



**THE REPUBLIC OF UGANDA**

**IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA**

**LABOUR DISPUTE: REFERENCE No. 006 OF 2020**

5 **ARISING FROM JINJA LAB 163/1/CB/63/2015**

**SEMPIJA STEPHEN ..... CLAIMANT**

**VERSUS**

**KAKIRA SUGAR LTD .....RESPONDENT**

**BEFORE:**

10 **THE HON.AG HEAD JUDGE, LINDA LILLIAN TUMUSHIME  
MUGISHA**

**PANELISTS**

**1. MS. ROSE GIDONGO**

**2.MR.CHARLES WACHA ANGULO**

15 **3.MS. BEATRICE ACIRO**

**AWARD**

**BRIEF FACTS**

On 20/11/2013, the Claimant engaged by the Respondent as a Miscellaneous worker and deployed as Security Guard in upkeep sub sections in the Agricultural  
20 Department. On 25/08/2014, he was arrested, arraigned in court, and remanded on allegations of stealing fertilizers. He was later released on bail on 11/09/2014 and on 13/11/2014, his Case was dismissed for want of prosecution. On

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22/04/2015, he was terminated following which, he reported a Labour Complaint to the Labour Officer of Jinja District Local Government, under LAB: 163/1/ (c.b.063/2015 on the grounds that the termination was unlawful. The matter was referred to this court after mediation before the Labour Officer failed.

## **ISSUES**

- 1. Whether the Claimant absconded from work?**
- 2. Whether the Claimant was unfairly terminated?**
- 3. What remedies are available to the parties?**

## **REPRESENTATION**

The Claimant was represented by Mr. Lubulwa Peter of M/s. Lubulwa Peter & Co. Advocates, Kampala while the Respondent was represented by Mr. Gregory Byamukama of Okalang Law Chambers, Jinja.

## **RESOLUTION OF ISSUES**

### **1. Whether the Claimant absconded from work?**

It was the Claimant's case that, he was arrested from his place of work on allegations that he stole the Respondent's fertilizers. He was arraigned in Kakira Court, however, the criminal case was dismissed on 13/09/2015, for want of prosecution. On 24/04/2015, he was dismissed from Employment. He contended that the dismissal was unlawful.

The Respondent on the other hand contended that the dismissal was lawful because the Claimant absconded from duty.

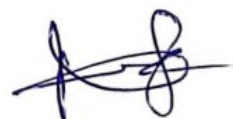
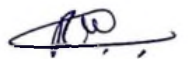
According to Black's law dictionary 11<sup>th</sup> edition "abscondment is defined as *"The act of secretly leaving one's usual place of abode or business especially to avoid arrest, prosecution or services of process..."*

Our analysis of the evidence on the record and adduced in court, indicates that, on 25/08/2014, the Claimant was arrested vide CRB 696/2014, charged with theft of fertilizers and remanded in prison vide Case No.039 of 2014, until 11/09/2014  
50 when he was released on bail. On 13/09/2014, Criminal Case no 039 of 2014, was dismissed for want of prosecution. He was, incarcerated for a period of about 3 and a half months, however the Respondent's witness testified that after the claimant was remanded, the Respondent did not follow up her complaint. This was confirmed by the dismissal of the case for want of prosecution. He was  
55 therefore incarcerated from 25/08/2014 to 13/09/2014, therefore this cannot be construed as abscondment from duty, because his absence was involuntary. Therefore, his absence from duty during this period was due to his incarceration and not because he secretly left work without authorization. Given that, he was not prosecuted and convicted of the offence of theft of the Respondent's  
60 fertilizers as alleged, his case having been dismissed for want of prosecution, Section 84 of the Employment Act is not applicable to his case. This section provides that, *an employee's continuous service shall not be regarded as broken where an employee is absent from work- due*

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65 *e) due to a sentence of imprisonment for an offence unrelated to her work"* In the circumstances, his services/employment remained uninterrupted up to the point when the criminal case was dismissed for want of prosecution.

It was the Claimant's submission that when he was discharged he made attempts to return to work, but he was denied access to the Respondent. He relied on  
70 exhibit PE6, which is a letter from a one Dramadri Harry, Branch Secretary of The National Union of Plantation and Agricultural Workers (U) Kakira Branch dated 22/01/2015, which states in part as follows:



75       *"We have learnt of the abrupt arrest of the above contract worker under Misc. Karongo division with Overseer – Mr. Taban. he was arrested on 25th August, 2014 and imprisoned till 13th November, 2014.*

*The allegation against Mr. Sempija was that of theft of company Fertilizer at Karongo Division. After 15 months of detention in prison cell the case against Mr. Sempija was dismissed for want of prosecution and the accused was discharged.*

80       *Our purpose of writing to you is to consider to either- to reinstate him or pay him his contract completion- annual leave and order for his repatriation to Namasiga Village ..." (sic)*

There was nothing to indicate that, this letter was received by the Estate Manager.

We also found no evidence to indicate that the Claimant returned to work after

85       the criminal his discharge from the Criminal case. In the absence of any semblance of evidence to indicate that he did make attempts to return to work, even Section 75(i) of the Employment Act which is to the effect that an employee's temporary absence from work for any period up to 3 months on reliable grounds including illness or injury should not be used as a basis for

90       dismissing or imposing a disciplinary penalty on him or her, the claimant cannot apply to him. The claimant only accounted for the period between 25/08/2014 when he was arrested until he was discharged from the criminal court. Although

he purports that he was beaten, and he was underwent treatment on 12/09/2014, this was not mentioned when he appeared before the Magistrate and or in the

95       Union Secretary's letter to the Estate Manager, in fact he did not adduce any evidence to that effect. In any case he was discharged on 13/09/2014 when the criminal case was dismissed for want of prosecution. We believe that had he suffered any injury resulting from any assault, it would have been addressed by the Prison Authorities and there was nothing on the record to this effect. Even



100       then there is nothing in form of medical evidence which presented to court which indicated that, he was hospitalized for a long or that he was actually assaulted. Save for the letter from the Union Secretary, the Claimant did not adduce any

other evidence to prove that he returned to work. During cross examination he stated that; *I did not go back after bail but retracted*" but during reexamination  
105 he stated that, he returned to work after the case was dismissed for want of prosecution on 13/11/2014, but he was chased away by his bosses. He testified that; "... *I went back after that and my bosses chased me away ...*" However, the letters to the Respondent from the legal Aid Clinic and the Labour Officer, marked PE8 and PE9 respectively state, that the Claimant returned to work, but  
110 he was not assigned any duties. The letters however are not sufficient, because they did not provide anything as proof that he returned, to whom he reported and who denied him work. In the absence of any reliable evidence, we were inclined to believe that the Respondent's submission that, in fact, the Claimant did not return to work as he claimed. It seems to us that, he only woke up, to follow his  
115 case, when he was served with the letter of termination. We are fortified by the fact that he only filed his complaint before the Legal Aid Clinic dated and the Labour Officer after he received the termination given the letters from these institutions to the Respondent regarding his case, dated, 12/5/2015 and 11/09/2015 respectively. Although we have established that, his employment  
120 remained uninterrupted until 13/11/2014 when he was discharged by the Criminal Court, in the absence of any evidence to prove that did return to work after that, it is our finding that, his absence from duty after 13/11/2014 amounted to abscondment from duty. This issue is therefore, resolved in the affirmative.

## **Issue 2. Whether there was unfair termination?**

125 It is trite law that, before terminating or dismissing an employee, the employer must give the employee a reason or reasons for the termination or dismissal. The employer must also give the employee an opportunity to respond to the reason or reasons, in writing or orally before an impartial tribunal or disciplinary Committee, accompanied by a person of his or her choice. (See Section 66 of the  
130 Employment Act 2006). Section 68 of the same Act is to the effect that, before

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the dismissal or termination, the employer must prove the reason or reasons and the reason or reasons must genuinely existing at the time of the termination/dismissal. In addition, the employee must be given notice or payment in lieu thereof, in accordance with section 58 of the Act. We have already  
135 established that the Claimant was incarcerated from 25/08/2014 to 13/11/2014. He was however issued with a termination letter on 22/04/2015, indicating that it was effective 26/08/2014.

The letter stated in part as follows:

140 *"... I regret to inform you that management has decided that your employment be, and is hereby, terminated with effect from 26/08/2014 since you last worked on 25<sup>th</sup> August of the said year.*


*When you have handed over all company property that might be in your possession to your immediate supervisor and complied with the Finance department's clearance procedures, you will be paid your dues as follows:*

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- *days worked up to 25<sup>th</sup> August 2014(if any).*
  - *twenty-one (21) days' basic salary in lieu of notice.*
  - *Pending leave if any...." (sic)*

We have already established that, the Claimant did not report back to work after he was discharged following the dismissal of the Criminal case for want of  
150 prosecution. However, we respectfully do not agree with the argument that, the Respondent was not aware that the Court file had been moved to Kakira Magistrate's without its knowledge, because its witness RW1 who was the CID Officer working with the Industrial Security Services, at the time testified that, when he worked for the Respondent as an independent contractor, he was notified  
155 about the Claimant's incident involving the Claimant on 25/08/2014. It was his testimony, he investigated the matter and handed the Claimant over to Police and he was in Court on 11/09/2014, when the Claimant was released on bail. In

reexamination, he stated that, "... I have no evidence that the claimant stole fertilizers ... I handed him over to police, that is what I did, I appeared in court  
160 on 11/09/2014 .. I did not testify in court..." RWI He also stated under paragraph 7 of his evidence in chief, that, "... we followed up the matter with police and the Claimant was arrested and arraigned in court in **Bugembe G1 Magistrates's Court and granted bail on 11/09/2014...**"

Therefore, the Respondent had no excuse for commencing disciplinary  
165 proceedings against the Claimant at that point as provided under Section 66 and 68 of the Employment Act(supra), which was not done. It is also our considered opinion that **Bonny Alzee Bineka Vs Kyambogo LDR No 302 of 2015**, on which she relied, is distinguishable because, in this case the Claimant was notified about a disciplinary hearing, but he declined to avail himself for it on  
170 grounds that, there was a pending and ongoing criminal case against him, yet he had been released on bail at the time. The Respondent in the instant case, did not adduce any evidence to indicate that, it made any attempt to subject the Claimant to any disciplinary procedures as provided under Section 66 and 68 of the Employment Act, 2006, which require an employer/Respondent to notify the  
175 employee/Claimant about its intention to terminate his services, by giving him an opportunity to defend himself, before terminating him. We found the issuance of the termination letter dated 22/04/2015, stating the effective date of termination as 26/08/2014, suspect. In any case the Claimant having been under incarceration until 13/11/2014, when he was discharged he was still in  
180 employment because his incarceration was involuntary. Even if it was the correct position that, the Claimant was not incapacitated when he was granted bail, this was more reason for the Respondent to subject him to disciplinary processes before terminating his services. As already discussed, no evidence was adduced to show that, the Respondent notified the Claimant about its intention to terminate  
185 him and or that he was invited for a disciplinary hearing and he failed and or

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refused to vail himself for the proceedings, to warrant his retrospective termination. This Court in **Bonny Alzee Bineka Vs Kyambogo LDR No 302 of 2015**, found that, even if an employee has a pending criminal case pending against him or her, the employer still has a right to summarily dismiss him or her, but  
190 after subjecting him or her to a hearing as provided under section 66 to justify the dismissal and particularly section 66(4) which provides that,

*(4) Irrespective of whether any dismissal which a summary dismissal is 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*  
195 *equivalent to four weeks' net pay..."*

It is not sufficient for the Respondent to argue that she dismissed the Claimant because he absconded from duty, without subjecting him to a disciplinary process for absconding from duty before terminating him for this reason. Even then there is no evidence to show that, the dismissal was because of the Claimant's  
200 absconding from duty because the termination letter does not state the reason for the dismissal.

Therefore, in the absence of evidence that, the Claimant was subjected to disciplinary proceedings, we find that the Respondent violated section 66(4) (supra). Therefore, the dismissal was procedurally unfair.

205 **ISSUE 3 What Remedies are available to the parties.**

Having established that the dismissal was substantively lawful but procedurally unfair, the Claimant is entitled to the following

- a) 4 weeks' pay for unfair termination in accordance with section 66(4) (supra).
- 210 b) He is also entitled to payment for the days worked up to 25/08/2014 as provided in the dismissal letter and the days spent in prison between 26/08/2014 to 13/11/2014 when he was discharged by the criminal court.



c) The 21 days in lieu of notice granted under dismissal letter and pending leave if any as stated in the dismissal letter.

215 In conclusion this claim partially succeeds.

No order as to costs is made.

1.THE HON. AG HEAD JUDGE, LINDA LILLIAN TUMUSIME  
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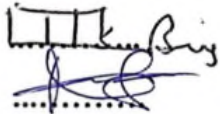
**PANELISTS**

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DATE: 2/06/2023