THE REPUBLIC OF UGANDA

IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA

LABOUR DISPUTE CLAIM NO. 049 OF 2015

(ARISING FROM LABOUR HCT-CS-108/2009)

SAM OKAO……..……..……..……...CLAIMANT

VERSUS

KAMPALA PHARMACEUTICAL INDUSTRIES (1996)LIMITED….....RESPONDENT

BEFORE

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

PANELISTS

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

AWARD

Through an amended memorandum of claim the complainant complained that having been employed by the respondent since 1996, he was on 31/1/2008 unlawfully dismissed without a fair hearing, and that the dismissal was a reactionary retribution to his claim for medical compensation for injuries sustained while on duty in 2004.

In answer to the above complaint, the respondent through an amended statement of defence stated that while on duty as security guard, the claimant on several occasions connived with other employees to take out the respondent's property without authorization. The respondent also stated that the claimant was involved in an attempt to sell the respondent's metal scraps and drums when he negotiated with one of the hired security guards. According to the respondent, the claimant having been previously

warned, he was subsequently invited for a hearing where he made his defence and later a decision to terminate him was made.

Issues for determination

The parties did not file a joint scheduling memorandum and therefore there were no agreed issues filed. We, however, find the issues stated by the claimant in submission sufficient to dispose of the claim and these are.

1) **Whether the claimant was wrongfully/unlawfully dismissed.**
2) **Remedies, if any**.

REPRESENTATIONS

The claimant was initially represented by Mr. Bernard Banturaki of Lugolobi Associated Advocates but later on the claimant engaged Mr.Otto Gulamali whose firm of Advocates is not reflected on the file. The respondent was represented by Mr. Isaac Walukaga of M/s MAKS Advocates

Evidence adduced

Each if the parties adduced evidence from one witness. The claimant as the only witness testified in chief via a written witness statement that on 17/12/2007 he received a note from the Human Resource Manager stating he should not report to work until 21/12/2007. On 21/12/2007 when he reported the Human Resource Manager informed him that he was accused of allowing people to get out of the premises with company property without a gate pass and conniving with people to sell company scrap. Eventually on 21/01/2008 in a meeting with the Human Resource Manager and her Assistant together with one Mr. Owii Patrick, he denied the allegations. He was expected to meet with the General Manager but instead on 31/1/2008 as he waited to meet the General Manager, he was served with a dismissal letter.

The respondent adduced evidence for one Ademson Consolata who at the time of the incident was the respondent's Head of legal department. She testified that the claimant connived with other employees to take out the respondent's property without authorization. She gave as examples one Mugisha Aaron

who on 14/12/2007 was allowed to take out gunny bags and one Henry Muwanika who confirmed that the claimant allowed someone take out 2 bottles of medicine and also saw the claimant's wife take out 2 plain sheets from the premises without authorization. The witness informed court that the claimant was asked to respond to the allegations which he did in writing and he attended a hearing where he was asked to respond to the allegations in the presence of his co-security guards who stated that the claimant had been involved in acts of misconduct.

According to the witness, the claimant was dismissed pursuant to Article 6(4) (V) of the terms and conditions of service at page 26 of the trial bundle.

SUBMISSIONS

Relying on **Section 66 of the employees Act, Ebiju James Vs Umeme Ltd Civil Suit 0133/2012** and other decided cases, counsel for the claimant argued that his client's right to a fair hearing was violated rendering his dismissal unlawful. He contended that RW1, Ademson Consolata and one Magandazi having been involved in investigations were not capable to sit in judgement against the claimant. It was counsel's contention that the letter of suspension should have included the allegation of connivance and theft as alleged and that it should have invited the claimant for a disciplinary hearing.

In reply to the above submissions, counsel for the respondent contended that the claimant was accorded a hearing at which he presented his defence. He relied on the testimony of RW1 who also testified to the fact that the claimant was involved in various acts of misconduct. He also relied on the testimony of the claimant himself who testified and confirmed in cross examination that he recorded a statement in defense of the allegations before he was terminated. Counsel contended that the claimant was given opportunity to cross-examine the witnesses. Relying on **Benon H. Kanyangoga & Others Vs Bank of Uganda LDC No. 80/2014,** counsel reiterated that a disciplinary committee need not follow the procedure as applied in courts of law but is required to merely give opportunity to the employee to defend himself/herself without the Standards of a court of law. He contended that the claimant as per the termination – letter was found to be dishonest and fraudulent and consequently the termination was in accordance with the law.

Decision of court

A right to be heard before condemnation by any Civil Authority or before conviction by a criminal court is a sacrosanct right as elaborated by **Article 28 of the Constitution** of the Republic of Uganda.

In the case of **Ebiju James Vs Umeme Civil Suit 0133/2012** Lady Justice Elizabeth (High court Judge as she then was), pointed out the following characteristics of a fair hearing:

1) Notice of allegations against the plaintiff with sufficient time for the plaintiff to prepare for a defence.

2) The notice to set out clearly what the allegations against the plaintiff and his rights at the oral hearing. Such rights to include the right to respond to the allegations against him orally and/or in writing, the right to be accompanied at the hearing and the right to cross-examine the defendant's witnesses or call his own witnesses.

3) The plaintiff to be given a chance to appear and present his case before an impartial committee in charge of disciplinary issues of the defendent.

In the instant case there were allegations from one Ogwel, one Aaron Mugisha and one Henry Muwanika, that the claimant had been or was involved in acts of misconduct. These allegations were in form of statements exhibited by the respondent as **RX1, RX2, and RX3**, dated 19/12/2007, 21/12/2007 and 20/12/2007 respectively. The claimant was directed not to come to office via what can be correctly described as a chit dated 13/12/2007 which stated:

"Dear Sam,

This is to request you to stay home and report 21/12/2007 3.00pm.

Thanks consulate."

This chit is the document referred to by the respondent as a suspension. Suspension of an employee is provided for under **Section 63 of the Employment Act** in the following terms:

"63 Suspension

(1) Whenever an employer is conducting an inquiry which he or she has reason to believe may reveal a cause for dismissal of an employee, the employer may suspend that employee with half pay."

Counsel for the claimant submitted that the suspension was illegal on the ground that there was no inquiry at all at the time and that the claimant was not paid half pay.

Although the section does not prescribe the nature and manner of the suspension, it is expected that the employee is informed at the time of suspension the reason for suspending him or her. This is the reason that the section pre-empts the beginning of an investigation or an inquiry before the suspension so that as the inquiry begins and progresses the employee is in the know of the reason of suspension for purposes of preparing for possible disciplinary proceedings. The Section requires that the subject of the investigation be sufficient to reveal a cause for dismissal of on employee otherwise the claimant will have a right under **Section 64 of the Employment Act** to lodge a complaint against imposition of the suspension. This section of the law provides:

"64 Complaint by employee

(1) Where an employee believes that an employer was not justified in imposing a disciplinary penalty on him or her, or in imposing a suspension with half pay, the employee may, within a period of four weeks after the imposition of the penalty or suspension make a written or oral complaint to a labour officer"

However, we do not accept the contention of counsel for the claimant that the mere fact that there was no formal inquiry either at the beginning or during the suspension makes the suspension illegal. It is our considered opinion that it is the reason for the suspension and not the detail of the allegations in the suspension that is required. Whereas it is necessary to clearly spell out the allegations in the notice to the claimant to attend a disciplinary hearing so as to enable him or her prepare for his/her defence, a simple reason without necessarily a detail will suffice for a suspension. We are positive that whether or not to conduct a formal inquiry that results into a report is always the discretion of the employer depending on the nature of the accusation and the degree required to prove it. A suspension letter therefore need not disclose that inquiries are in progress or that they have begun, as long as a reason for the suspension is disclosed.

In view of the above discussion it is our finding that the chit of 13/12/2007 above mentioned did not satisfy the requirement of a suspension for not revealing the reason for suspension as envisaged under **Section 63(1) of the Employment Act.** The chit was, in our view, a mere instruction of the employer to the claimant not to come to work as opposed to a suspension. The so called suspension was written on 13/12/2007, when the earliest statement containing allegations was on 19/12/2007, 6 days after the alleged suspension which in our view was unprecedented since the basis of a suspension must always be the allegations. The statement of the claimant made on 21/12/2007 exhibited by the respondent as

RX2 was not a statement made during a disciplinary hearing. It was a statement made by the claimant on the date he was made aware of the allegations contained in the statements made by his co-workers after he was asked not to report to work. The evidence used against the claimant was evidence of statements made by one Ogwell Muc, One Aaron Mugisha and one Henry Muwanika not at the disciplinary committee hearing. On perusal of the disciplinary report marked **RX10 at page 14 of the respondent's trial bundle** we cannot help but state that this did not constitute a hearing at all, let alone a fair hearing. It is in a reported speech summarizing the allegations as put by workmates of the claimant in their statements made after he was suspended. Summary of allegations could not by any stretch of imagination be said to be a hearing of the witnesses as listed in the same disciplinary report. It was not a summary of the evidence of the witnesses but a summary of the allegations.

The same disciplinary report at the bottom states the charge and indicates that the clamant should be **"charged of connivance and attempted theft**" and provides for the penalty as summary dismissal. It is not clear from the report whether the claimant was later on charged, heard and summarily dismissed. From the heading of the report, it is clear that the respondent without formally charging the claimant, and without allowing him sufficient time to formally defend the charges in a formal disciplinary committee hearing, merely relied on information given by colleagues of the claimant before he was suspended, to convict and dismiss him summarily.

We do not believe the evidence of the respondent that there was a disciplinary hearing attended by the claimant where the claimant gave evidence and was cross-examined. The disciplinary report is in our considered opinion devoid of showing that any hearing took place as it only states the allegations without showing any signs of a hearing or a sign that after the hearing a decision was taken or recommended to be taken after impartially considering the defense of the claimant. The best we can say about the report is that it was an investigation report and not a disciplinary hearing report. We accordingly find that every tenet of a fair hearing as described in the above case of **Ebiju James vs Umeme** was breached by the respondent. The case of **Benon Kanyangoga vs Bank of Uganda(supra**) relied upon by counsel for the respondent cannot apply. The Court only applies the legal proposition that a disciplinary tribunal is not an equal to a Court of law only to the extent that the tribunal's application of the principles enunciated in the **Ebiju James case** is not measured on the same level as a Court of law. It follows that the disciplinary committee is legally bound to a certain

extent to adhere to the said principles. The committee in the instant case having totally breached the said principles, we find that the claimant was unfairly and illegally dismissed.

The next issue is: **whether the claimant is entitled to reliefs claimed**.

The claimant in his memorandum of claim prayed for the following reliefs:

(a) A declaration that the respondent unlawfully suspended him from employment
(b) A declaration that the respondent unlawfully dismissed him from his employment
(c) An order that the respondent pays him severance allowance calculated at his monthly wages per completed year of service.
(d) An order that the respondent pays the claimant one month's wages in lieu of his accrued annual leave for the period 2007/2008.
(e) Repatriation costs
(f) General and aggravated damages for unlawful summary dismissal
(g) Costs of the suit.

In our discussion above prayer (a) and (b) have been granted.

(c) **SEVERANCE**

Section 87 of the Employment Act 2006 states:

Subject to this Act, an employer shall pay severance allowance where an employee has been in his or her continuous service for a period of six months or more and where any of the following situations apply -

(a) **The employee is unfairly dismissed by the employer;**

The claimant was employed by the respondent for more than 6 months and this Court has just declared that he was unlawfully dismissed. Accordingly, he is entitled to severance allowance. The case of **Donna Kamuli Vs DFCU LDC 02/2015** is of the legal proposition that in the absence of a set formula in calculation of severance allowance as per **Section 89 of the Employment Act**, the claimant would be entitled to a one month's salary pay per 1 year worked. In the instant case the claimant, by the time of his dismissal was being paid 90,000/ per month, as per appointment letter attached to his written witness statement. As per written submissions of counsel for the respondent, the claimant started working on 2/1/1998. By annexure **"CC"** to claimant's witness statement, he was terminated on

31/01/2008 meaning that he had worked for 10 years as opposed to the submission of counsel that he worked for 11 years. There is nothing in the evidence of the claimant to suggest that he earned 171, 103/- as claimant by counsel. After carefully perusing the evidence of the claimant contained in his witness statement and in his cross and re-examination nothing is further from the truth. Therefore, he is entitled to 900,000= as severance allowance and so we order.

(d) **Annual Leave**

This court in the case of **Edace Michael vs Watoto Child Ministries Labour Dispute Appeal 21/2015 consolidated with Labour Dispute Appeal 16/2015** held that in order to be entitled to payment in lieu of leave, the claimant must show that he got interested in taking his leave and went ahead to apply for it but the respondent denied him/her to take the leave. (see: also **Mbiika Dennis vs Centenary Bank Labour Dispute Claim 23/2014.** Nothing on the evidence shows that this was the case. Accordingly, this prayer is denied.

(e) **General and aggravated damages**

General damages are ordinarily awarded taking into account the nature of employment, the position and salary of the employee, how long the employee could have worked had he not been terminated, the circumstances leading to termination and the general impact of the loss on the family of the employee (see **Equity Bank Vs Mugisha Musimenta Rogers – LDA No. 26/2001).** General damages are not a means of gaining profit from litigation but are an attempt by court to place the successful litigant in the position he/she would have been had the loss or injury not been occasioned. It is a discretionary aspect of the court and the court is not bound to grant the same damages as in a previous case allegedly because the current case is based on similar facts since no case can ever be the same as a previous one in as far as exercising a discretionary power of court is concerned.

Given the nature of the job of the claimant and his salary, we are of the considered opinion that 2,000,000/= would be sufficient for general damages. We have not found any extraneous or aggravating circumstance to warrant aggravated damages.

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 Lillian Linda Tumusiime Mugisha ……

PANELISTS

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

DATED 28/01/2021