THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE CLAIM NO. 200 OF 2014
(ARISING FROM HCT-CS-No. 140/2014)

BETWEEN

OKELLO JANE……..……..CLAIMANT

VERSUS

ENTEBBE HANDLING SERVICES LIMITED…..…….…..RESPONDENT

BEFORE

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

PANELISTS

1. Mr. Ebyau Fidel
2. Ms Harriet Mugambwa Nganzi
3. Mr. Matovu Micheal

AWARD

Brief facts

The claimant filed this claim alleging that having been employed by the respondent as a security warden on 9/3/2009, and having worked hard and diligently through her period of employment, she was on 11/9/2013 wrongfully and unjustifiably terminated.

She claimed that allegations concerning her verification of documents related to two Indians travelling on a KLM flight on 8/7/2013 were false. According to her

the documents were verified by a representative of the Airline who had the final mandate/authority to do the same. She prayed for:

1) Salary for the month of September 2013.
2) Payment in lieu of notice
3) Repatriation back to Tororo.
4) 50% of basic pay for 4 years of service.
5) Untaken leave of one month and six days.
6) Certificate of service.
7) General damages and costs of the claim.

In reply the respondent alleged that the claimant having been working as a document verifier was not diligent throughout her employment and that her termination followed major security breaches instigated by her and that it followed a hearing from her. According to the respondent the total sum due to the claimant following her termination was 2,784,251/=.

REPRESENTATIONS

The claimant was represented initially by Mr. Swabur Marzuq of M/s. Lwere, Lwanyaga & Co. Advocates who completed the claimant's case hearing. The defense proceedings were later on taken over by Mr. Dominic Emiru of M/s. Emiru Advocates & Solicitors who filed submissions for the claimant.

The respondent was initially represented by Mr. Patrick Lubwama of Kasirye Byaruhanga & Co. Advocates who filed a reply to the memorandum of claim and cross examined the claimant.

On 9/12/2019 Mr. Ssembuya Dennis (probably from the same firm of Kasirye Byaruhanga & Co. Advocates) appeared for the respondent and suggested an adjournment to enable the parties seek an amicable settlement.

Given the time the matter had spent in court, given that settlement out of court had been tried but had failed and given that the respondent had been given a last adjournment to produce witnesses, the court agreed with the claimant that the respondent's case would close and that between the time of submissions and

Award, the parties could file a settlement. By the time of this Award no settlement had been filed.

ISSUES FOR DETERMINATION

By a joint scheduling memorandum filed on 3/5/2016 the issues agreed upon were:

(i) Whether the claimant's employment was wrongfully or unjustifiably terminated.

(ii) **Whether the claimant was entitled to the remedies sought**.

Evidence

The claimant adduced her evidence via a written witness statement on which she was cross-examined. She testified in chief that she was employed as security warden reporting to one Harriet Ndibayisa as team leader but also reported to the passenger handling superintendent and the chief of security and safety. She denied having attended a hearing on 10/09/2013. According to her, the C.E.O informed her that she was to be terminated for being fraudulent in the presence of 2 other people. She admitted having verified 2 individuals who were "high profile" but who she had to refer to the airline supervisor for final clearance. She found all the documents okay before she referred them to the airline supervisor.

Although the respondent had listed 3 witnesses to defend the case, none was produced before the court. The claimant having closed her case on 3/5/2016, the court on 9/12/2019, more than four years later, refused an adjournment by the respondent having previously granted a number of them to produce witnesses in vain and having eventually granted a last adjournment.

DECISION OF COURT

On perusal of the termination letter dated 16/09/2013, we find that the claimant was terminated effective 11/09/2013 for verifying documents of two Indian passengers who travelled on 10/8/2013 using counterfeit U.K visas. The termination was done under **Article 40 (b) (iv) of the terms and conditions of service**.

On perusal of Article 40 above mentioned, (at pages 4-9 of the respondent's trial bundle) we find that the Article deals with circumstances under which termination

of employment could be effected. Part (a) of Article 40 is about the requisite notice to be given by either party and part (b) is about the reasons that could constitute grounds of termination.

Article 40(b) of the terms and conditions of service provided

"The following reasons shall, inter alia constitute grounds for termination of services by the company

(i) ….
(ii) ….
(iii) ….
(iv) Loss of trust.

Under the **Employment Act, Section 58,** except where a contract of employment is terminated summarily in accordance with **Section 69** or for the reason of attainment of retirement age, no contract of service May be terminated without notice.

Under **Section 66 of the Employment Act** where an employee is accused of a misconduct the employer is required to prefer charges against such employee and give him/her sufficient time to respondent to the charges before he/she appears before an impartial tribunal to defend the charges.

Under **Section 68 of the Employment Act** the employer is required to prove the reason or reasons for dismissal constituting matters genuinely believed at the time of dismissal to have caused the said dismissal.

In the case of **HILDA MUSINGUZI VS STANBIC BANK (U) LTD SCCA 05/2015** after pointing out the right of the employer to terminate the contract by notice as provided for in the contract and as held by BARCAYS BANK UGNADA VS GODFREY MUBIRU SCCA 01/1998, the court went on to state:

"Section 68(1) demonstrates that the words "dismissal" and "termination" are used interchangeably. As already observed the discharge of the appellant was a dismissal and a reason was assigned for her discharge. It is not disputed by both parties that the appellant was first suspended on 2nd November 2007 following a robbery at Bundibugyo service Centre. The

appellant was given notification of a disciplinary hearing which was conducted……..

The respondent was in my view rightly accountable for the loss in the branch. As already stated the right of an employer to terminate a contract cannot be fettered by the court so long as the procedure for termination is followed to ensure that no employee's contract is terminated at the whims of an employer and if it were to happen the employee would be entitled to compensation".

From the above decision there arises a legal proposition that although an employer is entitled to terminate the contract as provided for in the contract of employment, such termination has to conform to **Section 66 and 68 of the Employment Act.** This is because the procedure to follow mentioned in the case above is constituted in these sections of the law.

In the instant case the claimant testified that she was terminated without being given an opportunity to be heard. Although the respondents trial bundle at page 33 has minutes of a disciplinary hearing, the claimant in cross examination denied ever attending such a hearing although she admitted having been called to the office of the C.E.O by one Dorcas, Chief of Security and Safety. According to her, she was called only to be informed that she was fraudulent and she was terminated because of this.

We do not think that the interaction which the claimant had with the C.E.O, Dorcas and Stella in the C.E. O's office amounted to a hearing within the meaning of **Section 66 of the Employment Act.** There is nothing to suggest that the claimant had been informed of the charges and that she had been given sufficient time to prepare. No evidence was led by the respondent to counteract the evidence of the claimant that there was no such a hearing. We are not privy to any reasons as to why those mentioned in the Disciplinary hearing minutes were not able to come to this court and testify.

In the absence of any submissions to the contrary, and in light of the evidence adduced by the claimant, it is clear that the respondent terminated the claimant because of **"loss of trust"** which was precipitated by the alleged negligence of the claimant in failing to detect alleged forgery of UK visas of 2 Indian passengers. It was the submission of counsel for the claimant that in the absence of the visas or the passports alleged to have been counterfeited, the accusation could only be a false accusation, and we entirely agree.

Although **Article 40(b) of the Terms and Conditions of Service** of the respondent company provided for lack of trust as a reason for termination, the same Article could not be invoked unless there was evidence that the conduct of the employee erased trust and confidence from the employer. In the absence of evidence that the visas and passports which the claimant verified were counterfeits and the claimant failed to detect the same, we cannot safely state that the respondent lost confidence and trust in the claimant and therefore properly terminated her.

Furthermore, given the legal proposition spelt out in the **HILDA MUSINGUZI VS STANBIC BANK (U) LTD** Case, earlier mentioned in this Award, such provision as Article 40(b) above mentioned could not by itself be reason for termination of employment without subjecting the claimant to the process spelt out in **Section 66 and 68 of the Employment Act** both of which are a replica of **Article 4 and 7 of the International Labour organization (ILO) Convention No. 158** on termination of employment which was ratified by the Government of Uganda on 18/10/1990.

Article 4 of the I.L.O convention mentioned above provides:

> **"The employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service".**

Article 7 of the same convention provides:

"The employment of a worker shall not be terminated for reasons related to the workers conduct or performance before he is provided an opportunity to defend himself against the allegations made, unless the employer cannot be reasonably expected to provide this opportunity.

We are aware of the legal proposition that the disciplinary hearing need not be on the same standards as a hearing in the courts of law and that a disciplinary meeting need not be a mini court. (**See D.F.C.U vs Donna Kamuli; Appeal; No. 121/2016, Court of Appeal, CAROLINE KARRISA GUMISIRIZA VS HIMA CEMENT LIMITED, HCCS 84/2015).**

However, disciplinary committee meetings are obliged to apply minimum standards of natural justice envisaged under **Article 28 of the Constitution** namely: a person is entitled to details and particulars of the offence allegedly committed, he/she is entitled to ample time to prepare for defense of the allegations and to appear before an impartial tribunal. See: **Ebiju James Vs Umeme Ltd., HCCS 0133/20212 and Nalukenge Mariam Vs Tropical Bank Limited – LDR 238/2017.**

Since in the instant case, the interaction of the claimant with the C.E.O and one Dorcus in the office of the C.E.O did not amount to a disciplinary hearing within the meaning of all the above legal propositions especially Article 28 of the Constitution, it is out finding that the termination of the claimant's employment was wrongful and unjustifiable. The first issue is determined in the positive.

The second and last issue is; **whether the claimant was entitled to the remedies sought.**

We have no doubt in our mind that once a person's employment is declared to have been unlawfully terminated, the legal consequence is that the employer is liable in damages the extent of which is determined by discretion of the court.

By memorandum of claim filed in court the claimant prayed for certain reliefs as here under discussed.

1) **816,000/= as salary for the month of September 2013**

The claimant testified that she was terminated on 10/09/2013 and she handed over on 15/09/2013. The termination letter says that termination was effective 11/09/2013, although it was written on 16/09/2013.

In the circumstances, it is our opinion that the claimant would be entitled to payment for the 1st half of September because she was still considered as employee of the respondent. The entitlement is 408,000/=.

2) **Payment in lieu of notice**

Section 58 of the Employment Act provides that no contract of service shall be terminated unless the employer gave the requisite notice to the employee. The claimant started working with respondent on 9/3/2009 and was terminated in September 2013. She had worked for almost 5 years which granted her a notice of one month. Since no notice was given to her, we declare that she is entitled to one month's salary in lieu of notice which is 816,000/=.

3) **Repatriation**

The prayer for repatriation of 500,000/= is based on the fact that the home of the claimant is Tororo. **Section 39 of the Employment Act** provides

(1) **An employee recruited for employment at a place which is more than one hundred kilometers from his or her home shall have the right to be repatriated at the expense of the employer to the place of engagement in the following cases-**

- **a. On the expiry of the period of service stipulated in the contract;**
- **b. On the termination of the contract by reason of the employee's sickness or accident;**
- **c. On the termination of the contract by agreement between the parties, unless the contract contains a written provision to the contrary; and**
- **d. On the termination of the contract by order of the labour officer, the Industrial Court or any other court.**

(2) **Where the family of the employee has been brought to the place of employment by the employer, the family shall be repatriated at the**

expense of the employer, in the event of the employee's repatriation or death.

(3) **Where an employee has been in employment for at least ten years he or she shall be repatriated at the expense of the employer irrespective of his or her place of recruitment.**

(4) **A labour officer may, notwithstanding anything in this section, exempt an employer from the obligation to repatriate in circumstances where the labour officer is satisfied that it is just and equitable to do so, having regard to any agreement between the parties or in the case of the summary dismissal of an employee for misconduct.**

On internalization of the above section of the law, we form the opinion that repatriation of the claimant by the respondent arises only when

(a) The contract of service has expired.
(b) The termination of the contract is by means of sickness or accident of the employee.
(c) The termination is by agreement between the employer and the employee.
(d) Termination is by order of a court or labour officer.

In the instant case termination of the contract was by the employer before the expiry of contract period. We are afraid these circumstances of a termination are not covered by the above section and therefore the prayer is denied.

4) <u>50% payment of basic pay for 4 complete years</u>

This payment was expressly provided for in the termination letter. It was an entitlement that the respondent bestowed upon the claimant upon termination. We have carefully studied the method used by counsel for the claimant in calculating this entitlement in his submissions and in the absence of any other method of calculation, we entirely agree with the same. We accordingly allow 22,047,741/=.

5) <u>Untaken leave of one month and 6 days</u>

The termination letter once again conceded to the claimant's entitlement to **"annual leave prorated to the date of termination."**

The respondent having admitted this entitlement and having opted not to make any submission as to its calculation, we are constrained to accept the submission of counsel for the claimant that this was untaken leave of 28 days at 1,042,384 which is hereby allowed.

6) **Certificate of service**

Under **Section 61 of the employment Act,** the employer is obliged to provide the employee with a certificate of service at termination of employment. If the employee so requests. Since by this prayer the claimant is requesting for the same, it is so ordered.

7) **General Damages**

On perusal of the appointment letter of the claimant, we find that she was appointed on 9/3/2009 on terms of an open ended period. In our interpretation of this appointment, the respondent intended to continue employing the claimant unless and until there was a legal impediment or by agreement of both parties the employment was ended. We have perused the collective Bargaining agreement exhibited by the respondent in the trial bundle. Article 40-46 of this agreement ought to provide for circumstances of termination but only Article 40 was extracted and exhibited and as already noted termination on the ground of loss of Trust as provided under this Article was not acceptable to this court.

Grant of general damages is always intended to place the aggrieved party in the original position he/she was before the loss or injury complained of. It is compensation of the loss or injury caused by the defendant or respondent. Since there cannot be an exact compensation, it is normally what the court estimates to have been equivalent to the loss or injury incurred by the aggrieved party.

Given that in the instant case the claimant was employed on an open ended contract, the presumption is that she had a number of years to work with the respondent and earn a living if she had not been unlawfully terminates. She earned more than 800,000/= per month and a few other allowances. She had a career that was rudely interrupted.

In the circumstances we think we think 20,000,000/= as the claimant prayed in her witness statement is not unreasonable and so it is granted.

Consequently and in the final analysis we find that the claimant proved her case on the required standard and we make the following declarations:

(1) The claimant's employment was wrongfully unjustifiably and unlawfully terminated.
(2) The claimant shall be paid 408,000/= as salary for the month of September 2013.
(3) The claimant shall be paid 816,000/= as value of payment in lieu of notice.
(4) The claimant is **not** entitled to repatriation allowance.
(5) The claimant shall be entitled to 22,074,741/= as 50% of payment of basic pay, for 4 years.
(6) The claimant shall be entitled to a certificate of service in accordance with **Section 61 of the Employment Act.**
(7) The claimant shall be entitled to 20,000,000/= as general damages.
(8) The claimant shall be entitled to 1,042,364/= in untaken leave.
(9) Because of the manner the respondent conducted the case, costs incurred by the claimant shall be payable by the respondent.
(10) The amounts in 2, 3, 5, 7 and 8 above shall carry an interest rate of 15% per year till payment in full.

Delivered & signed by:

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

PANELISTS

1. Mr. Ebyau Fidel ……..
2. Harriet Mugambwa Nganzi ……..
3. Mr. Matovu Michael ……..

Dated: 14/08/2020