

**THE REPUBLIC OF UGANDA
THE INDUSTRIAL COURT OF UGANDA HOLDEN AT MASAKA
LABOUR DISPUTE CLAIM. NO. 283 OF 2014
(ARISING FROM HCT-CS 249 OF 2010)**

BETWEEN

ROGERS KASOZI..... CLAIMANT

AND

NATIONAL INSURANCE CORPORATION..... RESPONDENT

BEFORE

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

PANELISTS

1. Mr. Bwire John Abraham
2. Ms. Julian Nyachwo
3. Ms. Susan Nabirye

AWARD

The claimant was employed by the respondent from 11/10/99 until 15/07/2010 when his employment was terminated. Although his benefits were calculated and paid to him, he was not satisfied with the method of calculating his benefits and the legality of his termination. His letter of termination showed that he was terminated because his services were no longer required by the respondent.

Issues for determination

By a joint scheduling memorandum filed on 12/5/2017 and signed by both counsel. The following were the issues agreed upon.

1. whether the respondent's calculation of the claimant's terminal benefits was appropriate?
2. Whether the claimant is entitled to the remedies sought.

However on filing submissions. Both counsel seemed to include a 3rd issue: whether the termination of the contract between the claimant and the respondent was wrongful/ or unfair.

EVIDENCE

Each of the parties adduced evidence from one witness. The claimant in a written witness statement which was admitted in court as evidence in chief, told court that having worked for the respondent since 1/10/1999 he was summarily terminated by letter dated 15/07/2010 for no reason at all. He was paid 3 months' notice and other benefits but only after several demands to be paid. In his evidence in chief his terminal benefits were calculated as if he was in the bracket of the employees who had worked for 10 years, yet he had worked for more than 10 years.

He told court that his summary termination was malicious and had the effect of denying him the remaining 3 months which would automatically place him in the 11 year physical employment of the company (and therefore allow him to get benefits of employees that had served for 11 years).

One Grace Wanyama testified on behalf the respondent. In her written witness statement which was also admitted as evidence in chief, she told court that the claimant was lawfully terminated in accordance with the law and conditions of service and that all the benefits accruing to him were paid. According to her the termination was fair without any ill will or malice.

SUBMISSIONS

Relying on **Section 2 of the Employment Act** and the authority of **Florence Mufumba Vs UDB L.C No. 138/2013** counsel for the claimant submitted that the termination without any reason was wrongful and unfair. He argued that it was not true that the services of the claimant were no longer required since the department and office in which he worked remained to date.

In his submission the calculation of the benefits of the claimant wrongly placed him in the category of 10 years thus denying him benefits of the category of employees of 11 years in which he should have fallen.

In his submission, counsel for the respondent contended that the reason for termination was expressed as his services no longer being needed. Counsel argued that clause 6 of the staff regulations did not bind the respondent to rely only on the grounds stipulated therein. According to counsel the claimant was fully paid his benefits falling in his category of those that had served for a period of in 10 years.

DECISION OF COURT

We propose to deal with the last issue first

The letter of termination addressed to the claimant reads in part:

“This is to inform you that your services are no longer required by the corporation with immediate effect.

You are directed to hand over office to Acting Chief Manager”

Section 2 of the Employment Act clearly defines what constitutes “**dismissal from employment**” and what constitutes “**termination from employment**” when considering the two situations this court in the case of MUFUMBA Florence Vs UDB (supra) emphasized that whether an employer “**dismisses**” or “**terminates**” an employee, he has an obligation to provide a reason for doing so. This is because under **section 68 of the Employment Act** the employer is under an obligation to provide a reason.

This section states:

“68 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 section 71.**

From the submission of counsel for the respondent, the fact that the employer was to give reason before termination or dismissal is not disputed. Counsel contends that his client provided a reason for terminating the services of the claimant and the reason referred to the employee's services no longer being required. The question before this court is whether this is the kind of reason envisaged not only in **section 68 of the Employment Act** (supra) but also in **BENON H. KANYANGOGA & OTHERS VS BANK OF UGANDA LDC 164/2014.**

The word “reason” as used in **Section 68 of the Employment Act** and as interpreted by this court in the above cases of **MUFUMBA AND KANYANGOGA** connotes an explanation or justification for terminating or dismissing an employee. The justification or explanation in our view has to make sense by making whoever is concerned understand the circumstances (whether wrong or right) that has led to the decision to terminate or dismiss the employee. The reason provided in the instant case falls short of the justification or explanation required under **section 68 of the employment Act.**

Following the submissions of counsel for the respondent, it is clear to us that the claimant was terminated not for misconduct. Under **section 2 of the employment Act.**

“**Termination of employment**” is discharge of an employee from employment for JUSTIFIABLE REASON other than misconduct.

The fact that the claimant's services were no longer required could not be taken as justifiable in the absence of evidence that the office occupied by the claimant was abolished or that the said office was to be restructured into an office requiring different qualifications from those that the claimant had. We therefore do not accept the contention of the respondent that the mere statement that the services of an employee were not required without substantiating how and to what extent such services were becoming irrelevant to the employer constituted justifiable reason as provided for under **section 2** and **section 68 of the Employment Act.**

Consequently the employment of the claimant was terminated without a reason as envisaged under **section 2** and **section 68 of the Employment Act** and as such was wrongful and/or unfair. The last issue is in the positive.

The first issue is: **whether calculation of the claimant’s terminal benefits was appropriate.**

Appendix 6 to the NIC Staff Regulations (Terms and Conditions of Service, 2004) Provides:
“A. on attaining a mandatory, or early retirement age or at retirement on medical grounds all permanent staff who have completed a minimum of 1 year of service shall receive terminal benefits computed as here below. This is an addition to the award promised for under deposit Administration Plan Policy. This does not apply to employees’ who have been dismissed.

- 1. 1-10 years 1 month’s gross salary X number of year’s served.**
- 2. 11-20 years 2 months gross salary X number of years served.**
- 3. 21 years 3months gross salary X number of years served.**
- 4. Further, the retiring employee will receive transport to destination calculated as followed:**

Shs. 2,000 X D x Shs. 200,000 where

- 2,000 is the rate per kilometre for the entire family.**
- “D” is the distance from Kampala to the home District Headquarters.**
- 200,000is the rate from the District Headquarters to one’s home regardless of distance.**

Counsel for the claimant argued that his client was entitled to claim under the category of 11-20 years. It was argued for the claimant that by the time of termination his client had worked for 9 months in the 11th year and that therefore the only category he could fall in was that of 11-20 years under the above appendix. Counsel for the respondent on the other hand argued that the claimant had worked for 10 years and 9 months and that 9 months could not be equated to 1 year given that a year constitutes 12 months.

Counsel for the claimant argued that

“Having worked for 10 years (ten) and 9 (nine) months in the 11th year, he had ceased being in the category 1-10. From November 2009, the claimant entered the category of 11-20 years.

It is our position that in order to benefit under the category of 11-12 years an employee must have entered the 11th year in the service of the respondent. One could only enter the 11th year of service after completing the 12 months of the 10th year of service. The nine months in our view was not **IN THE 11TH YEAR** as counsel for the claimant seemed to suggest but **TOWARDS THE 11TH YEAR**.

It is not disputed that the claimant started work on 11th October 1999. He was terminated on 15th July 2010. In our calculation the first year of service was completed on 12th October 2000. The last year of service ought to have been completed on 12th October but he was terminated on 15th July 2010.

Therefore by 12th October 2009 the claimant had worked for 10 years. The appendix captured 11-20 years which in our view meant that the claimant had to jump the 10-11 year period and fall into the 11-20 year period. In our calculation by the time the claimant was terminated he was in the 10-11 year period which is not covered under Appendix 6. We think the story would have been different if the appendix did not show the period as between years but as exact number of years served. According to us the intention was that the employee rather than complete a certain fixed number of years he/ she had to enter the next definite phase of a period of years of service.

Consequently we hold that having not clocked the 11th year in the service of the respondent, since he was **towards the same** being short of by 3 months, he could not benefit under the category of 11-20 year service. The second issue is decided in the positive.

The last issue relates to remedies:

The claimant sought damages for unfair termination. We have already held that the termination was indeed unfair and wrongful. The claimant was paid his terminal benefits although he was paid much longer after termination which we think was also unfair. On perusal of the appointment letter nothing suggests that the appointment was of a specific period of time implying that the employee/ employer relationship was to go on until one of the parties dissolved it albeit fairly and lawfully. The evidence is not clear on the record how old the claimant was by the time he was terminated and what chances he had for seeking and once again getting employed. The computation of terminal benefits has been found to have been proper. By appointment letter of 30th Sept 1999 which was confirmed in Dec, 2000 the claimant was earning 429,736 shs. The record does not reveal how much he was earning by

the time of termination. In the circumstances, for the unfair termination of the claimants job and therefore rendering him jobless we award him general damages of **Ugx.4,000,000/= (Uganda Shillings FIVE million only)**.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. Bwire John Abraham
2. Ms. Julian Nyachwo
3. Ms. Susan Nabirye

DATED. 10/8/2018