

THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE CLAIM NO.024 OF 2014
ARISING FROM HCT-CS-261 OF 2012

KANDIMAITE ALFRED.....CLAIMANT
VERSUS
CENTENARY BANK RESPONDENT

BEFORE

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

Panelists

1. Mr. Ebyau Fidel
2. Ms. Julian Nyachwo
3. Ms. Susan Nabirye

AWARD

By memorandum of claim filed in this court on 25/1/2015, the claimant under paragraph 3 enumerated circumstances that he claimed made work conditions impossible for him and therefore led to his eventual resignation which according to him was not voluntary.

By reply to the memorandum of claim, the respondent denied contents of the memorandum, particularly the circumstances alleged to have made work impossible for the claimant. The respondent in the memorandum of reply stated that the resignation of the claimant was not acceptable since there were investigations concerning fraudulent dealings involving the claimant and other employees. According to the respondent the claimant was summoned to attend a disciplinary hearing which he refused to attend. Having voluntarily resigned, according to the respondent, the claimant had no real grievances to be resolved but in the

alternative such resignation did not comply with the terms and conditions of employment and therefore the claimant absconded and abandoned duty warranting termination.

The issues agreed are:

- 1) Whether the resignation of the claimant was voluntary or a constructive dismissal from employment.
- 2) Whether the claimant's suspension and dismissal from the service on the 16th day of Feb 2012 and 21/6/2012 respectively were valid and/or lawful.
- 3) What remedies are available?

EVIDENCE ADDUCED

The claimant in his evidence in chief told court that on 13/2/2012 he involuntarily resigned because of the respondent's illegal, repudiatory conduct towards him. Reasons for this resignation were stated in his resignation letter and his evidence stated once again these reasons except this time in a lot of detail.

According to him by the time he resigned there were no disciplinary allegations against him and denied having resigned to fore stall any disciplinary proceedings. According to him he was informed that his resignation had been rejected after his lawyer made contact with the respondent but he was never served with such rejection and neither was he served with a subsequent suspension letter before issuing a dismissal letter on 21/6/2012 stating abscondment as a reason.

RW1:

One Peter Muyanja, in his witness statement told court that he was sent to Hoima branch for two weeks beginning 12/9/2011 to assist in non-performing loans. He met lots of resistance from the branch credit employees and because they challenged his authority by refusing, ignoring, or declining to follow procedures six of them including the claimant resigned voluntarily or absconded each time it was discovered that they had breached the policies. It was discovered that the claimant kept vital documents under his own lock contrary to the policies of the respondent.

On 8/2/2012, the claimant was summoned at the police station in connection to issues involving a customer of the bank regarding a loan application. On 9/2/2012, concerned about the safety of the documents, he (witness) got another padlock onto the cabinet of the respondent. According to him this was in an attempt to let the claimant open the cabinet in his presence and in the presence of the regional supervisors so as to verify the contents of the cabinet.

The claimant did not report back to work but only tendered his resignation on 13/2/2012. The padlock was subsequently forced open and certificates of title found therein were taken to the strong room and some other documents were found to have been forged. According to him the respondent left the branch when investigations in his conduct were underway.

RW2:

One A lot Geoffrey testified in chief that in 2012 he was asked to investigate dishonest dealings in Hoima branch and around February he proceeded to the branch where he found that some of the culprit officers had resigned and others absconded from work including the claimant. Lots of complaints were received from customers of the bank against the claimant for cheating, corning, tricking or defrauding them. When the claimant offered him money so as not to implicate him, he reported the matter and the claimant was arrested.

RW3:

One Barongo Patrick testified that he got a loan from the respondent but when the due date of instalment payments came the claimant would pick the same personally and at other times he would instruct him to pay on mobile No. 0772390047 in the names of one Kyaligonza but the claimant never deposited it on the loan account and he (witness) had to pay the same.

According to **RW4**, one Gafabusa Charles having been a customer of the respondent bank, he acquired loans and in payment of one of them the claimant advised he could pay to him to avoid delays and save costs. He did so through a driver one Abdu but the money was never deposited on the loan account.

RW5, one Byegaranzo Muhereza, corroborated the story of RW3, that he paid some of the loan instalments to mobile account on 0772390047 in the hands of the Kyaligonza on instruction of the claimant.

RW6, one Amandi Fabiano, a police officer testified in chief that, in 2012 he received a file GF09/2012 containing allegations of fraud and causing financial loss which he was assigned to investigate. Some of the people who alleged to have been defrauded by the claimant and made statements which were recorder by him included RW5, RW4, one Grace Birungi, One Mugisa Kagoro, one Kamanyire and others as shown in his statement. According to him, one Kyaligonza during investigations admitted to have received the money and transferred it to the claimant.

One Galimaka Johnstone was RW7. He testified that in December 2011 he was transferred to Hoima Branch to revive the bank since there had been mismanagement leading to interdiction of the previous manager. Complaints of dishonest dealings were revealed against some officers including the claimant. As a result the claimant was arrested and charged but released on bond on 8/2/2012 when he(witness) stood surety for him. On 13th Feb/2012, the claimant submitted his resignation but he (witness) advised him that the letter would be sent to the Human Resource department for advice but the claimant left. According to him the claimant did not follow procedures and therefore he absconded which led to his suspension.

RW8 was one Florence Mawejje, the Human Resource General Manager of the respondent. She received complaints in 2012 from one Peter Muyanja relating to breach of procedures by among others, the claimant. On 12/2/2012 she received the claimant's resignation letter and on 22/2/2012, she responded by declining the resignation since procedures had been breached by the claimant. Eventually the claimant was suspended for abscondment and loan malpractices on 28/2/2012. After investigations were completed, the claimant was summoned to a hearing 3 times but he refused to attend the same. The committee therefore determined the matter in his absence and on 21/6/2012 she (witness) wrote to the claimant informing him of his dismissal. According to her the claimant voluntarily resigned although his resignation was declined for having breached procedures.

After close of the respondent's case this court gave timelines for both counsel to file their submissions. Unfortunately none of them filed submissions and we have to deal with the case without the input of counsel. We have yet to appreciate the reasons for their failure to file submissions.

EVALUATIONS OF EVIDENCE AND DECISION OF COURT

The first issue is **whether the claimant voluntary resigned or was constructively dismissed**

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 Employment Act**. In **NYAKABWA J. ABWOOLI VS SECURITY 2000 LIMITED LC 0108/2014**, this court held that in order for the conduct of the employer to be deemed unreasonable within the meaning of **section 65(1)(c) of the Employment Act**, such conduct must be illegal, injurious to the employee and make it impossible for the employee to continue working. It was also held that the conduct of the employer must amount to a serious breach and not a minor or trivial incident. (See also **Mbiika Dennis Vs Centenary Bank LDC 023/2014**).

There resignation letter of the claimant showed as a main reason the deteriorating relationship between him and his immediate supervisor. In his letter of resignation he showed that he was demoralised because of the level of mistrust that his supervisor had shown him.

In cross examination about the sour relationship between the claimant and his supervisor, the claimant told court that he had grievances with his supervisor which he verbally referred to the manager.

Looking at the evidence on record as a whole, we find as a fact that the centenary bank branch at Hoima had problems relating to non-performance loans which were as a result of some connivance of the bank officials with its customers. At the time the claimant resigned, the management of the respondent bank had made attempts to restore sound management of the branch and one of the ways to do this was to deploy RW1, Peter Muwanja to assist in managing the state of non-performing loans and in doing this he found himself on collision sides with his junior, the claimant, who was in the same department.

Although the claimant in his evidence and in his resignation letter told court that his supervisor, Peter Muwanja mistrusted him, portrayed him as a non-performer and witch hunted him, there was no corroborative evidence to this assertion. There was no corroborative evidence to the assertion that RW1, allocated non-performing loans to the claimant with an intention that the claimant be portrayed as a non-performer. It seems to us that there was a difference in methods of work between the claimant and his supervisor. The supervisor demanded a lot from the claimant which the claimant took as too much pressure and this included allocation of non-performing loans which according to the claimant was meant to derail him from performing as a commercial loans officer and portray him in bad light as incompetent and possibly lead to this demotion or dismissal. The evidence reveals that this started “**sometime in 2011**” after his promotion and he resigned in February 2012.

Would this amount to constructive dismissal?

Although the claimant believed he was not expected to handle both assignments, he continued to handle them in the course of 2011.

In our considered opinion if an employee believes that the conduct of his employer is injurious to him or her and as such it is 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. Although there was a sour relationship between the

claimant and his supervisor beginning with 9/09/2011 it took the claimant 5 months to realise that he was pushed beyond the wall necessitating him to resign.

In cross examination he admitted that if there was a grievance one would exploit the grievances procedure but there was no evidence that he exercised this option except his own testimony that he orally referred the complaint to the manager. We form the opinion that what was happening between the claimant and his supervisor was a matter of the character of each of them in the way each of them handled official matters in the office.

There was no evidence to suggest that the conduct of the supervisor was such as to amount to being illegal or injurious to the claimant or to a serious breach within the meaning of the principle set out in Nyakabwa J. Abwooli Vs Security 2000 Limited LDC 108/2014.

It was the evidence of the claimant that the closure of his office cabinet by his supervisor rendered him redundant and jobless since he could not access any documents to be able to do his work. In Nyakabwa J. Abwooli (supra) this court pointed out that **“once an employer removes the instruments of an office for which the employee is employed to occupy, and instructs another employee to take up such instruments without providing an alternative to the employee, such act constitutes termination of employment by reason of the employee’s conduct.”**

In the instant case we find that the claimant was occupying space in the same office with other bank officials with a cabinet to himself. According to RW1, his supervisor, the cabinet had been designated for the Head of loans/credit administrator who had abandoned employment and the claimant had personalised the same and was keeping certain documents therein contrary to the bank policy which stipulated they ought to be kept in the fire-proof strong room. So, being the current designated credit administrator, in the course of investigations he, RW1, added a padlock to the cabinet in the absence of the claimant, so that when the claimant appeared both he and the claimant would open the cabinet to establish the documents being kept therein but the claimant never turned up.

According to the claimant **“At the work place I had a file cabinet which I used to keep box files for commercial loansPeter Muyanja bought a padlock, added it onto my own and made my cabinet inaccessible. He also withdrew my desk keys, locked my official desk and kept the key to himself. When I inquiredI was told that being a**

junior officer I did not need cabinets and that he also wanted to check what was in my cabinetI raised the issue with the branch manager but nothing was done until the 13th day of February 2012. I could not take the mistreatment anymore and I resigned.....”

As already alluded to earlier in this award, RW1 had been sent to the branch to put right what the bank thought had gone wrong in the credit portfolio of the bank and the claimant was in this department. This being the case and the claimant having been aware that his supervisor wanted to check what was in the cabinet, we do not appreciate any reason as to why the claimant would be objectionable to his supervisor checking his cabinet. It was incumbent upon the claimant to avail the cabinet for inspection to his supervisor who would eventually make an assessment of the use of the cabinets. The fact that the claimant did not give opportunity to his supervisor to check the cabinet in his presence before he resigned, in our view exonerated his supervisor from his conduct being termed as unreasonable for the benefit of the claimant under **section 65(1)(c) of the Employment Act.**

The claimant having been informed that as a junior officer he did not need a cabinet, it was incumbent upon him to provide evidence that in fact without a cabinet, he could not be able to perform any of his duties and he would be rendered jobless. This in our view was not done to our satisfaction in view of the fact that the cabinet in question had been designated to the officer who had left the bank. But even if such evidence was available to us, we would still be of the conviction that on the evidence available, RW1, the claimants supervisor, intended to cross check the documents in the cabinet and establish which documents ought to be in the strong room and not to completely dispossess the claimant of the cabinet in which case he would still have been obliged to be available and allow his supervisor access to the cabinet and this failure on the part of the claimant would still exonerate his supervisor. On the whole, we do not find the conduct of RW1, as supervisor of the claimant, or any other officer of the bank unreasonable, illegal or repudiatory towards the claimant as he claimed in his evidence.

The claimant in his resignation letter informed his employer that he would proceed on his leave for the previous year as well as for the current year. This court has held before that although one is entitled to leave in the course of employment, one ought to show that one is

interested in taking the same by applying for it (see **Waswa Polycarp & 12 others Vs Attorney General LDC 54/2015** and **EDACE Michael vs Watoto Childcare Ministries L.D appeal 21/2015 (Consolidated with LD. Appeal No. 16/2015)**)

Although the record and evidence does not reveal that the claimant applied and was denied leave in the course of the year 2011, one Galimaka respondent witness 7 was categorical in cross examination that the claimant had “**outstanding leave of 2011**” and one Florence Mawejje, the Human Resource Manager of the respondent could not tell if the claimant had taken leave for 2011 although she told court that when the claimant proceeded on leave at the time he did, it was not authorised. Galimaka was a relief manager of the Hoima branch where the claimant was working. We have no reason to disbelieve his testimony that by the time the claimant resigned he had outstanding leave of 2011.

In the recent case of **Mbiika Dennis Vs Centenary Bank, LDC No. 023/2014**, this court held that the entitlement to leave during a given calendar year was an entrenched and fundamental term in the contract and that the absence or weakness of a system of granting leave at the work place could not affect this entitlement to the employee in a given calendar year. This court went ahead to state that “**any procedures by the personnel manual relating to leave applications became irrelevant at the end of 2011 and therefore the claimant was not obliged to follow them.....**”

In the instant case, following the revelation of RW7 that the claimant had outstanding leave, for 2011, and following the decision in the above cited case of **Mbiika & Centenary Bank**, we find that the claimant’s leave had indeed been deferred during the course of 2011 and that when he decided to take it in the following year, he could not be obliged to follow procedures as stipulated in the manual of the respondent.

Having said that the claimant was entitled to take his leave of 2011, we have not found any evidence suggesting that denial of this leave was a reason for his resignation. In our view one takes advantage of **section 65(1)(c) of the Employment Act** only if the unreasonable conduct of his employer is the reason one resigns or stops working. The claimant in the instant case (unlike in the **Mbiika Vs Centenary**

Bank case) did not state or even imply anywhere either in the resignation letter or in his evidence that denial of leave was the cause or part of the cause of his resignation. He only exercised his right to proceed on leave which had been denied him during the 2011 calendar year. The reason for his resignation was the bad relationship he had with his supervisor and we have already held that the conduct of his supervisor did not satisfy the requirements of **section 65(1)(c) of the Employment Act**. Accordingly we find that the claimant has failed to prove that he was constructively dismissed and therefore the first issue is resolved in the negative.

The second issue as agreed is **whether the claimant's suspension and dismissal from service on the 16th day of February 2012 and the 21st day of June 2012 respectively were valid and/or lawful.**

The claimant filed his resignation on 13/02/2012 giving reasons in the resignation letter. He argued that his resignation was not voluntary but constituted constructive dismissal. We have found that the resignation did not constitute constructive dismissal. **Was the resignation then proper and effective?**

From the evidence of the respondent, the resignation was rejected because he did not comply with procedures related to handing over and being granted leave. We have already discussed the issue of leave.

We have perused and internalised the respondent's Human Resource policies and procedures manual **"HRP 25 – HANDING OVER AND TAKING OVER.**

Although Paragraph (a) provides that all employees of the Bank effect proper handover of office and or Bank properties prior to exit from the service, the rest of the manual provides for exiting staff as and when they are going on leave or being transferred or being assigned other duties. The procedures relate to the outgoing and incoming staff of the Bank.

Resignation from a job in our view is not ordinary and therefore if an employer intended that on resignation an employee should follow certain procedures, the said

procedures ought to be enumerated and specifically applicable to resignation. Ordinarily the employee would certainly hand over office and property of his employer before exiting the service. Indeed we find fault on the part of the claimant for having not handed over whatever he had in possession as property of the respondent. Having said this, we do not find on the evidence anything that the claimant should have handed over but he did not, to the prejudice of the respondent.

There is no evidence whatsoever on the file that the claimant received the rejection of his resignation or the suspension letter both dated the same date of 22/02/2012, although he received the dismissal letter dated 21/06/2012 on 25/6/2012. It is our opinion that if the respondent had intended that the rejection of the resignation of the claimant be effective, it should have taken them as much effort as it did with the dismissal letter which he was served within three days of its being written.

Consequently although we agree that the claimant ought to have followed procedures of handing over before he in fact exited the respondent, the fact that the respondent did not communicate its rejection of the resignation, the fact that there were no specific procedures related to resignation, and the fact that nothing was reported missing which the claimant ought to have handed over to the respondent, all combined exonerated the claimant and made his resignation effective from the date he resigned. The rejection of the resignation and the subsequent disciplinary proceedings (which the claimant was not aware of) could not negate his resignation and they were therefore of no legal effect. For the second issue we hold that suspension as well as dismissal were of no legal effect since the claimant had resigned from the service of the respondent.

The last issue is: what remedies are available. Having found that the claimant voluntarily resigned from the service of the bank, and that the rejection of his resignation as well as the subsequent disciplinary proceedings leading to dismissal were of no legal effect, he is entitled to no reliefs except payment for his annual leave of 2011 which he took in 2012.

The claim is therefore dismissed with no order as to costs.

Signed:

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

Panelists

1. Mr. Ebyau Fidel
2. Ms. Julian Nyachwo
3. Ms. Susan Nabirye

Date: 17/08/2018