

THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE CLAIM NO. 062/2014
ARISING FROM HCT-CS-065/2014

LUKYAMUZI GODFREY **CLAIMANT**

VERSUS

ENERGO PROJECT NISKOGRO-ANOJA **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. HARRIET NGANZI MUGAMBWA**
- 3. MR. F X MUBUKE**

AWARD

BACKGROUND

This claim was brought against the Respondents for a declaration that the Claimant's termination was unlawful, for special and General damages, payment in lieu of notice, Severance pay and interest of 30% per annum from the date of termination until payment in full.

BRIEF FACTS

According to the Claimant, he was a driver in the employment of the Respondent from 9/07/2009 on contractual terms until 26/03/2012, when he was appointed on permanent terms. He was earning Ugs.754,000/- per month. He was terminated on 23/10/2013, without notice or justification.

ISSUES

1. Whether the claimant's termination was lawful?

2. What remedies are available to the parties?

REPRESENTATION

The Claimant was represented by Mr. John Paul Baingana of M/s Tumwesigye, Baingana & Co. Advocates and the Respondents by Mr. Timothy Arinitwe of Paul Byaruhanga Advocates.

EVIDENCE

CW1: Lukyamuzi Godgrey

The Claimant testified that he was employed by the Respondent until October 2018, earning Ugx. 754,800/- although he was paid per hour worked and as a result he earned less than Ugx. 754,800/= sometimes. According to him he worked diligently and he had a good record.

RW1: Mbyeimeire Shaban, testified that the Claimant worked from March 2012 to October 2013, earning a salary under salary scale C1. He confirmed that the Company had agreements with some workers unions. When a copy of the Collective Bargaining Agreement was shown to him, he stated that one of the signatures resembled the Claimant's signature. He was not sure whether the Respondent Company was one and the same as Energo Uganda Co. Ltd. According to RW1, the Claimant was terminated because his services were no longer required. According to him when the Respondent circled "**Other**" among the reasons for termination, it meant any other reason other than those listed. He confirmed that the Claimant was working for the Respondent Company, Energo Project Niskogranja and not Energo Uganda Ltd. He however refuted the salary slips attached to the Claimant's trail bundle but he did not produce the alternative method of paying salary.

SUBMISSION

It was submitted for the Claimant that without issuing the Claimant with a notice in lieu of payment he was issued a termination letter on 28/10/2018, on the ground that his services were no longer required, contrary to the provisions of Sections 2 and 65 of the Employment Act, 2006. He cited **MARY PAMELA SOZI Vs THE PUBLIC PROCUREMENT AND DISPOSAL ASSETS AUTHORITY, CS NO.063/2012**, which is to the effect that an employer cannot unreasonably and without justification terminate the contract of the employee simply because there is a clause that provides for the payment in lieu of notice. Counsel contended that according to section 58 of the Employment Act, which provides for notice periods except in cases of summary dismissal, the Claimant was not given notice because the letter of termination was issued to him on the day he was asked to leave and he was entitled to payment in lieu of notice but he was not paid. He refuted the argument that the claimant was dismissed because his services were no longer required because section 81 on collective termination was not complied with and the Respondent assertion that the Claimant was wanted by Police was only intended to intimidate the Claimant not to bring this claim.

According to Counsel, the Respondent did not have satisfactory reasons for terminating the Claimant because it was done contrary to Sections 2, 66 and 68 of the Employment Act 2006.

In reply Counsel for the Respondent did not dispute the fact that the Claimant was the Respondent's employee. However he argued that the Claimant was given notice of termination and he had a meeting with the Company officials, who explained the reasons for his termination. According to him the claimant accepted the reasons for his termination, when he accepted the termination package which included payment

in lieu of notice and this was not controverted. He further submitted that the Claimant was issued with a certificate of merit for the services he rendered.

Counsel argued that according to section 65(1) of the employment Act, termination takes place when the contract of employment is ended with notice and according Section 58(3)(a) the notice for a person who had worked for 1to 5 years was entitled to a notice of 1 month or payment in lieu of 1 months' notice.

Counsel asserted that the Claimant was terminated lawfully because he was afforded a reason for termination and paid in lieu of notice which he accepted. He relied on **Bank of Uganda versus Betty Tinkamanyire, SCCA No.12/2007** in support of his argument. According to him the Supreme Court was cognizant of the Employment Act. According to Counsel, the Claimant has never been arrested and given that the Respondent issued him with a certificate of merit therefore the allegation that he was wanted by the police could not stand and Court should ignore it.

DECISION OF COURT

It is trite that before an employer terminates an employee, the employer must explain to the employee the reasons why he or she is considering the employee for termination. The employee must be given opportunity to respond to the reason or reasons. (see Section 66 of the Employment Act, 2006). The employer is further expected to prove the reason is justifiable and the proof must be done before the termination. (See, **Akeny Robert Vs UCC, LDC No.023/2015, Okou Vs Stanbic Bank ...**). According to sections 2, 65,66 and 68 of the Employment Act 2006, employment cannot be at the will of the employer. A contract of employment must comply with the statutory termination standards as laid down in the Employment Act and this was emphasized in **Hilda Musinguzi Vs Stanbic Bank (U) Ltd SCCA 05/2016**, cited with approval in **Nassanga Saphina Kasule Vs Stanbic Bank LDC No.227/2014**, where Justice Mangutsya JSC, held that:

“... the right of the employer to terminate a contract cannot be fettered by the Court so long as the procedure for termination is followed to ensure that no employees contract is terminated at the whims of the employer and if it were to happen the employee would be entitled to compensation...” (emphasis ours)

The procedure as already decided on many cases is provided under the Employment Act and specifically under Sections 66 and 68 of the Act.

In the instant case, the Claimant’s notice of termination dated 28/10/2013, circled “Other” as the reason for termination and stated that:

“Your Services are no longer required by the Company and consequently your employment shall be terminated with effect from 28/10/2013 on the day of termination indicated herein ...”

It is clear from the termination notice that the Claimant was terminated on the same date the notice was issued, therefore he was not given sufficient notice as is required under Section 58 of the Act and he was not given a justifiable reason for his termination.

It is only when an employee’s position ceases to exist as a result of restructuring that he or she can be terminated on the grounds that his or services are no longer required and in this case the reason would be restructuring (See Section 81 of the Employment Act(supra). The Respondent did not indicate that the she was undergoing a restructuring process which eliminated the position of drivers, to warrant the Claimant’s termination. Neither did the Respondent adduce any evidence to show that the Claimant had breached the fundamental terms of his contract to warrant summary termination as provided under Section 69 of the Employment Act. The Respondent’s actions in the circumstances clearly violated the minimum statutory termination standards as set out in the Employment Act, thus rendering the termination unlawful.

2.What remedies are available to the parties?

Having found that the Claimant was unlawfully terminated he is entitled to some remedies. He prayed for a declaration that his was unlawful, for special and General damages, payment in lieu of notice, Severance pay and interest of 30% per annum from the date of termination until payment in full.

Application of the Collective Bargaining agreement.

From the submissions of both Counsel and on the face of the Collective bargaining agreement, it was signed with Energo Uganda Ltd and not the Respondent Company. Although the salary slips indicate a deduction of Union dues, the Claimant did not adduce any evidence to show that the deduction was done in accordance with the admitted Collective Bargaining Agreement, given that it was signed with Energo Uganda and not the Respondent Company. There was no evidence that the 2 Companies are one and the same. In the circumstances we shall not interpret it or consider it in determining the remedies available to the for the Claimant.

A declaration that the Claimant was unlawfully terminated.

We have already established that Claimant was unlawfully terminated.

General Damages

It is settled that in addition to the statutory remedies provided for under the Employment Act a person is found to have been unlawfully terminated, is entitled to an award of general damages. It is trite that general damages are awarded at the discretion of Court and they are intended to return an aggrieved party to as near as possible in monetary terms to the position he or she was in before the wrong occasioned to him or her. Counsel cited **Richard Ndemerweki Vs Mtn (U) Ltd LDC No. 101/2014**, **Bank of Uganda Vs Betty Tinkamanyire SCCA No 012/2007** in support for the claim for an award of general damages and prayed for an award of Ugx.

20,000,000/=. By the time of his termination, the Claimant had worked with the Respondent under the permanent terms for 17 months. The record however shows that he was earning a different salary every month given that it was computed per hour worked. In the circumstances we shall take the average of the basic salary for the 17 months as his monthly salary, amounting to Ugx. 291,845/=. Therefore given that he worked for only 17 months at an average salary of Ugx.291,845/- Ugx. 2,500,000/- is sufficient as general damages.

Severance Allowance.

Section 87(a) of the Employment Act, entitles an employee who has been in an employer's continuous service for a period of 6 months to severance pay if he or she is unfairly dismissed/terminated. Section 89 of the Act provides that severance allowance should be negotiable between the employer and employee. This court in **DONNA KAMULI VS DFCU BANK LDC 002 OF 2015**, held that where the employer and employee have not agreed on a method of calculating severance pay, the reasonable method shall be payment of 1 month's salary for every year the employee has served. In the instant case we established that the claimant had served 17 months therefore he would be entitled to 1 and ½ month's salary as Severance pay amounting to Ugx. 437,768/= as severance pay.

Interest

The Claimant prayed for an award of interest of 23% above the Court rate as provided under Section 26 of the Civil Procedure Act Cap 71. Award of interest above the Court rate is discretionary. Given the current inflation rates, we shall award the Claimant interest of 15% per annum on all pecuniary awards from the date of this judgement until payment in full.

Special Damages

Special Damages must be pleaded and strictly proved. There were no pleadings on special damages, therefore they are denied.

Costs of the Claim

No order as to costs is made

In conclusion an award is entered in favour of the Claimant in the following terms:

1. A declaration that he was unlawfully terminated.
2. An award for General Damages of Ugx. 2,500,000/-
3. Severance pay of Ugx.437,768/-
4. Interest of 15% per annum on 2 and 3 above from the date of Judgement until payment in full.
5. No order as to costs

Delivered and signed by:

1.THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE

2.THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA

PANELISTS

1. MR. EBYAU FIDEL

2. MS. HARRIET NGANZI MUGAMBWA

3. MR. F X MUBUKE

DATE...14th NOV 2019

