THE REPUBLIC OF UGANDA
THE INDUSTRIAL COURT OF UGANDA HOLDEN AT KAMPALA
LABOUR DISPUTE CLAIM. NO. 243 OF 2014
(*ARISING FROM HCT-CS-*318 of 2014*)*

BETWEEN

DENNIS ROGERS BUWEMBO.....CLAIMANT
AND

HUTCHINS CANCER RESEARCH INSTITUTE IN UGANDA.....RESPONDENT

BEFORE
1. Hon. Chief Judge Ruhinda Asaph Ntengye
2. Hon. Lady Justice Linda TumusiimeMugisha

PANELISTS
1. Mr. Ebyau Fidel
2. Mr. F. X. Mubuuke
3. Ms. Harriet NganziMugambwa

AWARD
The claimant filed this claim against the respondent claiming special, aggravated as well as general damages for unlawful termination of his employment. He also claimed interest at the rate of 20% per annum from the date of judgement until payment in full as well as costs of the suit.

The facts briefly are that by a contract document dated 28/2/2013 the respondent employed the claimant as a Research Operations manager effective 1/3/2013. On 6/2/2014, the claimant's employment was terminated and he was paid 1 month's salary in lieu of notice.

The agreed issues from each of the partie's separate scheduling memorandum are:

1) Whether the claimant was lawfully terminated.
2) Whether the claimant is entitled to the remedies sought.

From the pleadings and from the evidence adduced, we gather that the case for the claimant is that having been employed by the respondent and having worked since March 2013, he was in February 2014 informed to prepare for a skype call with the overall head of the respondent, one Dr. Corey Caster. According to him, over the said call, the said Caster informed him that his contract was being terminated because of performance related issues and he was then served with a termination letter by the executive director. His case is that he was not provided with an opportunity to respond to the allegations and that he was embarrassed to be dismissed under the circumstances he was so dismissed. In a nutshell, his case is that he was not accorded a fair hearing, and therefore the termination was unlawful.

The respondent's case on the other hand (according to the reply to memorandum of claim) is that after the claimants performance was found unsatisfactory, he was invited for a hearing at which he stated he needed no one to attend with him. According to the respondent, the details of the claimant's unsatisfactory performance were brought to his attention and he responded to the same before he was terminated (as opposed to being dismissed).

According to the respondent, the claimant having received payment in lieu of notice, he could not allege that his termination was unlawful.

The claimant in his submission and relying on a number of authorities, including but not limited to sections, 2, 68, 66 and 78 of the Employment Act, contended that the termination of the claimant having been for no reason was unlawful. He emphasised that for any termination of employment to be lawful, the employer must give reason for the termination. He asserted that the real reason for termination was performance related and that if this was the case, the claimant was not heard within the meaning of section 66(i) of the employment Act, making the termination unlawful.

He also asserted that even if the respondent was to rely on restructuring as a reason for termination, the fact that the claimant was never notified of the same would make the termination unlawful.

The respondent in his submission in reply and relying on sections 61, 65 and 58 of the Employment Act as well as the contract agreement between the claimant and the respondent did not agree to the above assertions. Counsel also relied on a number of authorities. He argued that reason for termination of employment could only be made after the employee requested for it and since the claimant never requested for it, failure to give it could not render the termination unlawful.

He asserted that the claimant having been terminated as opposed to being dismissed, section 66(i) and 68(i) of the Employment Act were not applicable.

He was emphatic on the contention that the claimant had been terminated in accordance with the contract agreement by

payment of salary in lieu of notice and in accordance with section 65 of the Employment Act.

In deciding the first issue this court need to elaborate on the circumstances that may lead to an employee or employer legally terminating the contractual relationship between the two. Generally speaking the contract will always provide for the exit of either of the parties out of the contract. For as long as the exit clauses in the contract do not conflict with the provisions of the Employment Act or any other law, the said clauses if complied with, will form the legal termination of the contract. Counsel for the respondent strongly argued that the termination was in accordance with the contract as well as with the Employment Act. He relied on clause 14 of the claimant's contract that stipulated the mode of exit to be by termination.

Clause 14 provided:

Either party can terminate the contract by giving the other party notice in writing as provided by the Employment Act ……." He also relied on section 65 (i)(a) of the Employment Act that provides:

"Termination shall be deemed to take place in the following instances:

(a) **Where the contract of service is ended by the Employer with notice**. He also relied on section 58(i) and (5) which emphasize that employment cannot be terminated unless **payment** in lieu of notice is effected.

In counsel's submission once both the provisions relating to notice in the contract and in the Employment Act are complied with, the termination will be lawful.

We respectfully disagree. There are other provisions in the Employment Act that provide for exit of the contractual relationship between the employer and the employee.

It is our considered opinion that isolating only a provision relating to notice without having regard to other provisions amounts to a misdirection. The provisions of the Employment Act that must be read together with section 65(i) include:
Section 2 which is an interpretation section of the terms **TERMINATION and DISMISSAL** as well as section 68(i) which provides for a reason for dismissal.

As counsel for the claimant pointed out, this court in the cases of **FLORENCE MUFUMBA VS UGANDA DEVELOPMENT CORPORATION(LDC 138/2015) and BENON KANYANGOGA&Others Vs Bank of Uganda(LDC 80/2014**) expounded on sections 2 and 68(1) as it held:

> "**In our considered opinion whether the employer chooses to "terminate" or "dismiss" an employee, such employee is entitled to reasons for the dismissal or termination. In employing the employee, we strongly believe that the employer had reason to so employ him/her. In the same way, in terminating or dismissing the employee there ought to be reason for the decision."**

Counsel for the respondent argued strongly that in the decision of **Florence Mufumba** and **Kanyangoga** this court flouted the rule of stare decis by departing from the decisions of the Supreme Court in **STANBIC BANK VS KIYEMBA MUTALE SCCA No. 02/2010 and BARCLAYS BANK OF UGANDA VS GODFREY MUBIRU SCCA 1/98.** We have perused over and over again the above Supreme Court decisions and we do not find any departure from the Supreme Court. We form the opinion that if counsel for the respondent had perused carefully the two Supreme Court

decisions he would have found that they were completely distinguishable from not only **FLORENCE MUFUMBA** and **KANYANGOGA** but also from the current claim before us. The decision in **KIYEMBA MUTALE** was not about what constituted unlawful termination or dismissal but the right of the Employer to terminate the services of an employee hired by such employer. Thus the court said

> **"The position of the law is that an employer may terminate the employee's employment for a reason or for no reason at all. However, the employer must do so according to the terms of the contract. Otherwise he would suffer the consequences arising from failure to follow the right procedure of termination. A termination is effective even when wrongful because courts cannot force an employer to keep an employee forever. The employer would have to contend with a claim for damages for wrongful dismissal."**

To buttress our position, the Hon. Justice Bart Katureebe (Now the Hon. The Chief Justice) in the same case said:

> "**There is no doubt that the respondents contract of employment was wrongfully terminated by the appellant, his employer. The question that needed to be answered was this: what were the consequences of that wrongful termination……"**

In the cases of **FLORENCE MUFUMBA** and **KANYANGOGA** as well as in the current case, the court was and is concerned with the question whether the dismissal/termination was lawful and not the consequences or reliefs arising out of the dismissal. Nothing in the above Supreme Court cases suggests that termination of employment without reason constitutes lawful or fair termination.

Rather, the decision in the above cases is that with or without offering any reason for termination, the termination will be effective and the courts may not easily reverse the

termination by reinstating the employee who may only be atoned by damages.
The same applies to the Supreme Court decision in **BARCLAYS BANK Vs MUBIRU**. Here the court was concerned with both the consequences of the unlawful termination and what constitutes unlawful or wrongful termination. As opposed to the holding of the trial judge, the Supreme Court pointed out that the acts of the claimant constituted a fundamental breach of the contract and for that reason the employer was entitled to summarily dismiss the employee. Thus the lead judgement of Justice Kenyeihamba states:

> "**In my opinion the trial Judge did not consider the seriousness of the acts of the respondent who, on occasions, ignored or flouted his terms of employment .....**
>
> **It is my opinion that the learned trial judge misdirected himself on the principle of summary dismissal whose purpose is to effect an immediate termination of employment without notice or hearing .....**"

Clearly the acts of the respondent constituted the reason for dismissal .On careful perusal of the whole judgement it will occur to counsel for the respondent and to whoever carefully peruses the same, that when the court was referring to termination by notice the court was answering the question whether the employer could be obliged to keep the employee until the time provided for in the contract. The court stated: -

> **"I agree with the submission of counsel for the appellant that the learned judge erred in law in holding that the contract between the parties could not be terminated until the respondent attained the age of 55 years old or until the expiration of 30 years of service by him whichever was achieved earlier."**

In my opinion, where any contract of employment, like the present, stipulates that a party may terminate it by giving notice of specified period, such contract can be terminated by giving the stipulated notice for the period. In default of such notice by the employer, the employee is entitled to receive payment in lieu of notice and where no period for notice is stipulated, compensation will be awarded for reasonable notice which should have been given, depending on the nature and duration of employment."

It is therefore very clear that the **MUBIRU** case in referring to termination by notice, the case was referring to specific provisions in the contract of service providing for the period for which the employee was to serve the employer. Neither the **FLORENCE MUFUMBA** nor the **KANYANGOGA's**case or the current case have contracts of employment with clauses relating to the period of the contract. Even if this was the case, the issues at hand would still be different in which case the cases would still be distinguishable.

Therefore the **MUBIRU**case just like the **KIYEMBA MUTALE** case, in referring to notice were as well referring to the exclusive right of the employer to terminate the services of the employee whether rightly or wrongly and not to be forced to keep the employee for a stipulated period. The MUBIRU case was not stating the law as to what constitutes unlawful or lawful termination. This is the reason the court held:

"**The right of the employer to terminate the contract of service whether by giving notice or incurring the penalty of paying compensation in lieu of notice for the duration stipulated or implied by the contract cannot be fettered by the courts. The employee is only entitled to compensation only in cases where the period of service is fixed without provision for giving notice".**

Consequently, we reiterate our positon that for a termination of the contract of employment to be lawful, the employee must give reasons for the termination as provided under sections 2 and 68

of the Employment Act. The notice provided for under section 65(i) of the Employment Act as well as in the different contracts of employment, in our considered opinion reinforces and completes the requirement in the said sections of the law and it cannot be relied on singly to terminate the contract. This Proposition is supported by the authority of **MARY PAMELA SOZI VS THE PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS HCCS 63/20112** which held that an employer cannot reasonably and without justification terminate the contract of an employee just because there is a clause in the Employment Contract that allows payment in lieu of notice.

The respondent argued in the alternative, that reason for termination could only be given upon request from the claimant and he relied on section 61 of the Employment Act which states that:

> "**Certificate of Service**
>
> **(1) On termination of a contract of service an employer, if so requested by the employee, shall provide the employee with a certificate indicating:**
>
> **(a) .....**
>
> **(b).....**
>
> **Where the employee so requests, the reason or reasons for the termination of the employee's employment**."

We think the submission of counsel on this point has no merit.

The section of the law cited by counsel is meant to help the already dismissed employee get re-employed. It has nothing to do with the lawfulness of the termination of employment. Therefore whereas we accept the argument that under section 61 of the Employment Act the employer on request is obliged to issue a reason for termination, we do not accept the contention that it is the only section that requires the employer to give such reason. As already stated section 68 and section 2 both require reason for termination.

As a consequence of the above analysis, it is our considered opinion that the termination of the employment of the claimant was unlawful and therefore the first issue is decided in the negative.

The next issue relates to damages.

The claimant argued that under section 78 of the Employment Act he is entitled to a compensatory order in addition to other remedies. On careful perusal of the said section we form the opinion that the compensation reffered to is that arrived at by a Labour officer. This court being at the level of the High court has power to grant damages to a successful litigant. Section 78 relates to labour officers whose mandate to order compensation is limited to a maximum of three months wages of a dismissed employee. This court therefore will not grant any compensation under the said section.

We agree with the claimant that the position of the law is that where an employee is unlawfully terminated the court may grant him damages for the unlawful termination. The claimant had a good job earning him us dollors 3,588 per month as gross salary. The contract was open without a fixed term beginning 1/3/2013 but the job was no more by its unlawful termination on 6/2/2014 just over a year into employment. He lost means to fend for his family for no apparent reason. It is only right and jus that he be atoned in general damages but we think 300,000,000 prayed for is far too high and we consider Ug.Shs 50,000,000 sufficient.

The claimant also prayed for aggravated damages. These damages are awarded in the discretion of the court if the court finds that the offending party was high handed and malicious in the manner the wrong was executed. such damages are intended to send a signal to the potential wrong doers that they may be punished for exceeding limits. We have been persuaded that the respondent was high handed and malicious in the manner the termination was carried out. Having been asked to prepare for a skype discussion only to be informed of his termination was humiliating to the claimant who was not a junior officer. We

agree with counsel that the fact that other members of staff were informed that he was terminated because of performance issues portrayed him as having been retrogressive in the organisation yet no appraisals had been done to this effect. We consider 7,500,000 sufficient.

In the wake of the inflationary nature of the Uganda economy it is only fair and just that the above awards attract interest at the rate of 21% from the date of the award till payment in full.

In the final analysis the claim succeeds with the following orders:

(1) The termination of the claimant's employment was unlawful.

(2) The Respondent shall pay to the claimant 50,000,000 as general damages

(3) The respondent shall pay to the claimant 7,500,000 as aggravated damages

(4) The above sums shall earn interest of 20% from date of Award till payment in full.

(5) Each party shall bear own costs.

Signed by:

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

2. Hon. Lady Justice Linda TumusiimeMugisha .....

PANELISTS

1. Mr. Ebyau Fidel .....

2. Mr. F. X. Mubuuke .....

3. Ms. Harriet NganziMugambwa .....

Dated: .....of 2017