THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE NO. 183 OF 2015
(ARISING FROM LABOUR DISPUTE NO12/07/2015

AYEBAZIBWE PETER…….……..**CLAIMANT**

VERSUS

1. GOOD WILL COLLEGE SCHOOL LTD.
2. IGA FRANCIS……..……..... **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. Anthony Wanyama
3. Ms. Julian Nyachwo

## AWARD

By memorandum of claim filed in court on 31/7/2015 the claimant raised a claim against the respondents for damages for wrongful termination, compensation in lieu of reinstatement, severance allowance, and many other claims as specified in paragraph 4 of the memorandum of claim. By paragraph 11 of the same memorandum the claimant prayed this court to grant various declarations, orders and awards as specified thereunder.

Briefly the facts of the case as we discern them from the record are that the claimant was employed by the respondent by virtue of an employment contract dated 4/4/2015 as head teacher. According to him while on official duty at UNEB registering students on 11/6/2015, he was informed that the 2nd respondent had locked his office. Subsequently on 17/6/2015, he was informed by 2nd respondent that he had recruited another Head teacher thus terminating his services without notice.

According to the respondent, the claimant was suspended for 2 weeks for having neglected his office by keeping it inaccessible thus paralyzing activities of the school, whereupon another teacher was appointed to run the school till the suspension was lifted. According to the respondent after the suspension the claimant never returned to office.

The issues agreed are:
1. Whether the claimant was unfairly terminated.
2. Whether the respondent should return the confiscated/locked up properties in the claimant's office
3. What other remedies are available to the parties.

It was the evidence of the claimant that while he was at UNEB for official duty the reception door to his office was locked up by the 2nd respondent and that the next day he reported the matter to police. He was informed later on 17/6/2015 that another Head teacher had been

engaged to run the school whereupon he wrote a complaint to police regarding his locked up personal items in the office. He denied ever being out of office except while on official duties and the school was running normally under his leadership as headmaster before his office was broken into.

One Kamugisha Alfred corroborated the story of the claimant that the 2nd respondent locked up the reception door to the office of the claimant.

It was the evidence of the 2nd respondent that as Director Financier, and proprietor of the 1st respondent he engaged the claimant as Head teacher but during April and May 2015 communication between him as director and the claimant broke down and generally relations between the teachers and the claimant got strained to the extent that the examination centre was withdrawn from the school by UNEB. According to him the Head teacher became habitually absent which forced management to suspend him and appoint another person in his place. An audit of the school revealed fraud on the part of the claimant causing financial loss to the tune of over 22 million but even then the claimant was never dismissed but he only absconded from duty.

One Nganda Francis corroborated the story of the 3nd respondent that the claimant during April 2015 was absent from school and according to him this was because he had failed to account for the money received – school dues.

In his submission, counsel for the claimant argued that the actions of the 2nd respondent locking the office of the claimant meant that the claimant was not wanted at work anymore. He argued that there was no suspension of the claimant at all since the said suspension letter was never served onto the claimant. He submitted that the allegations of fraud were not proved since according to him the Audit report was not authentic since there was no explanation as to how the figures arose and how the claimant received the money.

According to counsel, the failure of the respondent to give prior notice of the charges against the claimant and failure to give him opportunity to respond to the charges as well as locking his office without any reason rendered the termination unfair and unlawful.

It was the submission of the respondents through counsel that the claimant absconded from work after expiration of his 2 weeks suspension and that therefore the question of termination of his employment did not arise. According to counsel the claimant should have approached the directors of the school instead of running to police accusing them of locking him out of office which was not the case.

**EVALUATION OF EVIDENCE AND DECISION OF COURT**

In respect to the first issue: **whether the claimant was fairly terminated:** we refer to **Section 65 of the Employment Act** which provides

**(1) Termination shall be deemed to take place in the following instances: -**

**(a) Where the contract of service is ended by the employer with notice;**

**(b) Where the contract of service, being a contract for a fixed term or task, ends with the expiry of the specified terms or the completion of the specified task and is not renewed within a period of one week from the date of expiry on the same terms or terms not less favorable to the employee.**

**(c) Where the contract of service is ended by the employee with or without notice, as a consequence of unreasonable conduct on the part of the employer towards the employee; and**

**(d) Where the contract of service is ended by the employee**, in **circumstances where the employee has received notice of termination of the contract of service from the employer, but before the expiry of the notice.**

**(2) The date of termination shall, unless the contrary is stated, be deemed to be:-**

**(a) In the circumstances governed by subsection (1)(a), the date of expiry of the notice given;**

**(b) In the circumstances governed by subsection (1)(b), the date of expiry of the fixed term or completion the task;**

**(c) In the circumstances governed by subsection (1)(c) or subsection (1)(d), the date when the employee ceases to work for the employer; and**

**(d) In the circumstances when an employee attains normal retirement age.**

Whereas the claimant insisted that he was terminated unfairly the respondent reiterated that the claimant was only suspended for two weeks but after the two weeks he absconded from duty.

Annexture **"G"** to the 2nd respondent's written witness statement is a suspension letter addressed to the claimant dated 4/6/2018. The letter suspends the claimant for 2 weeks implying he ought to have resumed work on 18/06/2018 or faced the disciplinary committee to answer the charges mentioned in the suspension letter.

We are not satisfied that the claimant was aware of the suspension. The evidence of the 1st respondent and that of RW4, one Kidugavu that the claimant received the letter is not acceptable since there was no acknowledgement of the same.

The evidence of the claimant is that he was never suspended for any wrong doing. Since he who asserts must prove, in the absence of evidence that the claimant acknowledged receipt of the suspension letter, we agree with the submission of counsel for the claimant that there was no suspension at all. . Assuming such suspension existed, under **section 63(2) of the Employment Act "Any suspension under subsection (1) shall not exceed four weeks or the duration of the inquiry whichever is the shorter."**

In the absence of evidence of service of the suspension letter, this court would expect evidence that after the 2 weeks suspension or after the four weeks provided for in the above section of the law, the respondent tried to make contact with the claimant in an attempt to allow him explain the allegations in the suspension letter.

Instead, evidence from the respondent is that after suspension, an audit was carried out without the participation of the claimant and without his knowledge that such audit was going on. Did the claimant abscond from duty?

We have no doubt that the 2nd respondent between the months of April and May was not getting on well with the claimant as the owner of the school and headmaster respectively. There were challenges of the closure of the examination centre for which the 2nd respondent sought explanation from the Uganda National Examination Board. As a result of these misunderstandings we believe the testimony of the claimant that part of his office was locked by the 2nd respondent who in cross examination admitted that he closed the office. He said

"**we locked the office after the centre number had been withdrawn……."** The evidence suggests that the 2nd respondent either locked the office in addition to the lock that had been fastened by the claimant as head master or it was the reception door to the office that was locked, in which case the claimant had himself locked the door to his office.

It seems strange to us that after being informed that his office had been locked by the 2nd respondent, the claimant the next day reported to Nalumunye police station instead of going to the office and finding out as to why the office had been locked.

In his evidence the claimant stated that he tried to call the 2nd respondent without success. Having not succeeded to call his boss, it would be expected that the claimant would move to the office to get the details.

We think that he failed to do this because of the already strained relationship between the two parties.

It was the evidence of one Edward Senyonga (RW5) that he attended a meeting that was meant to reconcile both parties and that at this meeting it was agreed that the office should be opened in the presence of those that attended the meeting. To their surprise, the claimant on the way to the office disappeared. The evidence is not clear as to whether the office was opened the next day after the meeting but it is clear that it was opened in the absence of the claimant. In his own testimony the claimant in chief testified.

> **"on or about 11th June 2015 I was called for interrogation by the Director, one Kidugavu and the Chairman of Board of Governors and, the Director forced me to open my office for a search, an act which I became suspicious of because it was at night, but above all they had sidelined to give me explanations as to why my office had been locked forcefully….."**

In the testimony of one Kidugavu, in cross examination, he revealed that at the meeting it was agreed that the office be opened but the claimant did not show up at the time of opening it.

If the office was closed on 4th June 2016 and on 10/06/2016 the claimant attended a meeting that called upon him to open the office which he declined and thereafter did not appear at the school or try to be in touch with either the Board of Governors or the proprietor of the school, would this amount to absconding from the job?

In the absence of an express dismissal or termination letter, would the locking up of the office of the claimant amount to termination by the respondent? Did the conduct of the respondents amount to termination of the contract of employment?

The answer to the first question in our view is **"YES".** This is because although the claimant continued in touch with the 2nd respondent as his employer when a meeting was arranged at Pope Paul Memorial Centre, the act of the claimant disappearing on the way to open the office, and not appearing again at the school, constituted abscondment. We think the claimant had no good reason to snub the invitation of his employer.
In order to answer the 2nd question we need to look at **section 65(1)(c) of the Employment Act.** This section provides that an employee has a right to terminate the contract as a consequence of unreasonable conduct on the part of the employer towards the employee.

In the case **of Nyakabwa J. Abwooli Vs Security 2000 Ltd. LDC 108/2014** and **Mbiika Dennis Vs Centenary Bank LDC 023/2014** this court held that in order for the conduct of the employer to be deemed unreasonable within the meaning of **section 65(1)(c)** above mentioned, such conduct must be illegal, injurious to the employee and make it impossible for the employee to continue working. The conduct of the employer must amount to a serious breach and not a minor trivial incident.

In the Nyakabwa case, the employer removed all the files that constituted the work of the employee leaving him with no work at all.

In the **Mbiika case** the employer deprived the employee of his entitlement to leave for a whole calendar year thus breaching **section 58 of the Employment Act** and leading to resignation of the employee. In both cases this court found for the employee, holding that the employee was entitled to terminate the contract within **section 65 (1)(c) of the Employment Act.**

In the instant case, whereas the 2nd respondent closed the door to the reception office of the claimant, there were discussions at attempting to reconcile the parties culminating in the decision that the parties should proceed to open the office which in our view had both locks of the claimant and of the respondent. The refusal of the claimant to proceed to the office in our view denied him the opportunity to prove that the conduct of the respondent was making it impossible for him to continue working. As already intimated there were misunderstandings between the 2nd respondent and the claimant.

The misunderstandings as presented by the respondents witnesses emanated from management issues particularly financial. As presented by the claimant they emanated from his management style which sought to streamline issues to do with NSSF and PAYEE but which the 2nd respondent objected to.

According to RW3, one Kananura, and Chairman Board of Governors of the 1st respondent.

> **"Peter as headmaster wanted to run the school according to the guidelines of the Ministry of Education. Iga Francis as Director and investor wanted to know in detail management of finances. He wanted accountability and Peter ended up in a misunderstanding….."**

We totally agree with this analysis of the problem between Director and Headmaster.
It is our position that in the absence of an express termination of services of the claimant, the only option left to prove termination was under **section 65(1)(c)** and given that the claimant refused to be party to opening the office closure of which was the basis of his termination claim, he cannot be heard to plead that he was terminated. He failed to prove constructive dismissal under **section 65(1)(c).** In our view the claimant terminated himself but outside this section.

This was so especially because the 1st respondent attempted a reconciliation meeting at Pope Paul Memorial Centre, which in our view absolved him from the consequences under **section 65(1)(c) of the Employment Act** (supra).

It is therefore our finding and conclusion on the first issue that unlawful termination was not proved.

The second issue is **whether the confiscated properties should be returned to the claimant.**

The claimant in his witness statement in **paragraphs 24 & 25** listed a number of items that were locked up in the office. RW6 testified that he participated in opening the office and recovered certain items.

In his submission counsel for the claimant implored this court not to rely on the evidence of RW6 because the alleged report that showed the items did not amount to a police report indicating that the respondents opened the office before they called the police.

Both the evidence of the claimant and that of RW6 as to what items were in the office was not corroborated by anybody else. RW6 told court that he recorded the items on a piece of paper a copy of which was left in the office and another deposited at the police station. He indicated this was in the presence of 7 people although none of them came to testify, even if certain names are affixed on the document. On a balance of probability we rely on the evidence of RW6 because the burden lay on the claimant to prove that the items he listed were in fact left in the office. Secondly he himself was advised to be present but he on his own volition decided to be absent at the time the items were being verified by RW6. It is only fair in the circumstance that his court orders return of the items as specified and recovered by RW6 and so it is ordered.

The last issue relates to any other remedies.

Having declared that termination of employment was not proved, it follows that no remedies arise except the salary that the claimant may not have been paid after working..

In conclusion, we find that the claimant was guilty of abscondment and failed to prove that his termination was at the instance of the conduct of the respondent within the meaning of **Section 65 (1)(c) of the Employment Act.**

Consequently the claim is dismissed with no order as to costs is made.

**Signed:**

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

**Panelists**

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

Dated: 27th July 2018