

THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE No. 336 OF 2017
ARISING FROM LD. NO. CB/01/2017

NAHAMYA CALEB

..... CLAIMANT

VERSUS

MUHAME FINANCIAL SERVICES

CO-OPERATIVE LTD

.....RESPONDENT

BEFORE:

1. THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA

PANELISTS

1.MS. ROSE GIDONGO

2.MS. BEATRICE ACIRO

3. MR. RAUBEN JACK RWOMUSHANA

AWARD

BRIEF FACTS

The Claimant was employed by the Respondent Company as a Credit Officer on 2-year renewable contracts. By the time of his termination on 17/03/2017, he was serving his 6th contract. He filed this claim against the Respondent for unlawful termination and for declarations that; he is paid 15,540,000/- as salary for the remaining 14 months of the contract, 3 months payment in lieu of notice, Ugx. 1,110,000/- as gratuity, Ugx.1,100,000/- as payment in lieu of a fair hearing,

Ugx.1,000,000/- as repatriation allowance, Ugx. 6,600,000 as terminal benefits, Ugx. 15,000,000/- as severance allowance, Ugx. 3,808,000/-, Ugx.2,000,000/- as expected transport allowance and Ugx. 1,400,000/- as airtime allowance.

ISSUES

1. Whether the dismissal of the Claimant was justified and lawful?

2. Whether the claimant is entitled to the remedies sought?

REPRESENTATION

The Claimant was represented by Mr. Robert Joel Karigyenda and Mr. Abel Kahara Kahindi was for the Respondent.

SUBMISSIONS

It was the submission of Counsel for the Claimant that, his summary termination was done without any justifiable reason or any form of hearing, because he was not given notice or an opportunity to defend himself. According to Counsel the dismissal was a breach of contract. He argued that the reasons stated in the termination letter marked CEX2 to wit:

- *Found nowhere to post you in Muhame*
- *Found you had ever served a suspension on your file*
- *Resolved to let you try your luck elsewhere as Muhame cannot contain your service anymore.*

were orchestrated by a grudge he had with his superiors arising out of the failure by credit officers to access their credit accounts. He refuted the allegation that, the Claimant was insubordinate because according to him, none of the Respondent's witnesses proved his insubordination. He also refuted the allegations of fraud that were leveled against the Claimant on the grounds that,

he changed the figures on the impugned loan application with the permission of the loan applicant.

Citing Section 66 of the Employment Act and **Mrs Mary Pamela Sozi vs Public Procurement and Disposal of Public Assets Authority HCCS No. 063/2012**, Counsel contended that, the Claimant was not given a fair hearing which was a fundamental right. According to him, the Respondent did not comply with the principles of a fair hearing as elucidated in **Ebiju James vs Umeme Ltd HCCS No133 of 2012**, because, there is no evidence to show that the Claimant was invited for a hearing, or that he appeared before a disciplinary committee nor is there any record of the allegations leveled against him. There is also no evidence that, he was asked to respond to any allegations made against him. It was further his submission that, the minutes at page 31 and 32 of the Respondent's trial bundle do not show that the principles in **Ebiju(supra)** were complied with because none of the defence witnesses knew who invited him for the hearing or whether he actually attended the hearing. He contended that the dismissal was unfair because there was no hearing and the Respondent did not provide genuine reasons for the dismissal.

In reply Counsel for the Respondent submitted that, the dismissal was lawful because the Claimant breached a fundamental aspect of his contract, which was the basis of his summary dismissal. He relied on the definition of dismissal in **Uganda Breweries Limited vs Kigula Robert C.A No. 1083 of 2016**, to mean that, *"the discharge of an employee from employment at the initiative of his or her employer when the said employer has committed a verifiable misconduct, which is deemed to have fundamentally broken his or her obligations arising out of the contract of service"* and Section 69(3) of the Employment Act 2006, for the legal proposition that, an employer was justified to summarily terminate an

employee, where the employee by his or her conduct had indicated that, he or she has fundamentally broken his or her obligations arising under the contract of service.

He argued that, the Claimant fundamentally breached his contract when he continuously underperformed and failed to meet his targets. According to him, underperformance is an offence under the Respondent's Human Resources Manual which is punishable by summary dismissal. He made reference to a letter dated 02/01/2016 in which management stopped the Claimant from disbursing any more loans so that he could concentrate on recovery and improve his performance and another letter dated 5/01/2017, which required him to explain his failure to meet targets.

He contended further that, the Claimant committed a number of breaches such as forging receipts, insubordination, and he admitted that he forged a letter authorizing a client to use land, through an apology letter marked Aw5, on the Respondent's trial bundle. He argued that, the admission was ground for summary dismissal. He relied on **kabojja International School vs Godfrey Oyesigire LDA No.003/2015**, for the Legal proposition that, *"an admission was sufficient to entitle the employer to summarily terminate the employee and the contention that an employee was entitled to a hearing was rendered redundant after admission of the misconduct."* Counsel stated further argued that, Claimant's failure to perform his duties was a verifiable and justifiable ground for his summary dismissal, because he was always aware that failure to meet certain targets and to exercise proper care and skill when executing his duties would amount to underperformance, which amounted to misconduct which warranted summary dismissal.

Counsel argued that, the Respondent met the principles espoused under section 66 of the Employment Act and in **Ebiju**(supra), when it made the Claimant aware of his underperformance through the various correspondences to him by his supervisors and this was in line with the holding of **Barishaki Cheborion J** in **DFCU vs Donna Kamuli CACA No. 121 of 2016**, to the effect that a disciplinary hearing need not be a mini court hearing and it could be conducted through correspondences by letter or email or face to face hearing. According to him, having notified the Claimant about his misconduct by letter, he cannot claim that he was not given a fair hearing. Counsel further argued that the Claimant, during cross examination admitted that he had been given various hearings before he was suspended from work and also admitted his involvement in acts of insubordination for which he was cautioned and the reasons for his termination were clearly stated in the termination letter, therefore his dismissal was fair and lawful.

DECISION OF COURT

Sections 66, 68 and 70(6), of the Employment Act provide for the procedure for termination/dismissal of an employee. The sections require that before terminating or dismissing an employee, the employer must explain to him or her, the reason for the dismissal/termination. The employer is also required to give the employee an opportunity to respond to the reason/s either in writing or orally before an impartial tribunal or disciplinary committee, in the presence of a person of the employee's choice. The employer is also required to prove on a balance of probabilities, that the reason for dismissal/termination, existed before the termination. The employer is therefore required to act reasonably based on the facts known to him or her, at the time he or she takes the decision to dismiss /terminate the employee.

We carefully perused the evidence on the record and adduced in court and the submissions of both Counsel, and established that the Claimant's contention is that, he was dismissed without justifiable reason and without a hearing.

It was also his testimony that, his termination was as a result of the grudge he had with the General Manager resulting from misuse of the Company's funds. He admitted that, he was subjected to 3 disciplinary proceedings and subsequently suspended for infractions, such as rudeness, insubordination and overstating the prices of oil for motorcycles. He admitted that he changed the terms on an already existing loan application, to favour the client who was making a new application and he apologized for it, in a hand written apology marked exhibit "Rex D" on the Respondent's trial bundle. His apology states in part as follows:

...

RE: APOLOGY FOR CHANGING THE FIGURE ON THE CONFIRMATION LETTER OF CLIENT

I Nahamya Caleb, I hereby apologise for changing on clients letter of last year to suit in the current figure for a loan.

It was done after calling the husband on phone that we need a letter giving powers to the spouse to use the land in question as security for a loan.

He reminded me that there was a letter on the file of last loan that can work because it's the same land and the value is ... for the loan.

It has been my mistake to conque with him. I hereby ask for forgiveness..."

We found several correspondences dated between 20/02/2015 and 21/08/2015 on the Respondent's trial bundle, in which the Claimant was being warned and or reprimanded for various infractions including rudeness, insubordination,

overstating prices among others, and the Claimant's responses to the same as evidenced by Exhibits A1w, A2w1, A2w2, A3w, A4w, A6w, A1R, A2R, A5R, culminating into his suspension on 21/08/2015. There were also other correspondences such as a letter dated 5/01/2017 (Rex. 6), requesting him to explain his poor performance and he responded to the same via A6R on the trial bundle. To that extent, the Claimant was given opportunity to respond to the various infractions leveled against him.

The Claimant was the Respondent's credit officer, for 12 years and one of the fundamental duties under the schedule of duties, under clause i(ii) of the Contract of Employment was, *"accurately posting customer's loans ledgers daily..."*, he was therefore expected to exercise care, skill and due diligence to ensure proper documentation was maintained. It was his testimony however, that he changed figures on a client's previous application to enable the same client to acquire a new loan using the same documents, for which he apologized. It is our considered opinion that, the apology was an admission of his failure to exercise care and skill and due diligence in handling the loan applications as a credit officer, therefore breaching one of his fundamental duties under his contract of *"accurately posting customer's loans ledgers daily..."*, which entitled the Respondent to summarily dismiss him, in accordance with section 69(3) of the Employment Act. Section 69(3) provides that:

"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 obligation arising under the contract of service".

Although his letter of termination only stated the reasons as:

- *Found nowhere to post you in Muhame*

- *Found you had ever served a suspension on your file*
- *Resolved to let you try your luck elsewhere as Muhame cannot contain your service anymore.*

We believe that the Respondent was justified to state it could not contain his service anymore after he admitted that, he manipulated a loan application to favour a client, which was a fundamental breach of his role as a credit officer. We are convinced that, the Respondent was justified to summarily terminate him after this admission, because this was the core of the Respondent's business and it was his fundamental role to ensure accuracy on loan ledgers but instead he was involved in manipulating the same contrary to what was expected of him. We therefore found to reason to fault the Respondent for summarily dismissing him. It is our finding therefore, that his summary dismissal was substantively lawful.

Although we found nothing on the record to indicate that, he was subjected to an oral hearing before the termination, and the minutes which the Respondent's witnesses relied on as the basis of the claimant's dismissal did not indicate that, the breach was put to him or that he was given an opportunity to respond to it or that he was subjected to disciplinary procedures before the summary dismissal, this court's holding in **kabojja International School vs Godfrey Oyesigire LDA No.003/2015(supra)**, is to the effect that, the requirement for a hearing as envisaged under section 66 of the Employment Act would not be applicable, to an employee who admitted to committing the infractions leveled against him or her by the employer. The Court held that, *"an admission was sufficient to entitle the employer to summarily terminate the employee and that the contention that an employee was entitled to a hearing was rendered redundant after admission of the misconduct."*

In our considered opinion, having subjected him to a number of disciplinary proceedings and punished him by even suspending him, when he admitted that he manipulated a loan application when he changed the figures on a previous application to enable the client acquire a new loan using the same documents, there was no requirement for the Respondent to subject him to a hearing as provided for under section 66(supra). His admission, was sufficient to entitle the Respondent to summarily terminate/dismiss him without a hearing and the his summary dismissal was lawful.

2. Whether the claimant is entitled to the remedies sought?

The Claimant prayed for this court to declare that he was unfairly and unlawfully dismissed. He also prayed for the following remedies; 14 months remaining on his contract, payment in lieu of months' notice, expected gratuity, payment in lieu of unfair hearing, Repatriation allowance, termination benefits, severance pay expected lunch allowance for the remaining 14 months, transport costs, expected airtime , general damages and costs of the Claim.

Having already found that, his summary dismissal was justified, he is not entitled to any of the remedies prayed for, they are denied.

In conclusion, this claim fails, it is dismissed with no order as to costs.

delivered and signed by;

1. THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA
PANELISTS

1. MS. ROSE GIDONGO

2. MS. BEATRICE ACIRO

3. MR. REUBEN JACK RWOMUSHANA

DATE: 16/12/2021