

**THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE NO. 022 OF 2014
(ARISING FROM HCT-CS NO. 213 OF 2014)**

**TUMUSIIME RICHARD AND 5
OTHERS.....CLAIMANT
VERSUS
MUKWANO PERSONAL CARE PRODUCTS.....RESPONDENT**

BEFORE

1. Hon. Chief Judge Ruhinda AsaphNtengye
2. Hon. Lady Justice Lillian Linda TumusiimeMugisha

PANELISTS

1. Mr. Ebyau Fidel
2. Ms. Harriet Muganbwa Nganzi
3. Mr. F. X. Mubuuke

AWARD

The claimants filed this claim against the respondent for unlawful dismissal and prayed for:

- (a) a declaration that their dismissal was unfair, unjust and illegal.
- (b) An order of compensation under **Section 7, of the Employment Act.**
- (c) An order for payment of severance allowance under **Section 87, of the Employment Act.**
- (d) General Damages
- (e) Interest, costs and any other relief deemed by court.

Brief Facts

By an amended memorandum filed on 23/1/2019, the claimants claimed that they were employees of the respondent until 10/2/2012 when they were suspended from duty and thereafter invited to a disciplinary meeting and on 11/2/2012 they were summarily dismissed. They claimed they were denied a fair hearing.

By memorandum in reply the respondent claimed that the claimants were suspended for conducting an illegal riot and failure to obey lawful orders as well as loss of trust and confidence. The respondent claimed that under the circumstances the claimants appeared before a disciplinary committee and a fair hearing was conducted.

When the matter was fixed for hearing neither the respondent nor her advocate were present and having been satisfied that they were served, court proceeded ex parte.

Issues:

It was agreed by both counsel that the issues were:

- 1) Whether the dismissal of the claimants was unfair.
- 2) What remedies are available to the parties?

We shall begin with the first issue.

Termination of employment can be either by the employer or employee depending on the circumstances of each case and on the terms of contract.

Section 65 of the Employment Act provides

“Termination:

- (1) Termination shall be deemed to take place in the following instances:-**
 - a) Where the contract of service is ended by the employer with notice;**
 - b) Where the contract of service, being a contract for a fixed term or task, ends with the expiry of the specified term or the completion of the specified task and is not renewed within a period of one week from the date of expiry on the same terms or terms not less favorable to the employee;**
 - 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; and**

(2) The date of termination shall, unless the contrary is stated, be deemed to be

- a) In the circumstances governed by subsection (1)(a), the date of expiry of the notice given.”**
- b) In the circumstances governed by subsection (1)(b), the date of expiry of the fixed term or completion of the task.**
- c) In the circumstances governed by subsection (1)(c), or subsection (1)(d), the date when the employee ceases to work for the employer; and**
- d) In the circumstances when an employee attains normal retirement age.**

In our interpretation the above section provides situations when the relationship between the employer and the employees is said to have been terminated. The question whether or not such termination has been fair or unlawful can only be determined by looking at whether or not **Section 66, and 68 of the Employment Act** have been complied with. In determining this question, the court is assisted as well by looking at the definition of “**termination**” and “**dismissal**” as provided by **Section 2 of the Employment Act**.

Section 66 of the Employment Act provides

Notification and hearing before termination:

(1) Notwithstanding any other provision of this Part, an employer shall, before reaching a decision to dismiss an employee, on the grounds of misconduct or poor performance, explain to the employee, in a language the employee may be reasonably expected to understand, the reason for which the employer is considering dismissal and the employee is entitled to have another person of his or her choice present during this explanation.

(2) Notwithstanding any other provision of this Part, an employer shall, before reaching any decision to dismiss an employee, hear and consider

any representations which the employee on the grounds of misconduct or poor performance, and the person, if any chosen by the employee under subsection (1) may make.

(3) The employer shall give the employee and the person, if any, chosen under subsection (1) a reasonable time within which to prepare the representations referred to in subsection (2).

(4) 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 net pay.

(5) A complaint alleging a failure on the part of the employer to comply with this section may be joined with any complaint alleging unjustified summary dismissal or unfair dismissal, and may be made to a labour officer by an employee who has been dismissed, and the labour officer shall have power to order payment of the sum mentioned in subsection (4) in addition to making an order in respect of any other award or decision reached in respect of the dismissal.

(6) A complaint under subsection (5) shall be made within three months after the date of dismissal.

The section obliges an employer before dismissing or terminating an employee where such employee has committed a misconduct, to prefer charges against him or her, give him or her time to prepare to defend himself or herself before an impartial tribunal and allow him or her to be accompanied by a person of his or her choice to the hearing. Although under **Section 58 of the Employment Act** an employee is entitled to notice before termination or dismissal, under **Section 69 of the Employment Act** once an employee has breached a fundamental obligation under the contract of service, such notice may be dispensed with

although the section does not preclude the obligation of the employer to provide a fair hearing as prescribe under **Section 66** above mentioned. For purpose of clarity **Section 69** provides:

Summary termination:

- (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 any statutory provision or contractual terms.**
- (3) An employer is entitled to dismiss summarily, and the dismissal shall be termed justified, when the employee has, by his or her conduct indicated that he or she has fundamentally broken his or her obligation arising under the contract of service.**

Section 2 of the Employment Act defines “**Termination**” and “**dismissal**” as follows:

“Termination from employment “means the discharge of an employee from an employment at the initiative of the employer for justifiable reasons other than misconduct, such as expiry of contract, attainment of retirement age, etc.

“Dismissal from employment” means the discharge of an employee from employment at the initiative of his or her employer when the said employee has committed verifiable misconduct.

In other words terminating or dismissing an employee must be justifiable. This can only be done by complying with **Section 68 of the Employment Act** which provides:

Proof of reason for termination.

- (1) In any claim arising out termination the employer shall prove the reason or reasons for the dismissal, and where the employer fails to do so, the dismissal shall be deemed to have been unfair within the meaning of section 71.**
- (2) The reason or reasons for dismissal shall be matters, which the employer at the time of dismissal, genuinely believed to exist and which cause him or her to dismiss the employee.**
- (3) In deciding whether an employer has satisfied this section, the contents of a certificate such as is referred to in section 61 informing the employee of the reasons for termination of employment shall be taken into account.**

We have endeavored to point out the above sections of the law because we consider them to be the principle of the relationship between the employer and the employee. We are confident that these sections of the law were embedded in the Employment Act because the government of Uganda being a member of the international labour organization participated and is signatory to the international labour conventions relating to conditions of work. Such Conventions include **THE TERMINATION OF EMPLOYMENT CONVENTION 1982(NO.158) which among others sets forth the principle that the employment of a worker should not be terminated unless there is a valid reason for such termination connected with the workers capacity or conduct, or based on the operational requirement of the undertaking or establishment or service**

In the instant case, the claimants were identified as ring leaders in an attempt to cause a strike at the work place. We must point out from the very beginning that laying down tools of work by workers is a given right. An employee has a right to withdraw his labour if he/she is not satisfied with conditions at work. He/she is entitled to join a Labour Union for purposes of collective bargaining for better conditions of work. A strike, or laying down of tools of work by employees is provided for under **Section 03 of the Labour Unions Act** which provides.

".....3. Right of employees to organize

Employees shall have the right to organize themselves in any labour Union and may

(a)....

(b)...

(c)....

(d) withdraw their labour and take industrial action.

However it is our considered opinion that such withdrawal of labour has to be done in an orderly manner without causing destruction of property or any unnecessary inconvenience which may be illegal.

The respondents claimed that the attempted strike was illegal and therefore immediately suspended the claimant and called them for a hearing the next day. From the facts and evidence available on the court record, the claimants and other employees had previously demanded for a salary increase and on 10/02/2012 there was suspicion that there was likely to be a strike and the claimants were suspected to have been party to the same.

It was expected that after being suspected and after a suspension was slapped on them, an investigation would ensue to confirm the suspicion and thereafter constitute a disciplinary committee for the claimants to answer to the allegations as revealed by the investigations.

On perusal of the minutes of the disciplinary committee, claimant 1, Tumusiime Richard, claimant 4, Abdallah Muwanguhya, and claimant 6, Nabaasa Alfred were not part of the proceedings. They were called in because one Taban mentioned them as having resisted to move out of the plant after being asked by one Mwogeza Joel who was one of those charged before the committee.. It was Mwogeza Joel who told the committee that Taban mentioned their names but before the committee they denied. Taban did not appear before the committee.

According to the minutes of the disciplinary committee, one Moses Esemu was the one who found the claimants planning a strike. However in his testimony before the committee, he found one Masaba Ibrahim moving from Nomi to plastics and when he queried him, he answered that they had enough production and that the Nomi Plant had stopped at 6.45 am which he confirmed. When he went to the small gate he found one Aida on phone but he did not establish what

he was talking about. He then asked the staff to move to the canteen but Ofwono resisted.

The evidence of Moses Esemu (the initiator) does not at all implicate any of the claimants except that it mentions that Ofwono resisted moving to the canteen.

A letter of suspension addressed to Mr. Peter Ofwono dated 10/2/2012 reads:

Dear Mr. Ofwono,

SUSPENSION PENDING AT HALF PAY INVESTIGATIONS

Please refer to the allegations relating to your involvement in attempting to strike on 09/02/2012.

There is no doubt that your actions were in contravention of the Company's General Rules and Regulations and the terms of your employment contract with the company.

Therefore, the company has decided to suspend you at half pay with effect from 10/02/2012 to 11/02/2012 at 9.30am at MPCB where upon your attendance is a **"MUST."**

The disciplinary inquiry was expected to establish whether indeed Mr. Ofwono and others were involved in the attempted strike and if so then they would appear before a disciplinary hearing. It seems to us that the disciplinary inquiry turned itself into a disciplinary hearing and found the claimants culpable. In our view this was not acceptable given that every person is entitled to a fair hearing from an impartial tribunal.

Secondly the claimants were not given sufficient time to prepare for their defense. They were suspended on 10/02/2019 and asked to attend the inquiry on 11/2/2012 which turned out to be a hearing. This could not be by any stretch of imagination sufficient time to prepare a defense even if one did not have to engage a lawyer.

A fair hearing under **Section 66 of the Employment Act** envisages a claimant having been formally informed of the infractions he/she is alleged to have

committed, he/she being given sufficient time to defend the alleged infractions, he/she appearing before an impartial tribunal; the impartial tribunal passing a decision based on proper evaluation of the evidence adduced by both those alleging commission of the infractions and the claimant.

In the instant case we appreciate the concerns of the respondent company about the effects of an illegal strike that may cause losses to the company. However, we form the opinion that having suspected that the claimants were involved in an attempt to cause an illegal strike their suspension ought to have resulted into a proper investigation which should have informed a disciplinary committee. At this stage the claimant should have been formally informed that they would appear before the disciplinary committee for hearing and that therefore they should prepare for their defense.

Instead the claimants appeared before a disciplinary inquiry which recommended termination of services on the evidence that did not implicate them.

Given that the claimant were given less than 24 hours to appear before the disciplinary inquiry, given that the disciplinary inquiry turned out to be a disciplinary hearing, given that the evidence of the initiator at the hearing did not implicate at all any of the claimants, and given that the claimants in their evidence denied participation or having been involved in the attempted strike, we find that the claimants were totally denied a fair hearing and therefore their termination was unlawful and unfair. The issue is therefore resolved in the affirmative.

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

- (a) Having found that the claimants were unlawfully terminated, the first prayer of declaring that the dismissal was illegal is granted.
- (b) An order of compensation under **Section 78 of the employment Act** is not granted since this court is not a labour office. Under **Section 78 of the Employment Act** the labour officer is given jurisdiction to order compensation.
- (c) Since the claimants were unlawfully terminated, under **Section 87 of the Employment Act** they are entitled to severance pay. Since the evidences does not reveal that there was any arrangement between the respondent

and the claimants as to calculation of Severance, this court hereby invokes its own authority of **DONNA KAMULI vs DFCU labour claim no.02/2014** to the effect that the claimant would be entitled to a monthly salary for every year worked as Severance pay. Accordingly each of the claimants shall be paid his monthly salary as at the date of dismissal. For example claimant No. 4 Abdallah Mwanguhya at the time of dismissal earned salary of 155,400. He had been employed since 13th Dec 2007 and he was dismissed on 11/02/2012. He worked for 04 years and therefore will be paid $155,400/= \times 4 \text{ years} = \mathbf{611,600/=}$ as Severance pay and this formula shall apply to the other claimants.

(d) We appreciate the pain of looking for a job and therefore sustenance of family and the general inconvenience of having no job. Given the nature of employment of the claimants and given their salary we grant each of them general damages of Ugx. 500,000/= each.

(e) Given the inflation rate in the country, the above sum shall attract interest rates of 20% per year until payment in full.

The claim succeeds in the above terms with no orders as to costs.

Signed by:

1. Hon. Chief Judge Ruhinda AsaphNtengye
2. Hon. Lady Justice Lillian Linda TumusiimeMugisha

Panelists

1. Mr. Ebyau Fidel
2. Ms. Harriet Muganbwa Nganzi
3. Mr. F. X. Mubuuke

Dated: 10/05/2019