

**THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE CLAIM NO. 304 OF 2014
[ARISING FROM HCT-CS-307/2013]**

BETWEEN

LILLIAN BYANSI.....CLAIMANT

VERSUS

ATTORNEY GENERAL.....RESPONDENT

BEFORE

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

PANELISTS

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

AWARD

By contract dated 26/07/2011, the claimant was employed by The Rural Electrification Board of the Ministry of Energy and Mineral Development which represented the Republic of Uganda. The claimant was engaged as Head Procurement and Disposal Unit for a term of 4 years from 1/8/2011.

On 07/12/2011 an email from the Executive Director to one Werikhe and others alleged that there were complaints about the performance of the P.D.U unit and called for a meeting on 8/12/2011 about the same. The same day Mr. Werikhe sent an email to the Executive Director pointing out issues with the P.D.U which included delay of procurement of consultancy services. Other officers sent mails

to Executive Director touching on the delays of the P.D.U. The contracts committee on 8/12/2011 also raised issues concerning the P.D.U.

In the meeting of 8/12/2011, issues were raised and the claimant as Head of the P.D.U was asked to respond by close of business on 12/12/2011. The claimant on 08/12/2011 wrote a response to the issues raised in the email of 7/12/2011 that called for the meeting.

On 14/03/2012, the Executive Director issued a first warning to the claimant about insubordination for her failure to respond to concerns raised in the above meeting. On 19/10/2012, the P.P.D.A (Public procurement and Disposal of Public Assets Authority) issued a circular to the respondent on implementation of compliance with Procurement Performance Measurements System (PPMS) for the 2012/2013 Financial Year.

On 11/3/2013, the PPDA wrote to the respondent showing concern about the respondent's failure to implement the PPMS since no data had been so far put into the system which ought to be done by 30/4/2013.

As a result of the above concerns, the executive Director on 17/4/2013 specifically assigned the duty of data entry into the PPMS to the P.D.O (Procurement Disposal Officer) and gave the officer up to 29/4/2013. This was by letter addressed to the claimant. On the same date, the Executive Director issued a notification of poor performance to the claimant and asked her to explain why she failed to ensure certain things were done and also to show cause by 23/4/2013 why disciplinary action should not be taken against her and to appear on 24/4/2013 in a management meeting to explain her response. This meeting was held on 26/04/2013 at which explanations by the claimant did not satisfy management and she was informed that a decision was to be taken to terminate her service. On the same date she was served with a termination letter.

REPRESENTATION

The claimant was represented by M/s. Julian Nakirija and M/s. Eva Nabitaka of M/s. Lukwago & Co. Advocates while the respondent was represented by Mr. Richard Adrole of the Attorney General's chambers.

Issues agreed

The issues agreeable to both parties for resolution by this court were:

- 1) Whether the claimant's termination was fair and lawful.**
- 2) What remedies are available to the parties.**

EVIDENCE ADDUCED

The claimant by a written witness statement filed in court, testified that four months into her employment with the Rural Electrification Agency (REA) there were anonymous P.D.U issues which were shared with the Executive Director who issued an email concerning the same to various people and because she was copied in she clarified the said issues in a management meeting of 8/12/2011. A deeper verification of the issues could not be done by the 12/12/2011 because they were issues which could only be answered with information from the previous Head of the unit who was not readily available but who later on made a response. According to her, the Executive Director was aware of the challenges beyond the control of the P.P.D.U. She informed Court that she did not attend the management meeting of 26/4/2013 and did not participate in any hearing.

The first respondent witness was one Godfrey Turyahikayo, the Executive Director of REA. He testified that in the course of the claimant's employment issues were raised concerning her competence and efficiency which were brought to her attention. According to him, the claimant was requested at a Senior Management meeting on 8/12/2011 to respond to the issues which the claimant failed to do.

He testified that the claimant deliberately failed to follow P.P.D. A Instructions even when she was reminded by P.P.D.A and as a consequence P. P.D.A refused requests for waivers which adversely affected the operations of REA. He told court that the claimant was notified of her poor performance by letter of 17/4/2013 and was requested to offer an explanation which she did on 24/4/2013 and on 26/4/2013 management having not been satisfied with her explanation took a decision to summarily terminate her. The second respondent witness,

Benon Berna, testified in the same terms as the first witness and his evidence was corroborative of the first respondent witness.

SUBMISSIONS

Counsel for the claimant strongly submitted that the Executive Director had no powers to dismiss the claimant. She argued that her client was employed by the Board and her appointment having been signed by the Chairman of the Board and in the absence of a Board decision to terminate her, her termination was illegal. She relied on **S.1 75/2001** which according to her did not delegate the power of the Board to the Executive Director to dismiss the claimant. She asserted that the argument that S.1.75/2001 and the Human Resource Manual had delegated power to the Executive Director had earlier on been overruled in the case of **Emily mbabazi Vs Rural Electrification Agency, Rural Electrification Board and R. Turyahikayo in Misc. No. 165/2019.** It was her contention that the management committee headed by the Executive Director usurped powers of the Board to discipline and eventually terminate the claimant.

Counsel for the claimant argued that the complainants who included RW1 and RW2 were in the meeting that decided to terminate the claimant which made the process leading to termination pre-meditated and biased. The claimant, according to counsel, could not get justice from the same accusing officers as judges in any hearing. According to her they were bent on getting rid of the claimant that they disregarded her response to P.D.U issues. Counsel argued that the operation of the PPMS systems which was hinged on to implicate the claimant in poor performance was a malfunctioning system and that management was aware of it. It was contended by counsel that the claimant was not allowed a hearing **C/S 66 of the Employment Act.**

In response to the above submissions, counsel for the respondent strongly argued that in accordance with **clauses 3.1 and 8.1. of the Human Resource Manual** of the employer of the claimant, the appointment of staff of the rank of the claimant and their disciplinary control was vested in the Executive Director. According to counsel under these clauses the Board delegated its functions stipulated under **rule 7(1)(i) of the Electricity (Establishment of the Rural Electrification Fund)**

Instrument 2001 which itself was established under the Electricity Act. In his view whereas the authority of **Petmum Pharmacy Limited Versus National Drug Authority, misc. Cause No. 56/2018** was inapplicable to the instant case, the case of **Emily Mbabazi Versus Rural Electrification Agency & Others (supra)** was distinguishable on the basis that in the instant case the power to appoint staff other than the manager and Executive Director is placed under the executive Director which was not the case in the above case.

According to counsel the Disciplinary tribunal relied on materials and evidence which showed that many complaints about the claimant's performance were raised and brought to her attention but they were not remedied. This included the failure of the PPDU unit to comply with entry of data through a system dubbed PPMS which caused the PPDA to deny REA the opportunity to directly procure essential services. In counsel's submission evidence on the record revealed that the poor performance of the claimant was not hinged on malfunctioning of the PPMS as argued by the claimant since the malfunction was only for a day or two as compared to the alleged malfunctioning of the same for a whole 2012/2013 Financial Year. He argued that the respondent accorded time to the claimant to remedy the complaints but to no avail and later on she was accorded a hearing before being terminated.

DECISION OF COURT

Issue No. 1 - **Whether the claimant's termination was fair and lawful.**

It was contended for the claimant that the termination having been effected by the Executive Director and not the Board, it was contrary to **Statutory Instrument no. 75/2001** and therefore unlawful. The case of the respondent was that the Executive Director was delegated power to discipline and consequently dismiss the claimant under **Clause 3.1. of the human Resource manual, November 2006** which provides:

"3.1. Recruitment/Selection Procedure Appointing Authority

All powers to appoint, promote, confirm and discipline staff are vested in the Board. The recruitment of staff to other positions is the responsibility of the Executive Director...”

Clause 8.1. of the same Manual provides:

“8.1. Discipline and its Administration. The disciplinary control of REA staff shall be vested in the board for staff in a managerial position. The Executive Director shall make his recommendation to the Board for their decision. For staff in a non-managerial position the Executive Director is entitled to handle disciplinary and termination matters except otherwise stated below: any person affected shall be given opportunity to be heard by the Board.”

Counsel for the respondent heavily relied on **rule 13(2)(c) of Statutory Instrument 75/2001 and rule 14** thereof in support of the argument that the Executive Director had delegated power of the Board to discipline and terminate staff other than the Executive Director and Managers. We did not have the opportunity to look at these provisions of the law since they were not part of the trial bundles of either the claimant or the respondent. Neither were the said provisions availed to us by the respondent at a later stage as they were being relied upon in submissions.

Be that as it may, from the submissions of counsel for the respondent, it is clear the Board had power of recruitment, discipline and determination of terms and conditions of service of staff. According to him under **Clause 3.1 and 8.1 of the Human Resource Manual**, the Board delegated these functions to the Executive Director and managers. However, our understanding of **clause 3.1 and 8.1 of the Human Resource Manual** is that both are about recruitment of staff on one hand and Discipline and its administration on other hand respectively. The contention in the instant case is not about recruitment but about discipline and termination of the claimant. Therefore, the only relevant clause of the Human Resource Manual is **Clause 8.1.** which deals with discipline. Our understanding of this particular clause is that whereas the Executive Director is entitled to handle disciplinary and termination matters in respect to non-managerial positioned

officers, any affected person is entitled to be given an opportunity to be heard by the Board.

In our interpretation, “**being heard by the Board**” means being heard on appeal. In other words, after the disciplinary and termination process involving an officer in a non-managerial position, such officer, if found culpable by the process initiated and handled by the Executive Director, is entitled to be given an opportunity to appeal to the Board. In the instant case nothing on the record or in the evidence adduced suggests that such opportunity to appear before the Board was availed to the claimant. It seems to us that this opportunity was not availed to the claimant on the basis that the Board had by virtue of the same clause delegated its power to the Executive Director, which in our opinion is not correct. The correct position is that a person in a non-managerial position, if found culpable was by virtue of clause 8.1 of the human Resource Manual entitled to an appeal to the Board. **Was the claimant in a non-managerial position?**

Clause 3.1 as already pointed out provides for the Board’s power to appoint, promote, confirm and discipline staff of REA. It also provides for direct responsibility of the Board to recruit the **Executive Director** and the **Managers** leaving recruitment of other positions as responsibility of the Executive Director.

There is no doubt in our minds that the contract of employment, exhibited by the respondent as **R1 at page I of the respondent’s trial bundle** was signed by the Chairman of the Board and witnessed by the Executive Director as Board Secretary. Given the provisions of clause 3.1 of the Human Resource Manual above mentioned it is clear in our minds that in the absence of an express contrary provision, the claimant was not in a non-managerial position.

We have perused the Human Resource Manual and nothing suggests therein that the claimant was in a non-managerial position, so as not to be exclusively in the jurisdiction of the Board in as far as the disciplinary process is concerned as prescribed in **Clause 8.1 of the Human Resource Manual**. Neither does the same manual prescribe which position is in the non-managerial position. From the evidence adduced it is easily concluded that the claimant reported directly to the Executive Director as head of the department/unit of procurement. It was

incumbent upon the respondent to prove that, having been appointed by the Board in accordance with **Clause 3.1 of the Human Resource Manual**, the claimant was not in fact a manager but deployed in a non-managerial position. However, it is clear from the contract that she was directly appointed by the Board to perform the duties of Head, Procurement and Disposal Unit, which duties she was performing by the time she was terminated. We are therefore not persuaded that **Clause 8.1. of the Human Resource Manual** placed her in the non-managerial position for the purpose of exercise of the disciplinary process by the Executive Director through the principle of delegation to him by the Board.

We are convinced that despite the Executive Director's administration considering her as a non-managerial staff, the claimant was by virtue of her appointment and reporting mechanism, a manager within the meaning of **clause 3.1 and 8.1. of the Human Resources manual**. Consequently, she was subject to disciplinary process by the Board and not the Executive Director. As a result we agree with the submission of counsel for the claimant that the power to terminate the claimant's contract of employment lay with the Board and not the Executive Director. The whole disciplinary process was therefore ultra vires leading to the unlawful termination of the claimant's employment. Without going into the disciplinary process itself, we find that the termination was unlawful and therefore decide the first issue in the negative.

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

(a) **SPECIAL DAMAGES**

It is trite law that in order for a party to succeed in a claim for special damages he/she must not only specifically plead the special damages but he/she must also specifically prove that he /she incurred or is entitled to such damages.

The claimant claimed 227,000,000/= as salary for the remaining 28 months of the contract; 18,018,054 as medical cover increased by 25% per year in accordance with the contract, 2,800,000/= airtime allowance at 100,000/= per month in accordance with the contract; 27,700,000/= as remittances to NSSF and 6,600,000/= for failure to follow the termination procedure. As can clearly be

seen each of the claims mentioned with the exception of the claim relating to termination procedure, refers to what the claimant would have earned if her contract had not been terminated. These are future earnings claimed for no work done for the employer. In the case of **Nassuna Vs Equity Bank LDC No. 06/2014** this court rejected such claims arising from future expectations for reasons that the court could not ascertain if the claimant would have earned the same give the vagaries of life which include death and any other inability that could possibly not allow the claimant to be able to complete the full term of employment. We are still firm in holding the same position. Accordingly, the prayer for such damages is rejected.

The prayer for 6,600,000/ representing four weeks as net wages for failure to follow termination procedure is rejected since it will be covered in general damages. It is our strong opinion that **Section 78 (1) of the Employment Act** which provides for an order of compensation of four weeks' pay for unfair termination is only applicable to Labour Officers who are limited in the quantum of compensation/damages that they may grant to complainants.

(b) **GENERAL DAMAGES**

These generally refer to monetary awards arising from injuries or inconvenience suffered by a successful party in a law suit where such injury or inconvenience is not easily computed or calculated. We are positive that the claimant having been unlawfully terminated from her employment suffered inconvenience of loss of income to support her family and herself. She lost the self-esteem that she obtained from being employed. She was earning 8,050,000/= per month as salary and was entitled to other benefits including gratuity of 25% of her total yearly salary at the end of every completed year. Her contract was expected to expire after 4 years from 1st August 2011, which should have been 1st August 2015 but she was unlawfully terminated on 26/04/2013. Given her terms of employment and the way she was terminated, we think she deserves general damages of 106,000,000/= and so it is ordered.

(c) **SEVEREANCE PAY**

Having been unlawfully terminated, and having served for more than 6 months, the claimant was entitled to severance pay in accordance with **Section 87 of the Employment Act**. In the absence of any arrangement between the respondent and the claimant as to calculation of severance pay in accordance with Section **89 of the Employment Act**, the principle laid down in **Donna Kamuli Vs DFCU Bank L.D.C.002/2015** is that a claimant is entitled to the equivalent of 1 month's pay per year of service. Accordingly having worked for 20 months the claimant will be entitled to 8,050,000/= for the first 12 months and 5,360,000 for the extra 8 months, totaling to 13,410,000/=.

(d) **EXEMPLARY AND ADDITIONAL DAMAGES**

We have not found any extraneous circumstances warranting award of exemplary damages. Neither do we find any justification for additional damages.

(e) **INTEREST**

Because of the inflationary nature of our currency, the above sums shall attract interest of 15% from the date of this Award till payment in full.

In the final analysis, the claim succeeds in the above terms with no order as to costs.

BEFORE

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

PANELISTS

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

Dated: 22/10/2020

