

THE REPUBLIC OF UGANDA
THE INDUSTRIAL COURT OF UGANDA HOLDEN AT KAMPALA
LABOUR DISPUTE CLAIM NO. 166 of 2014
(Arising from H.C.T – CS NO. 362 of 2012)

BETWEEN

NAMYALO DOROTHYCLAIMANT

VERSUS

STANBIC BANK.....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 claimant was employed by the respondent and by the time she was suspended in August 2009 she was serving as Manager, Fleet. She was alleged to have abused her office and to have used the respondent's property for her personal use. A disciplinary hearing was arranged and after the hearing the Disciplinary Committee found her culpable and recommended that she be dismissed and dismissed she was on 7/10/2009.

The agreed issues by a Joint Scheduling Memorandum were:

- 1) Whether or not the dismissal of the claimant by the respondent was wrongful.
- 2) Remedies available to the parties

We will deal with the first issue first. Counsel for the claimant submitted that the claimant having not been given reasonable notice as to the time and place of hearing so as to enable her prepare for defence she was not subjected to a

fair hearing and therefore her dismissal was wrongful. He relied on the notification of the hearing served onto the claimant and the respondent's Discipline Management Policy. He argued that the claimant was not given sufficient information about the charges against her which should have enabled her to fully understand the nature of the charges. To this end he faulted the respondent for not availing the investigation report to the claimant which report was used against her. He attacked the credibility of the investigation report pointing out that there was a contradiction in the evidence as to whether photographs or videos relating to personal use of the respondent's property were taken by DW2, one Richard Andruma.

It was counsel's submission that none of the witnesses were availed to the claimant for cross-examination including eleven drivers who admitted having run personal errands on instructions of the claimant. He attacked the presence of Elijah on the disciplinary committee having participated in the forensic investigation into the charges against the claimant and having endorsed the same report as Legal Advisor. Relying on **Article 28 (1) of the Constitution** and **Rosemary Nalwadda Vs Uganda Aids Commission, M.C. No45/2010**, he submitted that the said Elijah Omagor was biased. In counsel's submission, there was no evidence that the claimant breached any procurement procedures since she had declared her interest to one John Kiwanuka, her immediate supervisor and since the claimant was not responsible for allocation of vehicles and their inspection after repair which was a responsibility of one Edward Walugembe, the transport officer.

In reply, it was the submission of counsel for the respondent that the claimant was summarily dismissed. He argued that the infraction of abuse of office, influence peddling and fraud were not disputed by the claimant since the forensic investigation indicated that the actions of the claimant were contrary to the respondent's policy of fleet management. According to counsel, the claimant did not declare interest in her brother's business with the respondent which caused issuing of fraudulent documents in favour of her brother.

It was his submission that the claimant was subjected to procedural fairness through a fair hearing process. Relying on **General Medical council Vs Spackman (1943) ALL ER 337**, and **Caroline Karisa Gumisiriza Vs Hima Cement Limited C.S. 84/2015**, counsel argued that in the circumstances, the claimant was accorded a fair and adequate opportunity to be heard as required of a Disciplinary Committee hearing relating to employees and employers.

Decision of court

It was the evidence of the respondent that the claimant by using its vehicles to do private work abused her office as Manager Fleet. This evidence was contained in an investigation report which was not availed to the claimant during or before the disciplinary hearing. The evidence was to the effect that the claimant used the respondent's vehicles to drop her children at school without permission and also to attend private functions as well as delivery of chicken feed to her poultry farm and supplying eggs to her prospective customers.

Counsel for the respondent took issue with the fact that the investigation report was not given to the claimant which in his view affected her preparedness to defend the charges. We entirely agree that the claimant was entitled to the information in the investigation report to be able to appreciate both the nature and origin of the charges against her.

However, looking at the disciplinary hearing itself, we form the opinion that the facts of misuse of the vehicles were clearly put to the claimant who responded to them. In her response to the allegations she answered

"It's true I have used the vehicles for personal jobs because once in a while I have requested the drivers to pick my children from school for instance times when I am in trainings at Muyenga or when I am sick...."

On being asked whether she had recently used a bank car at a personal function she answered. **"I can't recall"**.

When she was showed pictures allegedly taken at a private function she answered

"We had an introduction at home and usually I requested Edward to allocate a car which car he gives me. I remember it was Yasin who was allocated but I don't remember which car I was given so I could not identify it."

From the above interaction of the claimant with the disciplinary committee of the respondent it is clear to us that the claimant at the occasions mentioned used the respondent's vehicles for work that had nothing to do with the respondent. Nothing in the evidence of the claimant or in the interaction with the committee shows that the claimant had permission to use the vehicles. It seems to us that the claimant having been the Manager, Fleet, took it upon herself to once in a while use the vehicles for such use. It may not have

seemed wrongful at the time since she was in full charge of the fleet but as the fleet management policy of the respondent provided, it was prohibited for the respondent's vehicles to be used for personal use. Although we think that the claimant should have been availed the investigation report that contained the above evidence and that the drivers who were involved should have been called to testify, the fact that the claimant herself admitted to the same during the disciplinary hearing was sufficient on the required standard to make her culpable. There was no evidence to show that as Manager of the Fleet she was authorized to use the respondent's vehicle at an introduction function or that the same vehicles would pick up her children from school when she was in trainings or when she was sick as she seemed to suggest during the hearing.

The question is whether this amounted to abuse of office. In simple terms abuse of office occurs once a person takes advantage of his or her official capacity to do certain things that are private and not related to his/her official duties.

In the instant case we are positive that the use of the vehicles to facilitate an introduction ceremony and to pick up the claimant's children from school was not for purposes of fulfilling the official duties of the claimant but for private purposes not related to her official duties. Accordingly these acts constituted abuse of office and made the claimant culpable since they were contrary to the fleet Management Policy.

There is no doubt that the brother of the claimant owned a garage and this garage was one of those garages that were servicing the Fleet of the respondent. This was a fact that was not denied by the claimant who was held culpable by the respondent for failing to disclose this conflict of interest since she was Manager of the fleet.

In her defence she claimed that she had disclosed this interest to one Alfred Oder who was her Line Manager. The claimant seemed to have been faulted for not reporting or disclosing this conflict of interest to the Compliance Officer and for the same not to have been in writing.

We have carefully perused the Conflict of Interest Identification and Management Policy of the respondent. We do not find any requirement therein to report or disclose the same to the Compliance Officer. According to the policy, **Part B, section 5.2** the head of compliance is to monitor adherence

to the policy and to assist with investigations into any potential conflicts of interest that may arise in particular units.

We have no doubt that the claimant properly disclosed the fact that her brother's garage was one of those engaged by the respondent as clearly testified by one Andruma Richard, the investigator that

"Dorothy's boss was aware that the bank used her brother's garage".

There was no requirement that the claimant had to put in writing the fact that her brother's garage was one of those servicing the respondent's vehicles. It seems to us that the disciplinary committee faulted the claimant for the alleged fraudulent invoices of her brother because she did not disclose her interest in writing. The same Andruma Richard said in evidence

"our problem with Dorothy was failure to declare conflict of interest. Her brother issued fraudulent documents. He was not prosecuted..."

We do not find any supporting statements in the Conflict of Interest Identification and Management Policy to the evidence of Andruma Richard that

"Declaration of conflict of interest was to be in writing to the Compliance Officer which Dorothy did not. I did not find any such written declaration....."

According to the evidence on the record, the garage was identified before the claimant was Fleet Manager and the question of who recommended the garage was not settled. One Walugembe was the technical person who was to check and ensure that repairs were done before payment would be passed by the claimant. Therefore if there were any fraudulent deals they could only be imputed on Walugembe unless there was evidence that the claimant colluded with him. We did not find such evidence.

Given that the claimant had declared her interest and given that there was no evidence as to whether it was the claimant who recommended her brother's garage to the respondent, evidence of influence peddling was lacking.

It was the contention of the respondent that the claimant was summarily dismissed. **Section 69 (3) of the Employment Act** provides

"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/she has fundamentally broken his or her obligations arising under the contract of service.”

Under section 69(1) of the same Act it is provided that in as far as summary dismissal is concerned, it is not necessary for the employer to give notice of termination to the employee.

It is our considered opinion that the employer under **section 69** above mentioned must prove that the infractions against the employee were not only proved but they constituted a fundamental obligation on the part of the employee in accordance with the contract.

On careful perusal of the terms and conditions of employment, many of the clauses in the document concern the rights of the claimant and not her duties. A reference to Policies and Procedures is made under clause 17.0 to the effect that policies and procedures would form part of the contract of employment.

The claimant at the time of dismissal was Manager Fleet. As we have pointed out earlier the infraction of influence peddling and fraud were not established. What was established was that against the procedures, she used the vehicles to pick her children from school and to organize private functions. Did this qualify as a fundamental breach of her obligation as a Manager of the fleet of the respondent?

Although there were no specific duties and obligations assigned to the claimant as Manager of the fleet, we form the opinion that the fundamentals would include: overseeing Maintenance of the vehicles; providing fuel and lubricants, and assigning drivers to specific vehicles and routes. In the absence of specific duties and obligations in the contract of service, we are of the considered view that for any infraction to constitute a fundamental breach it would necessarily be directly related to the above. We do not consider the infractions of picking children from school and using the vehicles at a private function directly related to the fundamentals mentioned above. We therefore decline to accept the contention that the claimant was summarily dismissed.

Was the dismissal then wrongful?

It was the contention of the claimant that her dismissal was both unfair and unlawful because she was not given a fair hearing before the decision to dismiss her was made.

The claimant was notified about the infractions on 28/09/2009 and the same notification put the hearing by the disciplinary committee on 30/09/2009 at 3.00pm and indeed the hearing took place at the time indicated.

We entirely agree with the claimant that this notification was contrary to the respondent's Discipline Management Policy which provided that such notification be served on the employee at least 4 working days before the disciplinary hearing. We take it that in the wisdom of the respondent at least 4 days were considered to be good enough to enable an employee to prepare his/her defence to the infractions. It was not established by evidence or otherwise as to why in this particular case, the same respondent thought that less than 2 days would be sufficient for the claimant to prepare her defence.

Sufficient time to prepare one's defence is given by not only **the Constitution but also the Employment Act, 2006, section 66 (3)**. The respondent is therefore faulted for breaching this tenet of a fair hearing.

The claimant complained that one Richard Omagor having participated in the investigation, he ought not to have been part of the Disciplinary committee and that the investigation report ought to have been revealed to the claimant before the hearing. As already pointed out earlier in this award, indeed the report should have been availed to the claimant but non availability of the report did not prejudice her especially when during the hearing she admitted to having used the vehicles inappropriately, one of the conclusions of the report.

The evidence on the record reveals that one Andruma Richard was the one assigned the duty of investigating the conduct of the claimant together with one Marina Tonny. According to Andruma, Omagor acted as Legal Advisor during the investigations. The report was signed by Mr. Andruma as the investigator and Mr. Omagor as the Legal Advisor. We agree with the claimant's submission that Omagor having been part of the investigative team would not necessarily have been part of the disciplinary committee. But we take cognizance of the authority of **CAROLINA KARIISA GUMISIRIZA Vs HIMA CEMENT LIMITED Civil Suit 84/2015** to the effect that strict adherence to procedures as applied in courts of law need not be demanded of employment disciplinary bodies. This is especially so when an employee during such

disciplinary hearings admits to acting contrary to a given personnel manual amounting to admission of the infractions leveled against her/him.

In the instant case, neither the investigation report nor any other evidence suggests a particular part played by Omagor in the investigation. Neither do the proceedings of the disciplinary hearing reveal that the admission to wrong doing of the claimant had anything to do with the presence of Omagor.

In the circumstances therefore, given that this was not a court of law but a disciplinary hearing, we are of the considered opinion that the presence of Omagor on the committee did not prejudice the claimant.

On perusal of the respondent's Personnel Manual (page 88 and page 95), it is our finding that it was the discretion of the respondent to consider unauthorized use of bank property a dismissable offence or an offence calling for a warning on first occurrence. The respondent was not obliged to take either options.

In conclusion of the first issue, we find that the claimant having admitted during the disciplinary hearing that she used the bank property for personal use without permission, the fact that she was given insufficient time for her defence did not erase from the record such admission and neither did the non availability to her of the investigation report nor the participation of Mr. Omagor in the disciplinary hearing. Accordingly her dismissal was not wrongful nor was it unlawful.

The second issue is **what remedies are available to the parties**

Although we have held that the dismissal of the claimant was not wrongful or unlawful, we are cognizant of **section 66 (4) of the Employment Act** which 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 4 weeks net pay".

We have pointed out that the claimant was not given sufficient time to prepare for her defence which is a requirement of **section 66**. Consequently we order just like we did in the cases of **Kanyangoga and others versus Bank of Uganda L.D.C 080/2014** and **Wakabi Fred versus Bank of Uganda & Another L.D.C.**

041/2014 that the respondent in accordance with the above section of the law pays 4 weeks net to the claimant. No order as to costs is made.

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.....

Dated 13/07/2018