and the appointments committee's findings were correct given that it

was not disputed that the claimant crossed to Mr. Obeke's office creating a quarrel over rumors. If the claimant had accepted the administrative action by both committees the matter would not have gone to the governing council.

Given the test in the case of **GRACE MATOVU VS UMEME LIMITED** and other cases earlier referred to in this award, it is our considered opinion that the respondent offered every opportunity to the claimant to defend allegations against him which he did both orally and in writing. We consider the proceedings to have complied with principles of natural justice constituting a fair hearing.

The claimant was terminated for **“conducting himself in a manner that could endanger the life, safety and health of fellow employees”**.

Neither the claimant nor the respondent produced some kind of guideline on the rules governing the Human Resource at the work place. Ordinarily this court would have determined from the rules in the Human Resource Manual whether the conduct of the claimant called for or amounted to a sanction of termination of service.

However, on perusal of the standing orders of the respondent exhibited by the claimant (see **claimant's trial bundle pages 27-181 part A.h on termination of appointment for Senior Staff**) section 7 provides for removal for good cause thus:

“Any officer may be removed from office by council for what council may deem to be good cause”.

We have no doubt in our minds that for the claimant to have moved from his office to the office of Mr. Obeke resulting in a fracas of shouting and insults and for him to have declined an administrative action imposed by both the management and the appointments sub-committee was all good cause within the meaning of section 7 of the standing orders. It was therefore within the power of the governing council to terminate the services of the claimant.

Consequently it is our finding and holding that the decision to terminate the claimant's services made by the respondent's council in the 63rd meeting was valid and the first issue is in the affirmative.

The following remedial reliefs were claimed by the claimant.

(a) Unpaid salary since alleged termination of services.

It was the submission of counsel for the claimant that since the 63rd meeting of council was not properly constituted and therefore the claimant was not terminated in the said meeting, the claimant was entitled to the unpaid salary since the alleged termination.

This court has already determined the validity of the decision of the 63rd meeting of the council and therefore the submission has no merit.

(b) Retirement benefits under the NIC arrangement.

It was argued for the claimant that under the **standing orders of the respondent, Part I, section 11(a)** the respondent operated a retirement scheme with NIC where the claimant was entitled to a 15% and 50% contribution from employer and employee respectively. He contended that there was no evidence that the scheme had stopped by the appointment of the claimant to his job and that even if it had stopped, he was not made aware of this fact.

In the case of **TABARO VS NATIONAL CURRICULUM DEVELOPMENT CENTRE, HCCS 132/2010** the court held that the retirement scheme under N.S.S.F being under an Act of Parliament overrode the NIC scheme under the standing orders of the respondent thereby denying the defendant benefits under the NIC scheme.

In the present case, during all the period of the claimant's employment the NIC scheme was not operational and no salary deductions from the claimant's salary nor any contribution from the employer were effected through the NIC scheme. It follows therefore that the obligation of the respondent to pay the retirement benefits from the claimant to NIC did not exist.

(c) Housing allowance

Relying on the respondents standing orders, the claimant submitted that he was entitled to 16,560,000/= as housing allowances.

The NCDC standing orders, section C Part I C.K provides:

“A Senior Officer not housed by the centre will be paid a housing allowance to be determined by the Finance Committee and General Purposes committee from time to time”.

According to the respondent, the governing council at its 79th meeting on 17/12/2015 agreed to pay staff housing at 5% of monthly salary from 1997-January 2012 which included the claimant. According to the respondent therefore the claimant is entitled to 3,651,331/=. Whereas the respondent's trial bundle (**Exhibit R2a at page 112**) shows the computation of the housing allowance of the claimant, neither the submissions nor any exhibited document shows how the claimant arrived at 16,560,000/= as his housing allowance. The burden lay on the claimant to prove that he was entitled to the sum he claimed and we form the opinion that he failed to do this.

Therefore we resolve that the claimant is entitled to 3,651,331/= as housing allowance.

(d) Transport allowance for leave

The claimant did not show the legal provision under which he was entitled to transport allowance while he proceeded on leave.

However according to the respondent, (RW3's testimony) whereas the 2005 Financial Regulations did not provide for transport while an officer proceeded on leave, the 2012 Financial Regulations which took effect on 1/1/2013 after the claimant's termination, provided for the same. Just as in the case of housing allowance above, the claimant failed to discharge the burden of proof and we have no alternative but to believe the respondents assertion that while the claimant was in employment of the respondent, there was no legal basis of transport allowance for officers while proceeding on leave. The claim is therefore disallowed.

(e) Payment in lieu of untaken leave

The claimant argued that he applied for leave for the years 2008, 2009, and 2010 which was declined and he claimed 5,434,707. This court in the cases of **KANGAHO SILVER VS ATTORNEY GENERAL LDC 276/2014 and PAUL BALABA VS REIME LTD LDC 261/2015** held that it is only when the employee who is aware of his right to leave expresses interest in taking leave and the employer rejects the same,

that such employee is entitled to payment in lieu of the same. We are not satisfied on the evidence adduced in the instant case that the claimant applied for and the respondent rejected his leave for the mentioned period. The claim is denied.

(f) Coordination allowance

It was not disputed that the claimant held the office of Co-coordinator for BTVET. The only contention was whether he was entitled to the allowance.

Section C c-cl of the standing orders provides:

“1. Responsibility allowance payable to an officer of specialist rank or higher who care takes the duties of a vacant specialist post or of a specialist who is away for a period of 30 days or more”.

We do not accept the argument of the respondent that the claimant would not be entitled to such an allowance because he was not formally appointed as acting or substantive head of department and because he was an assistant specialist.

According to the submissions of the respondent, the claimant was an Assistant Specialist since he did not have a Masters Degree and therefore he could not rely on the above standing orders to seek a responsibility allowance.

It is our finding that the office of the BTVET specialist was vacant and the claimant being assistant was engaged to perform the responsibilities of the BTVET specialist. The above standing orders provide different rules for **acting allowance and responsibility allowance**. For someone to get entitled to acting allowance, one has to have a formal appointment to the acting position, which is not a requirement for responsibility allowance.

Paragraph 4 of Cc-cl of the above standing orders provide for automatic expiration of the responsibility allowance after six months unless renewed by the appointment committee.

There was no evidence that while for 2 years the claimant had the responsibility of the BTVET office, it was renewed for any period. In the absence of any renewal, this court can only find that the claimant was entitled to responsibility allowance for 6 months as provided for in the standing orders.

(g) Withheld salary

The sum admitted by the respondent is 539,500/= in contrast to a claim of 830,000/=. In his submission the claimant failed to justify the difference. We therefore allow the sum of 539,500/=.

(h) Terminal benefits under Financial Regulations

The basis of this claim is that the claimant had worked for 5 years before being terminated. On perusal of all the relevant documents and evidence the claimant was employed in October 2007 and terminated by letter dated 8/2/2012 although the decision to terminate him was made in October 2011. The total number of years he served the respondent were therefore 4 years and 3 months. This excludes the claimant from the terminal benefits and therefore the claim is disallowed.

(i) General damages/aggravated

Since this court has held that the termination was lawful, no general or aggravated damages arise.

Consequently an award is entered partly for and partly against the claimant in the following terms:

- 1) The decision to terminate the claimant's employment was valid.
- 2) The claimant is not entitled to unpaid salary since termination of his service.
- 3) The claimant is not entitled to retirement benefits under NIC scheme.
- 4) The claimant is entitled to housing allowance of 3,651,333/=.
- 5) The claimant is not entitled to transport allowance during his leave.
- 6) The claimant is not entitled payment in lieu of untaken leave.
- 7) The claimant is entitled to responsibility allowance for 6 months.
- 8) The claimant is entitled to 539,500/= as salary withheld.
- 9) The claimant is not entitled to benefits under the respondent's Financial Regulations.
- 10) No order as to costs is made.

SIGNED BY:

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. Harriet Nganzi Mugambwa

Dated: 02/11/2017