

THE REPUBLIC OF UGANDA

INDUSTRIAL COURT OF UGANDA AT KAMPALA

LABOUR DISPUTE REFERENCE No.25 OF 2019

ARISING FROM KCCA /CEN/LC/314/2016.

AKELLO BEATRICE

..... CLAIMANT

VERSUS

TROPICAL BANK LTD

..... **RESPONDENT**

BEFORE:

1. THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA

PANELISTS

1.MR. F X MUBUKE

2.MS. HARRIET MUGAMBWA NGANZI

3. MR. EBYAU FIDEL

AWARD

BRIEF FACTS

In 2006, the Claimant was employed by the Respondent Bank, as a cashier. She rose to the position of Chief Cashier and by the of her termination, she was holding the position of Senior Banking officer.

According to her, on 30/05/2016, she handled a one Nyaka Micheal who wanted to withdraw Ugx. 84, 250,000/ but when she checked she found the signatures differed from the ones on the database. she queried and it and declined the withdrawal. The Client then went to the Branch Manager who verified and approved the transaction but it was later discovered that, he was an imposter. She was then subjected to a disciplinary

hearing and subsequently terminated. she contends that her termination was unlawful
25 hence this suit.

The Respondents, in reply denied her claims and insisted that she did not follow the
banks procedures, which caused loss to the Bank and she was given a fair hearing.

ISSUES FOR RESOLUTION

1. Whether the Claimant was accorded a fair hearing by the Respondent's
30 Disciplinary hearing?

2. whether the termination of the Claimant's employment was unlawful/wrongful?

3. Whether the Claimant was entitled to the remedies sought.

When the matter was called for hearing on 8/10/2021, the Respondent did not appear,
although there was an Affidavit of service by a one Kasangaki Patirick, indicating that,
35 the head office of the Bank was served with and it had acknowledged receipt of the
hearing notice on 30/10/2021, by appending on it, the Bank stamp dated 30/09/2021 at
12.35pm and it was received by the Receptionist of the Bank.

Counsel for the Claimant then applied to proceed exparte in accordance with order 9
rule 20(1)(a) of the Civil Procedure Rules. We were satisfied that proper service was
40 effected onto the Bank and granted the application hence this award.

EVIDENCE

The Claimant took oath and adduced her evidence in chief by witness statement.

SUBMISSIONS

Before submitting on the issues, Counsel prayed for the Respondent's reply to be struck
45 off the record for being filed outside the time scheduled by Court. We however found
no merit in his application given that the matter was adjourned on 2 occasions and
Counsel did not raise this issue on those occasions. In any case the matter was being
considered exparte.

RESOLUTION OF THE ISSUES

1. Whether the Claimant was accorded a fair hearing by the Respondent's Disciplinary hearing?

It was submitted for the Claimant that she was not given adequate time to prepare her defence having given her notice on 4/07/2016 for a hearing scheduled for 7/7/2016, contrary to Article 28 of the Constitution of Uganda 1995, which provides for the right to a fair hearing and to adequate time within which to prepare for a defence. Counsel also relied on **Namyalo Dorothy vs Stanbic Bank LDC No.166 of 2014**, in which this Court stated that, 2 days were not sufficient for the Claimant to prepare her defence as provided under the Constitution and section 66(3) of the Employment Act. He also cited **Albert Nuwamanya vs Post Bank, LDA No. 230 of 2015** and **Ebiju James Vs Umeme Ltd CS No. 0133 of 2012** and the minutes which were submitted by the Respondent as part of its trial bundle. He submitted that, whereas the invitation for the meeting was dated 4/7/2016 and meeting was scheduled for 7/7/2016, it was held on 1/7/2016 and a clear perusal of the meeting showed that all fingers pointed at the Branch Manager and not the Claimant. He contended that, had the committee scrutinized the evidence together with CEx3 the withdrawal slip they would have found differently.

It was also his submission that, the Committee was biased because, the invitation for a disciplinary meeting was signed by the chairman of the committee, the very chairman signed the termination of Appeal and it was the same chairman who gave her guidance on the appeal process. Therefore, she was not accorded a fair hearing.

DECISION OF COURT

It is well settled that an employer's right to dismiss/terminate an employee cannot be fettered by the courts, provided that the employer follows the procedure for termination/dismissal as provided under Sections 65, 66, 68 and 70(6)(read together) of the Employment Act, 2006. The law makes it mandatory for the employer to explain to an employee the reason why he and she is considering the employee's dismissal or

termination, before the termination occurs. The employer is also expected to give the employee in issue, an opportunity to respond to the reason/s in the presence of a person of the employee's choice and the explanation can be made in writing or orally before an independent and impartial disciplinary tribunal or committee.

80 The Claimant in the instant case contends that, she was given insufficient time within which to make her defence because 2 days were insufficient. She however appeared for the disciplinary meeting. Although she relied on *Namyalo*(supra) for the proposition that 2 days were insufficient, we think that this case is distinguishable because in **Namyalo's** case(supra), the basis for the decision that the time allotted was insufficient
85 was based the Respondent's Discipline Management Policy's requirement for the employee to be given 4 days before the disciplinary hearing. The claimant in this case did not substantiate the claim that 2 days were not sufficient for her to prepare for her defence, given that she attended the meeting and a perusal of the minutes of the said meeting, did not indicate that she protested the short notice she claims she was given.
90 In fact, the minutes indicate that, she confirmed the charges, when they were read to her and she knew why she had been invited for the meeting and she had an opportunity to explain herself.

A further perusal of the minutes indicated in part as follows that, *on 1/07/2016, the disciplinary committee convened to review a report from the inspection department and*
95 *draw charges to the respective officers involved in a suspected fraud case of Ugx. 84.2M that occurred on 32/05/2016 at Kampala Branch...."*

It goes further to state that the charges were framed and each of the officers was notified about the charges prior to the date of the hearing and ...*The committee further set the hearing date as 7/07/2016.*

100 It is therefore not correct for Counsel for the Claimant to state that the meeting took place on 1/7/2016 because clearly this was the date the committee sat to frame charges against the accused employees and not the date of the hearing.

The charges that were framed against the Claimant were as follows:

1. *Gross Negligence*

105 2. *Failure to alert the Branch Manager or noticing the difference in signatures.*

We are therefore, not convinced that, the Claimant was not given sufficient time to prepare her defence because she did not only make a verbal response to the allegations but she also made a written response and at no time did she indicate that the time given to her was insufficient nor did she request for more time to file her defence.

110 In the circumstances we have no reason to fault the Respondent.

2. Whether the termination of the Claimant's employment was unlawful/wrongful?

Counsel for the Claimant contended that had the committee evaluated the evidence *wholly* and subjected it to proper scrutiny they would have exonerated the Claimant. He argued that, it was the Claimant's uncontroverted testimony under paragraph 18 of her evidence in chief that, her appeal was declined and CEX10 indicates that the Appeal was determined without her being heard. According to him a perusal of the minutes indicates that, it was the Bank Manager Hamis Kintu who authorised the payment to the imposter and not the Claimant, yet he was only demoted while she was terminated. It was further his submission that, the claimant stated that when she approached the Managing Director before she her hand over, he told her that due to the pressure from Bank of Uganda, some had to go and so she was one of those handpicked as a sacrifice. He argued that the Claimant's termination was done contrary to Section 73(2)(b) of the Employment Act, therefore it was unfair. He argued that had the committee carefully looked at the withdrawal slip marked "CEX3" which was dully verified by the Branch Manager and the new procedures signature verifications "CEX11", they would have found the Claimant innocent and they would not have terminated her employment. He cited **Lt.(RTD) George Kiggundu Vs Attorney General CS No.386 of 2014**, where it was held that:

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130 “an omission to challenge the evidence in chief on a material essential point of cross examination would lead to the inference that, the evidence is accepted to its being assailed as inherently incredible or probably untrue.” He prayed that the court finds that the Claimant’s evidence is correct.

DECISION OF COURT

135 Section 101(1) of The Evidence Act Cap(6), provides that whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. **Sebuliba vs Coopertive Bank Ltd (1982) HCB 129** and **Nsubuga vs Kavuma 1978 HCB 307**, are authorities for the proposition that, in civil matters the burden lies on the plaintiff to prove his or her case on the balance of probabilities and the other party can only be called to dispute or rebut that which has
140 been stated by the party alleging. Therefore, even if the instant case was heard exparte, the Claimant still has the burden to prove her case.

2. Whether the termination of the Claimant’s employment was unlawful/wrongful?

It is trite that, an employer contemplating the dismissal or termination of an employee must prove the reason/s for the dismissal or termination. However, the proof of the
145 reason/s need not be beyond reasonable doubt. The reasons must however be based on facts known to the employer and must exist at the time the decision to dismiss /terminate is made. (see Section 66 and 68 of the Employment Act, 2006).

According to her termination letter, she was terminated for “...endorsing a withdrawal slip on which the customers signature had been verified whereas not, was outside the
150 laid down procedures and ordinary practice and tantamount to negligence....”

It was the Claimant’s testimony that, when the customer Nyaka Micheal approached her with a withdrawal slip to enable her verify the signature, she compared the client’s signature and photograph with what was in the system and the person before her, in accordance with the Bank’s Policy and established that, the signature was different from
155 what was in the system. She then asked the customer to sign again but instead he went

to the Branch Manager. It was also her testimony that, the customer was later served from the bulk section who required her stamp and signature and when the slip was returned to her by a messenger, she signed it when she saw that, it had been approved by the Manager. It was counsel's contention that, had the committee carefully evaluated the evidence at the disciplinary hearing, it should have found the Manager and not the Claimant culpable.

After carefully perusing the record and the minutes of the disciplinary committee, and the Claimant's testimony we established that she testified that, she knew that what she was doing was wrong. When she was asked why she signed she said "...because I thought he was a key customer at jinja Branch..." when asked whether she did not know that what she was doing was wrong she said ... *I do but...* when asked if a branch Manager came with a signed piece of paper and instructed you to take 1m would you take it she said that: "... its difficult but sometimes the manager instructs us to get money and we do it...", when asked if is it right she said: ... *no but we do it*. When asked do you see your responsibility in the process she said: ... *the fact that the manger offered him a seat in his office I assumed he had verified him*. When asked: In your process manual is there a way you can verify basing on someone's opinion: her answer was: *a No*. She went further to state that, when handling bulk transactions it was a requirement to ask for the person's IDs and to attach copies of the same and in this case, she did not do so because the voucher had been taken away and the customer went to the manager's office. She apologized for not calling the manager because she was very busy.

Given her testimony before the disciplinary hearing, it was clear to us that, the Claimant knew she had the Responsibility of verifying the signature and identity of any bulk customer who intended to withdraw money, before she could append her signature and stamp on the customer's withdrawal slip. She was also aware that, she could not rely on another person's opinion when verifying a transaction and she had to personally do the verification. In this case, she did the comparison and established that the signatures did

not match. She however kept this finding to herself and went ahead to append her
signature and stamp on the slip without confirming that the manager had actually
verified the customer and she did so merely on the assumption that the manager had
verified the Customer simply because he gave him a seat in his office. In **BARCLAYS
BANK OF UGANDA VS GODFREY MUBIRU, SCCA No.1 OF 1998**, Justice
Kanyeihamba JSC who wrote the lead judgement held that:

*“Managers in the banking business have to be particularly careful and exercise
a duty of care more diligently than managers of most businesses. This is
because banks manage and control money belonging to other people and
institutions, perhaps in their thousands and therefore are in a special fiduciary
relationship... Moreover, it is my opinion that in the banking business any
careless act or omission, if not quickly remedied, is likely to cause great losses
to the bank and its customers”*

In light of this holding, and given the claimant’s testimony before the committee, it is
our considered opinion even if she was not a manager, as head Cashier, she had the
obligation to be particularly careful and exercise a duty of care more diligently than the
Manager or any other officer in the bank because, the responsibility of the verifying the
authenticity of customer’s signatures and the identification of persons making
withdrawals at the Bank was hers. This is because she was the first point of contact with
the customer and she was the custodian or authorised person to check the customers
credentials to ensure that the right person withdrew money from the right account. It
was therefore her duty to ensure that any anomalies identified are immediately reported
to the Branch Manager for his intervention. In this case, when the Manager intervened
in the matter, she had the obligation to inform him about her findings regarding the,
difference between the signatures on the customers slip and the one in the system, as
soon as the Customer went into his office.

We do not believe the argument that she was too busy to notify him by phone call
especially given the amount of money involved and the attitude of the customer. Even

if she assumed that the manager had verified the Customer, she should have double checked to ensure he had done so. She however, did not do so and as a result the Bank lost a lot of money to an imposter.

215 We do not believe that, she was framed or picked as sacrifice as she claims because she neglected her fundamental role of notifying the Manager about the discrepancies regarding the customer which resulted in loss to the Bank.

In the circumstances, even if the Bank Manager errored when he cleared the Customer, the Claimant contributed to this loss because she purported to be too busy to notify the
220 Manager about the discrepancies, she had discovered about the said customer which resulted in fraud.

It is therefore, our finding that, the Respondent was correct to find her culpable of negligence for failing to notify the Manager when she noticed the difference in the signatures. In the circumstances her termination was not unlawful or wrongful.

225 **3. Whether the Claimant was entitled to the remedies sought.**

Having found that, she was accorded a fair hearing and the infractions leveled against her were proved against her and they were justified. she is not entitled to any of the remedies sought.

In conclusion, this claim fails, with no orders as to costs.

230 Heard and delivered by:

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

1.MR. F X MUBUKE

2.MS.HARRIET MUGAMBWA NGANZI

235 **3. MR. EBYAU FIDEL**

DATE: 28/01/2022

