

**THE REPUBLIC OF UGANDA**

**IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA**

**LABOUR DISPUTE CLAIM No. 142/2014**

**(ARISING FROM HCT-CS No. 213 of 2012**

**CHARLES ABIGABA LWANGA .....CLAIMANT**

**VERSUS**

**BANK OF UGANDA .....RESPONDENT**

**BEFORE**

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

**PANELISTS**

1. Mr. Ebyau Fidel
2. Mr. Anthony Wanyama
3. Ms. Julian Nyachwo

**AWARD**

This claim against the respondent arises from an employment relationship between the claimant and the respondent.

The claimant was employed by the respondent initially as a “Shamba boy” in 1994 and subsequently in 1998 he was appointed as office attendant on permanent and pensionable terms. The claimant during his employment entered into loan arrangements with the respondent.

By memorandum dated 5/8/2010, the respondent terminated the services of the claimant with immediate effect.

The issues agreed for determination were:

- 1) Whether the claimant's employment was lawfully terminated by the respondent.
- 2) Whether the claimant was indebted to the respondent.
- 3) Which remedies are available?

In his evidence the claimant testified in chief that as an employee of the respondent the respondent approved his application for a property improvement loan on 11/10/2004 and a further extra loan on 25/06/2009 that was to cover his whole service until retirement only to be surprised with a termination letter dated 05/08/2010.

The respondent through one Titus Mulindwa testified in chief that the claimant was terminated by the respondent invoking **clause 14(a) of the service Agreement between the parties** which required 2 months' notice. He also testified that at the time of termination the claimant owed money to the respondent and that the benefits of the claimant were used to settle the same.

In his submission on issue No. I Counsel for the claimant contended that having been appointed on permanent terms, unless for gross misconduct the claimant's termination would not stand and that not even notice or payment of notice would validate the termination. He relied on **section 2 and section 65 both of the Employment Act** as well as the letter of appointment (Exhb. CW3). He also argued that even if the respondent had a right to terminate the contract by giving notice, termination could not unreasonably and without justification be acceptable. He relied on **Mrs. Pamela Ssozi Vs The Public Procurement & Disposal of Public Assets Authority C.S 063/2012.**

Relying on **section 58 of the Employment Act**, counsel argued that the claimant having worked for 16 years was entitled to more notice than the purported 1 month.

On the second issue it was the submission of counsel for the claimant that the loans were secured by way of Insurance cover which was admitted by RW1 in cross examination, and that even the respondent produced no evidence to prove the loan claims. He submitted that even if there was a loan advanced to the claimant, such loan was recoverable through Insurance.

In reply, counsel for the respondent on the first issue submitted that, the claimant was lawfully terminated in accordance with his employment contract and that termination by payment in lieu of notice was a permissible contractual method of ending an employment contract. He relied **on section 65(1) and section 58(1), (3) (d) and 5 of the Employment Act.**

He also relied on **clause 14(a) of service Agreement between the claimant and the respondent.** Counsel argued that even when an appointment is of a permanent and pensionable nature, the employer's right to terminate by notice is not diffused. He relied on the authority of **East African Airways Vs Knight (1975) EA 165.**

He argued that, termination of a contract was not a disciplinary act but merely a contractual exit arrangement available to either party and that it could be exercised either **“for a reason or for no reason at all”**.

He submitted that the reason for termination of the claimant's employment was due to the right sizing exercise and relying on the authorities of **Cissy Nankabirwa Vs the Board of Governors St. Kizito Technical Institute Kitovu, L.D.C 60/2016** , **David Kalyango vs Rakai Health Science Programme L.D.C 038/2016**, and **Omoding Simon Vs Rakai Health Science Programme L.D.C 039/2016**, he strongly submitted that the respondent was entitled to restructure its business and therefore the termination was lawful whether or not anybody's job became extinct as a result of the exercise.

Relying on the authority of **Stanbic bank Ltd Vs Kiyemba Muntale S.C.C.A 02/2010** and **Barclays Bank of Uganda Vs Godfrey Mubiru S.C.C.A 02/1998**, counsel submitted that an employer can terminate the contract of an employee for a reason or for no reason at all and that this right cannot be fettered by the courts.

On the second issue, counsel contended that the claimant's unequivocal acknowledgement of indebtedness in **paragraphs 8, 9, 10, 11 and 12 of his written witness statement** was sufficient proof that he was indeed indebted to the respondent.

He submitted that the insurance cover in respect to the loan was not to cover the loan repayment but the building for which the loan had been acquired and that the respondent did not receive any reimbursement of the premium or payment from the insurer in relation to the building loan granted to the claimant.

In the case of **Benon H. Kanyangoga & others Vs Bank of Uganda**L.D.C 080/2014 in which the firm of MMAKS Advocates ably represented Bank of Uganda, this court dealt with the question of the right of the employer to terminate the contract and discussed the above authorities then relied on by counsel for Bank of Uganda. Relying on an earlier case of **Florence Mufumba Vs Uganda Development Bank, LDC 138/2014** which gave an interpretation of **section 2 of the employment Act**, this court in the **Kanyangoga case** emphasized that before terminating an employee, an employer must give reason for the termination. In the **Kanyangoga case** just like in the instant case, counsel for the respondent strongly argued that the termination of contract was not a disciplinary act but merely a contract exit arrangement available to either party exercisable for either a reason or no reason at all. We are surprised that the same submission is in the front line of the instant case yet this court made a ruling on it in the Kanyangoga case.

We rejected this submission and so do we in the instant case. The contention of counsel of the respondent that requiring an employer to give reasons for termination of the employment is in contradiction of the principle in **BARCLAYS BANK UGANDA VS GODFREY MUBIRU and Stanbic Bank Ltd Vs Kiyemba Mutale (Supra)** is as unacceptable in the instant case as it was in the **Kanyangoga case**. This is because section 2 of the **Employment Act provides** for proof of **verifiable misconduct** before dismissal and **Justifiable reasons other than misconduct** before termination. **Section 68 of the Employment Act** is more explicit in providing for a reason before termination. It provides:

**" proof of reason for termination**

**(1) In any claim arising out of termination the employer shall prove the reason or reasons for the dismissal and where the employer fails to do so the dismissal shall be deemed to have been unfair within the meaning of section71"**

**(2) The reason or reasons for dismissal shall be matters which the employer at the time of dismissal genuinely believed to exist and which**

**caused him or her to dismiss the employee"**

We therefore hold as we did in the **Kanyangoga case** that the cases of **BARCLAYS BANK UGANDA VS GODFREY MUBIRU** and **Stanbic Bank Ltd Vs Kiyemba Mutale (supra)** are not authority for the legal proposition that the employer will be at liberty to dismiss an employee without giving him any reason and without the employee being in any way at fault. The notice to be given to an employee as provided for under **section 58 of the Employment Act** and in almost all Employment contract agreements is only **supplementary and additional to the need to provide for a reason for dismissal or termination. It is not an end in itself.**

We agree with counsel for the respondent that the decision in **East African Airways Vs Knight (supra)** is authority for the legal proposition that permanent employment does not mean that it is employment for life or until retirement but that such employment is to continue for an indefinite period with an element of permanency and a degree of security of tenure and not necessarily a life appointment with the status of immovability.

In view of **section 2 of the Employment Act (supra)** and **section 68 of the same Act**, it is our opinion that permanent employment will only be terminated lawfully with the employer proving either **verifiable misconduct** on the part of the employee, or giving **justifiable reasons other than misconduct** which reasons include expiry of contract or attainment of retirement age. We do not accept the contention of counsel for the respondent that an employment on permanent and pensionable terms as described in the **East African Airways** case above, could be terminated by a stroke of a pen in the issuance of only and only a notice period or payment in lieu thereof.

It was the respondent's submission that the claimant was terminated due to a right sizing exercise. Counsel relied on a letter of recommendation dated 2/11/2010 from the respondent. It reads:

**"To whom it may concern**

**Reference for Mr Charles L. Abigaba**

**Mr. Charles L. Abigaba worked for Bank of Uganda for about sixteen years. During that period his performance was satisfactory. Indeed, in the last performance**

appraisal, he was recommended for a salary increment. However, his employment was terminated due to a right sizing exercise.

**The purpose of this letter is to recommend Mr. Abigaba for employment. He is hard working. Willing to learn and respectful of his peers and superiors.....”**

Counsel also relied on the authorities of Cissy Nankabirwa, David Kalyango and Omoding Simon of this court (supra) for the legal proposition that restructuring is one of the justifiable reasons envisaged in **section 2 of the Employment Act** and that therefore the claimant was lawfully terminated.

**Under section 81 of the Employment Act**, guidance is provided for in the event of collective termination of ten or more employees for reasons of an economic, technological, and structural or similar nature. It is our considered opinion that in the event that an employer intends to terminate one employee for the same reasons, such employer is obliged to follow the same guidelines.

In the Cissy Nakabirwa case, this court observed that:

**“The employer has an inherent right to restructure posts in his/her organization as long as the employees are aware of the process....” and that “the fact that one is occupying a certain position does not exclude the employer from advertising the same position if the said employer seeks more qualification or if the same post is being restructured....”**

The bottom line is that no restructuring of the position of an employee is acceptable unless the employee to be affected is informed at least 4 (four) weeks before and all other factors mentioned in section 81 of the Employment act are complied with. Ordinarily a restructuring process is intended to affect a large number of employees.

In the instant case, we do not accept the contention of the respondent that the claimant’s termination was as a result of a restructuring or a downsizing process. This is because none of the conditions in section 81 of the Employment act were complied with and because there is no evidence on the record to suggest that before the downsizing process started, the claimant was made aware of the same process. The letter from the respondent addressed to **“whom it may Concern”** is not informing the claimant the reason for termination but informing **“whom it may concern”** and this is after termination which is contrary to section 68 of the Employment Act as no evidence was led to suggest that at the time of termination restructuring or downsizing was the genuine reason that caused the termination. The letter of

termination dated 5/08/2010 contains no reason of termination and is of immediate effect. It has nothing to do with restructuring or downsizing. Consequently we find no merit in the submission that the claimant was terminated as a result of the reason of downsizing.

We find that the termination having been contrary to the provisions of **section 2, section 66 and section 68 of the Employment Act** was unlawful and issue no. 1 is decided in the negative.

The second issue is **whether the claimant is indebted to the respondent.**

The evidence on record reveals that the claimant applied for three loans at different times and they were approved. This is found in the claimant's own witness statement. Counsel for the claimant submitted that the loans were not disbursed to the claimant. Indeed there was no evidence that the loans were disbursed. After the approvals of the loans, there ought to have been a loan disbursement plan signed by the parties to indicate that in fact the loans as applied for and approved were disbursed to the claimant. The only evidence on the record is the fact that the respondent approved the same.

However, we note that in the written witness statement the claimant does not deny disbursement of the said loans after admitting that they were approved. In fact **in paragraph 12** he says that after the respondent had disbursed 20,000,000/= he was surprised to be served with a termination letter.

We therefore find that the three loans were disbursed to the claimant. The claimant through legal counsel contended that the loans were secured by way of insurance cover and that the respondent could not claim that no penny had been paid on salary secured loans given in 1998, 2004 and 2009. He argued that the loans were time barred.

There is no doubt that the loans were secured on the basis that they would be recoverable by way of deduction from the salary of the claimant. This was revealed by the only witness of the respondent in cross-examination when he said **“payment was matched on salary. One must be employed first ...”**

This being the case it was expected that every month or at whatever intervals were agreeable between the parties, a certain portion of the salary would be deducted in repayment of the loan.

The case for the respondent seems to be that the claimant, by the time he was terminated, he had not paid even a penny of the loan disbursed to him. In the absence of evidence that the claimant was getting his full salary and benefits without any deductions after the loan disbursements and before he was terminated, this court has no basis to find that ever since the loans were disbursed the claimant never paid any penny. We are not convinced that a loan disbursed in July 1999 and another disbursed in October 2004 both expected to be repayable by deduction of salary would still be repayable without any deduction by today in 2018. The same applies to the loan disbursed in June 2009. It is our position that before the claimant was terminated in August 2010, the loans granted to him in 1999 and 2004 should have been reduced by salary deductions just like the loan acquired in June 2009.

Whereas the claimant contended that the loans were insured, the respondent argued that the insurance was for the buildings for which the loans were secured and not the repayment of the same. No insurance cover was produced in court in support of either of the contentions, although the only respondent's witness testified that the respondent did not recover the money from the insurer.

This court is at a loss as to why for all this period the respondent did not attempt to recover any single penny either from the insurer or from the claimant. If the insurance was in respect to the building, then there should have been some kind of arrangement as to how the building would provide security for the loan reimbursed to the claimant. No such arrangement was available to this court. In the absence of such arrangement, we have no option but to find that the respondent intended to recover the loans by way of only and only deduction of certain amounts from the salary of the claimant. The case of **Okello Nimrod Vs Rift valley Railways C.S. 195/2009** which was cited by this court in the case of **Donna Kamuli Vs DFCU LDC 002/2015** is authority for the legal proposition that where a loan was premised on the understanding that the plaintiff (or claimant) would continue to be employed by the defendant (or respondent) and pay the loan eventually by solely the means of such employment, once the said employment was by an unlawful act of the defendant (or respondent) frustrated, then the defendant was liable to pay the loan.

In **Florence Mufumba Vs Uganda Development Bank LDC 138/2014** this court held that the claimant was entitled to be relieved of the loans that were intended to be wholly settled by salary deductions but for the unlawful termination of the employment.



In the instant case evidence suggests that for all intent and purposes, the loans advanced to the claimant were intended to be repayable by way of deductions from salary. The respondent seems to suggest that no such deductions were made until the claimant was terminated. As already resolved in issue No. I, the termination was unlawful having been in contravention of the Employment Act. Consequently in view of the above authorities, we hold that the claimant is relieved of the loans. The second issue is resolved in the negative.

The third issue related to **the remedies available to the parties.**

### **General damages**

It was the submission of counsel for the respondent that the struggle of the claimant to struggle for his family was not part of the Employment contract and that therefore the respondent was not liable for the inconvenience suffered by the claimant.

As pointed out by counsel for the claimant, damages are a discretionary remedy intended to return the claimant to the original position before the wrong was committed. The claimant had a job which he was looking up to fend for his family and had been put into a permanent and pensionable position. He had high hopes of a career ahead of him. His employment was directly connected to his struggle to fend for his family. We do not accept the submission of counsel for the respondent that the respondent was not liable for the inconvenience suffered by the claimant after loss of his job.

Unlike in the **Kanyangoga case and Grace Matovu vs Umeme LDC 004/2014** and many others where this court found the claimant at fault but faulted the respondents on certain aspects of a fair hearing, in the instant case the claimant was not at any fault whatsoever and despite the respondent having praised him as a hardworking and reliable employee, he was, without any reason whatsoever forced to leave employment. It is our position that whereas in the above cited cases the claimants were awarded 4 weeks net pay in accordance with **section 66(4) of the Employment Act**, in the instant case the claimant deserves general damages.

He is therefore entitled to general damages and in our estimation 25,000,000/= will be sufficient.

Although the claimant was not a senior member of staff but only an office attendant of a clerical grade, he deserved to be treated with respect. We agree with counsel for the claimant

that having been put on a permanent and pensionable establishment and having served the bank for over 16 years with satisfactory appraisals, It smacked of lack of compassion, callousness and indifference for the respondent to suddenly without notice terminate the employment with immediate effect. The claimant deserves aggravated damages and we think 5 million is sufficient.

### **SPECIAL DAMAGES**

We are in full agreement with counsel for the respondent that this category of damages entails specific pleading and strict proof.

It was the contention of counsel for the claimant that his client having been employed on permanent and pensionable terms he was entitled to salary and benefits up to his retirement which amounted to 14 years of salary. We do not think it is appropriate to presume that the claimant would have worked for 14 years without any interruption be it natural (like death) be it lawful termination or even resignation for a better opportunity elsewhere or any other intervening circumstance. The claimant did not show either in his submission or in the memorandum of claim how the figure of 232,540,330 as terminal benefits was reached. We have perused the Terms and Conditions of service exhibited in the claimant's trial bundle, and there is no provision relating to terminal benefits nor is there a method of calculating the same.

In the absence of proof that the claimant is entitled to such benefits therefore, the claim is rejected.

There is no doubt that the claimant having worked for over 16 years, he was entitled to not less than 3 months' notice in accordance with **section 58(d) of the Employment Act, 2006**. We accordingly grant him the equivalent of salary for 3 months.

### **GRATUITY AND SEVERANCE**

It was the submission of counsel for the respondent that since the claimant had not pleaded both gratuity and severance, he could not be heard to claim for the same. He relied on **interfreight Forwarders (U) Ltd Vs East African Development Bank C.A 33/1992 (Sup-court)**.

The terms and conditions of service which governed the relationship between the claimant and the respondent provided under clause 13:

**“Employers who serve the bank up to normal retirement age shall be paid a long service gratuity equivalent to one year’s annual basic salary at the time of retirement as long as they served a minimum of 10 years.”**

As already pointed out earlier in this award, the claimant’s termination of employment was unlawful. There was no fault at all visited on the claimant. On the contrary there were only praises for his hard work and commitment to his job. We do not find any reason for him to be excluded from benefiting under clause 13 especially when he served the respondent for over 10 years. Accordingly we are in agreement with counsel for the claimant that he is entitled to be paid for long service the equivalent of 1 year’s annual basic salary and so we order.

**Sections 87-92 of the Employment Act** provide for payment of severance allowance and under what circumstances it is payable by the employer. According to **section 87(a)** the employer is obliged to pay severance allowance once the employee is unfairly dismissed. Section 89 of the same Act provides that calculation of the payable severance is to be negotiated between the employer and the workers or the Labour Union that represents them.

In the case of **Donna Kamuli Vs DFCU LDC 002/2015** this court held that in the event that there was not method of calculation of severance agreed between the workers and the employers, as provided for in section 87 above mentioned, then the employer was obliged to pay the equivalent of one month’s salary for each year worked. We have no reason to depart from this decision and therefore we hold that the claimant having been unlawfully terminated and in accordance with **Donna Kamuli (supra)** shall be entitled to a month’s salary for each year for the years that he worked unless there is evidence that there exists a contrary arrangement for payment of severance allowance.

Consequently the claim succeeds with the following declarations/orders.

1. The claimant’s employment was unlawfully terminated.

2. The claimant was entitled to be relieved of the loans since they were intended to be secured by his employment which was unlawfully terminated.
3. The claimant shall be paid a total of 30,000,000/= as general and aggravated damages.
4. The claimant shall be paid 3 months' salary in lieu of notice.
5. The claimant shall be paid 1 month's salary for each year that he worked with the respondent as severance pay.
6. The amounts in paragraph 3 shall attract interest at 8% per annum from the time of delivery of this award till payment in full.
7. The amounts in paragraph 4 shall attract interest of 20% from the time of filing the suit till payment in full.
8. The amount in paragraph 5 shall attract interest of 20% from the date of the ruling till payment in full.
9. The claimant shall be paid taxed costs in this claim.

**Signed by:**

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

**PANELISTS**

1. Mr. Ebyau Fidel .....
2. Mr. Anthony Wanyama .....
3. Ms. Julian Nyachwo .....

**Dated: 23/FEB/2017**

