

**THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE NO. 06 OF 2017
[ARISING FROM KCCA/CEN/LC/142/2016]**

BETWEEN

JAMES HIGAYECLAIMANT

VERSUS

ECO BANK (U) LTDRESPONDENT

BEFORE

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

PANELISTS

1. Mr. Ebyau Fidel
2. Mr. F. X. Mubuke
3. Ms. Mugambwa Harriet Nganzi

AWARD

The claimant filed this claim against the respondent for

- (i) A declaration that his termination by the respondent Bank was unfair.
- (ii) An order for compensation/special damages for loss of expected incomes, severance pay, repatriation fees, provident fund employer contributions on earnings, the 13th cheque, National Social Security Fund contributions.
- (iii) Exemplary and General Damages.
- (iv) Costs of the claim.

It was alleged in the memorandum of claim that the claimant having been offered employment on 12/4/2014 by the respondent as bank manager, he was unfairly terminated on 10/09/2015 after he issued instructions to his juniors who did not follow the said instructions thus causing loss to the respondent.

The respondent in a memorandum in reply contended that the claimant was terminated for his negligence in giving vague instructions to his subordinates and delegating his responsibility to a subordinate in a sensitive and big transaction.

The brief facts are that on 29/10/2015, a customer of the bank (who turned out later to be a fraudster) came to a teller in the bank to withdraw USD 40,000 from an account in the names of one Christine Onyango. The teller upon checking the bank system felt uncomfortable paying the customer and referred the case to the claimant as manager. The claimant wrote on the voucher presented to him “**positively identify the client**”. Eventually the customer was paid and since she turned out to be fraudster the claimant was held culpable for negligence and after a disciplinary hearing he was terminated.

ISSUES AGREED

- 1) Whether the claimant was unfairly terminated
- 2) Whether the claimant was entitled to remedies sought.

REPRESENTATION

The claimant was represented by Mr. Oyine Ronald from Tumusiime, Kabega & Co. Advocates while the respondent was represented by Mr. Musiimenta Ferdinand from M/s. Sebalu & Lule Advocates.

EVIDENCE ADDUCED

It was the evidence of the claimant that when one Alice Najjoba, a teller brought to his attention for purposes of approval of a customer’s withdrawal of USD. 40,000 pointing at discrepancies in the identification documents, he instructed her to obtain additional identification by writing on the voucher “**positively identify the client**” but instead she completed the transaction by asking one Pamela Mbabazi, the Customer Service Manager to authorize the transaction on the

system and on the voucher. He was suspended on 10/8/2015 when he was asked to handover to her junior, one Mbabazi who according to him had authorized the transaction and feeling embarrassed on 11/8/2015 as he was invited for a disciplinary hearing he at the same time handed in his resignation which was rejected. He denied having been negligent in performing his duties as Manager. According to him his juniors disregarded his instructions and caused financial loss to the respondent bank.

First respondent witness, one Francis Banalekaki testified as the one who investigated a complaint involving fraudulent withdraw of USD 40,000 from a respondent's customers' account. His investigations revealed that upon the teller's suspicion about the customer she approached one Don Kasule her head who advised to approach either Pamela Mbabazi or the claimant and when she approached Pamela, Pamela advised her to go to the claimant who was the Branch Manager. According to the witness, both claimant and the teller walked together to the till as he advised her to pay upon signing the voucher though not stamping it. In his view, Pamela having been aware that the Manager was involved in verifying the customer, she authorized the transaction. The last witness for the respondent was one Patrick Omallah, who attended and was part of the disciplinary process. She informed court that during the hearing the claimant denied having intended to mislead his team by noting on the voucher "**positively identify**" and that he meant the team should conduct further due diligence. According to her, when the committee evaluated the evidence it found that the claimant's action amounted to neglecting his responsibility as manager by misleading his team with his instructions and delegating his responsibility to his juniors. It recommended that his contract be terminated.

SUBMISSIONS

It was the submission of the claimant, through his legal counsel, that his actions were nether unreasonable/unjustified nor negligent and that his conduct was misconstrued by the respondent making the termination wrong and unlawful. Counsel argued that the disciplinary committee was biased and based its decision on wrong facts. According to him the committee failed to evaluate evidence

when it exonerated the claimant's juniors after finding them culpable as it was clear that Pamela was the one who authorized the transaction and yet the claimant was ordered to handover to her.

Counsel submitted that a higher standard of duty of care was exerted on the claimant on the sole ground of his seniority as Branch Manager in total disregard of the fact that it was squarely within the teller's mandate to conduct proper and due diligence in client verification before payment as per respondent's trial bundle page 18 paragraph 9.

According to counsel, the teller's reference of the voucher to the claimant was not for clarity to pay but for approval and therefore the endorsement of the words "**positively identify client**" could not amount to delegation of duties as Manager by the claimant. Counsel strongly asserted that during investigations the teller confirmed that she misread the claimant's instructions as "**positively identified client**" and this inadvertence and lapse on the teller was wrongly attributed to the claimant culminating into his unfair dismissal (respondent's trial bundle page 19 paragraph 1).

Counsel for the respondent on the other hand, submitted that the claimant as manager of the respondent knew that one of his duties was to limit risk caused by fraudsters to the respondent bank but failed to do this when he failed to carry on due diligence required of him by being ambiguous in his direction to the teller. In counsel's submission the negligence of the claimant facilitated the fraud and was reason enough within the meaning of **Section 68(2) of the Employment Act** to terminate his services. He relied on the case of **Bwengye Herbert Vs Eco Bank, LDC 132/2015**. According to counsel the claimant was invited for a hearing after giving him sufficient time to prepare for his defense and after being heard the committee found him culpable of negligence. Counsel did not agree that the respondent was biased against the claimant since both Alice Najjoba the teller, and Pamela Mbabazi the customer service Manager, were each reprimanded with a final warning.

DECISION OF COURT

There is no doubt that the claimant was terminated because the respondent believed that his actions constituted negligence which caused loss of 40,000US dollars. Just as in the case of **Anyango Beatrice Vs Kenya Commercial Bank LDR No. 325/2015**, the claimant in the instant case was a Bank Manager with power to authorize payments of certain amounts beyond the capacity of a teller. He also had power to defer the payment or refuse to authorize payment in suspicious transactions pending being satisfied that the transaction was not fraudulent.

It is the case for the respondent that by endorsing on the payment voucher “**positively identify**” the claimant approved/authorized payment of the 40,000US dollars to the fraudsters. It was also contended on behalf of the respondent that by such endorsement the claimant was ambiguous and avoiding his responsibility as Manager and instead delegating it to his juniors.

It was the evidence of the first respondent witness, one Francis Banalekaki in re-examination that the transaction could only be authorized by either Pamela or the claimant and that whereas the claimant did a manual authorization, Pamela authorized the transaction on the system of the Bank.

It is very clear from the evidence that after the claimant had endorsed “**positively identify client**” on the voucher, it was not returned to him for another action. It was instead forwarded to Pamela who looked at the bank system and approved the transaction. Unlike in the **Anyango Beatrice case (Supra)** we do not subscribe to the view of the respondent that the claimant in the instant case approved or authorized the payment on the voucher. It was reasonably expected that the teller would bring back to the claimant the voucher for proper authorization. It was also expected that Pamela, being a junior staff to the claimant, after reading “**positively identify client**” would have only approved in the system after consultation with her superior or after herself being satisfied of the genuineness of the transaction since she had authority to approve the same. Pamela is on record during the committee hearing as confessing to having misread the instructions of the claimant. Instead of “**positively identify client**” she read “**positively identified client**” before she authorized the payment on the system. We are aware of the celebrated case of **Barclays Bank of Uganda Vs Godfrey**

Mubiru SCCA No. 1/98 where Hon. Justine Kanyeihamba JSC as he then was, stated:

“Managers in the banking business have to be particularly careful and exercise a duty of care more diligently than Managers of most businesses. This is because banks manage and control money belonging to other people and institutions.....any careless act or omission, if not remedied is likely to cause great losses to the bank and its customers.”

It is our considered opinion that in the instant circumstances, the claimant by endorsing **“positively identify client”** he took reasonable care expected of a manager and the failure of both the teller and the customer service manager to return the voucher to him cannot be visited onto him. We consider the misreading of the claimant’s instructions by the Customer Services Manager as the careless act envisaged in the **Godfrey Mubiru case**. During the committee hearing the said Pamela is said to have relied on the work I.D and not to have asked “for a second one which is needed in such withdraws”

It is our finding that the customer service Manager, one Pamela, with authority to authorize payment is the one who authorized the payment and not the claimant. It was not the implementation of the instructions (as was the case in the **Anyango Beatrice case** earlier cited in this Award) that led to loss of funds but rather the implementation of the misinterpretation of and by Pamela. It was therefore wrong for the respondent to attribute negligence on the part of the claimant for having endorsed on the voucher **“positively identify client”**. We agree with the claimant that the endorsement was an attempt by him to get further identification credentials before passing the payment. Consequently, the fact that Pamela passed the payment before the claimant could ascertain the positive identification could only be a negligent act attributable to Pamela and not to the claimant. We do not accept the submissions of the respondent that the endorsement on the voucher was such an ambiguous instruction that it led to authorization of the payment by Pamela or to careless delegation of duty by the claimant. Instead, we agree with the claimant that the instruction was for the teller to conduct further due diligence and did not amount to authorization.

Accordingly, it is our finding that the act of negligence was not established by the respondent against the claimant and therefore termination of employment on that account was unfair and not called for. The first issue is in the positive.

The second issue is **whether the claimant is entitled to remedies sought.**

(i) **LOST EMPLOYMENT INCOME**

It was the claimant's submission that having been in the banking career for 12 years and having been terminated at only at 38 years he would have had another term of working for 17 years translating in 918,000,000/=. He prayed court to grant him this amount. In the alternative he prayed court to grant him 270,000,000/= which he would have earned up to the date of judgement.

In response to this prayer counsel for the respondent argued that it was speculative and that the claimant having worked with the respondent for barely 1 year from another bank, this court could not be certain as to when he would have moved to another bank or any other business. He relied on **KAPIO SIMON VS CENTENARY BANK LDC NO. 300/2015.**

Whereas it is true that the career of the claimant was cut short by the unlawful termination, we do not think it is appropriate to grant him compensation for what he would have earned in future. We agree with the submission of counsel for the respondent that in accordance with the authority of **KAPIO SIMON VS CENTENARY BANK** (supra) such speculative future loss ought not to be granted and the prayer is hereby denied.

(ii) **SEVERENCE ALLOWANCE**

One of the circumstances mentioned in **Section 87 of the Employment Act** that entitles an employee to severance is when he/she is unfairly dismissed. The claimant having been in employment for more than 6 months is entitled to severance allowance since this court has declared that he was unfairly dismissed. In the absence of a stipulated method of calculation of severance allowance as stipulated in **Section 89 of the Employment Act**, and in accordance with this court's decision in **DONNA**

KAMULI VS DFCU L.D.C. 02/2015 which was upheld in **CIV. APP 121/2016** between the same parties by the Court of Appeal, the claimant's calculation of severance shall be at the rate of his monthly pay per year worked. Since he was employed on 14/4/2014 and terminated on 10/09/2015, he worked for 16 months. The claimant prayed for 3 months' salary which is outside the precincts of **DONNA KAMULI** and therefore not acceptable. He shall be paid 4,500,000/= for the 12 months plus 1,500,000/= for extra 4 months, making a total of 6,000,000/= as severance allowance.

(iii) **REPATRIATION FEES**

There are certain requirements to be fulfilled under **Section 39 of the Employment Act** before repatriation is payable. It was the duty of the claimant to adduce evidence that the requirements thereunder were met. Instead the claimant made a general prayer for repatriation fees and without justification prayed for 4,500,000/=. The prayer is rejected for failure to comply with **Section 39 of the Employment Act**.

(iv) **THE 13TH CHEQUE**

In his own submission counsel for the claimant contended that in accordance with the contract at page 2 of the claimant's trial bundle the claimant was entitled to the 13th cheque but only at the discretion of the respondent. This Court is of the view that being a discretionary entitlement it is not a legal right and therefore the prayer is rejected.

(v) **PROVIDENT FUND EMPLOYER CONTRIBUTION NSSF**

The claim of the claimant seemed to be for the contribution of the employer for the period for which he was expecting to work had he not been terminated. This is a speculative claim which, as already pointed out in this Award, is not recoverable. It is therefore denied.

(vi) **GENERAL DAMAGES**

Having held that the claimant was unfairly dismissed we appreciate, as his legal counsel submitted, that he suffered social inconvenience and financial distress as well as mental and emotional anguish for which he needs atonement in damages. He was earning 4,500,000/= per month and he was only 38 years, having worked for the respondent for over 1 year. We think the 150,000,000/= proposed by his lawyer is excessively high. In our opinion, given his salary and entitlements as well as his position as Manager, a figure of 45,000,000/= as general damages will suffice.

(vii) **EXEMPLARY DAMAGES**

We have not found any extraneous circumstances calling for exemplary damages. This prayer is rejected.

(viii) **INTEREST**

Given the inflationary nature of the currency and given the fact that the respondent may take time to pay the claimant, all the total sum awarded in this Award shall attract interest at the rate of 15% per annum from date of Award till payment in full.

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

Delivered & Signed by:

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

PANELISTS

1. Mr. Ebyau Fidel
2. Mr. F. X. Mubuke
3. Ms. Mugambwa Harriet Nganzi

Dated: 24/09/2020

