**THE REPUBLIC OF UGANDA**

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

**LABOUR DISPUTE APPEAL NO. 230 OF 2015**

**ARISING FROM LEI 95/232/01**

**ALBERT NUWAMANYA …………………………….. CLAIMANT**

**VERSUS**

**POST BANK ……………………………... RESPONDENT**

**BEFORE**

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

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

**PANELISTS**

**1. MS. JULIAN NYACHWO**

**2. MR. BWIRE JOHN ABRAHAM**

**3. MR.MAVUNWA EDSON HAN**

**AWARD**

**BACKGROUND**

This matter was brought for an award against the respondents for; reinstatement of the claimant to his post as credit Manager Customer loans and projects, payment of all the salaries and benefits accrued at the time of termination, general damages, compensation amounting to Ugx. 400,000,000/- as damage to his career and suffering due to unfair and unlawful termination, interest of 20% per annum from the date of filling till payment in full.

**BREIF FACTS**

On 13/10/2006 the Claimant was appointed by the respondents as Area Business manager, western region at a salary of Ugx, 2,000,000/= per month. He was confirmed in employment on the 13/06/2007 and his salary was periodically revised up to Ugx. 3,264,765/= per month.

The Respondent underwent restructuring in 2012, after which the claimant was appointed Senior Manager Business growth. On the 16/06/2014 he was appointed Credit Manager Consumer loans and projects, at Head Office. However before assuming the new appointment, on 23/07/2014, he was suspended at half pay. The suspension was based on the grounds that while executing his duties as Senior Business growth Manger he had behaved unprofessionally by;

1. *Disregarding the contract terms that were set by management through its auctioneer regarding the sale of Mr. Mukooba’s land by allowing the purchasers access to the land before full settlement of the agreed price.*
2. *Failing to consult with the banks legal and credit team before entering into a contract on behalf of the bank with an external party (visible SACCO) for a land sale transaction.*
3. *That these actions exposed the bank to a high reputational risk. A photocopy of the HR Policy is attached hereto marked “G”*

His suspension was extended to the 21/09/2014 and was invited for and he attended a disciplinary hearing on the 10/9/2014 and subsequently he was dismissed.

**ISSUES:**

1. **Whether the claimant was unfairly /unlawfully terminated?**
2. **Remedies available to the Claimant?**

**REPRESENTATIONS:**

The claimant was represented by Mr. Gilbert Niwagaba of KGN Advocates plot 5 Princess Avenue, Nakasero and Ms. Anne Namara of ARCADIA Advocates plot 6 Acacia Avenue was for the Respondents.

**SUBMISSIONS**

1. **ISSUE 1. Whether the claimant was unfairly /unlawfully terminated?**

It was submitted for the claimant that his termination was unlawful because it was contrary to Sections 68, 73 and 75 and the Respondents Human Resources Manual. Counsel that the claimants argued that the disciplinary committee was not fully constituted in accordance with the section 12.3.4 of the respondents Human Resources Manual. He stated that whereas the manual provides that the committee should comprise of 4 heads of department, head of legal services and 1 other employee nominated by other grades of staff, in the claimant’s case the disciplinary committee comprised of only 3 heads of department which prejudiced him and was contrary to section 73(b) of the employment Act 2006. He also cited **DR. OMONA KIZITO VS MARIE STOPPES UGANDA LDC NO. 033/2015.**

Counsel contended further that the charges set out in the claimant’s letter of suspension were different from the charges eventually put to him at the hearing. He submitted that whereas the charges in the letter of suspension marked “G”, stated that:

1. *Disregarding the contract terms that were set by management through its auctioneer regarding the sale of Mr. Mukooba’s land by allowing the purchasers access to the land before full settlement of the agreed price.*
2. *Failing to consult with the banks legal and credit team before entering into a contract on behalf of the bank with an external party (visible SACCO) for a land sale transaction.*
3. *That these actions exposed the bank to a high reputational risk. A photocopy of the HR Policy is attached hereto marked “G”*

The letter dated 9/09/2014 Marked “I” notifying him about the hearing scheduled for 10/9/2014, stated that:

*“He failed to follow the credit policy regarding property that had been handed over to an auctioneer and further witnessed the signing of a land sale agreement without permission from management which exposed the bank to reputational risk, litigation and financial loss.”*

Counsel asserted that the claimant was therefore not sure about what charges lay against him and that the disciplinary committee did not know what the hearing was about.

He further argued that the termination letter had not explicitly stated that the claimant had been found guilty or culpable. According to him the termination simply laid a background to the termination in line with section 13.1.1 of the human resources policy which states that;

***“13.1.1 It is the policy of the bank to terminate any employee who is no longer serving its interests, subject to normal disciplinary procedure.”***

Counsel concluded that the claimant had been terminated on grounds that “*he no longer served the interests of the bank”* yet he was not given any hearing with regard to this ground. He argued that the minutes of the purported hearing did not state this ground nor did they state it in the letter notifying him about the hearing. He insisted that no finding was made on these issue and according to him the committee only made observations regarding the following:

**“*by continuing to handle the customer’s requests without involving the debt collector, he contravened the Credit policy Section 9.5.2.4, which states that “once instructions are issued to an auctioneer/debt collector or Advocate, the branch should make no direct communication with the customer without involving the auctioneer or Advocate.”***

Counsel asserted that the committee made no reference to the terms of the agreement and in his view they simply imported new issues which they resolved without putting them to the claimant.

He argued that giving access for boundary opening was not the same as granting possession of the land to the buyer as was claimed by the respondents witness one RW 1, one Esther Babirye. According to him the claimant’s response to allow the purchaser permission to open the boundaries would not in any way prejudice the bank since any buyer would be interested in ascertaining the size and boundaries of what he was buying.

Counsel also contended that the committee had not shown how the claimants signing as a witness on the agreement between Joan Nkojo Turyagenda and Visible Co-operatives Savings and Credit Society had made the Respondent party to the agreement thereby exposing them to potential financial and reputational risk as well as legal risks.

According to him the respondents had not informed the claimant about the reasons for which they terminated him and therefore they violated Section 66 of the Employment Act nor had they proved anything against him as provided under Section 68 of the same Act. In light of this Counsel asserted that the claimant was therefore entitled to compensation of 4 weeks wages.

He further argued that the termination should have been effected by the Managing Director and not the Human resources Manager as was the case. He refuted the argument that the position of Senior Manager Business growth did not call for dismissal by the Managing Director. He insisted that the respondent’s relegation of this role to the Human resources officer was a violation of section 12.3.4 (vi) of the Respondents Human Resources Manual.

It was his submission therefore that a summation of all these actions by the Respondents rendered the termination of the claimant unfair and unlawful.

In reply it was submitted for the respondents that they had conducted an investigation into the allegations that the claimant had engaged in transactions that put the reputation of the bank at risk and possible legal challenges. According to Counsel for the respondents these allegations were a violation of the respondents Human Resources Manual. The claimant was given a hearing, and subsequently he was dismissed.

According to counsel the hearing was done in accordance with Section 73(a) and (b) of the Employment Act which sets out the parameters of an unfair termination. She insisted that they followed due process therefore the termination was not unlawful. She argued that giving the claimant an opportunity to appear and present his case before an impartial committee in charge of disciplinary issues was one of the tenets of a fair hearing as laid down in **EBIJU JAMES VS UMEME LTD CIVIL SUIT No. 0133/2012.**

She insisted that the charges leveled against the claimant were read out to the him and he did not object to the hearing on the grounds that they were not clear to him, therefore to assert that he had not understood them at this point was an afterthought which should be disregarded by court. She contended that the there was no difference between the grounds as set out in the suspension letter and the notification for a hearing. In her view the grounds for which he was expected to prepare a defence were on his dealings with the property that had been handed to an auctioneer, contrary to the credit policy thus exposing the respondent bank to reputational, litigation and financial loss.

According to Counsel exibit REX 13 shows that from the committee’s observations, the claimant was found culpable for the charges leveled against him and had recommended his termination from the respondent’s service for putting it at risk of reputational and financial damage. She further argued that, by exposing the bank to such risks, it was clear that the claimant was no longer serving its interests.

She insisted that under exbit REX7 the claimant had given the buyer of mortgaged property permission to deal with the property before the purchase price had been paid without consulting the people charged with the sale of mortgaged property.

She further argued that by the claimant signing on a land sale agreement as an official of the Bank, he had further exposed the bank to litigation risk and financial loss in case the Bank failed to lend to the party who intended to borrow the money for the purchase from the same bank. She was of the view that he should have consulted with the legal and credit departments before, to enable him understand the implications of such an action. She cited **BARCLAYS BANK VS GODFREY MUBIRU SCCA No. 1 OF 1998.**

According to Counsel in the instant case, as the respondent’s Senior Manager Business growth, the Claimant was expected to exercise a higher degree of care than any other employee in the branch. He however had been reckless and in his conduct amounted to failure to serve the interests of his employer. It was her submission therefore that the claimant had been given a fair hearing.

**DECISION OF COURT**

We have carefully considered the submissions of both Counsel, the evidence on the record and the law and find as follows.

It was the claimant’s evidence that the reasons for his dismissal as set out in his the suspension letter marked “G”, were different from those set out in “I” the letter notifying him about the hearing and the letter of termination. After careful examination of the 3 letters we found that whereas in “G” he infractions were;

“***1. You disregarded the contract terms that were set by management through its auctioneer regarding the sale of Mr. Mukooba’s land, by allowing the purchasers to access the land before full settlement of the agreed price.***

1. ***You didn’t consult with the bank’s legal and credit team before entering into a contract on behalf of bank with an external party (Visible SACCO) for land sale transaction. Your actions have exposed the bank to a high reputational risk…”***

“I” stated that;

***“it has been alleged that you failed to follow the credit policy regarding property that had been handed over to an auctioneer and further witnessed the signing of a land sale agreement without permission from management which exposed the bank to reputational risk, litigation and financial loss”***

“M” the termination letter stated that

***“1. You failed to follow the terms and conditions of the sale agreement of a loan defaulter’s property.***

***2. You entered into an agreement with an external party on behalf of the bank without Management’s approval.”***

It seems to us that the 3 letters though worded differently were referring to the same subject matter. That is, that the claimant as Manager Business Growth had not followed the required procedure for handling the sale of a defaulter’s mortgaged land and he had witnessed a land sale agreement in which the bank had a stake without authorisation of management. We do not think they were different. We also found that apart from the claimant’s testimony that he had requested for clarification on the same, we have not found any evidence indicating that the he had not understand the infractions put to him.

It is our considered opinion therefore that he understood the infractions that had been leveled against him and he responded to them. Further in cross examination the claimant admitted that he had authorized a buyer of mortgaged land to open its boundaries and he also witnesses a land sale agreement in which it was stated that the purchaser would pay the vendor from a loan which was to be provided by the Respondent bank. Did these actions justifiable reasons for his termination?

Section 68 (1) and (2) of the Employment Act 2006 provides that;

***“68. Proof of reason for termination***

 ***(1) In any claim arising out of termination the employer shall prove the reason or reasons for the dismissal, and where the employer fails to do so the dismissal shall be deemed to have been unfair within the meaning of section 71***

***(2) The reason or reasons for dismissal shall be matters, which the employer, at the time of dismissal, genuinely believed to exist and which caused him or her to dismiss the employee…”***

When we examined the terms of the sale agreement between the vendor Manquick auctioneer and the purchaser of the mortgaged land in question, we found that the purchaser would only get full possession of the land upon full payment of the purchase price to the bank. The claimant argued that by enabling the purchaser access to open boundaries he had not given him possession to the land as was alleged. According to blacks laws dictionary 4th edition “possession” means “***the detention and control, or the manual or ideal custody, of anything which may be the subject of property, for ones use and enjoyment either as owner as proprietor of a qualified right in it and either held personally or by another who exercises it in one’s place and name. Act or stat of possessing. That condition of facts under which one can exercises his power over a corporeal thing at his pleasure to exclusion of all other persons….”*** According to the same dictionary “access” to property does not necessarily carry with it possession (see **People vs Brenneaur, 166 N.Y.S 801, 806,101 misc .156.** Did his authorisation to open boundaries amount to giving the purchaser possession contrary to the sale agreement? We don’t think so.

It is our considered opinion that the act of allowing the purchaser access to open boundaries, did not amount to granting the purchaser possession of the land. Besides he stated that the opening would be subject to the agreement.

This notwithstanding however, it seems to us that the respondent’s main concern was that the claimant in granting the purchaser this access had failed to abide by the credit policy which prohibited him from dealing with property already handed over to auctioneers. According to Clause 9.5.2. (iii) (4) of the policy;

***“once instructions are issued to an auctioneer or advocate, the branch should make no direct communication with the customer without involving the auctioneer or advocate.***

In cross examination the claimant admitted to granting the purchaser access to open the boundaries he said that; ***“yes I accepted him to open boundaries…”*** In his evidence in chief under clause 22 he stated that he had not been informed of the provision of the Credit Policy he had flouted and in clause 23, he stated that he believed that the agreement between Manquick Auctioneers and Constance was illegal although he did not adduce any evidence to show that he had informed management about his distrust about the agreement nor did he adduce any evidence to prove that as the manager in charge he had made any effort to rectify or cause the rectification of the said illegality. He stated that he had not been given copies of the credit policy or the human Resources Manual during the hearing. We do not believe that as Senior Manger Business Growth he was not conversant with such Policies that governed his work, to justify his actions.

 We are inclined to agree with the respondents that by failing to raise the alleged illegality in the agreement between the auctioneers and the purchasers of the mortgaged land to the bank and by directly dealing with the purchaser when he authorized him to access and open boundaries which was contrary to Clause 9.5.2. (iii) (4) of the credit Policy, the respondents were correct to conclude that he had ceased to operate in the interest of the Bank. A manager at his level, is duty bound to disclose to his superiors any concern / distrust about any transaction under his docket, instead of working behind the scenes with the customer as the claimant had done by granting a customer permission to open boundaries in total disregard of the respondent Banks Credit Policy (supra).

The claimant also admitted to witnessing a land sale agreement between Joan Nkojo Turygenda and Visible Co- operative Savings and Credit Society Limited. He however insisted that he had authority to witness documents by virtue of his position and he had witnessed the agreement on behalf of the bank.

When we examined the land sale agreement marked “L” on the claimant’s trial bundle, we found that under clause 5 (b) the agreement provided that “***the purchaser shall proceed to secure and process a loan of the said money from Postbank Uganda Ltd which shall be paid to the vendor within 3 months from the date of signing this agreements to wit by the 14th day of July 2014.*** We also found that it had been signed ***“In the presence of POSTBANK (U) LTD…*** by signed by the claimant as the witness for the bank. The claimant testified that he knew that the SACCO was a client of the Bank and that was basis enough for him to witness the agreement. He said that the respondent’s Human Resources Manual did not bar him from witnessing any document.

Although nothing on the record indicated that he was not barred from witnessing any documents, the fact that the payment for the land was premised on the processing of a loan facility from the respondents themselves in our view could have led the parties to misconstrue his signature as a guarantee of the loan being granted to them. We agree with counsel for the respondents that in the event that the loan was not granted there was a possibility of the bank suffering reputational risk. We are buttressed by the reasoning in **BARCLAYS BANK OF UGANDA VS GODFERY MUBIRU(Supra) *“Managers in the banking businesses have to be particularly careful than managers of most businesses. This is because banks manage and control money belonging to other people and institutions perhaps in their thousands and therefore are in a special fiduciary relationship with their customers whether actual or potential … moreover, it is my opinion that in the banking business, any careless act or omission, if not quickly remedied, is likely to cause great losses to the bank and its customers. Loose talk, irregular or unconditional banking acts or behavior could lead to speculation about the undermining of the reputation of the appellant and therefore loss of customers and investors upon which the business of the bank depends.”***

The claimant ought to have exercised more caution before witnessing such an agreement in which his signature as a staff of the Bank could be construed by the parties as guaranteeing the acquisition of the loan which is the basis of paying the purchase price. In the event that the loan was denied for whatever reason, the bank could suffer irreparable reputational and possible financial risk.

It is our considered opinion therefore that the respondents were able to prove the reasons for terminating the claimant and in our view the reasons were justifiable.

**Was the claimant accorded a fair hearing?**

According to Section 66 (1) and (2) of the Employment Act 2006, before an employer considers termination or dismissal of an employee’s employment, the employer must give the employee justifiable reasons why he or she is considering the termination/dismissal. Section 66(2) provides that the employer must hear the employee before dismissing him or her.

***“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 that the subsection (1) may make.***

We have already established that respondents had notified the claimant about the infractions leveled against him and that he understood and responded to them.

It was further the claimant’s case that the hearing was unfair on the grounds that the disciplinary committee was not fully constituted thereby prejudicing him. From the submissions of Counsel for the claimant the committee comprised all the members save for 1member who was supposed to be a head of department.

Counsel for the respondents refuted the claim that the constitution of the disciplinary committee by less 1 person, had prejudiced the claimant because he had not adduced evidence to prove any prejudice. She argued that although section 12.3.4 of the Human Resources Manual provides that the disciplinary committee should comprise of 4 heads of department namely, head Human Resources, head Credit, head Operations and the delegate of head legal, all of them sat on the committee as heads. She argued that the although the head legal had not been referred to as head of department in the structure ,it did mean that he or she was not considered a head of department but rather made the attendance of the head of legal mandatory. She stated that the respondents witness had testified that the head of legal had to mandatorily sit on the committee in all disciplinary matters of the respondent.

Referring to **HON. JUSTICE G.W.KANYIHAMBA VS KAMAPALA INTERNATIONAL UNIVERSITY &2 OTHERS CS No.161/2010 and GENERAL MEDICAL COUNCIL VS SPACKMAN(1943) ALLER 627** Counsel further stated that it was trite “***that a disciplinary hearing as envisaged in employment matters is that the employee is given an opportunity to tell their side of the story. This is another element of a fair hearing and a hallmark of natural justice”*** Which the respondents had done.According to her Dr. Omona’s case was distinguishable from the instant case because in Dr. Omona’s case the composition of the disciplinary committee was prejudicial to the claimant because it was totally outside composition in the human resources manual.

This court in many cases has already established that a disciplinary hearing need not strictly conform to the procedures of a Court hearing. What is of paramount importance is that the tenets of a fair hearing must be met, that is the employee in issue must be informed about the infractions or allegations levied against him or her, he in a language he or she understands, he or she must be given notice of the hearing , the employee must be given time to prepare for a response to the infractions or allegations and advised on his or her right to be accompanied to the hearing by a person of his or her choice, the employee must be given the opportunity to physically appear before an impartial tribunal or disciplinary body to present his or her response and adduce any other evidence if any after which the tribunal or disciplinary body then makes a decision. (See **GRACE MATOVU VS UMEME LLDC NO. OO4.2014).**

In the instant case the claimant was given an opportunity to appear with his lawyer before a disciplinary committee although 1 head of department did not sit. From the record it seems that the Manager Compliance sat in the place of the head of department. The claimant insisted that the fact that this head had not sat prejudiced him. He cited the case of **DR.OMONA** (Supra). We think Dr. Omona’s case is distinguishable from the instant case. In Dr. Omona’s case, not only considered the fact that there was lack of quorum of the disciplinary committee, but that other tenets of a fair hearing such as failing to inform the claimant about the charges levied against him before the hearing, not giving the claimant enough time to prepare for the hearing were missing.

In the instant case not only was the claimant informed about the infractions levied against him, he also appeared before the committee with his lawyer and was given opportunity to seek clarifications and to make a response to the charges leveled against him. Although the charges under the different letters as seen, were worded differently, the claimant, responded to the charges and attended the hearing and subsequently a decision to terminate his services was made. His appeal to the Managing Director failed because the Managing Director held the Committee’s decision.

We did not find any evidence to show that the absence of 1 head of department had prejudiced the claimant. We believe that the disciplinary committee notwithstanding the absence of 1 head of department, met tenets of a fair hearing and we have no basis to declare otherwise.

In the circumstances this claim denied. The Claimant was lawfully terminated in accordance with Sections 66(1) and (2) and 68(1) and (2).

**2. REMEDIES AVAIALABLE TO THE CLAIMANT?**

We have already found that the claimant was lawfully dismissed therefore he is not entitled to any remedies.

In conclusion this claim 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. MS. JULIAN NYACHWO …………………**

**2. MR. BWIRE JOHN ABRAHAM ………………….**

**3. MR.MAVUNWA EDSON HAN ………………….**

**DATE……………………………….**