**THE REPUBLIC OF UGANDA**

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

**LABOUR DISPUTE REFERENCE: NO.012 OF 2015**

**ARISING FROM: HCT-C5-0279/2014**

**KYEYUNE PAUL …………………………………….. CLAIMANT**

**VERSUS**

**THE UGANDA PRINTING AND**

 **PUBLISHING CORPORATION …………………………………... RESPONDENT**

**BEFORE**

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

**PANELISTS**

**1. MR. EBYAU FIDEL**

**2. MR. WANYAMA ANTHONY**

**3. MS. ROSE GIDONGO**

**AWARD**

**BREIF FACTS**

On the 22nd October 2009 the claimant was apprehended by the Respondents Production Manager a one Bongonyinge Francis at the Respondents gate and found in possession of 4 serially numbered printed receipt books hidden in his pockets and inside his shirt.

The claimant admits to being found in possession of the said receipt books and only contests his unfair, unlawful and wrongful dismissal. He prays for reinstatement or payment of his salary from 28th October 2009 to date.

**Whether the claimant's dismissal was unlawful/unfair and wrongful?**

It was submitted for the claimant that his dismissal was unlawful/unfair and wrongful because his dismissal letter was signed by an unauthorised officer, the Assistant Manager Personnel and Administration a one Nabukenya Cissy which was contrary to Section 9(3) of the Uganda Printing and Publishing Corporation Act Cap 330. The section provides that “***Subject to the Act and the general supervision and control of the Board, the Managing Director*** ***shall be responsible for the management of funds, property and business of the corporation and for the administration, organization and control of staff management of the Corporation.”(Counsel’s emphasis)***

 It was the claimant’s evidence that the authorized delegate should have been the Human Resources Manager and not the Assistant Manager Personnel and Administration. He contended therefore that his dismissal was rendered unlawful by her signature.

Counsel refuted the Respondents reliance on the Code of conduct and Human Resources Manual marked “RE10” and “RE11 because the respondents witness could not verify the dates on which the documents were published and according to him the Uganda Printing and Publishing Corporation Act took precedence. According to Counsel the use of the word shall in section 9(Supra) meant that the Managing Director could not delegate this role thus rendering Nabukenya’s act unlawful.

He further argued that Hajji Twaha the Union Chairperson testified that staff were allowed to use the Respondent’s facilities for minor works such as trimming and this is what he had done. He argued further that the principles pf natural justice were not followed because Mr. Bongonyinge apprehended him and accused him, but he also sat on the disciplinary committee as its Secretary. Counsel was of the view therefore that he biased the committee

In reply the Respondents stated that the dismissal was done in accordance with the Code of conduct and Human Resources Manual marked “RE10” and “RE11.” According to Counsel the documents provide for dismissal as the appropriate action against an employee who is found guilty of or confesses dishonesty.” she refuted the claimant’s reliance on the respondent’s 2013 Human Resources Manual because the claimant was dismissed in 2009 and besides the claimant had not denied being found in possession of the alleged private receipt books, therefore the dismissal was justified.

Counsel insisted that an interpretation of Section 9 of the Act (supra) shows that the Managing Director was subject to the general supervision and control by the Board and the Code of conduct having been approved by the Board, it was applicable to this case. She cited pages 14 to16 of the Respondents trial bundle which is to the effect that the Managing Director could delegate the responsibility of issuing a dismissal letter for staff of scale 3 to 6 and this is what happened in the instant case. Counsel asserted that at the time of the dismissal the claimant was at scale 5, therefore Nabukenya Cissy rightly signed his dismissal letter.

It was further her submission that the Respondent’s witness Ann Arihomugisha, testified that the claimant admitted to committing the offence and that he was apprehended by Bongoninge and this testimony was not controverted. She insisted therefore that the Claimant could only succeed on procedural impropriety.

She was of the view that if court was so inclined to find that the dismissal was unfair he would only be entitled to remedies provided for under Section 78 of the Employment Act, 2006, that is 4 week wages and a maximum of 4 months wages. She prayed that this issue is resolved in the Respondents favour.

**DECISION OF COURT**

Dismissal from employment is defined under section 2 of the Employment Act as the discharge of an employee from employment at the initiative of his employer when the said employee has committed verifiable misconduct.

Section 66 (1) and (2) of the same Act provides for the notification of the employee in question and an opportunity for him or her to be heard before termination. The section provides as follows:

***“66. Notification and hearing before termination***

***(1) Notwithstanding any other provision of this part, an employer shall before reaching a decision to dismiss an employee, on the grounds of misconduct or poor performance explain to the employee, in a language the employee may be reasonably expected to understand, the reason for which the employer is considering dismissal and the employee is entitled to have another person of his or her choice present during this explanation,***

***(2) Notwithstanding any other provision of this part, an employer shall before reaching a decision to dismiss an employee, hear and consider any representations which the employee on the grounds of misconduct or poor performance, and the person, if any chosen by the employee under subsection (1) may make.***

The employer shall give the employee and the person so chosen reasonable time within which to prepare the representation referred to above.

Section 69(3) of the same Act provides for summary dismissal wherein it states that an employer is entitled to dismiss summarily and the dismissal shall be termed justified where the employee has , by his or her conduct indicated that he or she has fundamentally broken his or her obligation arising under the contract of service.

It is not disputed that the Claimant admitted that when he was apprehended, he was found in possession of private receipt books and although his witness Hajji Twaha testified that staff were allowed to use the respondent’s facilities to carry out minor private works, the claimant did not adduce any evidence to show that he had permission to carry out the purported trimming of the said Receipt books or that it was a minor activity that would not cost the Respondent.

We find it suspicious that the claimant did not declare the books as authorized private work and instead hid them in his shirt and they were not declared. In the circumstance we have no doubt in our minds that he had no authorisation to undertake the trimming of the receipt books as private work.

Section 69 states that:

***“69 (3).summary termination***

1. ***An employer is entitled to dismiss summarily and the dismissal shall be termed justified, where the employee has, by his or her conduct indicated that he or she has fundamentally broken his or her obligations arising under the contract of service.***

Therefore given that the printing and publishing of books including receipt books, is the main business of the Respondents and the claimant produced the receipt books without authorisation, he committed a fundamental breach of his employment contract and the respondents were therefore justified to dismiss him.

The record shows that the claimant was given a hearing and he testified that he had defended himself. He said;

***“… it was not allowed for me to take the 4 receipt books… yes what I had done was wrong…”***

Section 66 (4) provides that before dismissal whether the dismissal is summary or not section 66(1) and (2) must be complied with, however this court has already decided in **KABOJJA INTERNATIONAL SCHOOL VS GODFREY OYESIGYE LABOUR DISPUTE APPEAL NO. 003/2015,** that where an employee admits to committing the alleged misconduct, the employer is entitled to summarily terminate the employee without a hearing and the termination shall be lawful. Also see the South African decision in **ADESOKAN V SAINSBURY'S SUPERMARKETD LTD (2017) EWCA CIV 22.**

It is clear from the evidence on the record that the claimant was given a hearing and he defended himself. He said ***“…yes I was given a hearing…I made my statement and defended myself… yes the decision to dismiss was after I had been given a hearing”***

His contention however is that, his letter of dismissal was signed by the Assistant Manager Personnel and Administration and not the Managing Director. He also contended that Bongonyinge who apprehended him had participated in the decision of the disciplinary committee as its secretary and the union branch was not given opportunity to make their investigations.

We have already established that the claimant admitted that he had in his possession 4 receipt books which he claimed he had trimmed using the respondent’s facilities and he adduced no evidence to prove his action was authorized. He admitted to being given a hearing.

We find no evidence to suggest that the committee was biased given that the claimant admitted to committing the offence and in the same vain there was no need for the Union to investigate the matter any further.

We are therefore of the considered opinion that in the circumstances the hearing was procedurally fair. The decision to dismiss the claimant was made in the presence of the claimant’s representative the deputy Union chairperson.

Although the Respondents evidence in support of the delegation of the Assistant Manager Personnel and Administration by the Managing Director was controverted by the claimants, we do not think that by signing the termination letter, the termination was nullified, given that the claimant admitted that he committed the offence and the decision to terminate him was made by the Disciplinary Committee and not the Assistant Manager Personnel and Administration who signed the termination letter. However it would not be farfetched to consider that a Human Resources Officer in any organization is dressed with authority to sign termination letters unless expressly prohibited to do so.

In conclusion, we find that the claimant’s dismissal was substantively and procedurally lawful and therefore he is not entitled to any remedies. This claim therefore fails with no order as to costs.

Delivered and Signed by:

**1.THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE ……………………**

**2.THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA ……………………**

**PANELISTS**

**1. MR. EBYAU FIDEL ………………….**

**2. MR. WANYAMA ANTHONY …………………..**

**3. MS. ROSE GIDONGO ………………….**

**DATE: 20/7/2018**