

THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE CLAIM NO. 225 OF 2019
[ARISING FROM LABOUR DISPUTE COMPLAINT NO. KCCA/MAK/LC/103/2016]
BETWEEN
OLWENY MOSES
.....**CLAIMANT**

VERSUS
EQUITY BANK (U)
LIMITED.....RESPONDENT

BEFORE

1. Hon. Head Judge Ruhinda Asaph Ntengye

PANELISTS

1. Mr. Musimbi Jimmy
2. Ms. Kagoye Robinah
3. Mr. Lapenga Can Amos

AWARD

Brief facts

The claimant was on 21/01/2015 offered employment as credit officer and on 7/3/2015 he was appointed as collections and recoveries officer. On 30/1/2016 while travelling back from his work place he got involved in a motor accident which nearly claimed his life and as such he got 3 months' sick leave. Before he resumed work on 9/5/2016, he had been on 15/3/2016 transferred to Kayunga branch from Tororo effective 7/4/2016.

On 10/7/2016 by letter of termination the respondent ended employment of the claimant by paying him 1 month's salary, citing the terms of the contract.

ISSUES

As agreed in the joint scheduling memorandum, the following issues are due for determination.

(a) Whether the claimant was unlawfully terminated.

(b) What remedies are available to the parties?

REPRESENTATION

Mr. Isota Sulaiman of Katuntu & Co. Advocates appeared for the claimant while Mr. Kyewalabye of the legal department of the respondent, as per the Joint Scheduling Memorandum filed on 2/6/2021 appeared for the respondent.

When the matter came up for fixing a hearing date, Mr. Kyewalabye Denis appeared for the respondent and the hearing was fixed for 20/09/2021. On this date both counsel and respondent were absent and this court allowed the application by counsel to proceed exparte.

EVIDENCE

It was the evidence of the claimant by a written witness statement that on 14/5/2010 after resuming work from his 3 months' sick leave, he was issued with an inter-office memo of poor performance during January-April period yet the respondent knew what had transpired during this period. By email dated 30/5/2016 he offered an explanation and thereafter on 14/7/2016 he was issued with a termination letter without any good justification.

DECISION OF COURT

We have perused and internalized the submissions of counsel for the claimant as well as the evidence adduced by the claimant.

From the agreed facts, the claimant on January 30th got involved in a motor accident and was allowed sick leave of 3 months. The evidence of poor performance therefore, could not have arisen during the period January to April 2016 when the claimant was on sick leave. Upon reading and internalizing the termination letter, it is inevitable to conclude that the claimant was terminated by invoking the termination clause in the contract of service without giving any reasons for the termination.

The question whether or not an employer can terminate employment without reason is settled by **Section 68 of the Employment Act** which demands in no uncertain terms for proof of a reason before termination. The genesis of this section of the law can be found in the **Termination of Employment Convention No. 158/1982** which in **Article 4** provides

“The employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirement of the undertaking, establishment or service.”

Both **Section 68 of the Employment Act** and the **Termination of Employment Convention No. 158/1982** were reinforced by the decision in **Hilda Musinguzi vs Stanbic Bank (U) Limited SCCA 28/2012** where at page 12 of the lead judgement of Hon. Justice Mwangusya (JSC as he then was) it is stated:

“The respondent was in my view rightly held accountable for the loss in the branch and as already stated, the right of an 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.”

Following in the steps of the above Supreme Court decision and relying on the termination of Employment convention (supra) this court in **Okour R Constant Vs Stanbic Bank (U) Limited LDC 171/2014** stated at page 8 of the Award.

“It is granted that the employer is the owner of the business enterprise but the law recognizes the fact that the employee’s job must be secure for sustainable development. Consequently it is no longer tenable that an employer will wake up one morning and pay in lieu of notice or give notice to an employee and end the employment without legal consequences even if that was in accordance with the contract of service.”

In the instant case, according to paragraph 3 (d) of the reply to a memorandum of claim, **“there was no requirement of a hearing because the respondent exercised her right to terminate under the contract and there was no allegation of poor performance.”** The termination letter

itself is in the same terms. Given both decisions in Hilda Musinguzi (supra) and Okou R Constant (supra) as well as the Termination of Employment convention (supra) our holding is that the termination clauses in the contract of service were not sufficient for a legal termination of the claimant's employment in the absence of reasons impacting on the performance of the claimant.

Accordingly, the termination of employment was illegal and unfair and the first issue is in the affirmative. The second issue concerns remedies:

(a) **SALARY ARREARS FROM TIME OF TERMINATION TO DATE OF JUDGEMENT**

Whereas this court in the case of **Forence Mufumba Vs UDB, LDC 138/2014 and in Peter Waswa Kityaba Vs African Feld Epidemiology Network, (AFNET) LDC 86/2016** granted salary arrears for the remaining period up to date of judgement, on appeal in the Peter Waswa Kityaba case at page 38 stated: -

“While the Industrial Court moved from the premises that the appellant was entitled to severance pay, they held that the appellant was entitled to salary arrears from the date of unlawful termination to the date of the Award. The arrears were calculated at the rate of US\$2737 per month. A former employee should not get more than what he or she would have earned. The respondent was already awarded general damages ... The Industrial Court intended to compensate the appellant for loss of earnings as a result of termination. Those earnings can only be awarded as damages in the circumstances of this case....”

After the decision of this court in Florence Mufumba (supra) in subsequent cases of **Simon Kapio Vs Centenary Bank, LDC 300/2015. Equity Bank Vs Musimenta Rogers, LDA 26/2007, Blanche Byarugaba Kaira Vs AFNET LDR No. 131/2018 and Chandia Christopher Vs Abacus Pharma (AFRICARE) Ltd, 237/2016**, this court held that the Florence Mufumba case was decided in *per incurium* having not taken into account **Section 41 of the Employment Act** which provides for salary to employees only for work done in the course of employment.

The case of **Simon Kapio Vs Centenary Bank**, particularly and in line with **AFNET Vs Peter Waswa** (court of Appeal) held

“It is well established that the only remedy to the person who was wrongfully dismissed was damages...therefore, the claim for prospective earnings cannot stand. We are of the considered view that the claim for prospective earnings was speculative given that a person may not serve or complete his or her employment term because of circumstances such as death, lawful termination of employment, decision to change employment and closure of business among others.”

We accordingly reject the prayer for salary arrears for the remaining period.

(b) **COMPENSATION FOR CONTRAVENTING S.66 OF THE EMPLOYMENT ACT.**

Counsel asked court to award 4 weeks wages as compensation.

We form the strong opinion that the award of 4 weeks’ wages stipulated under **Section 64(4) of the Employment Act** cannot be in isolation from the award of general damages especially so when employment is not as a result of a summary dismissal as provided for under **Section 69 of the Employment Act**. Under **Section 66(5) of the Employment Act**, a labour officer is mandated to order payment of the 4 weeks wages in addition to any other Award granted by him/her. This is because unlike this court, a labour officer is not given latitude to award general damages and this is the reason he/she is mandated to award the four weeks.

Once the power of this court to grant general damages is exercised, we are firm that such damages will include compensation under **Section 66(4) of the Employment Act**. This court therefore cannot be seen to grant both 4 weeks wages and general damages. This prayer is therefore denied.

(c) , and (d) **BASIC COMPENSATION ORDER AND ADDITIONAL COMPESATORY ORDER:** For the same reasons above mentioned, these prayers fail.

(d) **SEVERANCE ALLOWANCE**

Under **Section 87 of the Employment Act**, severance allowance is payable where an employee has worked for a period of six months or more and (among others) when he/she is unfairly dismissed.

The claimant started work on 21/01/2015 and was terminated on 14/05/2016. This is a period of more than 6 months. At the same time, this court has just found that he was unfairly dismissed. Both of these scenarios make him entitled to severance allowance.

Under **section 89 of the Employment Act** calculation of severance is negotiable between an employer and an employee or the relevant labour union.

However, the authority of **Donna Kamuli Vs DFCU Bank LDC 2/2015** which was upheld on appeal in the same case, is of the legal proposition that an employee be entitled to a month's pay per year served. Accordingly since the claimant was earning 850,000/= per month and he served from 21/05/2015 up to 14/5/2010 he shall be paid 850,000 as severance pay.

(e) **GENERAL DAMAGES**

Given the circumstances of termination, the nature of the job the claimant was engaged to do and the fact that the appointment was on permanent terms, we form the opinion that 15 million Uganda Shillings will be sufficient for general damages.

Interest:

Given the inflationary nature of the economy, all the amounts awarded shall attract an interest of 15% from the date of this Award till payment in full.

In conclusion the following orders/declarations are made.

- 1) The termination of employment was not only unfair but unlawful as well.
- 2) The claimant shall be entitled to 850,000/= as severance pay.
- 3) The claimant shall be entitled to 15,000,000/= as general damages.
- 4) The above sums shall attract interest at 15% per year from the date of this Award until payment in full.
- 5) No order is to costs is made.

Delivered & signed by:

1. Hon. Head Judge Ruhinda Asaph Ntengye

PANELISTS

1. Mr. Musimbi Jimmy
2. Ms. Kagoye Robinah
3. Mr. Lapenga Can Amos

Dated: 12/11/2021