**THE REPUBLIC OF UGANDA**

**IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA**

**LABOUR DISPUTE: CLAIM NO.004 OF 2014**

 **ARISISNG FROM HCT-CS-0183 OF 2009**

 **GRACE MATOVU………………………………………………………..CLAIMANT**

**VERSUS**

 **UMEME LTD …………………………………………………....... RESPONDENT**

**BEFORE**

1. **The Hon. Chief Judge, Asaph Ruhinda Ntengye**
2. **The Hon. Judge, Linda Lillian Tumusiime Mugisha**

**PANELISTS**

1. **MS. ROSE GIDONGO**
2. **MR. BAGUMA FILBERT BATES**
3. **MR. EBYAU FIDEL**

**AWARD**

**FACTS**

Grace Matovu the claimant, brought this matter against Umeme Limited, the Respondent seeking a declaration that her termination from the respondent s employment was unlawful, special damages, general damages, and aggravated damages for wrongful and unlawful dismissal.

The claimant was employed by the Uganda Electricity Board (UEB) on permanent basis, on the 16th of December 1994 and continued under its Employment until the transfer of part of its business to Uganda Electricity Distribution Company Limited (UEDCL).

She continued working under the UEDCL until it transferred its Business to the Respondent company, UMEME, on March 1st 2005.. The Claimant continued under the employment of the Respondent Company on permanent basis from the date of transfer and was entitled to a monthly salary of 1,569,773/- and 3 months notice of termination or payment in lieu of notice.

The Respondent by letter dated 8th May 2009, summarily dismissed the claimant from her employment on the following grounds:

1. Theft and loss of company property equivalent to Ushs. 240,202,913/- using Combined Requisition and issue vouchers =(CRIVS) specially assigned to the Claimant
2. Failure to comply with the financial policies and procedures (E3) leading to the loss of company funds in the sum of Ushs. 240, 202,193/-
3. Gross negligence of company funds in the sum of Ushs. 240, 202,193/-
4. Purporting to lodge a criminal complaint of forgery with the Uganda Police on behalf of the Respondent without authority whilst the defendant was still carrying out its internal investigations.

The claimant contends that the dismissal was unfair, unlawful and not in accordance with the Principals of natural justice and caused her loss and damage for which the Respondent is liable.

**ISSUES:**

1. **Whether the claimant’s dismissal from the Respondents employment was lawful?**
2. **Whether the claimant is entitled to the reliefs sought?**

**EVIDENCE**

Evidence was adduced from the claimant and two witnesses from the respondent’s side.

The claimant in her evidence in chief acknowledged that she was employed as a Revenue controller and later on the 11th March 2005 as acting supervisor of the Revenue protection Unit. That she was responsible for ensuring that no loss was occasioned to the Respondent Company. In cross examination the Claimant stated that within her unit Combined Requisition and Issue (CRIVs) were used for procuring materials from the company stores. She said that there were some CRIVs that were assigned to her. Her supervisor had assigned her the responsibility of supervising the Revenue Protection Unit to ensure that all CRIVs were accurate. She said that in case of any anomaly inquiries on the same would start with her. For some time she was also responsible for receiving goods until a substantive person was appointed. She confirmed that she had been told of the loss of UGX. 240 million shillings and that inquiry in this loss had started with her. She said she had been told that the CRIVs that were used in the fraud bore her signature.

She disputed the disciplinary proceedings on the record and stated that they did not constitute everything that transpired at the hearing. She also denied the existence of the financial policy referred to by the respondents, because at the time she was supervisor Revenue Protection Unit, they were still in draft form. She said that she had told the Disciplinary Committee that her signature had been forged and that she had reported the matter to the police without informing the respondent. She acknowledged signing a confidentiality agreement with the respondent. She also said that she had not been given a chance to call witnesses neither had she been given a chance to call the expert who had established that her signature had been forged.

On the other hand, the RW1, Clare Mukasa, the Manager Revenue Collection in the respondent Company, in her evidence in chief stated that she was one of the disciplinary committee members that heard the claimant’s case. She reiterated the infractions levied against the claimant as summarized in the facts above and confirmed that the respondent Company had established a Revenue Protection Unit to ensure that losses were contained. She said the claimant had been appointed Acting supervisor of the unit. She further stated that the allegations against the claimant arose when a discrepancy between goods taken out of the stores for a campaign the respondent had in Masaka and those that were actually received in Masaka was discovered. That whereas the materials could only be taken out against a document called a Combined Requisition and Issue Voucher (CRIVs) and whereas the materials were taken out of stores, they had no direct link to activities in Masaka, so the matter was investigated and eventually the disciplinary hearing was conducted. She stated that the claimant had been given an opportunity to review the evidence that is the CRIVs against her.

 In cross examination she stated that the claimant had been informed of the infractions against her, and given time to prepare her response. She stated that the claimant was expected to account for the CRIVs in issue. The claimant had been given the CRIVs in dispute before the hearing, though she did not call any witnesses. RW1 stated that the claimant was asked to defend herself but she gave very little detail. She did not provide any detailed evidence on the forgery of her signature. She also stated that the claimant had violated the respondents financial procedures dated September 2007, especially with regard to the taking of inventory. The claimant only said that she was innocent and she had not raised the CRIVs in dispute. Based on the findings the committee summarily dismissed her.

**SUBMISSIONS:**

Both counsel made written submissions for which the Court is grateful.

**1. Whether the claimant’s dismissal from the Respondents employment was lawful?**

In submission Mr. Peter Kawuma for the claimant, contended that the claimant’s termination from employment was wrongful because the disciplinary interview to which she was subjected was marred with impropriety and unfairness and was contrary to the law and principals of natural justice. Counsel stated that the disciplinary committee before which the claimant had appeared on the 6th of May 2009 was compromised and un-impartial because the chairperson of the disciplinary committee Mr.Chimbima Simbiso had been personally involved in the matter under investigation both as a signatory to one of the requisitions in question and as the sitting head of department and initiator of investigations on the claimant. Counsel argued that the claimant therefore had not been afforded the opportunity to appear before an impartial and disinterested Tribunal. He cited the case of **Caroline Turyatemba and others Vs Attorney General Constitutional Petition No. 15 of 2006** in which court held that:

***“The right to be heard is a fundamental basic right. It is one of the cornerstones of the whole concept of a fair hearing. The principle of “Hear the other side” or in Latin: “Audi Alteram Partem” is fundamental and far reaching. It encompasses every aspect of fair procedure and the whole area of due process of the law. It is as old as creation itself, for even in the Garden of Eden, the Lord first afforded a hearing to Adam and Eve, as to why they had eaten the forbidden fruit, before he pronounced them guilty…”***

He further contended that the committee had only singled out the Claimant for disciplinary action yet there were several others who were involved in the alleged fraud, in addition he stated that the committee had ignored her defence to the allegations levied against her. Counsel also stated that the claimant had not been given notice or payment in lieu of notice as was required, making the dismissal unfair, unjust, arbitrary, harsh wrongful and illegal. He therefore prayed that court orders that the claimant dismissal was wrongful and unlawful, that the respondent pays three months salary of UGX. 4,709,319/- , as salary in lieu of notice, UGX. 570,826/- as unpaid salary for the period 1st may to 8th may, balance on salary for 7 weeks when claimant received half pay of UGX 392,443 per week totaling UGX. 2,747, 103/-, severance pay aggravated damages for unfair and unlawful dismissal, interest on the above amounts and costs of the suit.

On the other hand, Mr. Mafabi Michael Counsel for the respondent did not dispute the summary dismissal of the claimant and stated that it was done in accordance with Section 2 of the Employment Act, 2006 and Section 69 of which is to the effect that; A Summary dismissal meant a dismissal without notice or with less notice than the employee was entitled to under the contract or under the Act and that summary dismissal was justified by a fundamental breach by the employee of his or her obligations under a contract.

Counsel argued that although the Employment Act 2006 had not defined **“*fundamentally broken,”*** Common Law by reason of Section 13 of the Judicature Act applied to the facts of this case. In light of this it was his contention that conduct which under common law would be regarded as disregarding the essential conditions of the contract of service would be regarded under the Employment Act 2006 as one that had fundamentally broken the contract of service, therefore justifying summary dismissal.

To establish that the claimant had fundamentally breached the contract of service Counsel argued that the claimant had admitted that she was employed by the respondent as a supervisor in the Revenue Protection unit and that part of her duty was to ensure that no loss was occasioned to the respondent by ensuring the accuracy of the Combined Requisition and issue vouchers (CRIVs) which were used to get materials from the company stores and that where any anomaly occurred it was the claimant who would be the first point of inquiry. He further stated that the claimant had acknowledged that she had been informed about the loss of property worth Ug.shs. 240 million and that the CRIVs that led to the loss had been signed by herself. He added that the claimant had admitted to reporting the forgery of her signature on the disputed CRIVS, to the Police without informing the Company.

He made reference to RW1s testimony which was to the effect that the property in question had been requisitioned for a campaign in Masaka, though it did not reach Masaka. RW1 stated that although the materials had been moved from the central stores in Lugogo where the claimant worked they had not reached Masaka hence the loss. Counsel invited Court to note that this testimony had not been challenged by the claimant in Court.

Counsel contended that the claimant had failed in her duty as supervisor and that the loss of UGX. Shs. 240,202, 913/- was attributed to her failure as supervisor. He argued that the claimant had been grossly negligent in failing to abide by the company financial policies and in the handling of CRIVs which lead to the loss of UGX.Shs.240,000,000/=.

It was his opinion that the claimant had failed to satisfy the disciplinary committee that her signature had been forged and therefore she was guilty of the infractions levied against her. He further argued that the claimant had no mandate to lodge a criminal matter on behalf of the respondent. He emphasised that the claimant had failed in her duty as supervisor to prevent loss to the respondent and therefore she deserved to be summarily dismissed.

After carefully considering the evidence on record, the parties written statements in evidence in chief and both counsels submissions, we find that the claimant had failed in her duty to ensure that the Combined Requisition and Issues Vouchers (CRIVs) used for requisitioning materials from stores were utilized as was required and therefore gave the respondent reason to dismiss her.

**REASONS:**

 It was the claimant’s evidence during cross examination that she was employed as supervisor in the Revenue Protection Unit,

**“…*my core responsibility was to ensure that no loss was occasioned to the respondent”***

The conference Investigation report Exhibit R2 showed that Grace had identified anomalies in the use of the CRIVs by some staff in her department particularly a one Luutu and Kenneth Masaba but had done nothing as supervisor to either reprimand or report the same to higher authorities. In the report the claimant acknowledges that Luutu had on several occasions failed to make returns of the CRIVs for goods delivered to Masaka, but there is nothing on the record to show that she had take action to address this anomaly.

On the flouting of financial regulations, the Claimant insisted that the financial regulations Exhibit R1 were a draft which she was not obliged to follow, even then as supervisor of the Revenue protection Unit she had the responsibility to follow up the return of CRIVs issued under her docket. There was no evidence to indicate that the Claimant had made some minimum effort to ensure that the errant officers were brought to order. The laxity with which she handled these officers in our opinion created an environment which led to the loss of Ug. Shs. 240,202,913/- , to the respondent.

The claimant acknowledged that she had been notified of the infractions levied against her, and that she was also given an opportunity to review the document / CRIVs that she was alleged to have signed before the hearing, an opportunity to defend herself and also granted a right of appeal. She had argued that the loss was due to CRIVs that bore her forged signature which she had reported to Police. Although the claimant had been given an opportunity to adduce evidence in her defence during the disciplinary hearing she did not raise any evidence to prove that the signatures were the forged. She did not prove the same in this Court either.

The claimant also insisted that the disciplinary hearing was presided over by Mr. Chimbima Simbiso who was her supervisor and head of department. In the claimants opinion because Mr.Chimbima had commissioned the investigation he was not an impartial chair of the disciplinary committee and therefore she was unfairly treated. The question however is would the decision have been different had the committee been chaired by a different? The answer in our opinion is NO. As already decided the claimant had been given an opportunity to defend herself and she had failed to provide evidence exonerating her. We believe that this case can be distinguished with the case of **ENG. JOHN SENFUMA VS THE ENGINEERS REGISTRATION BOARD HCT-00-CV-0026OF 2009** in which Justice Yorokamu Bamwine decided that ***“….a Person who previously chaired an investigation in which the appellant was condemned , would obviously be perceived as biased in a hearing of the same victim to justify the result of the investigation… it was improper for Prof. Mwakali who was chair of the CTIT to also actively participate in the proceedings of the respondent. It was a decision reached in breach of rules of natural justice. It is void ab initio even if the board would have come to the same decision had the rules of natural justice been complied with…”***

The fact that Chimbima chaired the proceedings of the claimants disciplinary hearing in our view, did not prejudice the outcome of the proceedings neither did it cause any miscarriage of justice because unlike Prof. Mwakali, in Eng. Senfuma,s case, Chimbima neither participated in the investigation nor was he investigated himself. He only commissioned the investigation.

We further agree with others before us that a disciplinary hearing needn’t apply the strict procedures applied in a Court of law. The cases of **GENERAL MEDICAL COUNCIL OF MEDICAL EDUCATION AND REGISTRATION OF THE UNITED KINGDOMVS SPACKMAN (1943) ALLER 340, AND CAROLINE KARISA GUMISIRIZA VS HIMA CEMENT LIMITED HCCS NO. 84 OF 2015** both concluded that a disciplinary committee needn’t follow the procedure as applied in the courts of law but merely required that an employee appearing before it, is given an opportunity to defend him/herself without the requirement of the standards of a Court of law. In this case the claimant had been given an opportunity to defend herself and she failed to convince the committee hence her dismissal.

On the respondents’ failure to give the claimant notice or pay in lieu of notice, we agree with Counsel that the respondent was justified in summarily dismissing the Claimant without notice in accordance with section 69 and section 58(1) of the Employment Act. Section 58 (1) (a) provides that:

**“*A contract of Service shall not be terminated by an employer unless he or she gives notice to the employee, except:***

1. ***Where the contract of employment is terminated summarily in accordance with section 69."***

It is our considered opinion therefore that the respondent genuinely believed that the claimant had fundamentally breached a core responsibility assigned to her and was justified to summarily dismiss her.

**Issue Two:**

1. **Whether the Parties are entitled to remedies**

Having found that the claimants dismissal was justified her prayers for the remedies cannot be granted by this Court. We however make no order as to costs..

1. **The Hon. Chief Judge,**

 **Asaph Ruhinda Ntengye ……………………………………………….**

1. **The Hon. Judge,**

**Linda Lillian Tumusiime Mugisha ……………………………………….**

**Panelists**

1. **MR. ROSE GIDONGO ………………………………………**
2. **MR.BAGUMA FILBERT BATES ……………………………………..**
3. **MR. EBYAU FIDEL ..……………………………………**

**Date……………………………………………………………..**