

IN THE SUPREME COURT OF UGANDA
AT MENGO
(CORAM: MANYINDO, D.C.J., ODOKI, J.S.C., & ODER, J.S.C.)

CIVIL APPEAL NO. 13 OF 1993

BETWEEN

MARY B. MUGENYI NALONGO :: :: :::::::::::::::::::: :: :: :: :: APPELLANT

AND

COFFEE MARKETING BOARD LIMITED ::::::::::::::::::::;RESPONDENT

**(Appeal from a judgment of the
High Court of Uganda at Kampala
(Mrs. Byamugisha J.) dated
22.7.1993 in H.C.C. suit No. 346
of 1991).**

JUDGMENT OF ODER, J.S.C.

This is an appeal against a dismissal by the High Court of the appellant's suit against the respondent for general damages for alleged wrongful dismissal from employment.

The Appellant was employed by the respondent on 4 August, 1982 as an Accounts Clerk/Sub Cashier at their Coffee Processing Plant at Bugolobi in Kampala. After a period of probation, she was confirmed in her employment on 25th February, 1983. At first her work consisted of entering vouchers on which the respondent's customers paid money in the vote book.

Subsequently, she worked as a receiving cashier. She entered money received in the relevant book and passed it and the book to her immediate superior called "Cashier Production", who signed for it. The receipt books from which she issued receipts for money received were also kept by her.

The appellant's terms of employment were governed by an Agreement made between the respondents and the Union of which the appellant was a member. The agreement was tendered in evidence by the respondent as exhibit D.5.

By a letter dated 21.5.1990 exhibit P.3, the respondent suspended the appellant from duty.

The letter stated:—

“This is to acknowledge and thank you for your letter dated 17th may, 1990 in reply to yours reference AD/J/3200 of 29th January, 1990.

I am rather surprised that it took you so long to reply to our above reference letter. However, investigations are still being carried on the allegations that caused your suspension.

You will soon be informed on the final decision on your future employment with the Board”.

By another letter dated 30th May, 1990, the respondent dismissed the appellant from their employment, The letter said:

“Management has directed that you should be dismissed with loss of all the privileges and rights to which you were entitled under your appointment as per union/Management Agreement.

You are required to hand over to the Administration Manager the C.M.B. Identity Card and any other property of the Board in your possession”.

Although the letters of suspension did not state the reasons for the respondent’s action it was not disputed that the dismissal was founded on alleged misappropriation by the appellant of the respondent’s money amounting to Shs. 3,887,280/=. In her plaint and testimony, the appellant’s position was that she had not misappropriated any money, and that she had properly remitted it to the Cashier production, who signed for it. Her dismissal was therefore, wrongful.

In their written statement of defence and evidence at the trial, the respondent maintained that the appellant had incurred that amount of cash shortage according to the receipt books indicating that she ha received the money. After an audit report showing what had happened the appellant was dismissed.

At the trial, three issues were framed:— First, whether the appellant’s dismissal was wrongful or not; second, whether the appellant was entitled to the relief’s sought in the claim, and third, the quantum of damages, if any. The learned trial Judge found for the respondent answering the first and second issues in the negative, She concluded that the appellant’s dismissal was justified, and dismissed the suit with costs.

Regarding damages, she awarded the appellant Shs. 2 million general damages in the event of a successful appeal.

Two grounds of appeal are set out in the memorandum. First that the learned trial Judge failed

to appreciate the evidence adduced and therefore, erred in holding that the appellant had been justifiably dismissed; and second, that the learned Judge erred in law in holding that the relief prayed by the appellant were special damages, whereas they were not, and therefore awarded insufficient damages in case of a successful appeal.

With respect, I do not see any merit in the first ground of appeal and therefore, I think it should fail. In his submission concerning this ground, Mr Nangwala, the learned Counsel for the appellant said that the letter dismissing the appellant did not give reasons for doing so, and yet the respondent's case was that they were entitled to dismiss her summarily under Article 32 of this Union Agreement because she had been found to have misappropriated the respondent's funds. The correct Article was actually Article 28 of the Agreement which provides as follows:—

“28 GROSS MISCONDUCT

Any of the following acts on the part of an employee shall constitute gross misconduct and/or serious neglect and shall justify instant dismissal.

- (a) If he is guilty of misappropriating any funds or property belonging to the employer;
- (b) If he is convicted on a criminal charge of offence involving, on his part, the Penal Code.

The learned Counsel contended that the use of the word “guilty” meant that to justify dismissal under Article 28(a), an employee must have been prosecuted and convicted by a court of law, or confessed of misappropriation of his employer's funds. In the instant case, the appellant having denied the allegations against her, the respondent should have instituted criminal proceedings so as to bring the appellant within ambit of that article of the agreement. In the learned Counsel's view as evidence showed that the respondent had involved the Police C.I.D. in the alleged loss of cash by the appellant and another cashier, L. Kamugisha, the appellant should have been dismissed only after her conviction arising from C.I.D. investigations.

The learned Counsel then referred to the evidence that was adduced at the trial, and said that contrary to the evidence of the respondent's Senior Internal Auditor, Peter Rwimu, (DW1), to the effect that the appellant was supposed to remit the cash received by her to the respondent's Chief Cashier at the Head Office, in Amber House, the appellant's evidence was that it was not her duty to do so. On the contrary, she had properly accounted for the money to the Cashier Production, which was all that she was supposed to do. Her duty ended there. It

was the Cashier Production's duty to follow up what happened to the money.

Secondly, she had never had problems with her employers before the incident in question. In cross—examination, she said that on 23rd January, 1990, the respondent's auditors checked cash and receipts in her office and informed her that she had had a cash shortage of Shs. 3.8 million and that some receipt books were missing. She explained that she entered the money in the form cheques — in the register and that Cashier Production had received it.

Subsequently, she was suspended on 29th January, 1990. Then on 17th may, 1990 she sent a written explanation to the respondent in her letter of the same date (exhibit P.5). Her testimony was a summary of the explanation in the letter.

As against the appellant's account of what happened, Rwima (Owl), the respondent's Internal Auditor, said that as a result of allegations against the appellant about loss of the money, he carried out an investigation and found a total cash shortage of Shs. 3,887,320/=. The shortage was reflected in a receipt book of 50 receipts all of which the appellant had signed as having collected Shs. 387, 280/=. The whole of the money was not handed over because there was no acknowledgement receipt for the money. Then from another receipt book, the appellant had issued one receipt for Shs. 3.5 million as having been received. That money, too, had not been handed over. Another receipt book was also found to have been missing at the time of the investigation and was recovered later. The receipt books were exhibits D.1, D.2, and D.3 respectively. Rwima (OWI) compiled a report of his investigation which was admitted in evidence as exhibit 0.4.

In cross—examination, the witness said that the appellant was answerable to th Chief Accountant. The procedure was that after the cashier kept the money until its accuracy was checked by an Internal Auditor. Thereafter, the Cashier would issue a receipt. There were two cashiers and each cashier had his/her own receipt book and a safe and accounted for the money separately.

The evidence of the respondent's only other witness came from Hellen Edyam Orikol (DW2), their Senior Personnel Manager concerned with the Union Agreement (exhibit D.5) which she said was in force at the material time. Her evidence was to the effect that the appellant's employment with the respondent's was governed by the agreement.

The learned trial Judge chose to prefer the respondent's version of events to that of the appellant. On the evidence before her, I think that she was entitled to do so. Apart from the contention that she did not properly evaluate the evidence, it has not been shown how she

was wrong in accepting the respondent's evidence. her findings in this regard was as follows:

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“After the summary of the submission made by the Counsel, I think there is no dispute that the plaintiff as an employee of the defendant and in the course of her duties received cash amounting to Shs. 3,870,280/=. It is also not disputed that the said amount of money was not received by the defendant hence, the plaintiff's dismissal. The question is whether this money was misappropriated by the plaintiff and therefor defendant was entitled to instantly dismiss her in accordance with article 32 (supra) (sic). The evidence of the plaintiff is that her duties ended when she handed the funds collected to the cashier Production. This Cashier Production would sign for the money and she claimed that this was done. There was no evidence to prove this. On the other hand, the evidence of Rwima (DW1) who carried out the audit exercise clearly stated that each cashier was responsible for accounting for the money collected. In his report (exhibit D.4) he checked on the two cashiers - the plaintiff and Kamugisha. Each had his/her receipt books — (exhibit D.1 and D.2), the Audit Department after checking the accuracy of the money collected directs the Chief cashier (in Amber House) to receive the cash. In those two receipts no money was received because the plaintiff did not hand it over. The plaintiff both in her evidence in court and her written explanation, put all the blame on Kamugisha (Cashier Production) yet according to Rwima's report, both were receiving cashiers from sales and receipts. I accept Rwima's evidence that each cashier was responsible to account for the money collected and the plaintiff failed to account for the money which led to her suspicion and subsequent dismissal. The arrangement which the plaintiff relied upon and which her Counsel stressed during the course of the summing up the case must have been an internal arrangement between Kamugisha and the plaintiff and it did not absolve her from her duties in my opinion. Taking into account the facts, the evidence and the circumstances of this case, it is my finding that the dismissal was justified”.

Regarding Article 28(a), I do not, with respect, agree with the construction given to it by the learned Counsel. I do think that an employee must have first been convicted in a court of law before that article can apply to him or her. The parties to the agreement must have intended that an employee's guilt in that respect was ascertained by the respondents in accordance with their established procedure. If it were not so, Article, 28 (b), which refers to an employee's

being convicted on a criminal charge before court, would have been superfluous. It would have been a duplication of Article 28(a) as interpreted by the learned counsel.

In the instant case an investigation by the respondent's internal auditors established that the appellant did not account for their funds which she had received in the course of her duties. Accordingly, her conduct amounted to misappropriation of funds, of which she was therefore, guilty. Accordingly, Article 28 (a) was applicable to her.

For reasons given, I think that the first ground of the appeal must fail. That also disposes of the second ground consideration of which does not arise in the circumstances.

In the result, I would dismiss this appeal with costs and uphold the judgment of the lower court.

Dated at Mengo this 31st date of December 1993

A.H.O ODER

JUSTICE IF THE SUPREME COURT

JUDGMENT OF ODOKI J.S.C

I have had the benefit of reading in draft the judgment prepared by Oder JSC and I agree with it.

Dated at Mengo this 31st of December 1993

B.J ODOKI

JUSTICE OF THE SUPREME COURT

JUDGMENT OF MANYINDO DCJ

I read the judgment of Oder, JSC in draft. I agree with it and as Odoki, JCS also agrees, the appeal is dismissed with costs here and in the High Court.

Dated at Mengo this 31st day December 1993

S.T MANYINDO

DEPUTY CHIEF JUSTICE