

**THE REPUBLIC OF UGANDA
THE INDUSTRIAL COURT OF UGANDA HOLDEN AT KAMPALA
LABOUR DISPUTE CLAIM. NO. 323 OF 2015
(ARISING FROM LABOUR DISPUTE NO. 06 OF 2014)**

BETWEEN

TUMURANZE AGGREY..... CLAIMANT

AND

TORO & MITYANA TEA CO. LTD. RESPONDENT

BEFORE

1. The Hon. Chief Judge, Asaph RuhindaNtengye
2. The Hon. Judge, Linda Lillian TumusiimeMugisha

Panelists

1. Mr. Ebyau Fidel
2. Ms. Harriet Mugambwa
3. Mr. Frank Mubuke

AWARD

This is an exparte award involving one Tumuranze Aggrey and Toro Mityana Tea Company Ltd.

On 21/03/2016, Counsel Mugisha appeared for the claimant who was present but the respondent did not appear, nor did counsel for the said respondent.

This court was satisfied that the respondent had been served and therefore allowed the claimant to proceed exparte and prove his case.

The respondent had been served with the memorandum of claim by a notice of claim to which was attached to the said memorandum. No reply was filed by the respondent, despite court process having been received by Kaahwa, Kafuuzi Bwiruka & Co. Advocates and therefore the claimant was allowed to file submission since there were sworn written witness statements on record already.

Briefly the facts of the case are that the claimant was employed by the respondent in August 1993 and confirmed in 2004. As a green leaf clerk he was responsible for entries in the Muster roll book.

In May 2013, the auditors found anomalies in the Muster roll consisting changes in ink that were not countersigned by the claimant. Following these anomalies the claimant was terminated.

The issues as framed by the claimant are:

- 1) Whether the claimant was lawfully terminated
- 2) Whether the claimant was entitled to terminal benefits
- 3) Whether the claimant was entitled to damages and costs.

We will deal with the first issue first.

In his evidence the claimant informed court that when the Personnel Officer invited him to office he was to "settle differences with Union officials" but before this was done he was served with a summary dismissal letter. It was after this dismissal that the earlier arranged meeting took place and thereafter the dismissal was changed into a termination.

He also asserted in evidence that given his long service with the respondent he wouldn't have been terminated without gratuity and repatriation allowance.

The evidence of one Monday Christopher was to the effect that as a Labour Officer he tried to mediate the conflict but the parties did not agree to a settlement.

One Paddy Twesigomwe accompanied the claimant to the disciplinary hearing. According to him, the claimant conceded to the anomalies in the Muster roll but denied any forgery on his part. He informed court also that the claimant did not go to the management office since he had earlier been stopped from work and for that matter he had tenderd in a resignation letter.

In his submission, counsel contended that contrary to section 58 of the Employment Act the claimant was not notified of his termination. He submitted that instead of giving notice to the claimant, the respondent intimidated him with arrest and thereafter served him with a dismissal letter. He submitted that the respondent was not entitled to dismiss the claimant summarily under section 69 since the auditors had, according to him, clearly said that although there were alterations, the claimant was always to countersign whenever he made alterations and therefore the dismissal was uncalled for. He argued that since there was no notice in accordance with section 65 of the Employment act, the claimant's contract would not come to an end (legally). He further submitted that under section 39, of the employment Act, the claimant was entitled to repatriation.

According to a letter of dismissal signed and dated 17/07/2013, the claimant was summarily dismissed. Summary termination of employment is provided for under section 69 of the Employment Act which states:

" (1) Summary termination shall take place when an employer terminates the service of an employee without notice or with less notice than that to which the employee is entitled by any statutory provisions or contractual term.

(2)

(3) An employee is entitled to dismiss summarily, and the dismissal shall be termed justified where the employee has, by his her conduct

indicated that he or she has fundamentally broken his or her obligation arising under the contract of service.”

The letter of dismissal stated thus:

“This is to bring to your notice that following forgeries you made in your muster roll when you were altering figures on field daily reports and marking false Mondays in the muster roll and also having refused to turn up for fair hearing when you were called in a letter dated 26/06/2013, management has decided to give you summary dismissal not only for failure to carry out your duties but fraud as well.”

One Paddy Twesigomwe, a witness to the claimant in a sworn written statement said **“when the claimant was stopped from working and then invited by the management to explain how those anomalies were in the muster roll, he feared to be arrested and didn’t go to the management’s office as he had been stopped from working.”**

Counsel for the claimant in his submission said **“in his letter, the Personnel Manager only alleges that he asked the claimant to come with a person of his choice for fair hearing of which he had no knowledge except that after receiving the said letter and as he was served with a letter of summary dismissal.....”**

The letter calling the claimant for a hearing states:

“Re: FORGING OF THE MASTER ROLL”

Please note that following the forgeries found in your master roll for the month of April 2013 by auditors from Kampala, it has been found out that you have been forging books as far back as January 2013. You were asked to come and we do the fair hearing with the Union or any other person of your choice, you have refused. You must do the needful with immediate effect short of which the matter will be handed to police”.

It is intimated that the claimant was called for a hearing on an undisclosed date before the 26th of June 2013, the date the above letter was written. This letter in the last sentence stresses that the claimant should **“do the needful with immediate effect”**. It is our interpretation that the letter was giving the claimant a second chance to appear and explain the alleged forgeries. We think that the claimant had been timid to appear for hearing for fear that he would be arrested.

We do not accept the contention of counsel for the claimant that he, the claimant, was still looking for a member of the Union when he was served with a letter of dismissal.

It is our view that by letter dated 26th June he was given a second chance which he should have immediately used to clear the allegations before the 17th June 2013 when he was finally dismissed.

The dismissal was over two weeks after he had been given a second chance.

In the absence of a clear denial in the memorandum of claim or in the written statement on oath (evidence in chief of the claimant) that he had not been called for a hearing prior to 26th June 2013 when he was warned to “immediately do the needful”, It is the opinion of the court that the claimant had in fact been called for a hearing prior to 26th June 2013 when he was warned to **“immediately do the needful”**. It is the opinion of the court that the claimant had in fact been called to a hearing which he snubbed for whatever reason. It is our view that the time was sufficient for him to offer an explanation with or without a friend accompanying him.

The claimant did not deny occasioning anomalies in the muster roll which he was in charge of. He admitted in his memorandum of claim that the auditors found he had caused some alterations in the muster roll without countersigning. The respondent believed that the alterations were intended to defraud her and called onto the claimant to offer an explanation which he did not as already discussed. The question for this court is whether in the circumstances, the respondent was entitled to summarily dismiss the claimant.

Earlier on in this award, we stated the position of the law in the event of summary dismissal. It embraces the following characteristics:

- (a) No notice is required
- (b) If such notice is given, it may be shorter than the employee is ordinarily entitled to
- (c) By his conduct the employee has fundamentally broken his obligation
- (d) The obligation fundamentally arises out of the contract of service.

This court in the case of **KABOJJA INTERNATIONAL SCHOOL VS GODFREY OYESIGYE (Labour dispute Appeal No. 003/2015 (arising from K.C.C.A NO.201/06-13))** while allowing the appeal stated:

“This admission was enough to entitle the employer/appellant to summarily terminate the employee/respondent which they did. The respondent’s contention that he should have been subjected to hearing was rendered redundant after he admitted his misconduct and the fact that the appellant had denied him a last chance could not render the dismissal unlawful.”

In the above case, the respondent had been summarily dismissed for admitting to have, as a teacher, failed to issue reports to pupils in time. The court found that issuing reports in time was a fundamental obligation of the respondent which entitled the appellant to summarily dismiss the respondent.

It is our finding in the matter before us, that the fundamental obligation of the claimant was to manage the muster roll and by doing so enter rightly the right figures. Entering the wrong figures in the muster roll would automatically constitute a breach of his fundamental obligation.

The claimant admitted to have entered certain figures without countersigning. He was called to explain but he declined to do so and after over 2 weeks he was summarily dismissed.

We do not think that the plea that the claimant did not intend to defraud the respondent, absolved him from his fundamental obligations to manage the muster roll properly. And this was made explosive by the fact that though given a chance to explain, he failed to do.

For the above reasons we do not find the submissions of counsel about provisions of sections 58 and 65 of the Employment Act relating to giving notice before termination useful.

The fact that after the dismissal, the management instead terminated the claimant with some benefits in our view does not make the dismissal unlawful.

All in all we take the position that the claimant was lawfully terminated and therefore the first issue is resolved in affirmative.

The second issue relates to terminal benefits.

It seems to us that terminal benefits are a subject of the employment contract between the employer and the employee. It is such a contract that ordinarily provides for the benefits that accrue to the employee after earlier termination, dismissal or retirement of the employee. In the absence of such a contract, the court will refer to sections 39 and 88 of the Employment Act.

Section 39 provides for circumstances under which repatriation accrues to the employee. None of these has in our view been proved by the claimant. Neither are we convinced that circumstances that favor the claimant so as to use our discretion to grant repatriation after the Employee is summarily dismissed have been proved.

Under section 87, circumstances under severance allowance is payable are enumerated and they have nothing to do with the circumstances in the current case before us and section 88 specifically provides for no such payment in the event of a summary dismissal with justification.

Therefore given the above provisions from counsel for the claimant as to his client's entitlement to terminal benefits, the second issue is resolved in the negative.

However, since in the termination letter the respondent conceded to paying, 4 months in lieu of notice, 12 days prorated leave and 44,000/ transport, we accordingly grant this concession.

Following the resolution of issue No. 1, in the affirmative and No. 2 in the negative, it follows automatically that the claimant is not entitled to damages.

The claim is dismissed as it has not been proved on the required standard.
No order is to costs.

Signed:

1. The Hon. Chief Judge, Asaph RuhindaNtengye
2. The Hon. Judge, Linda Lillian TumusiimeMugisha.....

Panelists

1. Mr. Ebyau Fidel
2. Ms. Harriet Mugambwa
3. Mr. FrankieMubuuke.....

Date:18th/10/2016