

**THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE CLAIM NO. 304 OF 2014
(ARISING FROM HCT-CS-208 OF 2013)**

MBABAZI MADINA BAKER::CLAIMANT

VS.

UMEME LIMITED:: RESPONDENT

BEFORE:

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

PANELISTS

1. Mr. Rwomushana Reuben Jack
2. Mr. Wanyama Anthony
3. Ms. Rose Gidongo

AWARD

Brief facts

The claimant filed this claim alleging that she was unlawfully terminated from her employment as a result of which she suffered general and exemplary damages which she sought this court to compensate her with interest.

The claimant was employed as a customer care Executive and on 1/12/2012 one customer in the names of Peter Kinyera came to be served by her. The customer had been disconnected off power and on presenting payment the claimant did not have change and she advised the customer to keep off the line as she received money from others which could include change. This prompted a verbal exchange between the two leading to an intervention of two other employees in an attempt

to cool down tempers. Later on one of them came with changed money but the claimant still refused to serve him, leading to the said employee contacting another customer through whom the said Kinyera was served. Sometime later, a disciplinary hearing was arranged and after finding the claimant culpable the respondent terminated her services.

REPRESENTATIONS:

The claimant was represented by Ms. Atulinda M. of M/S Kabega & Bukenya Advocates while the respondent was represented by Mr. Ferdinand Musiimenta of M/S Sebalu & Lule Advocates.

Agreed issues rising from the above facts are:

- (a) Whether the dismissal was lawful**
- (b) Whether the claimant was entitled to the remedies sought.**

Evidence adduced

For the claimant, evidence was adduced from herself alone while for the respondent evidence was adduced from two witnesses; One Daniel Tumuhimbise and one Aerons Tibeindwa.

In a written statement on oath, the claimant informed court that when she asked the complainant to take a seat and wait for his change he did not oblige but instead started threatening her prompting one Richard and one Peace to take him away from the till. After 4 or 5 days she was asked to make a statement which she did and on 18/2/2013 she appeared before a disciplinary committee consisting of 4 members. At the hearing she explained that she could not receive the customer's money without his change upon which she was summarily terminated.

For the respondent, one Daniel Tumuhimbise in his written witness statement informed court that at the time of the incident he was the Manager, customer Relations. The respondent on 3/12/2012 received a complaint that the claimant had harassed, embarrassed and unfairly treated a customer on 1/12/2012.

The claimant was asked to give an explanation which she did in the form of **Exhibit R4**. She was invited for a hearing at which she denied the charge. The committee established that the claimant's actions amounted to a breach of customer service as a core value of the respondent which violated **Regulation 40(1) and 42(1) of the Employee Manual** and recommended termination of contract.

The second respondent witness in his written witness statement informed court that he carried out investigations in the complaint by interviewing the claimant as well as three other witnesses and the claimant's supervisor. According to him attempts by one Ikungu Charles to pay on behalf of the claimant failed until an unidentified customer offered to pay on behalf of the complainant without the claimant's knowledge. He recommended disciplinary action.

Submissions

Counsel for the claimant submitted that the claimant's employment was terminated illegally because the respondent did not consider the number of customers served that day, they did not investigate the allegations of the illegal disconnection by the complainant and they did not consider other options available to discipline the claimant in the circumstances. Counsel strongly argued that the claimant was **"willing to serve the customer upon the issues raised by the client being addressed by her supervisor"** and that **"having served more than one hundred customers on the said day....the respondent ought to have put the said issues in consideration before the decision to find the claimant guilty for misconduct..."** According to counsel the act by the claimant did not amount to misconduct and her dismissal was wrongful with no justifiable reason. In her submission, none of the four persons sitting at the hearing witnessed the alleged harassment and the complainant himself was not interviewed for a statement. She insisted that the claimant's explanation as regards the conduct of the complainant was ignored and the team that investigated the claims was not part of the hearing rendering the hearing unfair.

Counsel for the respondent on the other hand submitted that the respondent had justifiable reason to dismiss the claimant as provided under **Section 68 of the Employment Act** and that the reason was that the claimant fundamentally

breached her contract of service by her refusal to serve the respondent's customer. Counsel insisted that as a customer care executive the claimant was the face of the company who was to promote the image of the respondent by serving its customers. It was his submission that the claimant's admission and apology for having kept the customer waiting in expectation of her supervisor entitled the respondent to dismiss her as was held in **Kabojja International School Vs Godfrey Owoyesigire LDA 003/2013**. Counsel for the respondent further submitted that the claimant was afforded a fair hearing as provided for under **Section 66 of the Employment Act** and as expounded in the cases of **Alex Methodias Bwayo Vs DFCU Bank, HCCS 78/2012** and **Isaac Nsereko Vs MTN HCCS 156/2012**. He argued that the claimant was given a notification of hearing on 12/2/2013 for the hearing of 18/2/2013 and that the allegations were stated in the notification. In his submission, non-attendance of hearing by the complainant would not jeopardize the proceedings given that his written complaint was corroborated by the evidence of an eye witness and the claimant herself. After all, he argued, the authority of **DFCU Bank Vs Donna Kamuli** held that hearing contemplated under **Section 66 of the Employment Act** did not require the employer to hold a mini court.

Decision of Court:

The evidence on the court record reveals that the claimant was employed as a customer care executive by an offer of appointment dated 15/6/2011. It is not contested that while she worked at the till one customer, having been disconnected came to pay up the bill so as to be reconnected to power. We agree with the testimony of the claimant that this customer was in high gear complaining about the disconnection and may have been even quarreling over the said disconnection. The charge against the claimant was harassing/refusal to serve a Umeme customer even when he tried to use a third party to pay his bills.

In her defense before the disciplinary committee the claimant admitted having refused to accept payment of the bill by a security guard because according to her she had to preserve the integrity of the respondent company by guarding against complaints by other customers at seeing her serve the security guard.

In cross-examination the claimant admitted that a security guard came to pay the bill but she refused to take the money.

Whereas we appreciate the fact that the customer was furious over disconnection of power, we do not appreciate the reason for the claimant's refusal to serve him. As a customer care executive she was in a better position to know how to handle such furious customers and the better position was not to refuse to serve him.

We do not accept the submission of counsel for the claimant that her client had served more than one hundred customers and that this fact should have been taken into consideration by the disciplinary committee. The evidence on the record is very clear that the complainant customer was the third in the line and the claimant had just opened the till and served only two customers. The customer/complainant having been one of the first three customers in the line to be served and the claimant having failed to serve him because of non-availability of change, it was not acceptable that she would subsequently refuse to serve him or a security Guard on his behalf because of preservation of the integrity of the company and avoidance of complaints from other customers in the line. We form the opinion that she refused to serve the customer because he appeared quarrelsome and argumentative. We do not accept the contention of counsel for the claimant that the non-appearance of the complainant and other witnesses before the disciplinary committee rendered the proceedings unfairly conducted. This is because the gist of the charge was the claimant's harassment/refusal to serve a customer.

Granted that the testimony of an eye witness and that of the complainant would have proved whether the claimant harassed the customer, but evidence is clear that the claimant admitted having refused to serve the customer. Therefore to the extent that part of the charge was harassing the customer, we agree with counsel for the claimant that evidence was lacking to prove that the claimant harassed the customer, although we are convinced that there were unpleasant exchanges between the two personalities. Counsel for the respondent argued strongly that the conduct of the respondent fundamentally breached her contract of service. According to counsel (and to the claimant in cross-examination) it was of utter

importance that cash collections were made since this was the only source of income for the respondent. According to counsel refusal to collect the same amounted to fundamental breach.

The claimant was terminated for breach of **“Customer service as a core value, regulations 40 paragraph one (1), 42 paragraph one (1) of the employee manual....”**

The notification of hearing dated 12/2/2013 inviting the claimant for a hearing on 1/12/2013 stated (among others);

“Reference is made to your statement dated 28th January 2013 regarding the alleged harassment/refusal to serve a Umeme customer Mr. Julius Peter Kinyera even when he tried to use a third party to pay his electricity reconnection fee

The above act caused embarrassment to the company and if proven a violation of Regulation 40 is paragraph one (1) and regulation 42 paragraph (1) of the Employee Manual.....”

Section 69 (3) of the employment Act provides

“An employer is entitled to dismiss summarily and the dismissal shall be termed justified where the employee has, by his or her conduct indicated that he or she has fundamentally broken his or her obligations arising under the contract of service.”

Fundamental breach in our opinion will be occasioned when a certain conduct by the employee in given circumstances is in direct conflict with the core duties of such employee under the contract of service, or in direct conflict with the main purpose for which the employer exists. Whether a breach is fundamental or not therefore will always depend on the nature of the contract and the circumstances under which the employee committed the breach.

Chapter 7, Regulation 40(1) of Umeme Regulations provided to the court by the claimant in her **trial bundle at page 139** provides

“Regulation 40, the role of the employee

- (1) Employees of the company are providers of a service and are required to give service to customers and the general public as a duty”.**

Regulation 42, paragraph (1) provides

“Regulation 42, Business principles – improper conduct

- (1) Improper conduct is classified as conduct that may raise questions as to the company’s honest, integrity, impartiality or reputation or activities that could cause embarrassment to the company or damage to its reputation. This includes any activity, conduct or transaction that could create an appearance of unethical, illegal or improper business conduct.....”**

In the instant case,

RW2, Daniel Tumuhimbise, a customer relationship manager of the respondent informed court in cross-examination that the respondent had no personnel designated as cashiers but that being cashier was one of the duties of a customer care executive. The claimant herself in cross-examination testified that her duties were to serve customers on **complaints or payments**. She also stated that if clients did not pay their bills the company would not run. We consider this evidence as conceding to the fact that collections or receipts of payment by the respondent company from its customers was a crucial activity by any employee deployed for the purpose.

Customer care in our opinion has or ought to have inherent characteristics of control of anger, resilience and proper care about customer’s needs. It is failure to exhibit these characteristics (and others in the same class) that could lead an employee in conflict with the above cited regulations. The claimant as a customer care executive, in our view failed to exhibit the above characteristics when faced with a customer who was angry from having been disconnected from electric power but who wanted to pay his bills and get a reconnection.

By refusing to receive payment, having been deployed to do exactly that, the claimant fundamentally breached her contract of service especially when a third party was involved in an attempt to lure her to receive the said payment. We agree with counsel for the respondent that in spite of the claimant and other witnesses' failure to personally appear before the disciplinary committee, there was sufficient evidence especially from the claimant herself to satisfy the committee on a balance of probability that the claimant had fundamentally breached her contract of service. We reject the submission of counsel for the claimant that her client should have been given a lighter reprimand. This is because it is in the discretion of the Employer after proof of misconduct as to what penalty to impose which may include written reprimand, suspension, demotion, dismissal or termination.

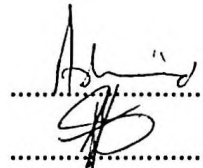
According we find that the claimant has failed to make a case for unlawful dismissal and we hold that she was lawfully terminated.

The second issue relates to **damages**.

Since the claimant has failed to establish that she was unlawfully dismissed, no damages arise. Consequently the claim is dismissed with no orders as to costs.

BEFORE:

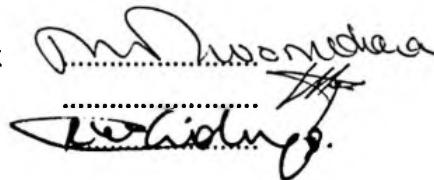
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Dated: 28/04/2020