

**THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE CLAIM NO. 216/2014
ARISING FROM HCT-CS-60/2014**

BETWEEN

WALTER THUAMBE..... CLAIMANT

VERSUS

UGANDA POSTA LIMITED..... RESPONDENT

Before

1) The Hon. Head Judge, Ruhinda Asaph Ntengye

Panelists

1. Ms. Adrine Namara

2. Ms. Susan Nabirye

3. Mr. Michael Matovu

AWARD

Brief Facts

By an amended memorandum of claim, the claimant alleged that having been employed by the respondent since 2001, he was unlawfully terminated on 16/8/2013. According to him, his rights to respond to the allegations, his right to be accompanied by a lawyer, his right to cross examine witnesses of the respondent and his right to call his own witnesses were all denied him, leading to abuse of principles of natural justice.

In an amended memorandum in reply the respondent stated that upon receiving a complaint from a whistle blower that the claimant was aiding illegal removal of mail from parcels at the sorting center, carried out an investigation and suspended the claimant, and later on he was accorded a hearing after which a decision to terminate him was made.

Agreed issues

- (1) Whether the claimant was accorded a fair hearing
40 (2) Whether the claimant was unlawfully or unfairly dismissed
(3) What remedies are available to the parties?

REPRESENTATIONS

The claimant was represented by Ms Harriet Tumuhairwe from M/s. Okecha, Baranyanga & Co. Advocates while the respondent was represented by Mr.
45 James Kiiza from M/s. Uganda Post Limited Legal Department.

EVIDENCE ADDUCED

The claimant adduced evidence from himself alone while the respondent called evidence from one Atukunda Rosette, Head of human Resource of the
50 respondent.

The evidence in chief of the claimant was to the effect that at the disciplinary hearing he informed the committee that he would like to have his lawyer present and that the committee refused despite the request for an adjournment.

55 He was asked to write a statement regarding the allegations and bring it in the morning. When he brought the statement to the M.D., he at the same time received a letter of dismissal from the Head of Human Resource.

The evidence of the respondent was to the effect that the claimant was notified of the allegations and attended a hearing which gave him time to reply to the
60 allegations.

SUBMISSIONS

On the first issue counsel for the claimant, relying on **Ebiju James Vs Umeme, HCCS 133/2012** argued that the committee that heard the matter was not a disciplinary committee but an extra ordinary meeting of the board which illegally
65 turned itself into a disciplinary committee. According to counsel, this together with the denial of counsel for the claimant to attend the meeting and denial of witnesses for cross examination breached all tenets of a fair hearing as well as principles of natural justice.

On the second issue counsel submitted that the failure of the respondent to call
70 the alleged whistle blower as a witness so that he/she was cross examined

rendered the charges unproved just like the failure to produce a video showing the claimant removing parcels in a suspicious manner.

According to counsel the allegation of the claimant absenting himself from duty was not proved since the claimant showed that he asked for compassionate leave via an email. Counsel argued that the claimant's dismissal was illegal because of the reason that he was not given the required notice before dismissal.

In reply to the above submissions counsel for the respondent raised a preliminary objection that this court had no jurisdiction to entertain the matter as a first instance court having received the file from High Court. In counsel's view this court ought to have referred the matter to the labour officer who had jurisdiction.

On the first issue counsel for the respondent argued that the respondent complied with the principles enunciated in the case of **Ebiju James Vs Umeme** (supra) as well as in **Augustine Kamegero Vs Rwenzori Bottling Company HCCS 027/2012**. According to counsel the claimant having been suspended was invited for a hearing and from the minutes of the hearing it was a fair hearing since this was part of the agenda for the meeting and it was not therefore smuggled in. According to counsel the investigation report was not necessary for the claimant because he was already aware of the case against him, to which he gave testimony. Relying on **Caroline Kariisa Vs Hima Cement HCCS 84/2012**, counsel argued that disciplinary proceedings need not be on the strict standards of a court of law.

On the second issue, counsel for the respondent submitted that the claimant was dismissed for gross misconduct under **Section 9.3.3. of the Posta Uganda's Employees Regulations, Terms & Conditions of Service** following failure to report a missing parcel which came to his knowledge and instead chose to engage the consignee in a settlement. According to counsel the claimant was found to have smuggled his personal items using Posta Uganda Property without clearing taxes. In his view and relying on **Barclays Bank of Uganda Vs Godfrey Mubiru SCCA 1/98** and **Kabojja International School Vs Godfrey Oyesigye, LDA 3/2015** dismissal without notice was reserved for serious misconduct and an admission of guilt was sufficient to justify a summary dismissal thus making a hearing unnecessary.

DECISION OF COURT

We shall deal with the preliminary objection first. The objection of the respondent is that this court not being a first instance court but a reference court had no jurisdiction to entertain the dispute which, according to counsel should have been referred to a labour officer to handle first.

110 **Section 8 of the Labour Disputes (Arbitration & Settlement) Act 2006** provides

“8 Function of Industrial court

(1) The industrial Court shall –

(a) Arbitrate on labour disputes referred to it under this Act; and

115 **(b) Adjudicate upon questions of law and fact arising from references to the Industrial court by any other law.**

(2) The Industrial Court shall dispose of the labour disputes referred to it without undue delay.”

120 Whereas we agree that this Court entertains labour disputes referred to it and not originally filed in this Court, we at the same time recognise the power of the High court to transfer or refer matters to courts that it thinks can effectively decide the issues therein.

In the case of **Obeelee Edward Vs Soroti University M.A 156/2019**, the same objection was raised and this court had this to say

125 **“This matter was filed in the High Court which referred it to this court for determination. The jurisdiction of this Court emanates from the Labour Disputes (Arbitration & Settlement) Act 2006 (LADASA) which provides in (B) as:**

“Adjudicate upon questions of law and fact arising from references to the Industrial court by any other law.

130 **The Judicature Act grants power to the High Court original jurisdiction in all matters and the Civil Procedure Act grants High court power to refer matters to courts it thinks has jurisdiction to entertain the same... the objection therefore stands overruled since the claim was properly referred to this court by the High Court.”**

135 We have no reason to depart from this previous position of this court. Consequently, the objection is overruled as it was in the above case.

The tenets of a fair hearing were clearly spelt out in the case of **Ebiju James Vs Umeme, HCCS 133/2012** as

140 “1) Notice of allegations against the plaintiff was served on him and a sufficient time allowed for the plaintiff to prepare a defence.

2) The Notice should set out clearly what the allegations against the plaintiff and his rights at the oral hearing. Such rights would 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 witnesses of his own.

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

In the instant case, the claimant was suspended on 22/7/2013 and the suspension letter clearly stated reasons why he was suspended. On 7/8/2013 a letter inviting him for hearing on 15/08/2013, which hearing he attended.

150 In cross-examination, Natukunda Rosette the witness for the respondent admitted that the disciplinary committees asked the claimant to put in writing a response to the allegations which he did. There is nothing on the record to show that the written defence was taken into account by the disciplinary committee and therefore we believe the claimant’s testimony that he was given a termination letter at the same time as he was delivering his written defence.

Section 9.3.3. of the Operations Manual under which the claimant was charged provides:

“9.3.3 Gross Misconduct

160 This category consists of breaches that put the company’s business or at immediate risk. Examples of gross misconduct include but are not limited to the following

- Acts of violence
- Theft, embezzlement and fraud
- 165 • Gross negligence causing substantial loss to the company.
- Breach of confidentiality
- Gross incompetence or inefficiency in performance of work.
-and abuse of office
- Abscondment from duty for more than five working days

- 170 • **Falsification of records or any document whether of a personal nature or otherwise.**
 • **Intentional and unlawful destruction of the company's property.**

The claimant was suspended because

- 175 (a) One of his staff caused disappearance of a bag containing letters and a registered mail that contained a sum sung phone.
 (b) Failure to report and instead engaging the consignee into a settlement.
 (c) Aiding illegal removal of mail and parcels from the sorting centre.

180 These were the same charges for which the claimant was invited for a hearing. We were at pains trying to connect the above charges to **Section 9.3.3 of the Operation Manual**. In his submission counsel for the respondent argued that the claimant was found guilty of gross misconduct because he failed to report a missing mail bag for a period of 2 months' despite having knowledge of the same and for smuggling his personal items using Posta Uganda's property without clearing taxes.

185 According to the claimant, he received the report on 06/5/2013 and he reported the same on 10/06/2013 which is one month after he received the report. On perusal of **Section 9.3.3**, we do not find time within which the claimant should have reported so as to blame him for reporting outside the prescribed time and consequently reporting after 1 month did not constitute a misconduct under the
190 above section of the manual. During the proceedings in this court, the respondent promised to produce a video clip that showed the claimant's misconduct as he could be seen removing certain parcels from the central sorting centre using the exit and not the parcels office, without clearing taxes. This video clip was never available to this court.

195 The minutes of the hearing suggest that the committee relied on signed statement of URA and other Posta personnel in arriving at its decision, yet this court was not availed such statements or such witnesses. This was a lacuna in the respondent's case before this court because the claimant in his written defence stated that 3 customs officials verified the declarations of his parcels
200 and released them to him. On perusal of the minutes of the hearing contained in the respondent trial bundle, we failed to connect the conclusions of the committee with **Section 9.3.3** of the Manual under which the claimant was charged and which were the bases of the dismissal. These conclusions were

- (i) The failure by Mr. Thuambe to report the missing mail bag for a period of 2 months contravene the operations manual.
- (ii) Mr. Thuambe left work without following the proper procedure of applying for leave, and so contravened the HR Terms and Conditions of Service. Compassionate leave is for a period of 5 working days and leave forms must be filled in, signed and approved by HR and the supervisor.
- (iii) The instruction by Mr. Thuambe a senior staff to a company driver to take personal items to his residence using a company car contravened company regulations.
- (iv) The statement signed by URA official stated that no clearance had been obtained with regard to the parcels in question and therefore Walter's actions amounted to smuggling using a company vehicle. This could have resulted in confiscation of both the parcels and company car by URA.
- (v) The CCTV footage revealed suspicious behaviour by Thuambe in taking out the parcels.

As mentioned earlier the infractions enumerated under **Section 9.3.3 of the Postal Operation Manual and Employee Terms and Conditions of Service**, are far apart from the reasons expressed by the committee for dismissal of the claimant. In law and according to the case of **Ebiju James Vs Umeme, HCCS 133/2012** the allegations put to the plaintiff must be the same allegations proved during the hearing. The allegations must be originating from breach of certain codes of conduct, or breach of terms of employment clearly spelt out in the contract or in the Human Resource Manual. Atukunda rosette, the respondent witness in cross-examination stated that corruption and abuse of office were the charges for which the claimant was dismissed, but on careful perusal of the reasons above given and conclusions of the committee above given, these offences are not reflected. Given that the infractions constituting gross misconduct under **Section 9.3.3. of the Postal operations Manual** were not clearly the same as those reflected in the suspension letter or charge read to the claimant, and given that the committee did not take into account the written defence of the claimant, and in the absence of evidence of a CCTV Video clip as well as the URA statements relied upon by the committee, it is our finding that the claimant was not accorded a fair hearing and therefore his termination was unlawful.

The next issue is: **What remedies are available**

(a) **General damages**

The claimant was earning 3,250,000/= per month. As a result of termination the earnings were cut short by 7 months to the end of his contract. We accordingly award him 15,000,000/= as general damages.

(b) **Special damages**

Counsel for the claimant in submission prayed for things that were not pleaded or prayed for in the memorandum of claim. The authority of **DFCU Vs Donna Kamuli Civil Appeal 121/2016 (court of Appeal)** is of the legal proposition that reliefs not pleaded cannot be awarded by the court. The claimant prayed for special damages of 3,250,000 as salary for August 2013. In submission counsel changed this to 24,500,000/= for the remaining 7 months without any justification and this is not acceptable. Evidence in proof of the 3,250,000 is lacking and therefore this prayer is not allowed.

(c) **Gratuity**

The claimant has not ably illustrated how gratuity arises. However, counsel for the respondent explained that gratuity for 2011 and 2012 was duly paid and in his submission admitted that the claimant having worked for 5 months his gratuity would be 20% of 14,000,000/= which is 2,800,000/=. This being an admission is acceptable to us and it shall be payable.

(d) **Interest**

The monetary awards granted above shall attract interest at a rate of 15% per year from the date of this Award till payment in full.

In conclusion, the claimant having proved his case against the respondent, an Award is entered in his favour in the above terms with no orders as to costs.

Delivered & signed by:

1. Hon. Head Judge Ruhinda Asaph Ntengye

PANELISTS

1. Ms. Adrine Namara

2. Ms. Susan Nabirye

3. Mr. Michael Matovu

Dated: 22/04/2022