

THE REPUBLIC OF UGANDA

IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA

LABOUR DISPUTE CLAIM NO.42 OF 2017

[ARISING FROM LABOUR DISPUTE REFERENCE NO.470 OF 2017]

5

ALIKER JOSEPH RINGA.....CLAIMANT

VERSUS

APPLIANCE WORLD(U)LTD.....RESPONDENT

10

BEFORE

1. Hon. Head Judge Ruhinda Asaph Ntengye

PANELISTS

- 15
1. Ms. Kagoye Robinah
 2. Mr. Can Amos Lapenga
 3. Mr. Musimbi Jimmy

AWARD

Brief Facts

- 20
- The claimant was offered employment on the 18th day of November 2012 as a store keeper by the respondent at the Respondent's head office located at Old

Portbell road, Wankoko and later transferred from the main branch to the feeder stores on the 3rd day of January, 2016. On the 18th day of July, 2016, the claimant was arrested and detained at Jinja road Police station and later charged for the offence of embezzlement, prosecuted at the Anti- corruption court and acquitted
5 of the same on the 06th day of July 2018. The Claimant also alleges that for the whole period of his employment with the Respondent, he was only paid a salary for the month of July, August and September 2013.

The claimant therefore brought this claim against the Respondent on the 16th of November 2017 seeking Ugx 60,000,000/= being salary arrears from 2012 to the
10 date of filing, UGX 200,000,000/=being payment for failure by the Respondent to offer the Claimant a fair hearing, UGX 120,000,000/= being for loss of income as a result of the penalties imposed by the Respondent and costs of the claim.

In the joint scheduling memorandum filed before this court, both parties agreed that the claimant's period of service ended on the 18th day of July 2016.

15 Issues

1. Whether the Claimant was unfairly terminated from employment
2. Whether the claimant is entitled to the reliefs sought

Representation

Mr. Okuku Conrad of Patricia Okumu Ringa & Co. Advocates appeared for the
20 Claimant while Mr. Kabega MacDusman appeared for the Respondent.

Evidence

The claimant adduced evidence from himself alone. In his evidence in chief the claimant informed court that he was employed by the Respondent from the 18th of November 2012 as a storekeeper earning a salary of 550,000/= which was later
25 increased to 800,000/= in 2014. He further testified that through his employment period, he only received salary for August, September and October 2013. It was also his testimony that he complained to the Respondent's Human Resource Manager Ms Ayebare and Managing Director about the non-payment of his salary but he was never paid the same. The claimant further testified that on 18th day of

July 2016, he was arrested, detained and charged with the offence of embezzlement for which he was prosecuted and acquitted on the 18th day of July 2018.

The Respondent presented two witnesses. The Respondent's 1st witness Ms Ayebare Provia testified that it was discovered that stock was missing and being in charge of the store he was cautioned and questioned about the missing stock where he acknowledged and agreed to pay for the lost stock. It was also her testimony that on the 18th day of November 2012 to 31st December 2015, the Claimant was found to have incurred loss of several items from the store which he acknowledged being responsible. She further testified that the Claimant was paid all his salaries and the mode of payment was through cash system and that the claimant never wrote to the Respondent to claim for unpaid salary. It was also her evidence that during a routine checking in the feeder store, the Respondent noticed more items missing and wrote to the claimant on the 26th May, 2016 requesting for accountability to which the claimant replied to but the Respondent was not satisfied with the Explanation. According to her, the Respondent wrote another letter demanding for accountability from the claimant and after failure of recovering the missing items to which the Claimant was in charge, the Respondent wrote a letter to the Criminal Investigations Directorate following which the Claimant was arrested and charged at the Anti- Corruption Court.

However, in cross- examination, the Respondent's witness informed Court that she didn't have records in acknowledgement of cash payments in court. She also testified that the claimant was not involved in the investigation process and was no longer an employee of the Respondent when the said investigations were carried out.

The Respondent's 2nd witness CPA Fredrick Owora testified that he received instructions from the Respondent on 04th January 2017 to conduct an investigation on the loss of stock or inventory of Appliance World. According to his findings, there was missing stock at stores which the claimant was to account to the tune of Ugx 191,632,810/= consisting of IQRA bulbs, Ugx 42,811,850/= and Russel Hobbs bulbs worth Ugx 147,820,960/= since it was his duty to ensure that

the actual stock account matched with the physical stock. The Respondent's 2nd witness also confirmed that he did not interview the claimant during the investigation process and that by the time of the investigation, the claimant was not an employee of the Respondent.

5 **Submissions**

Both parties filed written submissions. However, the Respondent's submissions were filed late on account that they were not served with the claimant's submissions.

10 Counsel for the claimant submitted that the claimant was unfairly terminated from employment. Counsel relied on **Section 73(b) of the Employment Act** which states that **"a termination shall be unfair... where it is found that in all the circumstances of the case, the employer did not act in accordance with justice and equity in terminating the employee from service"**. Counsel relied on the claimant's testimony of being arrested on the orders of the Respondent, charged,
15 prosecuted and subsequently acquitted and further being denied any fair hearing prior to his termination and neither being given any notice of termination. Counsel also relied on the Respondent's policy which required the Respondent to give a notice of termination or payment in lieu of the same before termination. Counsel also submitted that the warning letters in annexures D1, D2, E and F
20 which the respondent relied on were not communicated to the claimant making the Respondent breach its own code of conduct or policy.

Counsel further relied on **Section 66(1) of the Employment Act** that makes it mandatory for an employer to explain to the employee the reasons for his termination upon which the employer shall hear the employee and section 73(2)
25 which according to counsel is to the effect that in deciding whether or not termination was just and equitable, court shall take into consideration the procedures adopted by the Employer in reaching the decision to dismiss the employee and the communication of the decision to the employee. Counsel argued that the said provisions were not followed by the Respondent thereby
30 making the termination unfair.

On the 2nd issue, Counsel argued that since the claimant was unfairly terminated from his employment, he was entitled to the reliefs sought. Counsel prayed to this Honourable Court to award the claimant UGX 60,000,000/= being salary arrears from the 18th of November 2012 to the date of filing. Counsel argued that based on the claimant's testimony, the claimant only received remuneration for three months out of the total period he was employed by the respondent and that the said salary was paid at Cairo International Bank to which a bank statement was tendered in as evidence. Counsel further argued, that the Respondent failed to produce evidence of cash payments as alleged but instead produced NSSF payment details which the Respondent's first witness confirmed are not the same as acknowledgement of receipt of salary.

Counsel further prayed for Ugx 200,000,000/= being payment for failure by the respond to accord claimant a fair hearing. To back up this relief, counsel relied on section 71(5)(b) of the Employment Act which according to counsel states that "if court finds that a dismissal is unfair, the court may order the employer to pay compensation to the employee"

The third relief sought by counsel was an order of Ugx 120,000,000/= being payment for loss of income as a result of penalties imposed by the respondents and on this counsel submitted that it was the claimant's testimony that he was falsely accused on various occasions by the Respondent for causing stock shortage and was required to make payments to make good the said shortages without being given a hearing and that this was confirmed by the Respondent's first witness who admitted that the claimant was not accorded an opportunity to be heard before penalties were imposed on him. Counsel further argued that the Respondent's second witness only conducted investigations long after the claimant had been terminated and that even so he was not accorded an opportunity to be heard.

Lastly, Counsel asked for costs and submitted that it is trite law that costs follow the event as provided for under section 27 of the civil procedure Act.

On the first issue, counsel for the Respondent also relied on section 73(1)(b) of the Employment Act and submitted that the claimant's employment was lawfully

terminated due to the claimant's corrupt and unscrupulous tendencies which occasioned immense financial loss to the Respondent. Counsel relied on annexure B of RWI and submitted that the claimant conceded that he had caused financial loss to the Respondent of UGX. 573,906/= and that on the 23rd march 5 2016, the loader was caught red- handed while taking out bulbs from the feeder store and the culprit confessed that he was executing the claimant's instructions according to paragraph 11 and 12 of RWI's Witness Statement. Counsel also submitted that the Respondent wrote to the claimant requesting for accountability for the missing items and the claimant responded to the 10 Respondent's request acknowledging that the items were missing and as well took responsibility for the loss of items as per exhibit P5 of the Claimant's Trial Bundle.

Counsel for the Respondent also implored court to take cognizance of the fact that in accordance with the Respondent's penalties and Disciplinary procedure, 15 the claimant was issued with a verbal warning followed by two written warnings that is on 24th October 2013 and 16th October 2013 and that the Respondent had adduced uncontroverted evidence to show that at all material times, the claimant was notified of his misdeeds, given chance to respond and countless opportunities to redeem himself. Counsel further submitted that despite the 20 warnings, the claimant was actually promoted from the position of Assistant store keeper to that of manager of the feeder store and his salary accordingly increased from 550,000/= per month to UGX 1,200,000/= and with all this, the respondent had acted in accordance with justice and equity before terminating the claimant's employment.

25 Decision of the court

Issue No.1: Whether the claimant was unfairly terminated from employment.

This court has pronounced itself in a number of cases on the right to a fair hearing before termination. In the case of **Birungi Grace Vs Management Committee of Kampala Quality Primary School LDR No.015 of 2019** arising from 30 **KCCA/CEN/LC/217/2018**, this Court stated that;

“Article 28 and 44 of the Constitution provide that before being condemned a person alleged to have committed a wrong is required to be called for a fair hearing before an impartial tribunal. In employment terms an employer must inform the employee in a language such employee understands the nature of the offence he/she is alleged to have committed, give the employee sufficient time to prepare and appear before a disciplinary committee which after considering the accusation and the defence without any bias gives out a verdict. This process is summarised in Section 66, 58 and 68 which provide for a fair hearing where an employee is charged with misconduct, notice before termination and proof of a reason for termination respectively.

In other words, before a termination is considered to be lawful or justified the employer must do the following.

- a. Notify the employee of the nature of the offence.
- b. Give the employee sufficient time to prepare a reply.
- c. Constitute an impartial tribunal.
- d. Give the employee sufficient time to defend the accusation which includes calling evidence.
- e. Give the employee chance to appear with a person of his or her choice who should be allowed to make representations.
- f. Give the employee chance to cross examine the witnesses against him or her.
- g. Prove the commission of the offense by the employee.
- h. Make a decision.

All the above steps were declared to be constituting a fair hearing in the case of **Ebiju James Vs Umeme HCCS 0133/2012.**

From the evidence adduced by the claimant, he was terminated without being heard neither was the reason for his termination given. The Respondent adduced evidence to the effect that the claimant was at all material times notified of his misdeeds and given a chance to respond and further given both verbal and written warnings, the 2nd written warning being on the 16th of October 2013,

three years before the claimant was terminated. Be it as it may, the Respondent ought to have given the claimant a hearing before termination as required under section 66 of the Employment Act No.6 of 2006. Verbal and Written warnings cannot constitute a hearing.

5 Further, from both the Respondent's witnesses, the investigation into the alleged missing stock was only carried out after the claimant had ceased being an employee of the Respondent. The question before court is what reason did the Respondent rely on to terminate the claimants' employment? We have perused exhibit P5 on the claimant's trial bundle which counsel for the respondent argued
10 was an admission on the part of the claimant. We do not think it was an admission Our finding is that it was an explanation. It should be noted that the police investigations and the subsequent prosecution of the claimant before the Anti- Corruption Court did not bar the Respondent from administratively conducting its own investigations and coming up with a decision concerning the
15 claimant. Someone being prosecuted in a criminal matter is not enough or sufficient reason to terminate his or her employment contract.

Therefore, the requirements under Section 66 and 68 of the employment Act were not complied with neither did the Respondent act in accordance with justice and equity in terminating the claimant from service as required under section
20 73(b) and (2) of the Employment Act.

The first issue is therefore resolved in the affirmative.

Issue No.2 : Whether the claimant is entitled to the reliefs sought.

25 a) Ushs, 60,000,000/= being salary arrears from 18th November 2018 to the date of filing.

The claimant adduced evidence of a bank statement from Cairo International Bank showing that he only received salary for the months of August, September and October 2013 for the whole period of service he worked with the Respondent. He further testified that he wrote constant reminders to the human

resource manager and managing director of his salary arrears but there was no evidence on record to prove his claim. The Respondent rebutted this claim on account that the claimant received all his salary through a cash payment system but did not provide evidence of acknowledgement of the same. However, the Respondent provided NSSF payments which showed both the claimant's and Respondent's remittances from the claimant's salary which according to the said statements had been increased to UGX 1, 200, 000/= by the time of his termination. The claimant also confirmed in his evidence that his salary increased from UGX 550,000/= to 800,000/= in 2014 and later to 1,200,000 per month. The question before this court is how possible can it be that the Respondent progressively made increment's to the Claimant's salary without giving him the same. However, it is also unbelievable that if indeed the Respondent paid the claimant all his salaries through a cash system, they could not attach a payment voucher to prove acknowledgement of the same.

In the case of **Stanley Henry Kijjambu Vs Wamala Growers Co-operative Union Ltd, LDC NO.031 of 2015 arising from HCT.Cs No.149/2011** this Court held that whereas the claimant alleged that he was never paid any salary for the period 2002 – 2010, there was no evidence that he ever raised the issue of non- payment of his salary to the Board or to any other senior manager of the Respondent until his office was formally abolished. Court also made reference to **Kabi Geoffrey Vs National Union of Plantation and Agricultural Workers Union, LDC NO. 52/2015**, where court while considering a claim for salary arrears stated,

“it is our opinion that the claimant needed to do more than claim that he was paid in 1998 and he continued working without pay until July 2010 when bad blood started oozing from both claimant and respondent. This state of affairs without explanation is not believable by this court”

In the latter case, the question was whether the demand for salary arrears was justified and given the discrepancies and inconsistencies in what was claimed as salary arrears, this court declined to award the claimant salary arrears whereas in the former, the question was whether the claimant was re-engaged on the same

terms to claim the salary arrears which the claimant failed to adduce evidence and his claim failed.

5 The two cases are distinguishable with the instant case in a way that when the claimant alleged that he was paid for only three months for the whole of his employment period, the Respondent claimed that they had paid all his salaries in full using a cash system. In saying this, the burden shifted to the Respondent to provide evidence of payment of the said salaries to the Claimant.

10 Court is not convinced by the Respondent's corroboration of the claim of salary payment through NSSF payment statements. This is because it is possible for the Respondent to fulfill its statutory requirements of contributory pension remittances to NSSF without paying salaries to its employees for fear of the statutory penalties that come with non- remittances. We take judicial notice of the fact that employees ordinarily sign or acknowledge payment of salary and so in the absence of such acknowledgement the presumption is that no wages were
15 paid.

Court therefore grants this relief save that the salary arrears payable should only be up to the date of the Claimant's termination of employment and not the date of filing this claim. Salary can only be paid for work done.

20 **b) Ushs 200,000,00 being payment for failure by the Respondent to accord the claimant a fair hearing**

Section 66(4) provides;

25 "Irrespective of whether any dismissal which is a summary dismissal is justified or whether the dismissal of the employee is fair, an employer who fails to comply with this section is liable to pay the employee a sum equivalent to four weeks net pay.

However, this section is only instructional to the Labour officer. This court is clothed with unlimited pecuniary jurisdiction to award damages and has held in a number of cases that where the claimant is entitled to damages as a result of

unfair termination, four weeks' penalty should not be awarded at the same time. This prayer therefore fails.

c) Ushs 120,000,000/= being payment for loss of income as a result of the penalties imposed by the Respondents.

5 Considering the claimant's loss of employment and the circumstances surrounding his termination which included prosecution before a criminal court, and failure of the respondent to pay his wages he is hereby awarded General damages of UGX, 5,000,000/=.

In conclusion the claim has succeeded in the above terms with no orders as to costs.

Delivered and signed by:

1. Hon. Head Judge Ruhinda Asaph Ntengye



PANELISTS

- 15
1. Ms. Kagoye Robinah
 2. Mr. Can Amos Lapenga
 3. Mr. Musimbi Jimmy



Dated: 14th/04/2022

20