

**THE REPUBLIC OF UGANDA  
IN THE INDUSTRIAL COURT OF UGANDA HOLDEN AT GULU  
LABOUR DISPUTE CLAIM NO.006/2016  
(ARISING FROM HCT-CS NO. 0032/2014)**

LAMUNU FAITH .....CLAIMANT

VERSUS

KROTCHET EMPLOYEES SACCO AND KROTCHET KIDS UGANDA.....RESPONDENTS

**BEFORE**

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

**Panelists**

1. Mr. Rwomushana Jack Reuben
2. Ms. Rose Gidongo
3. Mr. Wanyama Anthony

**AWARD**

The claimant filed this claim in the High Court as civil suit no 032/2014. She alleged in the plaint that she had been unlawfully dismissed by the defendants/ respondents and she prayed therefore that the court orders for:

- (a) Payment of annual leave
- (b) General damages
- (c) Interest
- (d) Costs

**BRIEF FACTS**

Krotchet Kids Uganda, the second respondent and a programme for empowerment of the northern region entered into an arrangement with the claimant to pay her for certain specified crafts made by her every month. She was to be supervised so as to be able to produce quality as well as quantity in the required time period. The terms were contained in a Beneficiaries contract of 19/06/2013 and later on the contract of 08/07/2015. The claimant on 13th August 2011 had been appointed a credit officer at Krotchet Uganda Employees Sacco effective 23rd August 2011, the said Sacco being in the same premises as Krotchet Kids Uganda.

On 1/1/2014 the claimant was appointed as loans officer effective 1/1/2014 to December 2014, the contract being renewable. Krotchet Kids Uganda had members who were all referred to as

beneficiaries. The management of the first respondent sought to acquire a loan and the claimant as loans officer was identified and mandated to lead this process and as such on behalf of the 1st respondent opened an account and deposited thereon Ug, shs 1,200,000/

According to the respondent in a surprise twist of events the claimant and the cashier obtained Ug. shs 6,000,000/ without approval and purchased livestock contrary to the earlier position to get a loan for the same. The claimant at the same time withdrew the 1,200,000shs for her personal use. Both the claimant and the cashier, according to the respondent, failed to account for their actions and they were suspended. Both of them apologized for their actions and asked for forgiveness but this was not acceptable and they were dismissed. According to the claimant, 6,000,000/ was requisitioned and later on approved by the treasurer for purchase of livestock for the beneficiaries. She bought the livestock and distributed it to the beneficiaries although she had been informed of the change of the policy after she had bought the same and as she was on the way to distribute the them.

According to her, as she prepared to account for the money she received suspension on allegations of being involved in a fraudulent dealing and later on she was dismissed. In cross examination she told court that because of logistical issues which included transporting of the livestock by each beneficiary, the respondent in a meeting with the beneficiaries decided to call off the loan requirement since it would be expensive. This was the reason money was withdrawn and given to her to purchase the livestock which she had done before in a previous dealing. She admitted having written an apology but only because she feared losing her job and not for being in the wrong.

## **SUBMISSIONS**

In his submission counsel for the claimant contended that no disciplinary procedures were followed and there was no fair hearing since the claimant was not summoned to defend herself. He submitted that in contravention of **section 68 (1) of the Employment Act**, the respondent did not prove reason for termination. He argued that the respondent took advantage of the claimant to deny her a fair hearing and payment of her labour.

In reply counsel for the respondent submitted that the claimant was given chance to explain why she acted irregularly which she failed to do and then she was suspended. He argued that having apologized and asked for forgiveness the claimant could not be heard to say that she was innocent since she did not prove that she was forced to apologize. Counsel also submitted that the respondent was entitled to dismiss the claimant summarily since she had ignored the essential parts of her contract as a loan's officer. According to counsel for the respondent it was gross misconduct for the claimant to receive cash as she had no mandate to procure any items.

## **RESOLUTION OF ISSUE 1: WHETHER THE CLAIMANT WAS UNLAWFULLY TERMINATED**

There is no doubt that the claimant at the time of her employment termination was employed as a loans officer. There is unchallenged evidence on the record that as such she was authorized to manage the process of acquisition of a loan for livestock to be distributed to beneficiaries under a programme of the respondent. She was a signatory to an account which she opened for and on behalf of the respondent and deposited there on some 1,200,000/. There is nothing on the record to show that the resolution for the respondent to acquire a loan was rescinded.

Although the claimant testified ( in cross examination) that the chair person , the treasurer and the secretary of the respondent were of the view that it would be expensive for the respondent to provide transport and therefore asked her to call off the loan, there was nothing on the record to suggest that this was the case. Instead the country Director of the respondent in his written sworn statement informed court that:

**" In a very surprising twist of events the claimant and the cashier of the 1st respondent..... without the knowledge of the management and the loan committee and without approval of their supervisor obtained 6,000,000/.....and purchased livestock in cash thus greatly violating the resolution of the 1st respondent management committee"**

The said country director was not shaken in cross examination as he insisted that the resolution to get a loan for livestock was not cancelled and that it was cheaper to purchase the same by loan since the loan was at a subsidized rate.

Although one Okello Mary was not called in court to testify, she filed a written statement on oath to the effect that due to ordinate delays from the microfinance in the distribution of the livestock, the 1st respondent decided to change the mode of livestock acquisition from the loan to the cash method. But as already said above there is nothing on the record to suggest that there was any change of the mode of acquisition of the livestock.

In his submission, Mr Magara argued that the claimant fundamentally broke the terms of her service and therefore the respondent was entitled to dismiss her summarily. Even then, he argued , the claimant was asked to explain which she failed to do.

We have perused the whole record including the only trial bundle, but we have failed to trace any hearing of the matter either by the Board of the respondent or by any properly constituted disciplinary committee. Neither is there anything to suggest that the claimant was asked for any explanation related to the matter at hand.

Nonetheless, the respondent's written sworn statements on the record reveals that the claimant was dismissed summarily. **Section 69 of the Employment Act** provides:

**'(3) An Employer is entitled to dismiss and the dismissal shall be justified, where the employee has, by his or her conduct, indicated that he or she has fundamentally broken his or her obligation arising under the contract of service....."**

Upon perusing the appointment letter of the claimant as a loans officer we agree with counsel for the respondent that purchasing items for and on behalf of the respondent was not one of the terms . We must say , however, that the same letter of appointment did not outline the duties of the claimant as a loans officer. As expressly provided under **section 40 of the Employment Act:**

**"(1) Every employer shall provide his employee with work**  
**a. in accordance with the contract**  
**b. during the period which the contract is binding**  
**c. on the number of days equal to the number of working days expressly or impliedly provided for in the contract"**

It is our considered opinion that the respondent in compliance with the above section should have outlined the duties of the claimant as a loans officer. We take note that the claimant despite lack of an outline of her duties from her employer, was in charge of the process of acquiring the loan by virtue of the resolution of the loans committee dated 2/5/2014. The resolution was clear that Talenta finance co. limited was to offer an agricultural loan. In the absence of a contrary resolution rescinding the one dated above, she claimant as loans officer, was bound to continue processing the loan.

The fact that the claimant received cash without the necessary approvals points to a lacuna in the 1st respondent. The same applies to the fact that as a loans officer the claimant easily withdrew the 1,200,000/ she had deposited in the bank. Despite these weaknesses in the management of processes in the respondent organization the claimant as an employee was not expected to exploit the same to the disadvantage of her employer. Her written admission and apology to almost everybody in management points to her humility to accept her mistake but unfortunately for her this may not exonerate her.

In **KABOJJA INTERNATIONAL SCHOOL VS GODFREY OYESIGYE LABOUR APPEAL NO.003/2015** this court had this to say:

**"This admission was enough to entitle the employer/ appellant to summarily terminate the employee/ respondent which they did. The respondent's contention that he should have been subjected to a hearing was rendered redundant after he admitted his misconduct and the fact that the appellant had denied him a last chance could not render the dismissal unlawful".**

The contention that the claimant was either forced or coerced into writing the apology is not acceptable to us. In her mind she thought writing an apology would break the heart of management and as consequence she would be forgiven. We do not find any evidence of coercion and like in the above cited case the fact that the respondent did not feel sympathetic and reinstate the claimant after her apology did not render the termination unlawful.

In our considered opinion the claimant had breached a fundamental obligation as a loans officer to process the loan and the moment she withdrew cash and went to purchase the livestock, she breached this obligation and therefore fell into the armpits of **section 69 of the Employment Act** cited above. Consequently, following the decision of **KABOJJA (supra)**, the respondent in this case acted within the law to terminate the services of the claimant.

#### **RESOLUTION OF SECOND ISSUE: DAMAGES**

Having held that the claimant was lawfully terminated she will not be entitled to general damages, or payment in lieu of notice. We agree with counsel for the claimant that leave is a right of an employee.

However, as we have held before, for planning purposes an employee is always expected to apply for his/ her leave at a certain period during a calendar year so as to allow the employer arrange for somebody to perform the duties of the employee on leave. In the absence of the employee showing interest in taking his/ her leave when he or she is aware of this right, he or she is taken to have willingly forfeited his or her entitlement. **see: MWAKA MOSES VS ROADMASTER LABOUR CLAIM 155/2014; NYAKABWA J. ABWOLI VS SECURITY 2000LIMITED LABOUR DISPUTE CLAIM108/2014**

In the instant case there was no evidence adduced to show that the claimant was ignorant of the entitlement to leave and neither was there evidence to show that the claimant applied for and was denied leave. In the former case the respondent would have been under a duty to have sensitized the employee on this fundamental right. We are therefore in agreement with the respondent's submission that the claimant forfeited her right to leave.

All in all the claim is dismissed with no orders as to costs

**SIGNED**

- 1) Hon. Ruhinda Asaph Ntengye, Chief Judge.
- 2) Hon. Lady Justice Linda Lillian Tumusiime Mugisha.

**PANELISTS**

- 1) Mr. Rwomushana Jack Reuben.
- 2) Mr. Anthony Wanyama.
- 3) Ms. Rose Gidongo.

**DATED: 30<sup>TH</sup> MARCH, 2017**