THE REPUBLIC OF UGANDA

IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA

LABOUR DISPUTE 057/2015

ARISING FROM HCCS No. 0209/2015)

ESEZA CATHERINE BYAKIKA …….. CLAIMANT

VERSUS

NATIONAL SOCIAL SECURITY FUND …….. RESPONDENT

BEFORE

1. **THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE**
2. **THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA**

PANELISTS

1.MR. FIDEL EBYAU

2.MS, NGANZI HARRIET MUGAMBWA

3. MR. FRANKIE XIAVIE MUBUUKE

AWARD

BRIEF FACTS

The claimant Eseza Catherine Byakika, was employed by the respondent as head of Human resources on a 3 year contract, effective 1/07/2013.

On the 28/05/2015 she was suspended by the Managing Director Mr. Richard Byaruhanga on the grounds that, she had breached the respondent's communication Policy by entertaining a media interview without his consent.

On the 11/06/2015 the claimant was subjected to a disciplinary hearing. On the 22/03/2015 the Respondent dismissed her after finding that she had conducted a media interview about the affairs of the Respondent without the authorisation of the Managing Director and therefore found her guilty of flagrant disregard of the Respondents Policies, regulations or rules in force from time to time contrary to its code of conduct under the Human Resources manual, Policy and Procedures and breach of confidentiality under her employment contract. She claimed her efforts to file an appeal had been frustrated and her dismissal was wrongful and unlawful in as far as it was based on unreliable and inconclusive media reports and whose contents did not require the authorization of the M.D. At all times of her employment she claimed she had been diligent and competent with no record of misconduct.

She sought compensation of Ugx. 23,000,000/- per month for unpaid notice, medical allowance, general damages of Ugx. 276,000,000/-for prospective income for the remainder of the contract, gratuity at 20% of 55,200,015/-, a declaration that the dismissal was unfair and wrong, an order for reinstatement, special damages of Ugx. 73,000,000/= and interest at 24% Per annum.

The respondent on the other hand claimed that the claimant had been found guilty of disregarding the Respondents policies, procedures regulations or rules in force from time to time contrary to its code of conduct under the Human Resources manual, policy and procedures and breach of confidentiality under her

employment contract. That the requirement to seek Managing Director's authorization before giving media interviews was mandatory and her dismissal was in line with her contract of employment and the Human Resource Manual, Policy and Procedures and the Employment Act, 2006 and she had filed her appeal out of time. That all her benefits had been paid to her in accordance with the respondents' Policies and the Employment Act 2006 and therefore she had no claim.

ISSUES:

According the joint scheduling memorandum the following were the agreed issues.

1. **Whether the Claimant breached the Respondent's confidentiality Policy.**
2. **Whether the Claimant breached her employment contract with the respondent and whether the claimant was wrongfully and unlawfully dismissed by the Respondent from her employment.**
3. **Whether the Claimant is entitled to the remedies sought.**

RESOLUTION OF ISSUES:

Both learned Counsel were allowed to file written submissions.

1. **Whether the Claimant breached the Respondent's confidentiality Policy.**

After carefully considering the evidence on the record, both Counsel's submissions and the law, the case for the Claimant as we understand it, is that the she was dismissed on the grounds that she flagrantly disregarded the Respondents Policies, Procedures, Regulations and Rules and breached confidentiality, when she gave the press an interview about herself and

allegations about fraud in the Fund. According to the Respondents this was confidential information.

Mr. Mukwaya learned Counsel for the claimant, citing the case of **SALTMAN ENGINEERING CO. LTD AND OTHERS V CAMPBELL ENGINEERING CO. LTD (1903) ALLER 413,** submitted that to qualify as confidential, the information must not be something which is public property and public knowledge. He argued that although the duty of confidentiality could be implied and arises out of the fiduciary relationship between the employee and employer, it must be material for the protection of the employers business. He argued that in the instant case nothing in the information released was material to the Respondents business. He insisted that the information about fraud in the Respondent Fund was not its business but rather a threat to the business. According to him by the time the claimant was recorded on the audio tape, she had already used the internal whistleblowers procedure to raise the matter to her superiors and investigations had been concluded and the culprits disciplined. In his opinion therefore, this information had ceased to be confidential and even if it were, it was in the public interest that the fraud had been published because the respondent was the only statutory body in Uganda receiving contributions from employers for the benefit of employees. He argued that the publicizing of offences such as fraud were an exception to the duty of confidentiality. He contended that in light of the Respondents business the information disclosed by the claimant could not be detrimental to the respondent and therefore there was no need for the claimant to seek authorisation before disclosing it.

In reply Mr. Omunyokol learned counsel for the Respondents asserted that the Claimant had breached the Respondent's Communications Policy when she gave an interview to the media and particularly to ***The Red Pepper Newspaper about*** her employer's business without written authorisation from the Managing Director as was required and when she made statements attributed to her in an audio recording. The article in the said News Paper read: ***"… After the session, Byakika who is out on bail said this case was engineered by thieves in NSSF who want to steal workers' money unchecked.... … I will continue getting thieves in the Fund… I will get them and fire them all…."***

Counsel asserted that by making such statements, to the press, the claimant had breached Clause 11.4 of her contract of service and clauses 12.2 and 12.3 of the Respondents Communication Policy (2012). Clause 11. 4 of the contract of service provides that:

> ***"… save in the proper performance of the Employer's duties , the Employee shall not either during employment or after its termination, make any statement or give any interviews to the media in relation to the Employer's business or any of its Employees without the prior written consent of the Managing Director…"***

Clauses 12.2 and 12.3 of the Communications Policy provide that:

> ***"12.2 Relationship with the Media***
>
> ***By virtue of their respective jobs, some members of staff may from time to time come into contact with the media, when faced with enquiries, members of staff shall politely refer the media to Head marketing and Communication or the Public relations Manager.***

12.3 Media Interviews

Members of staff may not give interviews to the media for any purpose connected with the Fund, a client or professional matter without prior consent of and authorisation from the Head of marketing and Communication…"

Counsel also cited the case of **FACCENDA CHICKEN Ltd VS FOWLER PER NEIL LJ [1986] ICR 297;1RLR 69, CA,** in which it was held that where the parties are or had been linked by a contract of employment, the obligations of the employee are to be determined by the contract between him and the employer.

Counsel contended that in the instant case the Claimant was linked to the respondent by a contract which forbade her from disclosing confidential information to the public and imposed on her a duty to act in good faith that is not to do what would prejudice her employer. According to him her utterances to the media about the allegations of fraud and the case of a staff member, one Odeke and the PPDA, breached the duty of confidentiality because this information was not in the public domain and it was extremely injurious to the respondent whose statutory mandate is to keep safe custody of workers money.

He insisted that the claimant as head of Human Resources at the Respondent Fund had got to know about Odekes case in the course of her duties, and she had a contractual obligation not to disclose such information. He also argued that the unsubstantiated allegations she had made about fraud, in the organization were detrimental to the Respondent whose statutory duty was to safeguard workers money. According to him she intended to ruin the image of the respondent and such allegations were material to the respondent's core business and therefore

this court should find her in breach of the respondent's communication policy and her employment contract.

In his opinion the information she disclosed met the qualities of confidential information as laid down by Lord Griffiths in the case of **ATTORNEY GENERAL VS THE GUARDIAN NEWSPAPER Ltd. and OTHERS No.2 (1988) UK HL**.

It is not in dispute that the claimant was employed by the respondents under a 3 year contract of employment. A contract of employment has both express and implied terms/ rights and obligations entrenched in it. The employees freedom of action is regulated by the contract and the scope of his or her power are determined by the terms (express or implied) of the contract. As a consequence the employer can exercise (or at least place himself or herself in a position where he or she has the opportunity to exercise) considerable control over the employee's decision making powers. See **UNIVERSITY OF NOTTINGHAM VS FISHEL [2000] ICR 1462, 1491 Elias J**

The equitable duty of confidence seeks to protect the confidential information provided by one party to another in circumstances which import an obligation not to disclose information or to use it for unauthorized purposes. The rationale underlying the protection of confidential information is diverse and includes commercial, professional and other relationships that require confidentiality in order to function effectively and that the protection will serve the public interest. Courts my however deny this protection even if the duty is expressly or impliedly imposed on a person, if to do so would be against the public interest .

In the instant case the claimant's contract had expressly provided under clause 11.4 (supra) the circumstances under which an employee should not give interviews to the media.

This provision as counsel for the claimant rightly stated does not define the scope of confidential information but specifically prevents an employee from disclosing "any" information about the respondents business without the consent of the Managing Director. The claimant in her testimony admitted to disclosing information relating to the respondent to the press, although she hastened to insist it was not related to its business. She testified that ***"… this information had come to me in the course of my work… yes I did mean what I said there was fraud in the company…"*** In her submission she also admitted to having told the newspapers that:

"… I have not been terminated from work, its I who asked for leave but all that is happening in court now, it is because of the fraud that I have just learnt of pertaining to the fund, I shall not stop unearthing it- and that's my role. I will unearth it regardless what they do" (as per transcription filed on 27/10/2016, page 78 of the trial bundle). According to her this information was not material to the respondents business and it did not have the qualities of confidentiality.

Mr. Omunyokiol learned Counsel argued for the respondent that the information the claimant had divulged to the media had the four elements of confidentiality as defined by Lord Megarry in the case of **THOMAS MAESHALL (Exports) Ltd VS GUINLE [1978] 3 ALL ER 193 at 209** where he stated that:

"… First I think the information must be information the release of which the owner believes would be injurious to him or of advantage to his rivals or others.

Second, I think that the information is confidential or secret, that it is not already in the public domain. It may be that some or all of his rivals already have the information; but as long as the owner believes it to be confidential, I think he is entitled to protect it.

Third, I think that the owner's belief under the two previous heads must be reasonable.

Fourth, I think that the information must be judged in the light of the usage and practice of the particular industry or trade secrets, but I think that any information which does not satisfy them must be of a type which is entitled to protection.

He insisted that the principles of equity required that once a person has received information in confidence he or she shall not take unfair advantage of it and use it to the prejudice of the owner without obtaining his consent.

The respondents business was and still is to safeguard and grow the workers savings. The fund is therefore expected to have impeccable integrity and security for these savings. Hence the need to keep information relating to the safeguarding of the workers money confidential. The claimant alleged that there was fraud in the fund and this meant that the moneys the fund was supposed to safeguard were no longer secure and therefore it was no longer a credible Social Security organization. Indeed as Counsel for the claimant rightly submitted this information was a threat to the organization's business.

The claimant stated that it was in the public interest that this alleged fraud was published because the fund was the only statutory body mandated to safe guard workers money. In her testimony however, she stated that she had already used the internal whistleblowers procedure to report the fraud, caused its investigation and eventual dismissal of the culprits. According to her the fraud had been investigated and resolved internally, which meant it was not yet in the public domain.

Counsel for the claimant however opined that by being internally resolved the information about the fraud had become public property and public knowledge and therefore could not be considered as confidential. He argued that even then the respondents had not defined nor scoped what "confidential Information" was and therefore the claimant cannot be faulted. In **ATTORNEY GENERAL VS THE GUARDIAN NEWSPAPERS [No.2] [1998] 2WLR 805 SCOTT J,** was held that:

> ***"It is a well settled principle of law that where one party (the confidant) acquires information during his service with, or by virtue of his relationship with another (the confider), in circumstances importing a duty of confidence, the confidant is not ordinarily at liberty to divulge that information to a third party without the consent or against the wishes of the confider".***

The claimant had an obligation under clause 11.4 of her contract (supra) and clauses 12.2 and 12.3 of the respondents Communications Policy (supra), not to disclose any information about her employers business to anyone without authorisation. She testified that she understood the contract and the Policies.

We think that it is reasonable for the fund to consider information about alleged fraud in it as material to protecting its business as the sole statutory body mandated to safeguard workers money at the time. The information in our view met the 4 principles espoused by Lord Meggary in the case of **THOMAS MAESHALL (Exports) Ltd VS GUINLE [1978] 3 ALL ER 193 at 209 (supra), because** it had a lot to do with their credibility as custodians of workers savings which is their core business and the information was not in the public domain because it had been handled internally with the help of the claimant who reported it in confidence. The disclosure and publicizing of such information would therefore be injurious to the respondent as the sole custodian of the people's money and the country's Social security as a whole.

We believe that the claimant was cognizant of her duty of confidentiality when she initially reported the same fraud to her superiors using the internal whistleblowing mechanism and when the matter was investigated and culprits dismissed in confidence.

Although we agree with counsel for the claimant that reporting a fraud was in the interest of the public, we do not believe that claimant had the public interest at heart when she decided to publicize a fraud which she had already reported months earlier and participated in resolving as a whistle blower. We think that the disclosure she made was an afterthought only intended to bring the Respondent Fund into disrepute and her actions had the potential of causing negative repercussions on the Country's Social Security.

This Court would have expected that a highly qualified Person such as the Claimant should have used the correct procedure and or forum for reporting a

Fraud to either the Police or an investigative authority such as the Inspectorate of Government and not directly to the press.

We therefore hold that by giving an interview about information that she acquired during the course of her employment and specifically about a fraud that had already been resolved internally by the respondent and about a staff members conduct, the claimant had breached her duty of confidentiality and as expressly stated in clause 11.4 of her contract of employment and clauses 12.2 and 12.3 of the Respondents Communication policy and in so doing breached her contract.

2. Whether the Claimant breached her employment contract with the respondent and whether the claimant was wrongfully and unlawfully dismissed by the Respondent from her employment.

It was contended for the claimant that before she was dismissed she was entitled to a fair hearing in accordance with section 66 (2) and (4) of the Employment Act, 2006. She argued that the disciplinary officer one Richard Wejule, was the investigator and prosecutor at the same time. According to counsel this was contrary to the Respondents Human Resources Manual which provided that the Head of Department was the Disciplinary officer with the responsibility of investigating the matter and presenting results to the committee. According to him this responsibility could not be delegated to a representative. In addition the committee had not cross examined key witnesses such as the head of communications and the rejection of her appeal on the ground that it was filed out of time whereas not. The claimant alleged that she had filed her appeal in time but the Respondents Officers refused to acknowledge receipt of the Appeal

and it was later rejected for being filed out of time. According to her the deliberate refusal to acknowledge receipt of the appeal was calculated to fail her in her endeavor to exercise her right of Appeal therefore the hearing being devoid of the principles of natural justice and equity, was unfair and unlawful.

The Respondent on the other hand submitted that before dismissing the claimant, all the required procedures under the Employment Act, her contract of service and the Respondents Human Resources Policy and Procedures had been adhered to. Counsel asserted that she had been suspended to allow inquiry into the matter in accordance with section 63(1) of the employment Act, 2006, a properly constituted disciplinary Committee had been set up in accordance with Clause 23.4 of the HR Policy and procedures and a date had been set up to hear and determine the allegations against her. He stated that the claimant had appeared before the committee with her lawyer a one Tebyasa Ambrose. The committee found her guilty and recommended her dismissal. She was dismissed via a letter dated 22/06/2015. Counsel insisted that the respondent had complied with the legal requirement under the law and as was put by this Court in the case of **KIBUUKA & OTHERS VS BANK OF UGANDA LABOUR DISPUTE CLAIM No. 184 OF 2014** which quoted the case of **FLORENCE MUFUMBO VS. UDB LABOUR CLAIM N0. 138/2014.** According to him in line with section 69(1) of the Employment Act, 2006, the claimant had committed acts of misconduct that led to her dismissal. Counsel insisted that the claimant had filed her Appeal out of time.

The record shows that the claimant lodged an Appeal on the 25th June, 2015 and the respondents refused to acknowledge the Appeal. The Respondents on the other hand said they received the Appeal on the 30th of July of 2015.

It is our considered opinion that the burden to prove that the claimant had filed the Appeal out of time lay with the Respondents. The respondents did not adduce evidence to discharge themselves of this burden. In absence of any evidence to the contrary we believe that claimant made an appeal in time and it was not considered. That notwithstanding, we have already found that the claimant had breached her contract and therefore the appeal would not have had any effect.

We respectfully disagree with Counsel for the claimant that a Delegate has no authority. Mr. Richard Wejule like the head of department would have done, presented the investigation report and proposed charges to the committee. In our opinion he had the authority and right to do so as a delegate of the head of department. We don't see how the claimant could have been prejudiced.

Even then this court in the case of **GRACE MATOVU VS UMEME LTD Labour Claim No. 004/2014,** already decided that a disciplinary hearing does not have to strictly conform to a trial proceeding. All that was required was for the accused employee to be given an opportunity to respond to the charges/allegations levied against him or her before an impartial tribunal. The Charges against the claimant were brought to her attention, she was subjected to a hearing in which she admitted having held interviews with the media without the authorisation of the Managing Director and we already held that in so doing she had breached her contract of employment. This court in the case of **KABOJJA INTERNATIONAL VS GODFREY OYESIGIRE LABOUR DISPUTE APPEAL No. 0003/2015,** held that an admission was sufficient to entitle an employer to summarily dismiss an Employee. We have no doubt in our minds therefore that the claimant was lawfully dismissed.

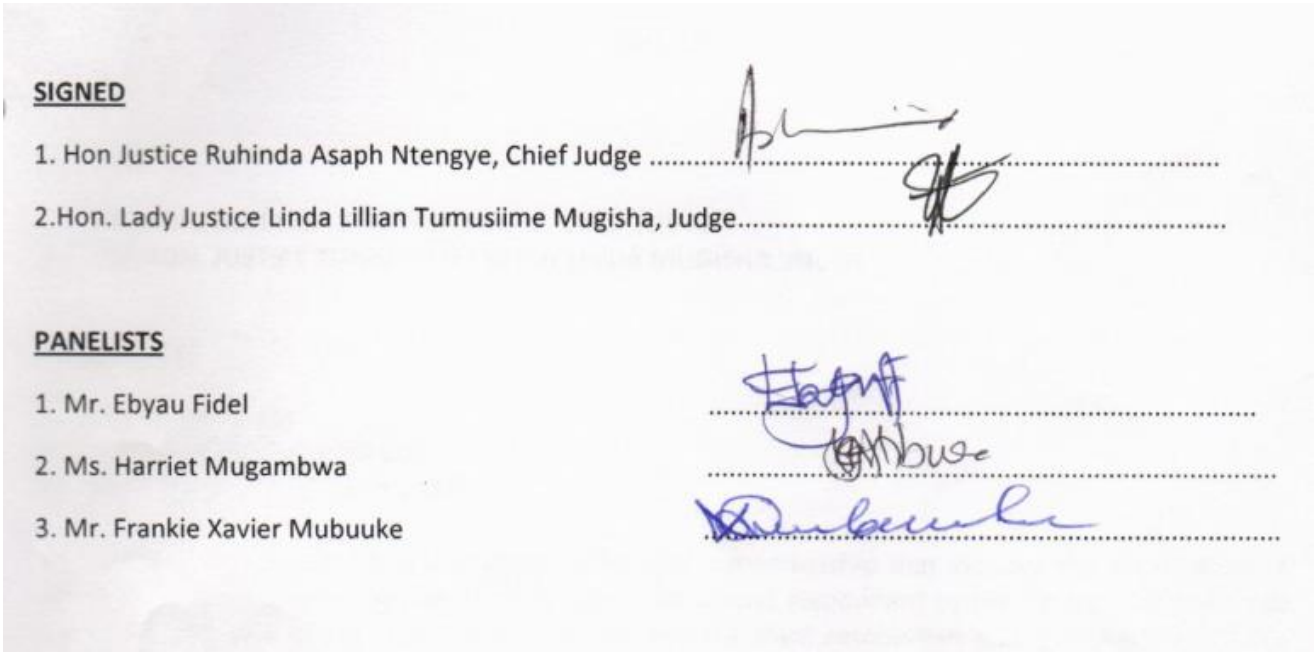
3. Whether the Claimant is entitled to the remedies sought.

The claimant sought compensation of Ugx. 23,000,000/- per month for unpaid notice, medical allowance, general damages for prospective income for the remainder of the contract of Ugx. 276,000,000/-, gratuity at 20% of 55,200,015/-, a declaration that the dismissal was unfair and wrong, an order for reinstatement, special damages of Ugx. 73,000,000/= and interest at 24% Per annum.

Having found that the claimant had breached her contract of service and was therefore lawfully dismissed, we have no basis to grant her any of the remedies sought.

The claim is dismissed with no orders as to costs.

Delivered in open Court and signed by:



SIGNED

1. Hon Justice Ruhinda Asaph Ntengye, Chief Judge .....

2.Hon. Lady Justice Linda Lillian Tumusiime Mugisha, Judge.....

PANELISTS

1. Mr. Ebyau Fidel .....

2. Ms. Harriet Mugambwa .....

3. Mr. Frankie Xavier Mubuuke .....