

**THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE CLAIM No. 032 OF 2014
[ARISING FROM HCCT-CS No. 275 OF 2016]**

BETWEEN

INNOCENT MUSHABECLAIMANT

VERSUS

REAL PEOPLE FINANCIAL SERVICESRESPONDENT

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. Rose Gidongo

AWARD

By an amended memorandum of claim filed in Court on 21/04/2016, it was contended by the claimant that in the course of his employment with the respondent, the latter committed fundamental breaches and illegalities that destroyed the employment bond between the two parties leading to forced resignation of the claimant from employment on 15/8/2012. Among the reasons for resignation was denial of leave entitlement, endless and baseless disciplinary allegations, continued refusal to pay his salary entitlements and forced demotion.

By an amended response the respondent contended that the claimant was never appointed as general manager but was only asked to stand in temporarily after the resignation of the General Manager. It was contended in the response that the respondent committed no illegalities but rather the

claimant engaged in financial irregularities which caused him to appear before a disciplinary committee. After a hearing the claimant was found culpable and advised that he could not continue in a senior management position but be offered a position of a lower rank instead of dismissing him. The claimant, according to the respondent, declined the offer and preferred another post but as the respondent considered the preference of the claimant, he resigned before a decision was made and communicated to him.

In a counter claim the respondent contended that the claimant took a loan which after deductions at his resignation left a balance of 3,991,992.35/=.

In the counter claim also the respondent claimed the equivalent of 1 months' notice as provided under the contract of employment.

Although the Court record bears Joint scheduling notes, they were not signed by both counsel and therefore there was no joint scheduling memorandum filed. Given this state of affairs, we take the issues in the instant case to be;

- 1) Whether the respondent constructively dismissed the claimant.**
- 2) What remedies are available to the parties?**

In an attempt to respond to the above issues the claimant adduced evidence from only himself and the respondent adduced evidence from two witnesses.

In his evidence in chief in a form of a written statement on oath, the claimant informed court that he served both as regional manager and Acting General manager. He involuntarily resigned on 15/08/2012 by which time his salary was 3,800,000/=.

He was denied paternal leave when his wife was admitted in hospital and he was also denied annual leave for 2009-2012 despite his complaints. Although he was suspended on 25/07/2012 he was not paid salary for July 2012 and neither was his entitlement for August before he resigned paid.

According to him the contents of his suspension letter did not satisfy the principle of a fair process since it did not contain sufficient material for him to be able to prepare for defense of the allegations. At the hearing he was faced with a charge sheet that contained other allegations he was not aware of and the committee consisted of members who ought not have been on the same for being his subordinates and for having been involved in investigating the matter. According to him no hearing took place; he was only informed that a decision had been taken to demote him to Senior Loans Officer. In his view the hearing was only to torture, humiliate and frustrate him and this was confirmed when he got a second suspension on 11/08/2012 which finally compelled him to resign.

The first witness of the respondent was one Ouma Nicodemus who worked as a legal and compliance officer for the respondent.

According to him, the claimant was properly suspended and placed on ½ pay and later on properly summoned to attend a hearing that constituted of members to whom the claimant did not show any objection. The claimant according to the witness applied for leave only once in October 2012 for 4.5 days and there was nothing to show that the claimant had ever raised any grievance against any employee to management about any form of mistreatment or denial of leave.

According to the second respondent witness, one Gonzaga Sserubiri, he attended the disciplinary hearing of the claimant. There were allegations of financial irregularities leveled against the claimant upon which he was suspended.

After conclusion of investigations the claimant was served with a hearing charge sheet and after the hearing the claimant was advised that he could only be offered a junior position of Senior Loans Officer which he declined and requested the position of Approval Officer which was not possible and this fact was communicated to him but he insisted on his preference whereupon he

was given one week (to ponder over the offer) thereby extending the suspension to 17/08/2012. Unfortunately, the claimant pre-empted any decision by management on the options available to re-engage him by voluntarily resigning on 15/8/2012.

The hearing of this matter was closed on 24/4/2018 and both counsel were given timelines to file written submissions. They were to have completed filing by 7/05/2018. By 20/07/2018 when we discussed the case none of them had filed submissions and up to the time of writing this award none had filed submissions. We take exception to both counsel for their failure or neglect to file submissions.

We now consider the first issue:

- **Whether the respondent constructively dismissed the claimant**

The law relating to constructive dismissal is found in **section 65 of the Employment Act 2006** which provides

"65 Termination

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

(a)

(b)

(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;"

Constructive dismissal occurs when an employee resigns because the employer has created a hostile work environment, making the resignation referred to as having been involuntary. The hostile environment created by the employer will have amounted to a serious breach of contract giving rise to the resignation which then ends the contract of employment in accordance with **section 65(1)(c) of the Employment Act** above cited. In the cases of **NYAKANA J. ABWOOLI VS Security 2000 Ltd L.C. 0108/2014**, and **Kandemaite Vs Centenary Bank, LDC No. 24/2014** this court expounded on the legal

proposition that in order for the conduct of the employer to be deemed unreasonable within the meaning of **section 65(1)(c) of the Employment Act**, such conduct must be illegal, injurious to the employee and make it impossible for the employee to continue working and that the conduct of the employer must amount to a serious breach and not a minor or trivial incident.

The resignation letter of the claimant dated 15/08/2012 shows that he resigned **“owing to the recent psychological torture which the company inflicted on me”** and because of **“such inhuman circumstances”**. In the body of the letter the claimant spells out reasons (already pointed out earlier in this award) for his resignation. The question for this court is **whether the reasons or any of them is good enough to constitute constructive dismissal**.

In the **Kandemaite Vs Centenary Bank** case this court expounded the legal proposition that if any employee believed that the conduct of the employer was injurious to him or her and as such it was impossible for him or her to continue working, he/she ought to stop working and resign within the shortest possible time in order to benefit under the doctrine of constructive dismissal. . The mere fact that conditions of work are not favourable to a given employee may not necessarily culminate in a constructive dismissal once such employee resigns as a result of the unfavourable conditions especially when such employee has been working under the same conditions for a reasonable period. In such general unfavourable conditions the employee who resigns will have merely exercised his right to withdraw his labour against the backdrop of the unfavourable conditions.

The first reason for the claimant to resign as stated in the letter of the resignation was **constant alienation of his annual leave entitlements**. This court has held before that although one is entitled to leave in the course of his employment, one ought to show that one is interested in taking the same by applying for it (see **WASSWA POLYCARP & 12 ORS VS Attorney General, LDC 54/2015, EDACE MICHEAL VS Watoto Child Care Ministries, L.D. Appeal 21/2015**).

In his evidence, the claimant did not show that he applied for leave and that he was denied to take the leave. In cross-examination the claimant explained that there were conditions of leave and that the consequences of not taking one's leave were that one would forfeit the same. He also admitted that there was only one instance when he applied for leave. This evidence was corroborated by RW1, Nicodemus Ouma who told court that the claimant only applied once for leave in October 2012 for 4.5 days. It is of course not possible that this was the date that the claimant applied for leave because he had already resigned. But in cross examination the claimant put the date right to 2/10/2011.

We do not therefore believe that the respondent constantly denied leave to the claimant for the years he worked and therefore there was no constant failure to grant the said leave amounting to **"unreasonable conduct on the part of the employer towards the employee"** to have warranted the claimant to terminate the contract as provided for under **section 65(1)(c) of the Employment Act.**

The second reason for the claimant to have resigned from his employment was **"endless and baseless disciplinary allegations."** The letter of resignation reads in part

"I value my professional reputation immeasurably and I have been psychologically tormented by the company's false and baseless allegation and incessant concealment of investigation results from me. I consider the same are acts of direct blackmail calculated to derail me from my duties and cause any down fall..... I am compelled to cease my service with your company with immediate effect."

The record reveals clearly that the claimant was put on suspension following allegations that he had procured staff uniforms and business cards without authorization and due process and that he abused authority and threatened staff. The letter of suspension clearly states that investigations were to commence to establish the allegations.

The court record is silent on how endless and baseless the allegations were and how they were intended to cause the claimant's down fall.

It is our position that under **section 65(1)(c) of the Employment Act**, the claimant is under a burden to prove a specific conduct of the employer that is unreasonable and to what extent it is, so as to cause such employee to resign. The claimant was suspended and later on summoned for a hearing. We do not see anything close to endless and baseless allegations up to this point. The only issue worth of mention....is **"concealment of investigations results from the claimant."** The question is: **Was this unreasonable conduct of the respondent warranting termination of the contract within the meaning of section 65(1)(c) of the Employment Act?"**

Whereas the claimant was suspended pending investigations, the record does not reveal any investigation report or the fact that investigations were in fact carried out.

In the same way the record does not reveal that the claimant demanded for this investigation report and that it was not availed to him prompting his resignation. Nonetheless, whether or not such investigation was carried out was a matter for the merits of the hearing which in fact took place and which the claimant attended. We form the opinion that the non availability or concealment of investigation results could only form part of the defense against the allegations and we do not think it would constitute unreasonable conduct of the employer within the meaning of **section 65(1)(c) of the Employment Act**.

The 3rd reason mentioned in the claimant's resignation letter is **continued refusal to pay salary entitlement**. In his evidence in chief the claimant testified that having been suspended on 25/7/2012 he was not paid his salary for July. He also testified that having been entitled to ½ pay during the time of suspension he should have been paid ¼ of his pay by the time he resigned on 15/08/2012.

The respondent did not deny having not paid the claimant's salary for July. RW2, Nichodemus Ouma also in cross examination re-echoed the fact that there was no such payment in July. We find therefore as a fact that the claimant's salary of July as well as the payment up to his resignation date was not paid. The question however is whether this constituted unreasonable conduct within the meaning of **section 65(1)(c) of the Employment Act**.

The claimant was suspended on 25/07/2012. There is no complaint of delay of salary or failure to pay salary of the claimant during the past employment period. Although the record does not show any reason as to why the claimant was not paid his salary for the month of July, we think it would have been prudent for the claimant to raise a complaint related to the said non-payment of salary.

This complaint would have triggered off a reaction from the respondent as to what could have been the cause of non-payment or delay of salary. The benefit of the doubt that there could have been other factors leading to delay or non payment can only be resolved in favor of the employer. Consequently we do not subscribe to the thinking that mere failure or delay of payment of a month's salary without an employee raising a complaint constitutes unreasonable conduct of the employer so as to allow an employee to take benefit of **section 65(1)(c) of the Employment Act.**

The last reason for the claimant's resignation was stated to be **forced demotion.**

The court record reveals that the claimant was demoted after a hearing and we find it very difficult to gauge this decision of demotion as unreasonable behavior of the respondent.

On the whole we find that the claimant having been suspected of participating in financial irregularities was suspended, brought before a disciplinary committee which found him culpable. He was not satisfied with the process and he believed he was not fairly or justly treated and because of this he resigned. We have not been convinced that the claimant has discharged the burden of proving that his resignation was because of the unreasonable conduct of the respondent as no specific conduct of the respondent was proved to have been the immediate cause of the resignation. It is our view that in the belief that the respondent was not a fair and a just employer, the claimant exercised his right to withdraw his labour by resignation which in our considered view did not constitute constructive dismissal. Accordingly the first issue is resolved in the negative.

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

The claimant prayed for general and aggravated damages, punitive damages, a declaration that the respondent wrongfully, unlawfully and constructively dismissed him, a declaration that the respondent breached and repudiated the employment contract and costs of the suit.

The special damages claimed by the claimant amounted to 13,900,000/= which included remuneration and leave payments.

As already pointed out in this Award, we find no evidence that the claimant showed interest in applying for his leave and indeed no evidence that he in fact applied and it was denied. We are not convinced that he deserves leave payment for the period he did not show interest to take and for which leave is not shown to have been denied.

However, we agree to the claimant's submission that he was entitled to his salary of July 2012 since his suspension came on 25/7/2012. He is also entitled to his salary as specified in his suspension letter up to 15/08/2012 when he resigned. Having held that the claimant was not constructively dismissed and therefore he voluntarily resigned, the rest of the prayers are rejected and not allowed.

The respondent filed a counter claim of 3,991,992.35 being outstanding on the loan the claimant took and 3,800,000 being one month's salary in lieu of notice. There is no defense of the counter claim filed on the court record. After perusal of the evidence of RW1, Ouma Nicodemus, we are convinced that the claimant owed the respondent a balance of 3,991.992.35 off the loan advances to him.

The claimant filed his resignation and immediately left the employment of the respondent. On perusal of the contract of employment, it was expected that the claimant before leaving the respondent company would either give a one month's notice or pay a month's lieu of notice. The claimant, according to the record, had been offered a lesser job of Senior Loans officer after being held culpable by the disciplinary committee when he filed his resignation probably after being unable to accept the lesser appointment. We do not find any

reason not to enforce **clause 8 of the contract of service** that provided the terms of disengagement from the contract. Accordingly we hold that the respondent shall be entitled to payment in lieu of notice in accordance with **clause 8 of the contract of service**.

In conclusion, an Award is partly entered in favor of the claimant and partly in favour of the respondent with the following orders/declarations.

- 1) The claimant voluntarily resigned from his job and this did not constitute constructive dismissal.
- 2) The claimant shall be entitled to his salary of July 2012 as well as up to the time he resigned on 15/08/2012 as provided for in the suspension letter.
- 3) The respondent will be entitled to recover 3,991,992.35 being loan balance as well as 3,800,000/= being payment in lieu of notice.
- 4) No order as to costs is made.

Signed by:

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. Rose Gidongo

Dated: 24th August 2018