

REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE No. 031 OF 2019
[ARISING FROM KDLD NO. 01/2018)

BETWEEN

KABANZA DAVIDCLAIMANT

VERSUS

GREAT LAKES REGIONAL UNIVERSITY.....RESPONDENT

BEFORE

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

PANELISTS

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

AWARD

Brief facts

By letter of appointment dated 3/8/2017, the claimant was offered appointment for the job of Deputy Vice Chancellor commencing 6/09/2017. This appointment was operationalized by a contract of employment signed by both parties on the same date. According to the appointment letter, the contract period was 4 years commencing 6/09/2017. On 1/8/2018 the claimant received a termination letter stating termination would be effective on 31/8/2018, the

month of August 2018 serving as notice of termination. On 13/09/2018, the claimant lodged a complaint to the Kanungu Labour Office in which he complained of unlawful termination. On 15/2/2019 the claimant filed a memorandum of claim in this court in which he claimed that his termination was with no justifiable reason and prayed court for;

- (a) A declaration that he was unlawfully/unfairly terminated
- (b) General damages
- (c) Special damages of 10,971,500/=
- (d) Exemplary damages
- (e) Interest on (b), (c), (d) above at court rate.
- (f) Costs of the suit.

Through a memorandum in reply, the respondent contended that the termination was in line with the Employment Act and with the contract of employment between the two parties and that therefore the claimant was not entitled to any of the remedies sought. The respondent contended in the reply that subsequent to the appointment of the claimant, it experienced a financial crisis that disabled it to meet operational expenses including payment of salaries which the claimant was aware of. The memorandum in reply further stated that following an agreement dated 13th September 2018, both parties agreed that the claimant would receive all his salary arrears and a half pay for the month of August 2018 which was effected by the respondent.

Issues arising

- 1) Whether the termination of the claimant's employment was lawful/fair**
- 2) Whether the claimant is entitled to the remedies sought.**

After adjournment of this case on several occasions for the parties to agree on settlement, eventually according to counsel for the claimant, the respondent settled the claim for special damages. The contention calling for this award, according to counsel is about damages for unlawful termination, payment in lieu of notice, severance pay and costs of the suit.

- 1) **Whether the termination of the claimant's employment was lawful/fair.** When the matter came up for hearing on 9/2/2021, in the absence of the respondent and counsel, Mr. Muhumuza Edward counsel for the claimant, applied to proceed ex parte. After checking the record, we found that the respondent had been served through counsel and we were satisfied by the affidavit of service on record. We allowed the claimant to proceed ex parte.

It was the claimant's evidence that after a misunderstanding with the vice chancellor over handling of salaries sent by the donors in December 2018 (we believe he meant December 2017) he was terminated effective 30/8/2018 by letter citing financial circumstances. On perusal of the termination letter it is evident that this was the reason for termination. The letter states (inter alia);

"It has been considered necessary that the position of Deputy Vice Chancellor, which you currently hold will be terminated with effect from the 30th of August 2018, due to insufficient financial capacity in G.L.R.U to sustain such a senior position against a situation of insufficient income.

It is recommended by copy of this letter that you will continue with the vice Chancellor the dialogue that you have been holding.....This will I believe result in agreement, about a position that you can take up, where your expertise can continue to benefit G.L.R.U, under terms and conditions that can be afforded by the University in current state of financial inadequacy."

Given the above clear message in the above termination letter, we have no doubt in our minds that the reason for termination was the financial inadequacy of the respondent. The question however is whether this was in accordance with the law and constituted lawful termination.

We must state from the beginning that an employer at all times is in full control of his/her business enterprise/organization and as such he/she has the right to re-organize the business/organization by downsizing, reconstituting or in any other way giving the organization a different structure from the previous one. To that end, the employer may merge units of the

organization, may lay off a certain number of employees, and may indeed change certain existing terms of conditions and service under a restructuring programme. **Section 81 of the Employment Act** provides for a procedure to follow in the event of contemplation of termination of over 10 employees over a period of 3 months for reasons of an economic, technological, structural or similar nature. The employer is required under this section of the law to give relevant information to the employees within at least 4 weeks. We take the relevant information to include factors and circumstances influencing the employer to lay off the employees. Even if the section is about termination of more than 10 employees, in the case of **Programme for Accessible Health**

Communication and Education(PACE) vs Graham Nagasha LDA 035/2018 this court held that an employer would have the right to terminate less than ten employees or even one employee for the same reasons of economic, technological, structural or similar nature for as long as the same conditions expounded in **Section 81 of the Employment Act** were complied with.

Consequently, in the instant case, as long as the provisions of section 81 of the employment Act were followed, the respondent could terminate the claimant for the reasons that the office of the Deputy Vice Chancellor could not be accommodated in the structure of the University and that remuneration of the person in occupation of the office could no longer be afforded by the respondent.

However, evidence is lacking on the record to show how irrelevant the office of the Deputy Vice Chancellor became and how the inadequacy to remunerate the occupant of the office evolved. We do not subscribe to the view that a mere statement from an employer that he/she could no longer afford to pay salary is sufficient. We strongly subscribe to the opinion that there is need for the employer to adduce evidence beyond a mere statement of failure to pay salary.

We find it necessary at this time to note that the termination clauses in most contracts of employment alone without being aligned to the provisions of the employment Act, are not sufficient to legally terminate the employment of an employee. Thus in the case of **HILDA Musinguzi Vs Stanbic Bank, SCCA 05/2016** the court held

“The right of the Employer to terminate a contract cannot be fettered by the court so long as the procedure for termination is followed to ensure that no employee’s contract is terminated at the whims of an employer and if it were to happen the employee would be entitled to compensation”.

This court in the case of Musakiriza Vs African Vending Systems Limited_LDR 72/2018 interpreted the “procedure for termination” referred to in the HILDA Musinguzi case to mean the procedure as expounded in **Sections 2, 68, 65 and 66 of the Employment Act** which respectively refer to definition of termination and dismissal; reason for termination; forms or methods of termination and a requirement of a hearing before termination.

In the instant case the termination having been for economic reasons was expected to be preceded by a process establishing the inability of the respondent to accommodate the office of the Deputy Vice Chancellor. A mere statement of inability to pay salary was insufficient to terminate the employee within the meaning of **Section 81 of the Employment Act**.

It is our finding following the above legal authorities that the respondent having not complied with the demands of **Sections, 66, 68 and 81 of the Employment Act**, the termination of the claimant was not lawful and the first issue is resolved in the negative.

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

(a) Declaration of unlawfulness of termination

Following the findings of this court as stipulated above, it is hereby declared that the claimant was unlawfully /unfairly terminated.

(b) General Damages

Counsel prayed that the claimant be awarded 166,500,000 as general damages. The claimant was earning 4,500,000 per month and he had served for slightly one (1) year. He was expected to have served 03 years although there is no guarantee that he would in fact have served the 3 years given the normal susceptibility of Human

nature to changing environs. It is our opinion that 30,000,000/= will be sufficient as general damages.

(c) Special damages

As submitted by counsel for the claimant, this prayer was settled by the respondent.

(d) Exemplary damages

We have not found any thing extraneous to warrant such damages. This prayer is denied.

(e) Interest at court rate

The general damages awarded by court shall carry an interest of 12% per year from the date of the Award till payment in full.

(f) Costs

No order as to costs is made.

In his submissions counsel argued that the claimant was entitled to certain other remedies not contained in the pleadings. Such remedies include severance pay and payment in lieu of notice. In the case of **DFCU BANK VS DONNA KAMULI CIVIL APPEAL 121/2016** the Court of Appeal while relying on the Supreme Court case of **MS FANG MIN VS BELEX TOURS AND TRAVEL LIMITED SCCA 06/2013 consolidated with civil Appeal 01/2014, CRANE BANK LIMITED VS BELEX TOURS AND TRAVEL LIMITED** held at page 18 of the Judgement;

“It is now well established that a party cannot be granted relief which it has not claimed in the Plaintiff or Claim”

Consequently, the said remedies are hereby disallowed.

In the final analysis the claimant has proved his case on the required standard and an Award in the above terms is hereby entered in his favor.

Delivered & signed by:

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

PANELISTS

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

Dated: 17/05/2021.