

THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE NO. 79/2018
ARISING FROM 048/2018

DAVID BOSA **CLAIMANT**

VERSUS

POST BANK UGANDA LIMITED **RESPONDENT**

BEFORE:

- 1. THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE**
- 2. THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA**

PANELISTS

- 1.MS. ADRINE NAMARA**
- 2.MS. SUSAN NABIRYE**
- 3. MR. MICHEAL MAVUNWA**

AWARD.

BACKGROUND

When the matter was mentioned on 18/7/2019, Mr. Tendo Kabenge of STEK Advocates represented the Claimant and the Respondent was represented by Mr. Isaac Bakayana of ACADIA Advocates. The issue for resolution was whether the Claimant was entitled to damages and Costs arising out of the labour officers award. The Parties were directed to file submissions which they did and for which Court is grateful.

BRIEF FACTS

According to Counsel for the Claimant, the Claimant was called by desk phone to report to Head Human Resources Officer, interrogated by the Operations Manager Operations and Head Human Resources, about his relationship with his supervisor. On his way out he was handed summons for a disciplinary hearing on the same day and asked to sign acknowledging receipt. He went back to prepare his defence and waited for the said disciplinary hearing on that day in vain. After almost 50 days he was served with a termination notice. The labour officer heard and determined the matter and made a finding that the claimant was unfairly terminated from employment and the same was orchestrated and malicious. The labour officer awarded the claimant remedies under the Employment act and referred the claim for damages to this court for resolution.

SUBMISSIONS

Counsel for the Claimant framed the following issues:

1. Whether the Claimant was entitled to general, special and aggravated damages against the respondent?

2. Whether the claimant is entitled to costs of the labour dispute against the Respondent?

SUBMISSIONS

1. Whether the Claimant was entitled to general, special and aggravated damages against the respondent?

1. General damages

It was the submission of Mr. Kabenge counsel for the Claimant, that damages are a direct probable consequence of the wrongful act complained about, including but are not limited to damages for pain, suffering inconvenience and anticipated future loss. They are compensatory in nature and not a punishment. He asserted that the claimant is entitled to general Damages for the loss of

income and damage he suffered as a result of the unfair and unlawful termination. He relied on **Uganda Commercial Bank Vs Kigozi [2002] 1 EA305** in which court when awarding damages was guided by the economic inconvenience the claimant may have been put through and the extent of the injury suffered.

He submitted that a person who was unfairly and unlawfully terminated such as the instant case was certain to suffer some kind of pain, suffering and damages in the form of shame, embarrassment, psychological torture and loss of reputation and loss of future expectations. He contended that whereas the Labour officer made a finding that the claimant was entitled to a long service award as provided for in the Respondent's Human Resources manual, to date the Respondent has never complied with Section 70(3) (c) of the Employment Act and clause 9.6.2 (b) of the Banks's Human Resources Procedure and Credit Manual and as a result the Claimant has not been able to find alternative gainful employment from which he earn an income.

According to Counsel, the Labour Officer made a finding that the Claimant lost his job as a result of the Respondents hostile and inhumane conduct, which finding has never been challenged by the Respondent, and to date the Respondent has not exhibited remorsefulness nor had it extended any apology to the Claimant thus exacerbating his suffering.. He argued that after unfairly losing his job the Claimant is no longer in position to look after his family yet he served the Respondent for 9 years and 10 months with a clean record and still had reasonable expectation to of continuous service or that his contract would be extended as had earlier been done by the Respondent, but this arrangement was unexpectedly and unlawfully brought to an abrupt end.

He contended further that at the time of his termination the Claimant had an outstanding loan obligation whose interest was increased after he was terminated causing him more suffering, given that he had no means of getting

money to service the loan which was solely based and dependent on salary deductions.

However the Claimant made efforts to mitigate the loss of his employment by establishing a small business in order to provide for his family and raise some income to finance his loan obligations with the Respondent. He asserted that his was evidence of the extent to which he was inconvenienced, hence the justification for an award of general damages. He prayed for an award of Ugx. 445,000,000/- as appropriate to atone for such prolonged disruption, embarrassment and humiliation, compensation for pain and suffering and general inconvenience suffered by the Claimant. He cited **Blanche Byarugaba Kairra vs Africa Field Epidemiology Network LDR No. 131/2018 in which this court awarded Ugx.150,000,000/= for general damages**

In reply Counsel for the Respondent contended that labour officers award was made exparte. He also did not deny that the labour officer referred the prayer for damages and costs to this court. He contended however that being aggrieved by the award the Respondent appealed to this court, which determined the Appeal on a preliminary point of law and dismissed it. According to him the Respondent Further appealed the ruling of this court to the Court of Appeal under Civil Appeal No. 126/2019) which is pending hearing.

He contended that the reference for damages was not properly before this court because the Constitution of Uganda (1995) as amended under Article 126(1) provides that “ All Judicial power is derived from the people and shall be exercised by the courts established under this constitution ... and in conformity with the law...” According to him the Court is duty bound to only consider the provisions of the Constitution and any relevant law. He relied on Julius Rwabinumi Vs Hope Bahimbisomwe SCCA No. 10/2008, and Sam Kuteesa and 2 Ors vs Attorney General (Constitutional Reference No. 54 of 2011) to support of this assertion. According to him the labour officers power to

investigate and dispose of complaints is provided for under section 13 of the Employment Act(2006). He argued that the labour officer's power are to investigate the complaint and any defence put forward ... and to settle or attempt to settle any complaint by way of conciliation, arbitration, adjudication or such procedure as he or she thinks appropriate...he also cited section93 which empowers the labour officer to handle infringements of rights granted under the employment Act but there is no power for the labour officer to refer the complaint to this court not even under section93(7). According to him section 5 of the LAGASA only provides for the reference of matters resolved as provided under section 4 (a) and (c) which provide for mediation and conciliation, therefore there is no provision for a referral. He insisted that there is no law that permits a labour officer to hear and determine parts of a labour disputes and refer a residuary part of it to the court, therefore the reference is not properly before this court.

As to whether the claimant was entitled to the damages sought, he insisted that all power exercisable by any authority in Uganda must be derived from the Constitution and the applicable laws. He insisted that the section 3 of the Employment Act explicitly provides that it applies to all employees employed by an employer, employed under a contract of service. Section 93(3) empowers the labour officer to order a party to comply with the provisions of this Act and in accordance with the provisions, make the aggrieved party whole.

According to him, the Act provides for remedy's for breaches and empowers the labour officer to award compensation as specified under section 78. In his opinion the labour officer's powers to award any remedy are limited to the Act, except for section 71(5) which is the preserve of the Court, therefore the labour officer has no power to make an award for damages and therefore the claimant is not entitled to damages. He prayed the claim is rejected.

In rejoinder Counsel for the Claimant refuted the respondents assertion and insisted that where a labour officer believes that an employee deserves more remedies than what he is empowered to grant under section 78 he has the option to refer the matter to the Industrial Court for determination. In the instant case he stated that he had no jurisdiction to make an award on of general damages which he referred to the court for determination in accordance with regulation 3 of the Labour Disputes (Arbitration and Settlement) (Industrial Court Procedure) rules 2012. He also cites **Netis Uganda vs Charles Walakira, LD No.22/2016**, this court was of the considered opinion that in the event that the labour officer considers that the compensation deserved by a dismissed employee is beyond what he or she is empowered to give under section 78, he or she has the option to refer the issue to this court. He also cited **Jessica Namayanja Kisseka Vs St. Raphael of St Francis Hospital LDA No.019/2015** and **Action Aid Uganda vs David Tibekinga LDA No. 028/2016** to the same effect.

DECISION OF COURT

We shall resolve the Respondent's contention before we consider the issue whether the Claimant is entitled to General damages.

The contention as we understand it is that the Labour officer is not empowered by the law to refer to this court any issue that is not prescribed under the Act. The argument that the Labor officer can only refer matters in accordance with section 5 of the Labour Disputes(Arbitration and Settlement) Act, 2006 and Regulation 3 of the Labour Disputes(Arbitration and Settlement)(Industrial Court Procedure) Rules 2012, cannot hold given section 93 of the Employment Act.

As submitted by Counsel for the Respondent indeed, the Employment Act applies to all employees employed by an employer under a contract of service

except for family members /dependent relatives employed in a family undertaking and The Uganda Peoples Defence Forces other than their civilian employees. Therefore the Employment Act is the primary law that establishes the rights of such employee and remedies for the breach of these rights.

The Act under Section 8 establishes the Directorate of Labour acting under the Authority of the Minister as well as the local authorities under the local government Act. Although Section 9 provides for the appointment of a commissioner as the officer responsible for the implementation of the Act, it states under 9(3), that he shall have the powers of a labour officer further establishes the

Section 13 of the Act, prescribes the power of the labour officer to among others

“(a) Investigate the complaint and any defence put forward to such a complaint and to settle or attempt to settle any complaint made by way of conciliation, arbitration, adjudication or such other procedure as he or she thinks appropriate and acceptable to the parties to the complaint with the involvement of nay Labour Union ...

(2) The labour officer shall, while exercising the powers under paragraph (a) state the reasons for his or her decision on a complaint ...”

Section 93(3) of the Employment Act, empowers the labour officer to order a party to comply with the provisions of this Act and in accordance with the its provisions, make the aggrieved party whole.

Therefore as already decided in **Netis Vs Walakira(supra)** and all subsequent decisions that where the labour officer believes that the dismissed employee deserved more than he was empowered to award under the Act he had the option to refer the matter to this court for determination. It is our considered opinion that intention of such a reference is to actually **make the aggrieved party whole!** Contrary to what counsel for the Respondent is arguing nothing in the Act precludes the Labour officer making such a reference.

We do not see how the reference violates the Construction given Article 126(2) (e), which provides that

“(2) in adjudicating cases of both a civil and criminal nature the courts shall, subject to the law , apply the following principles-

(e) Substantive justice shall be administered without undue regard to technicalities.”

In the instant case one of the prayers placed before the labour officer for resolution was an award of damages for which he stated he had no jurisdiction to consider and he referred it to this court for determination.

The labour officer recognized he could only award what was prescribed under Section 78 that is compensation. We believe that he made the reference for the determination of Damages because he believed that the Claimant deserved more than he could award under section 78. As already stated although the law does not explicitly state that such a reference should be made, nothing in the law precludes the labour officer from making it and in the interest of substantive

Justice as provided under Article 126(2) (e), his court is empowered to make an award of damages, therefore the reference is properly before this court.

Was the claimant entitled to an award of damages?

Counsel for the Respondent cited the Blacks law dictionary and Robert Coussens vs Attorney general to the effect that damages that the law presumes follow from the type of wrong complained of and the object of an award of damages is to give the plaintiff compensation for the damages, loss or injury he or she has suffered...”

He argued that the Respondent had preferred an appeal against the decision of the court and the labour officer and it remains pending before the Court as appeal 126/2019 which according to him was filed on 21/5/2019 so according to him the issue of whether there was an unfair termination is yet to be finally determined.

He also cited *Uganda vs Betty Tinkamanyire SCCA No. 12 of 2007* in confirming to the position of the law in *Barclay Bank of Uganda vs Godfrey Mubiru CA No. 1 of 1998*, for the legal proposition that damages were limited to the notice period therefore the claimant if any should be awarded damages of 2 month wages.

DECISION OF COURT

The contention that the Respondent already filed an appeal in the Court of Appeal cannot stand because Counsel did not attach a copy of the Notice of Appeal and the Actual Appeal which was purportedly filed in the Court of Appeal.

Relying on **VIRES VS NATIONAL DOCK LABOUR BOARD (1958) 1 QB 658** cited with approval in **STANBIC BANK VS KAKOOZA MUTALE C.A No. 2 OF 2010**, It was held that; *“It has long been settled that if a man employed under a contract of personal services is wrongfully dismissed he has no claim under the contract after repudiation. His only claim is for damages for having been prevented from earning his remuneration. His sole money claim is for damages and he must do everything he reasonably can to mitigate them.”*

This court takes cognizance that the suffering that arises out of the unlawful termination and employee and has since established in many cases, that where an employee was unlawfully dismissed, he or she shall be entitled to General damages and the damages shall not be limited by the notice period, but shall be computed at the discretion of court, based on the merits of each case.

It is trite that General Damages are intended to bring an aggrieved party to as near as possible in monetary terms to a position as he or she was in before the injury occasioned to him or her by the respondent occurred. They are therefore compensatory in nature.

Therefore the Labour officer having established that the Claimant was unlawfully terminated, he is entitled to an award of general Damages. Although

he referred to the case of **Blanche Byarugaba**(supra), in which this court awarded ugx 150,000,000/- in support of his prayer for an award of Ugx. 455,000,000/- **Byarugaba** is distinguishable. Whereas the Claimant in in **Byarugaba**, was earning over USD 4000, by the time of her termination, the claimant in the instant case was earning Ugx. 1,200,000/- by the time of his termination at the age of 36 years. He had served the respondent for 9 year and 10 months. The presumption that he would have worked for another 24 years cannot hold given that there is a possibility that the contract could have terminated by circumstances such death, resignation, insolvency of the Respondent among others therefore it is speculative and therefore cannot be considered.

Therefore the labour officer having found that the claimant's termination was both unfair and unlawful both substantively and procedurally, because it was done without a hearing and it did not establish any proof of misconduct and given that the claimant had served the respondent for 9 years and 10 months, earning Ugx.1,200,000/- per month, however given that he had been given other remedies under the Employment Act we think an award of Ugx.35,000,000/, is sufficient as General damages.

2.Aggravated Damages

Counsel for the Claimant submitted that the labour officer made a finding that the Respondent's actions were egregious, high handed and arrogant and it

terminated him without a hearing and subsequently increased the interest on the salary, which was malicious, uncompassionate, callous and indifferent, yet the Claimant served the respondent for 9 years and 10 months without any scandal. He cited **Obongo vs Kisumu Council [1971] EA at page 96** in which Spry J stated what constitutes aggravated damages that if it is well established that when damages are at large and a court is making a general award, it may take into account factors such as malice or arrogance on the part of the defendant and the injury suffered by the plaintiff as an example causing him humiliation or distress. He also asserted that the court may award more than nominal measure of damages by taking into account the motives or conduct of the defendant which may be either aggravated damages which are compensatory in that they compensate the victim of the wrong and the mental distress suffered. Relying on **Bank of Uganda Vs Betty Tinkamanyire C.A No. 12/2007**, in which Kanyeihamba JSC as he then was awarded the plaintiff Ugx. 100,000,000/=, as aggravated damages because the appellants actions were not only unlawful but degrading and callous. He prayed for an award of Ugx. 200,000,000/= as aggravated damages.

In reply Counsel for the Respondent Asserted that nothing in the Labour officer's decision and letter to the Respondent indicated that the Respondent was malicious given the holding in **Fredrick J.K Zaabwe v Orient Bank and 5 others CA No. 4 of 2006**.

DECISION OF COURT

A perusal of the labour officers award did not show any submissions or argumentations relating to aggravating circumstances. It is our considered opinion that aggravating circumstances have to be proved and submissions of counsel are not sufficient. The fact that he was terminated without a hearing and with insufficient notice has already been addressed by the grant of general damages. We have not found any basis to award aggravated damages, therefore they are denied.

He also prayed for exemplary damages which as we did for aggravated damages were not proved. They are therefore denied.

Costs of the suit

No order as to costs is awarded.

In conclusion the claim partially succeeds. The Claimant is awarded General Damages of Ugx. 35,000,000/-- with interest of 15% per annum from the date of the award until payment in full. No order as to costs is made.

Delivered and signed by:

1. THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE

2. THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA

PANELISTS

1. MS. ADRINE NAMARA

2.MS. SUSAN NABIRYE

3. MR. MICHEAL MATOVU

DATE: 11TH MARCH 2020