

**THE REPUBLIC OF UGANDA
THE INDUSTRIAL COURT OF UGANDA HOLDEN AT LIRA
LABOUR DISPUTE CLAIM. NO. 79 OF 2014
(ARISING FROM HCT-CS- No. 161 OF 2014)**

BETWEEN

PATRICK OUTA..... CLAIMANT

AND

BARCKLAYS BANK OF UGANDA LTD..... RESPONDENT

BEFORE

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

PANELISTS

1. Mr. Ebyau Fidel
2. Mr. Mavunwa Edson Han
3. Ms. Julian Nyachwo

AWARD

The claimant was an employee of the respondent bank who rose through the ranks. By the time of this claim he was holding the position of Business Manager and he was in charge of the Shawuriyako Bank branch.

According to the respondent, on 02/03/2011, through the whistle blowers direct line, the respondent received information that the claimant requested for “facilitation” in order to process a loan application. On 23/03/2011, according to the respondent, the claimant was interviewed about the allegations and the next day he was put under investigative suspension until 02/05/2011 when he attended a hearing and was subsequently dismissed.

According to the claimant, at the time of suspension or thereafter he was not availed with information related to the allegations; except at the disciplinary hearing when the respondent alleged that the allegations were by whistle blowers.

Issues

The issue agreed by both parties were:

- 1) Whether or not the dismissal of the claimant from employment by the respondent was unlawful.
- 2) What remedies are available to the parties?

Evidence

Both the respondent and the claimant adduced evidence from one witness for each of them.

The claimant in his testimony informed court that in March 2011 he was summoned for a meeting with the Risk Director at which meeting he was informed that some customers had accused him of taking bribes to process their loans. Both directors insisted they had evidence but they declined to reveal it to him.

He was later on suspended and put on $\frac{1}{2}$ pay. On 3/5/2015, he attended a disciplinary hearing at which when asked about the specific allegations, the committee informed him that they were bound by the whistle blowers Act, 2010 not to reveal the information. According to him, the term “whistle blower” was not used at any one time before the hearing.

Despite his denials , the committee decided to dismiss him. According to him the processing of loans involved various actors at various stages before the loan was finally approved.

The respondent’s Head of Human Resources, one Joseph Bagabo testified on behalf of the respondent that the respondent had a group Anti-bribery and anti-corruption Policy as well as a whistle blowers protection policy. He testified that on 02/3/2011, two customers complained to the customer service Director that the claimant and another requested for a bribe though only one of the customers paid the bribe and identified the claimant by his staff identity card which was displayed. According to him, both customers did not want to be on record or to provide evidence for the investigation process. On being interviewed, the claimant denied the accusations and later on it was agreed that the claimant be put under investigative suspension for the reason of “taking facilitation payment for processing business instalment loan

applications”. Having been advised of the hearing and his rights as to being accompanied by a colleague, the claimant attended the hearing on 3/3/2011. The respondent did not find the claimant’s explanation satisfactory and found him in breach of the policy on anti-bribery which was gross misconduct that attracted a dismissal.

EVALUATION OF EVIDENCE IN RESPECT TO THE FIRST ISSUE

We are cognisant of the fact that unlike in criminal matters, in civil matters the burden of proof is always on the balance of probability and not beyond reasonable doubt. We are also aware of the principle of law in **GRACEMATOVU VS UMEME LIMITED LDC 004/2014, MUGISHA JOHN BOSCO VS CENTENARY BANK HCCS 162/2008 AND GUMISIRIZA CAROLINE KIIZA VS HIMA CEMENT,HCCS084/2012** all cited by counsel for the respondent, that a disciplinary committee of an employer is not a court of law and is not expected to operate at the standards of a court of law.

It was the submission of the respondent that verifiable misconduct in accordance with section 2 of the Employment Act was proved by the respondent through exhibit C (notification of suspension), exhibit B (summons to attend a disciplinary hearing) and the dismissal letter. According to the respondent’s submission these documents alleged and established that the claimant solicited for facilitation/bribe.

In counsel’s submission evidence was led at the hearing to show that two whistle blowers who did not want to be disclosed had been asked to pay a bribe and that these facts had been brought to the attention of the claimant which according to counsel for the respondent discharged the standard of proof required in disciplinary hearing.

In counsel’s submission, having interviewed the customers who alleged soliciting of bribes by the claimant, the respondent genuinely believed the allegations within the meaning of section 68(1) of the Employment Act.

According to counsel, the claimant was accorded adequate opportunity to be heard in accordance with the Employment Act, before he was dismissed and therefore his dismissal was not unlawful.

In the claimant's submission it was contended that there was no fair hearing accorded to him since the claimant was only given general information regarding the allegations as opposed to what is provided for in section 66(1) of the Employment Act.

He also relied on **TWINOMUGISHA VS RIFT VALLEY RAILWAYS (U) LTD CS 212/2009**. He contended also that the respondent could not avail evidence so that he could prepare for his defence.

The right to be heard as expounded under Article 28 of the constitution as well as section 66(1) of the Employment Act envisages the right of an accused or a defendant to know the nature of the charges against him or her and to be availed opportunity to defend himself before an independent tribunal. This means that the charges ought to be clearly spelt out including the particulars of the said charges. The charges should be such that the defendant comprehends and appreciates them so as to be able to offer a defence.

This cardinal principle is applicable to all manner of tribunals, be it a disciplinary committee or a quasi-judicial tribunal. The question before this court therefore is whether on the evidence available this cardinal principle was complied with.

The evidence suggests that one of the two customers of the bank identified the claimant as the person who had asked for a bribe. The claimant had no opportunity to either interface with this customer neither did he access any document nor any other statement from someone else attributed to the solicitation of a bribe. The reason this was so is because according to the respondent, the customer was protected under the Whistle Blowers Protection Act, 2010.

The information availed to the claimant was that a customer complained to the authorities that he, the claimant, had taken a bribe and he was expected to defend himself against this complaint. Section 2(2) of the Whistle Blowers Act provides:

"2 subject to any other law to the contrary, any disclosure of an impropriety made by a whistle blower is protected where he or she

(a) Makes the disclosure in good faith.

- (b) Reasonably believes that the disclosure and any allegation of impropriety contained in it are substantially true**
- (c) Makes the disclosure to an authorised officer.**

Section 8 of the same Act provides

“Where disclosure of impropriety is made to a person specified under section 4, the authorised person shall investigate or cause an investigation into the matter and taken appropriate action.”

The import of the above sections of the whistle blowers Protection Act is through investigations to ascertain the credibility and sincerity of the whistle blower. In our opinion, the authorised person must be convinced through the investigation that the whistle blower made the disclosure in good faith and that the whistle blower’s allegations were substantially true.

The evidence on the record seems to suggest that the allegations of the customer of the bank was taken as gospel truth without any independent investigation to verify its authenticity. The investigation referred to in the evidence relates only to the interview of the whistle blowers who were at the same time the complainants. We think that the investigations envisaged under the whistle blowers Act should be able to establish (among other things)

- 1) The circumstances under which the impropriety was committed.
- 2) The integrity and character of the whistle blower.
- 3) How often the offender has been involved in the impropriety
- 4) What could have been the cause of the commission of the impropriety
- 5) The truthfulness of the allegation.

It is on the strength of the investigation report that any offender may be produced before any tribunal. In the absence of the whistle blower, who is protected, the offender is then required to respond to this report or to the charge that should contain a summary of the report. It is only through compliance with sections 2 and 8 of the Whistle blower's Protection Act that a fair hearing can be said to exist.

According to a report on the file marked as D2 which is called a **Breach against Group anti-money laundering Policy or Group anti-bribery and anti-corruption Policy** and which was an attachment to the evidence of Joseph Bagabo “3/05/2011 – Disciplinary and Grievance session was held. Patrick Outa denied allegations against him.

The Panel included a representative from the Human Resource Department and Head of operational risk. A conclusive decision was not reached due to the following:

- Refusal of complainant to appear before the panel for cross examination.
- Lack of evidence. The case is vested in the complainant’s hand against the staff members’ word.

After review by the Head of Human Resource, panellists were advised of available options/decisions. As a result the panelists returned a recommendation to dismiss Patrick Outa in light of the fact that two different customers complained to the Customer Service Director and Executive Director of the bank about the same staff member, a reasonable inference was drawn and the bank exercised its legal/contractual and policy mandate to dismiss the staff member”.

We appreciate the attachment of the bank to its customers but as a court of law we do not appreciate how an allegation of such a customer, without verification or investigation as a basis to establish its truthfulness, can lead to a dismissal of an employee. We do not appreciate the submission of counsel for the respondent that;

“The claimant was subjected to procedural fairness through a fair hearing process.....” This is because the nature of the accusation was a mere statement of an allegation of impropriety with no substantive description of particulars to enable the claimant prepare adequately for his defence. Merely being able to appear before a disciplinary committee without such particulars in our view does not constitute a fair hearing. The report above clearly states that there was no conclusion reached due to lack of sufficient evidence. In this particular case the fact that the proponents of the statement could not appear and the fact that there was no investigation in accordance with section 8 of the

Whistle Blowers Protection Act made matters worse for the respondent. Unlike in this case, this court in **Benon H. Kanyangoga & Others vs Bank of Uganda LDC 080/2014** (cited by Counsel for the respondent) after faulting the respondent for breach of some tenets of a fair hearing held that the hearing established enough facts to constitute breach of clause 1.15 of the Administration Manual of the bank under which the claimant had been charged.

The hearing in the case before us did not establish the facts constituted in the allegation against the claimant and therefore **the Kanyangoga's case** is not applicable.

Accordingly we find that the claimant was not accorded a fair hearing within the meaning of section 66(1) of the Employment Act and the reason for dismissal was not proved in accordance with section 68(1) of the same Act. It follows therefore that the dismissal of the claimant was unfair and unlawful culminating in issue no.1 being resolved in the positive.

The second and last issue relates to damages.

(a) **Special Damages**

The respondent vehemently argued that these damages could not arise and he cited the cases of **Barclays Bank Vs Godrey Mubiru Civil Appeal 1/98** and **Bank of Uganda Vs Betty Tinkamanyire Civil Appeal 12/2002**. Counsel for the claimant argued that he was denied earnings for up to 2025 when he would have retired and he prayed for these earnings.

This court in the case of **FLORENCE MUFUMBA Vs UGANDA DEVELOPMENT BANK LDC 138/2014** after considering the decision in **Berry Tinkamanyire (Supra) and Omunyakol Akol Johnston Vs A.G S.C.C.A 06/2012** awarded salary arrears of the period from the date of termination to the date of the award. We therefore hereby award salary to the claimant for the date of termination to the date of the award of this court.

(b) **Severance**

Section 89 of the employment Act provides for the agreement of employer and worker's union on the amount of severance pay. This

court granted a month's pay every year worked by the employee in the event that there was no such negotiation between the two in the case of **Donna Kamuli Vs DFCU Bank LDC 002/2015** and in **Joseph Kibuuka & others Vs Bank of Uganda: LDC 184/2014**. The same will apply in this case.

(c) **General Damages**

The respondent's counsel vehemently argued that the claimant was not entitled to general damages. He argued that under the Employment Act, damages do not apply. He contended that the claimant would only be entitled to compensation in accordance with section 77 and 78 of the Employment Act. With due respect to counsel's submissions, section 78 refers to compensation awardable by a labour officer. This is the reason it stipulates the maximum compensation.

We are not aware of any law that limits damages awardable by this or any other court not being of a labour officer. Over time the courts have granted damages to persons unlawfully dismissed. Examples include **TWINOMUGISHA MOSES VS RIFT VALLEY RAILWAYS (U) LTD CS 212/2009** where Justice Elizabeth Musoke awarded 30,000,000/- as general and aggravated damages. Even in the Supreme Court case of **Omunyakol Akol Johnston Vs A.G (Supra)** the court awarded these damages.

Considering that the claimant had worked for the respondent for over 21 years and considering that he lost a job to cater for himself and his family needs and also the anguish that occurred to him, we are of the considered view that 20,000,000/= as general damages will suffice.

(d) **Aggravated Damages**

These are damages awarded to the claimant (in order to punish the respondent for the excessive acts done in perpetuating the unlawful act complained of). It is our view that the claimant did not prove anything beyond the respondent having relied on information by a whistle blower who was their customer to dismiss the claimant. We decline to award these damages.

(e) **Interest**

Given that in the Uganda economy one cannot rule out inflation, we form the opinion that the interest rate of 20% is fair. This rate will run from the date of the award till payment in full in respect to all the amounts granted by this court.

(f) **Costs**

Although ordinarily costs follow the event, having considered the circumstances of this case, no order as to costs is made.

In conclusion an award is entered in favour of the claimant against the respondent in the following terms:

- (1) The claimant was unlawfully dismissed.
- (2) The claimant will be entitled to special damages of salary arrears from the date of dismissal to the date of this award.
- (3) In the event that there is no arrangement about severance pay in accordance with section 89 of the Employment Act, the claimant shall be entitled to severance of a month's pay per year worked.
- (4) The claimant shall be entitled to 20,000,000/= as general damages.
- (5) The sums mentioned in this award shall attract 20% interest from the date of the award till payment in full.
- (6) No order as to costs is made.

Signed by:

1. Hon. Chief Judge Ruhinda Asaph Ntengye
2. Hon. Lady Justice Linda Tumusiime Mugisha

Panelists

1. Mr. Ebyau Fidel
2. Mr. Mavunwa Edson Han
3. Ms. Julian Nyachwo

Date:..... of 2017