

**THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE CLAIM NO.136 OF 2014
(ARISING FROM HCT - CS 159/2012)**

WESONGA BENJAMINCLAIMANT

VERSUS

CENTENARY RURAL DEVELOPMENT BANK LTD.....RESPONDENT

BEFORE

1. Hon. Chief Judge Ruhinda Asaph Ntengye
2. Hon. Lady Justice Linda Tumusiime Mugisha

PANELISTS

1. Ms. Adrine Namara
2. Ms. Susan Nabirye
3. Mr. Michael Matovu

AWARD

By memorandum of claim filed in this court, the claimant alleged that he was unlawfully terminated from his employment. He claims that one of the customers of the respondent was desperately in need of a loan and having been delayed by the process she deposited 30,000/= on his mobile money account in an attempt to quicken the process but he declined and sent it back to her. According to him she was infuriated and hatched a plan to have him pay for the delayed loan application process by accusing him of misconduct and delay to process her loan. Consequently he was interdicted on allegations that he solicited and received a bribe of 200,000 from her for the sake of fast tracking the loan. After a disciplinary process he was terminated.

In a memorandum in reply filed by the respondent, it was stated that the respondent received a complaint from its customer one Ndagire that the claimant had solicited for a bribe from her. She initially sent him 30,000/= which he declined

and returned and she apologized sending him a text that she would offer more money and indeed she paid him 200,000/=.

At the disciplinary hearing the customer, Ndagire, was called and she insisted she paid the claimant 200,000 after he demanded it and the committee believed her and recommended a dismissal which was eventually effected.

During the court proceedings the claimant was represented by Mr. Waiswa Ramathan of Katuntu & Co. Advocates while the respondent was represented by Mr. Kyagaba of Kampala Associated Advocates.

ISSUES:

Both counsel agreed on the following issues:

- 1) Whether the claimant was unfairly or unlawfully terminated or dismissed from employment with the respondent.**
- 2) Whether the parties are entitled to the remedies sought.**

EVIDENCE:

The claimant adduced evidence from himself and another while the respondent adduced evidence from 3 witnesses.

In his evidence in chief, the claimant reiterated what was contained in his memorandum of claim insisting that although there was a delay in the processing of the loan of one Ndagire, he, the claimant was not responsible and that he never solicited nor accepted any bribe from her.

The evidence of the only witness of the claimant was to the effect that the claimant was a staunch Christian and a preacher who detested any acts of immorality including soliciting and taking a bribe. According to him the claimant could not solicit or take a bribe from any one.

The respondent's evidence was also largely reiterating what was contained in the reply to the memorandum of claim. One Angella Amuge, chief manager, commercial Credit of the respondent testified in chief that she received a written complaint from one Ndagire about the claimant's solicitation of a bribe. A Human Resource Committee meeting was held at which the complainant ,reiterated what she had put down in writing that she had paid 200,000/= to the claimant. When the claimant was called in the meeting she narrated the events as they had happened up to when she paid the 200,000/- to him.

Ms. Ndagire in her oral testimony in chief told court that she paid the claimant 200,000/= after he asked for facilitation to process her loan and that earlier on she had sent him 30,000/= which he had returned. She told court that she appeared before the Human Resource committee of the respondent and told them about this complaint after she had reported to Ms. Amuge. One Kato Kachope was the Secretary to the disciplinary committee. In his evidence in chief, he stated that he received a written complaint of a customer of the bank who alleged that the claimant had received 30,000/= from her via Mobile money which he rejected and sent back to her upon which she apologized and asked for an appointment to meet him and gave him enough money. Indeed they met and she gave him 200,000/-. The complainant was forwarded to the General Manager of Human Resource and eventually the claimant was interdicted. At a disciplinary hearing the complainant was asked to come and she came and told her story which the committee believed and recommended dismissal of the claimant.

SUBMISSIONS

Mr. Waiswa Ramathan, counsel for the claimant, complained in his submission that the disciplinary committee was very partisan, biased and uncontrollable. As evidence of this partisan and biased behavior, counsel pointed out that RW1, Angella Amuge called the customer who allegedly gave the bribe and coached her. According to counsel, the customer (RW2) was instructed to reiterate to the disciplinary committee her allegations that were made outside the committee which gave her a standing ovation and refunded her transport. Counsel also argued that the committee members had views on the claimant before they

conducted the hearing and that three of them tampered with the message on the phone of the customer which was in Luganda to translate it in English. According to counsel it was the same disciplinary committee that not only recommended but as well dismissed him.

Relying on **Article 28(1) of the Constitution** and the case **of Eng. John R. Senfuma Vs the Engineers Registration Board, HCCA 26/2009** counsel strongly argued that the law was offended when a committee which recommended the dismissal of the claimant sat and considered those recommendations and dismissed him.

According to counsel the allegations of RW2 were so grave that they needed corroborative evidence which was not available and the same allegations having not been investigated by the Audit team or the police and in the absence of any camera or eye witnesses the allegations were not proved.

Counsel strongly objected to the claimant's dismissal for **"causing the bank reputational damage"** having not been charged with the same implying that the charges of bribery were not proved.

Counsel prayed that this court declares that his client was unfairly and unlawfully dismissed because the dismissal was contrary to **Section 66(1), 68, 70 and 71 of the Employment Act** as his right to a fair hearing was abused and the allegations were not proved.

In reply Mr. Kyagaba, counsel for the respondent denied that the committee was partisan or biased and that RW1 coached R2 before the hearing. According to counsel, given the gravity of the allegations, the complainant was asked to reiterate her complaint verbally before the disciplinary committee. According to counsel the text messages on the phone of the complainant (RW2) were viewed using her own phone during the hearing and they were viewed by the committee only to translate them in English from Luganda for purposes of the proceedings of the disciplinary committee.

Counsel submitted that after deliberations of the Human Resource Disciplinary Committee the recommendations were forwarded to the Executive Committee

for approval and that it was the Managing Director who approved the dismissal of the claimant.

It was counsel's submission that the allegations were proved before the committee and that the claimant was dismissed for both bribery and bringing the respondent into disrepute since the latter was a result of the former.

DECISION OF COURT

The law that governs termination of employment is found in **Sections 58,65,66,68 and 69 (among others) of the Employment Act. Section 58** describes the notice periods that an employee is entitled to before termination. **Section 65** describes the various circumstances under which a contract of employment may come to an end. **Section 66** provides for an impartial hearing before an employee is terminated on grounds of misconduct. **Section 68** provides that before terminating an employee, the employer has to provide a reason for the termination and **Section 69** provides that where an employee's conduct breached a fundamental obligation on his/her part, the employer need not give him/her notice as provided for in **Section 58**.

In the instant case the claimant was alleged to have solicited for and to have received a bribe from one Ndagire Annet, a customer of the respondent bank, the employer of the claimant.

EXHIBIT D1 in the trial bundle of the respondent at page 11-13 referred to as **RE8** constitutes regulations of the respondent and regulations 3.18 states:

"Corruption

The bank maintains a policy of zero tolerance toward employee corruption and fraud. Disciplinary action will result from the discovery of any behavior or action by an employee that indicates that they have received an unauthorized reward as a result of their actions or behavior. Dismissal is mandatory after discovery of theft of bank and/or customer funds, any other property and when reasonable evidence of soliciting or

the receipt of bribes, unauthorized fees, or tips, unjustified rewards from current or potential clients or suppliers is found."

The claimant denied ever soliciting and /or receiving any bribe from any customer of the respondent bank.

There is no doubt that the claimant received 30,000/= on his mobile account and later on returned the same money. It is possible that the customer of the bank was in an urgent need of the loan and sought to influence the claimant to process the loan very quickly and the claimant refused by returning the money. It is also possible that the claimant, aware that the customer of the bank wanted the loan urgently used the opportunity to demand facilitation to quickly process the loan. It is the customer of the bank who alleged that the claimant solicited for the facilitation and the burden was therefore upon her to prove that the claimant demanded or solicited for the same.

The customer (RW2) was a semi-illiterate business lady who in her written complaint to the respondent bank (among other things) states

".....he told me that if I bring the book from the valuer to him, the file will only take two days where after he brings it to the Head office on 12/10/2011. I gave him the book from the valuer and he asked me some money to work on my file.....the next day he called me and asked me to send him to the Head office so that he could talk about my file and also told me to first give him money in order to go... the moment I told him that I had no money, he told me that was the end of his work to me and the rest of the work was in the hands of the Head Office...and I told him that at least I look for some money elsewhere which were to be sent to him via mobile money....he became so happy and told me to send him money..."

Given the position of the claimant as a person who was processing the loan of RW2 and given that RW2 was a semi illiterate customer of the bank without any background of hostility or ill will between the two personalities, on a balance of probability we believe that the claimant asked her money for facilitating the loan

process and in her illiterate businesslike manner she posted 30,000/= on the claimant's mobile account believing that this would be sufficient to facilitate the process of her loan. She may or may not have been aware that accepting to yield to the demands of providing facilitation she would be committing a crime and in our view for purpose of the instant case, this was immaterial. We do accept the claimant's evidence that the Rw 2 was attempting to bribe him and that because of his integrity he refused the bribe by returning the 30,000/= to her. On the contrary we take evidence of RW2 as truthful; that the claimant returned the money because it was too little.

If it was true that RW2 had attempted to bribe the claimant who genuinely refused and returned her money, we do not think that she, RW2, was in position to pursue the claimant for such refusal to the extent of filing a written complaint against him, given that there seems to have been no hostility between the two before the incident as none had ever seen or known the other before. .

We entirely agree with the submission of counsel for the claimant as to the applicability and relevance of **Article 28(1) of the Constitution**.

Indeed **"in determination of civil rights and obligations or in any criminal charge, a person shall be entitled to a fair and public hearing before an independent and impartial court or tribunal established by law"**.

We also take cognizance of the decision in **Eng. John R. SsenfumaVs the Engineers Registration Board HC CV. CA 26/2009** that

"Surely a person who chaired or participated in an investigation in which an aggrieved party was condemned would obviously be perceived as biased in a hearing or trial of the same victim to justify the result of the investigation."

In the instant case counsel for the claimant strongly submitted that the disciplinary committee was biased and not impartial because they tampered with the message evidence in the claimants phone as they changed it in Luganda and because one of the committee members, RW1, "coached" the complainant before she came to testify in the disciplinary hearing. Counsel also faulted the

committee for **“standing up and clapping for the complainant”** after she had testified before them and for giving her transport to and from the committee proceedings.

Finally counsel submitted that it was the committee which recommended the dismissal of the claimant that effectively dismissed him: that it recommended to itself.

A careful scrutiny of the evidence reveals that once the claimant orally lodged her complaint, she was asked by RW1, Ms. Amuge Angella to reduce the complaint in writing. The same Amuge Angella was in attendance at the hearing. We do not accept the contention of the claimant that asking the complainant to put her oral complaint in writing amounted to "coaching" by Amuge.

Neither do we envisage the complainant's invitation to the hearing as a coaching. The complainant was invited to the hearing because the committee wanted her to substantiate what she had put in writing. Being asked to verbally repeat or reiterate what the complainant had put in writing did not amount to coaching her. We consider it as a genuine attempt by the committee to establish the truthfulness of the allegations made against the claimant. It was not an attempt to interfere with any investigation or to tilt the case against the claimant. We therefore do not find any iota of bias in this process leading up to the claimant's oral evidence before the committee. Neither do we see any bias in tampering with the claimants phone to retrieve the messages.

First of all the claimant himself admitted having received the messages on the phone and having replied to the said messages. We consider the retrieval of the messages as a genuine attempt to establish the truthfulness of the allegations. The proceedings of the committee were to be recorded in English and the messages were in Luganda and so it was necessary for the committee to get the correct interpretation. The fact that the claimant did not deny the messages or their interpretation in our view indicated there was no prejudice caused to him.

Whereas in the submissions of counsel for the respondent, the committee did not **“stand up and clap”** for the complainant after her testimony, the complainant herself testified before this court that

“After my explanation they clapped for me and thanked me for the courage”.

The question is whether this amounted to bias or impartiality. We take judicial notice of the fact that even before this court after the testimony of witnesses, the court passes on **“a thank you”** to the witness. Therefore a mere **“thank you”** to a witness either in favour or against a certain position before the court or tribunal does not necessarily culminate into bias or impartiality.

There are many cases involving the bank institutions where complainants have refused to testify or even put anything in writing and have preferred to be treated as **“Whistle blowers”**. The Banks have acted on their complaints and some of them for lack of credibility have been thrown out of the courts to the disadvantage of the banks.

It is therefore understandable when in the instant case the committee is happy that a complainant gains courage to come up and not only write down the complaint but come to the committee to testify. This was one of the rare occasions only equal to when a daughter testifies against her own biological father in a rape or defilement case and the courage of such a daughter has to be applauded not only by the public but by the court before whom the victim appears.

The claimant did not disclose any ill will or hostility against him by any of the members of the committee before the hearing. Consequently on a balance of probability we form the opinion that the **“clapping and the thanking”** was a genuine expression of the committee that they had at last gotten evidence that could stand the test in proving the allegations. When the complaint came before court she impressed us as a truthful witness and therefore we do not find any bias or impartiality exhibited by the committee when they too considered her as a truthful witness.

Unlike in the case of **Eng. John R. Ssenfuma**(supra), the instant case had no investigation report and no investigator of the infraction allegedly sat on the disciplinary committee. The circumstances of the case in our view did not require an investigation from the Audit team of the respondent since it concerned a customer of the bank who was willing and who wrote the complaint and came to the committee to testify. Lack of the investigation report therefore did not nullify or weaken the case against the claimant as counsel for the claimant seems to suggest.

One of the recommendations of the disciplinary committee was a dismissal of the claimant for causing the Bank reputational damage. The dismissal letter referred to the interdiction of the claimant and the interdiction letter showed that the cause of interdiction was an allegation that the claimant had received 30,000/= and subsequently 200,000/= as facilitation for processing a loan contrary to established policies and core values enshrined in the Human Resource Manual.

The dismissal letter was signed by one Kachope Kato, a member and secretary of the Disciplinary Committee.

It was the submission of counsel for the claimant that the committee which recommended his dismissal was the same committee that dismissed him.

In cross examination RW3, Mr. Kachope Kato testified that he communicated the decision of dismissal on behalf of the Human Resource and that the Disciplinary Committee had recommended to the Chief Executive Manager who approved the decision. The complaint of counsel as we understand it, is that the Chief Manager Human Resource having been part of the disciplinary committee was not supposed to have signed the dismissal letter .

We are in agreement with counsel for the respondent that the decision to dismiss the claimant is ordinarily taken by an authority other than the one that presided over the disciplinary proceedings. There is nothing to suggest in the evidence that the decision was taken by the Managing Director as RW3 seems to suggest. However, it is our opinion that the basic doctrine of a fair hearing as envisaged in the case of **Eng. John R. Ssenfuma**(supra) is that the investigator or the accuser

must not be at the same time the one who condemns. The maxim **“no one should be a Judge in his own cause”** does not extend to **“no one should hear and take a decision or “hear and condemn”**.

Having established earlier in this ruling that there was no evidence suggesting that the committee was biased or partisan, we do not see any prejudice caused by one of the committee members signing the dismissal letter.

The fact that ordinarily disciplinary committees recommend to Senior Management appropriate action to be taken, does not by itself preclude a disciplinary committee after impartially hearing the claimant to impose an appropriate sanction unless the same committee is expressly prohibited by rules and regulations to do so. After all even in the courts of law, it is the same court which has heard evidence that condemns the culprit!!!

In the same vain we do not read any partisan tendency in the fact that the disciplinary committee refunded transport to the complainant which she used to come to testify, even the Courts of law refund transport to witnesses especially in criminal cases!

It was submitted for the claimant that the charges for which he was called to answer were not the same for which he was dismissed. We do not accept this submission. On internalizing both the dismissal letter and the interdiction letter one cannot fail to notice that the dismissal was as a result of the commission of acts of bribery which brought the respondent’s image into disrepute and reputational damage.

Consequently the recommendation of the disciplinary committee to dismiss the

“staff for causing the bank reputational damage”

had everything to do with the charges of soliciting and taking a bribe for which the claimant was called before the committee to answer. We do not find any merit in the submission that the claimant was found guilty of the offence he did not answer or which he was not charged with.

Although the testimony of RW2 as to whether she paid 200,000/= to the claimant was not corroborated by any other evidence, the witness as we have already stated appeared truthful and we believed her. She was not shaken in cross examination and she was consistent with what she wrote down and what she told the disciplinary committee. Cases of soliciting and accepting bribes are usually committed in secrecy between two parties and in the instant case the evidence of sending 30,000/= to the claimant by mobile money created fertile ground for the 200,000/=. We believe RW2's evidence that the claimant having rejected 30,000/= sent by the mobile money,, she organized 200,000/= and paid it to him so as for him to quickly process her loan, even if there was no evidence that he solicited for this much. The evidence which we believe is that the claimant demanded facilitation without stating exactly how much he wanted which in our view does not exonerate the claimant. As has been decided in many cases including **Grace MatovuVsUmeme Ltd LDC 004/2009, of this court; Caroline Kariisa GumisirizaVsHima Cement Ltd, HCCS 84/2015** and **the Supreme Court case of Hilda MusinguziVsStanbic Bank SCCA 005/2016** , the standard of proof imposed upon an employer to establish reasons for terminating an employee is lower than in ordinary cases before the courts of law. In the circumstances the 30,000/- sent by mobile money and the evidence of RW2 that she later on paid the claimant 200,000/- was sufficient.

All in all we do find that the claimant was properly brought before the disciplinary committee, the committee was not biased or partisan, the claimant was given sufficient opportunity to defend the allegations against him, the committee on the evidence adduced considered both the defense and the complaint and on the required standard properly found the claimant culpable and rightly decided to terminate his service. The termination was accordingly fair and lawful. The first issue is in the negative.

DAMAGES

Since this court has declared that the termination was fair and lawful, no damages whatsoever arise there from.

Consequently the memorandum of claim has no merit and an award is entered in favour of the respondent as the claim has failed and is hereby dismissed. No order as to costs.

SIGNED

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

PANNELISTS

1. Ms Adrine Namara
2. Ms Suzan Nabirye
3. Mr. Michael Matovu

DATED 14/06/2019