

**THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT FORT PORTAL
LABOUR DISPUTE APPEAL NO.025 OF 2017
ARISING FROM KCCA/RUB/LC NO. 497 OF 2016**

**BETWEEN
BUREAU VERITAS UGANDA LIMITED.....CLAIMANT
AND
DALVIN KAMUGISHA RESPONDENT**

BEFORE

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

Panelists

1. Mr. Bwire John Abraham
2. Mr. Mavunwa Edson Han
3. Ms. Julian Nyachwo

AWARD

This is an appeal against the decision of the Labour Officer sitting at Kampala City Authority (KCCA). The appellant was represented by Mr. Ndyagambaki while the respondent was represented by Mr. Atuhairwe.

The following grounds were the basis of the appeal of the appellant.

1. The Labour Officer at KCCA erred in law when she diverted from her role as Mediator to an Arbitrator in so far as she made a ruling which is enforceable by the Industrial court.
2. The Labour Officer at KCCA erred in law when she failed to properly evaluate the evidence on record both procedurally and substantially leading to an erroneous decision that the respondent's dismissal was unfair.
3. The learned Labour Officer at KCCA erred in law when she failed to properly evaluate the evidence on record both procedurally and substantially leading to an erroneous decision that the respondent's summary dismissal was unjustified.
4. That the learned Labour Officer at KCCA erred in law when she reached conclusion that the respondent was entitled to be paid four week's pay for failure to give a hearing.
5. The learned Labour officer at KCCA erred in law when she reached a conclusion that the respondent was entitled to three month's pay as additional compensation while at the same time she ordered the applicant to pay one month's pay as a compensatory order.

6. That the learned Labour Officer at KCCA erred in law when she reached a conclusion that the respondent was entitled to 2 ½ months' pay being severance allowance.
7. That the learned Labour Officer at KCCA erred in law when she reached a conclusion that the respondent was entitled to four weeks' pay for unfair termination, while at the same time she ordered the applicant to pay one month's pay in lieu of notice.
8. The learned Labour Officer erred in law when she reached a conclusion that the respondent was entitled to be paid wages for March when he was dismissed on 3rd March 2016.

The respondent in this appeal filed a cross-appeal with the following grounds;

1. The Labour Officer erred in law when she ignored or failed to award the cross-appellant his salary from the date of the purported termination of employment on 3/3/2016 to 19th December 2016, when the decision was passed which caused a miscarriage of justice to the cross appellant.
2. The learned Labour Officer erred in law and fact when she declined to award interest on the items allowed thereby causing a miscarriage of justice to the cross appellant.

The appellant, when it came to submissions, opted to abandon Ground I and to argue concurrently grounds 2, 3 and 4 under the general issue of whether the dismissal was lawful and grounds 5, 6, 7 and 8 concurrently under the general issue of what remedies are available.

Grounds 2, 3, and 4 are basically a discontentment by the appellant on the way the labour officer evaluated evidence so as to reach a conclusion that the respondent was unlawfully dismissed.

In his submission, counsel for the appellant contended that the evidence on **pages 5 and 7 of the Labour Officer 's ruling and pages 3 and 4 of the respondent's** testimony as well as an acknowledgement of alteration of the tally sheets pointed to gross misconduct of the respondent. He argued that the evidence showed that the respondent authorized issuance of altered tally sheets to one Paul Pangholi who colluded with the respondent and one Ritah Nakibuule and that therefore the appellant was entitled to summarily dismiss the respondent under **Section 69 of the Employment Act**. In his submission two meetings were held at which the respondent was given a chance to defend himself and eventually the respondent made a statement admitting liability. Counsel faulted the Labour Officer for failure to call one Ritah Nakibuule and one Paul Pangholi to corroborate the respondent's testimony that the tally clerk was coerced into issuing the altered tally sheets. Counsel in his submissions relied on **BARCLAYS BANK OF UGANDA VS MUBIRU SCCA 1/98** for the proposition that dismissal without notice was reserved for serious misconduct, and the authority of **KABOJJA INTERNATIONAL SCHOOL VS GODFREY OYESIGYE Labour Dispute Appeal No. 003/2015** for the legal proposition that an admission of guilt was sufficient to justify summary dismissal.

In reply counsel for the respondent strongly argued that the tally clerk was coerced by the deputy house manager to alter the tally sheets and that in order to fix the respondent, the appellant asked him to sign a new job description which he refused. According to counsel, the respondent merely did his job by instructing the tally clerk to give the manager the tally sheets while he, the respondent, was on leave. According to counsel, the appellant did not

comply with **Section 66 of the Employment Act** in relation to the right of the employee to be heard before dismissal and therefore such dismissal was unlawful.

The summary of the facts as we understand from the labour officer's proceedings is that the respondent was an employee of the appellant as a GSTI Inspector responsible to inspect conforming of goods and their standards. While he was on leave, he was asked to authorize release of tally sheets which he did by instructing one Paul Pangholi, a tally clerk to do so. Unknown to him (so he testified) the tally sheets were fundamentally altered causing his dismissal. According to the appellant the respondent was responsible for the altered sheets and this was gross misconduct.

In his own evidence, the claimant said that he originally denied any liability in a statement he made on 17th February 2016 but was later on forced by one Ali Wanje to write another statement accepting liability that the tally sheets were altered with his knowledge. In the same evidence the claimant testified that one Ritah Nakibuule coerced the tally clerk to alter the tally sheets.

There was no further evidence adduced to show that the respondent was in any way forced or unduly influenced to change his mind and admit liability. No evidence was adduced from Ritah Nakibuule or one Pangholi for the purposes of explaining under what circumstances the tally sheets were altered.

In the absence of any evidence to the effect that the respondent was forced to admit liability, and given his own testimony that he admitted the same, it is not possible for this court to believe that he merely instructed the tally clerk to issue the tally sheets without knowing that they were altered. We do not think that the job description that the respondent did not sign, had any bearing on his liability. In our considered opinion whether or not the new job description enhanced his profile or not, he admitted having been party to alteration of the tally sheets. We have not seen any usefulness of the emails in so far as they do not exculpate the respondent from liability. The emails lack detail of what exactly happened.

The only question is whether the alteration of the tally sheets was such a fundamental breach of the contract of the respondent that it tantamounted to a summary dismissal.

Section 69 of the Employment Act provides:

“(1) Summary termination shall take place when an employer terminates the service of an employee without notice or with less notice than that to which the employee is entitled by any statutory provision or contractual term.

(2) Subject to this section, no employer has the right to terminate a contract of service without notice or with less notice than that to which the employee is entitled by an statutory provision or contractual term.

(3) An employer is entitled to dismiss summarily, and the dismissal shall be termed justified, where the employee has, by his or her conduct, indicated that he or she has fundamentally broken his or her obligations arising under the contract of service.

A declaration that a certain conduct of an employee amounts to a fundamental breach will always depend on the circumstances of a given case and in the manner that the contract was couched. Such conduct should inevitably lead to a conclusion that the core duties of the employee were breached leading to termination of the contract.

Although the contract of the respondent did not show the job description, from his own testimony his job description included authorization of issuing of tally sheets. From the facts of the case, the tally sheets once not genuine the repercussions on the business of the appellant would be very negative.

Consequently, it was fundamental that the issuing of tally sheets be done with the greatest care. The respondent was in charge of the clerk who issued the altered tally sheets and he, the respondent, admitted liability. We hold the view that issuing of genuine tally sheets in the circumstances was a fundamental obligation of the respondent. In the case of **KABOJJA INTERNATIONAL SCHOOL VS GODFREY OYESIGIRE, Labour Dispute Appeal No. 003/2015**, this court propagated the legal principle that an admission was sufficient to entitle the employer to summarily terminate the employee and that the contention that an employee was entitled to a hearing was rendered redundant after admission of the misconduct.

We agree with the respondent that **Section 66 of the Employment Act** was not complied with in as far as providing a fair hearing to him was concerned. We do not accept the contention of counsel for the appellant that the two meetings referred to by the Labour Officer in the proceedings at pages 5 and 7 of the proceedings amounted to a fair hearing. These were meetings which in our view were investigative in nature and not disciplinary as required under **section 66 of the Employment Act**.

Nonetheless as the **KABOJJA INTERNATIONAL SCHOOL** case (supra) expounded, in the face of an admission, such a hearing was inconsequential in as far as unlawful dismissal was concerned, such dismissal having been summary. Accordingly we find that the Labour officer failed to address herself properly on the evidence especially as to the admission of misconduct. Had she addressed her mind to the available evidence and properly evaluated it, she would have arrived at a different decision. Accordingly we uphold grounds 2, and 3 of the Memorandum of Appeal.

As for ground No. 4, **Section 66(4) of the Employment Act** provides:

“Irrespective of whether any dismissal which is a summary dismissal is justified, or whether the dismissal of the employee is fair an employer who fails to comply with this section is liable to pay the employee a sum equivalent to four weeks pay”.

In our considered opinion, this **Section of the law** is meant to provide for employees who were summarily dismissed after fundamentally breaching their obligations without a hearing and not entitled to general damages because of the fundamental breach. An employee having been dismissed without a hearing for fundamentally breaching his/her contract is therefore under this section of the law entitled to 4 weeks net pay.

This section of the law in our view entrenches the principle of a hearing in both a case of summary dismissal under **Section 69** and a case of dismissal for misconduct under **section 66** both **of the Employment Act**. We consider the 4 weeks net pay as a penalty against the employer for failure to provide a hearing despite having taken a correct decision to summarily terminate the employee.

Accordingly ground 4 of the Memorandum of Appeal fails.

Grounds No. 5, 6, 7 and 8 related to remedies available to the parties. True to the submission of counsel for the appellant, the Labour Officer granted the remedies she did, on the ground that she found the respondent having been unlawfully dismissed. As discussed above, the respondent having fundamentally breached his obligation under the contract, the dismissal could not have been unlawful. Consequently the Labour Officer should not have granted the remedies that she did, with the exception as discussed above of the penalty of 4 weeks net pay. Accordingly we uphold grounds 5, 6, 7 and 8.

For ground 7, save for four weeks pay, the appeal on a month's pay in lieu of notice succeeds.

Considering that this court has found that the respondent's dismissal was not unlawful, the grounds of appeal in the cross appeal collapse. We must add that, under **section 78 of the Employment Act**, an award of interest by the Labour Officer is not a matter that is listed there under as within the jurisdiction of the Labour Officer. No labour Officer therefore can be faulted for refusing to grant interest or damages. The section limits the Labour Officer as to how much in compensation he/she can award the employee.

This court under **section 94(3)** has power to confirm, modify or overturn the decision of the Labour Officer. Accordingly we find it in order and proper to grant the respondent interest of 20% on the 4 weeks' pay from the date of this award till payment in full.

For the above reasons, the appeal succeeds with a declaration that the respondent was lawfully terminated for fundamentally breaching his contractual obligations on admission.

Signed by:

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

Panelists

1. Mr. Bwire John Abraham
2. Mr. Mavunwa Edson Han
3. Ms. Julian Nyachwo

Date: 16/11/2018