**THE REPUBLIC OF UGANDA**

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

**LABOUR DISPUTE REFERENCE NO.261/2018**

**ARISING FROM ML/LD/338/2018**

**KIBUUKA MICHEAL ……………………….. CLAIMANT**

**VERSUS**

**UGANDA CHRISTIAN UNIVERSITY …………………. RESPONDENT**

**BEFORE:**

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

**PANELISTS**

**1.MS. ADRINE NAMARA**

**2.MS. SUSAN NABIRYE**

**3. MR. MICHEAL MAVUNWA**

**AWARD**

**INTRODUCTION**

This claim was brought against the Respondent, for unlawful termination, lost salary, general damages, interests and cost of the claim.

**BRIEF FACTS**

In 2007, the Claimant was employed by the Respondent initially as a casual worker in the Accounts Department. 0n 28/03/2008, he was transferred and redesignated as a stores Assistant effective 31/03/2008 on a 6 months’ probation contract. on 20/11/2008, he was confirmed in the position of Stores Assistant on a 2-year renewable contract. According to him he served diligently, leading to the contract being renewed twice until 20/08/2014, when he was promoted to the position of Stores superviser on a 3 year contract.

On 25/07/2016, he was interdicted for 1 month on half pay, on allegations of theft of 50 bags of rice. On 24/08/2016 he was invited for a disciplinary hearing and asked to respond to the allegations in writing, and submit them to the tribunal, which he did. On 9/09/2016, he appeared before the tribunal and presented his defence. He was terminated on 30/09/2016 and his salary for the month of September was not paid.

He contends that his termination was unlawful because he was never given the report of the decision of the tribunal or an opportunity to appeal, as provided under the Respondent’s Code of Conduct.

**ISSUES FOR DETERMINATION**

1. **Whether the Claimant was unfairly and wrongfully terminated/dismissed?**
2. **Whether the Claimant was entitled to the remedies sought?**

**REPRESENTATION**

The Claimant was represented by Mr. Kakande Edward of Bumpenje and Company Advocates, Kampala and the Respondent by Mr. Bwire Geofrey Candia Advocates and Legal consultants, Kampala.

**RESOLUTION OF THE ISSUES**

1. **Whether the Claimant was unfairly and wrongfully terminated/dismissed?**

Counsel cited section 2 of the Employment Act, for the definition of dismissal, as the discharge of an employee from employment at the initiative of his or her employer when the said employee has committed verifiable misconduct and termination as, discharge of an employee from employment at the initiative of his or her employer for justifiable reasons other than misconduct such as expiry of contract, attainment of retirement, etc.

According to Counsel, on 25/7/2016, the Claimant was orally terminated by the Deputy Vice Chancellor Finance and Administration, without any reasons because the interdiction letter was only issued to him after dismissal. Therefore, in light of the provision of section 65(1) the termination took effect then. He argued that the Claimant was not given a fair hearing and he was terminated on 30/09/2016 without any reason and without payment of his September salary. He contended that he 2nd termination letter dated 7/10/2016, provided for 3 months payment in lieu of notice but this was not paid. He also contended that the tribunal report was not issued to the claimant despite several reminders from the Claimant. He also contested the procedure adopted by the tribunal on the grounds that it was not provided for in the code of conduct under the statement of offences i, ii, iii and iv and the claimant was not informed about his full rights.

Counsel contended that pursuant to section 66(1) (2) and (3) of the Employment Act, 2006, the claimant was denied the right to have a person of his choice present during the hearing and he was not given the report of the findings of the tribunal. According to him the report was a sham because the tribunal was never meant to afford the Claimant a fair hearing. He cited **Barclays Bank of Uganda and Godfrey Mubiru SCCA No. 1 of 1998,** in which the principle of natural justice was elucidated and it was stated that a fair hearing was evidenced by notice of the charge being given to the person being charged and given an opportunity for the person to be present to defend himself or to be legally represented. He also relied on **Ebiju James vs UMEME Ltd CS No.0133 of 2012,** for the same legal proposition and **Benon H. Kanyangoga & Ors vs Bank of Uganda LDC No. 080 of 2014** in which this court held that an employer cannot terminate the contract of an employee, unreasonably and without justification, simply because there is a clause in the employment contract that allows for payment in lieu of notice. Given that the employer had reason to employ a person, in the same way in terminating or dismissing the person, he or she ought to be given reason for the decision.

Therefore, Court should find that the claimant was wrongly, unlawfully and unfairly terminated and dismissed.

In reply Counsel for the Respondent submitted that the Employment Act under section 2 used the terms *termination and dismissal* interchangeably. He restated the definitions as provided under the Act and emphasised that dismissal is termination for verifiable misconduct and in order for court to determine whether the termination is fair and lawful, due to verifiable misconduct, it should determine whether the employee in issue was given a hearing in regard to the verifiable misconduct. He also cited section 66(1) and 2 which is to the effect that before terminating an employee on grounds of misconduct or poor performance, the employer must explain to the employee, the reason for which the employer is considering dismissal and the employee is entitled to have another person of his choice present during the explanation and the employee should be given an opportunity to be heard.

Counsel restated the fact that the Claimant was interdicted and the Vice chancellor of the Respondent set up an independent tribunal to carry out investigations. On 24/08/2016, he was invited for a hearing, and he appeared before the tribunal on 9/9/2016. According to Counsel, the Claimant made his defence and the findings of the tribunal were communicated to him in his termination on 30/9/2016 and October 2016.

He refuted the Claimants assertions about a that the Vice Chancellor Finance and Administration who chaired the hearing because he did not adduce any proof of any bias on the Vice Chancellor’s part. Counsel also contended that the Claimant’s assertion that he was denied a right to appeal did not hold water because it was his duty to lodge an appeal but he chose not to do so and this could not be blamed on the Respondent. He argued that the Claimant did not dispute the fact that the appeal should have been made to the Vice Chancellor. Counsel also refuted the assertion that the tribunal lacked authority to recommend termination.

It was his submission that, in accordance with section 66(1) and (2) the Respondent afforded the claimant a fair hearing before terminating his contract of employment. After hearing both sides, the tribunal found him guilty of all the charges of theft of rice and recommended his termination. he argued that, it was the Claimant’s responsibility to appeal because he was aware of the procedure which he chose not to follow.

Counsel further stated that the Claimant had several inconsistencies in his evidence, such as his testimony that his statement was made by his lawyer who did not include his age and when he stated that he was terminated on 25/7/2016 and 30/9/2016 both of which were in contradiction with his statement under paragraph 4 where he stated that he was terminated in August 2016. He also contested the Claimants testimony that he should have appealed to the Vice chancellor yet in cross examination he stated that being an Administrative staff he should have appealed to the University Council.

He concluded that in the circumstances, the Claimant was lawfully dismissed therefore the claim should be dismissed with costs.

**DECISION OF COURT.**

It is trite law that an employer has a right to dismiss an employee for verifiable misconduct or poor performance. However, Section 66(1) and (2) of the Employment Act provides that, before dismissing the employee, the employer must explain to the employee the reason he or she is considering the dismissal and give the employee an opportunity to make representations about the reasons in the presence of a person of his or her own choice. The employer is expected to hear and consider any representations which the employee on grounds of misconduct or poor performance and the person chosen, if any, may make. Section 68 of the same Act also requires the employer to prove the reason for termination although, it is not mandatory for him or her to do so beyond reasonable doubt. This Court in, **Asaba Allan &3 Ors Vs KCB Bank LDC No 165/2019,** stated that: *“… the employer is only required to act reasonably based on the facts known to him or her at the time of the decision to dismiss /terminate the employee is made. Therefore, what must be established is that the employer honestly believed on reasonable grounds that, the employee was guilty, at the time he or she took the decision to terminate. The honest belief and reasonable grounds will off course depend on the evidence available, therefore the expectation is that a reasonable investigation into the alleged infractions would have been carried out…”*

We have carefully analysed the evidence on the record and found as follows: It is not disputed that in the instant case, that at the time of his dismissal the Claimant, was the Respondent’s Stores superviser. It is also not disputed that he was interdicted on 25/7/2016. According to the Interdiction letter, it was alleged that the he was involved in theft at the University. The letter also stated that his interdiction was

*“… for one (1) month on half pay while further investigations are made into your manner of work and conduct…*

*You may be required if it is so deemed, to appear before the Departmental Disciplinary Committee on a date and time to be communicated to you…”*

The Claimant admitted that he was invited to make a written defence which he presented to the tribunal and he appeared before it on 9/9/2016. He was charged for theft of university property contrary to section 8(a) of the Uganda Christian Code, 2007 as revised in 2011, theft of 50 bags of rice belonging to the Respondent, Negligence of duty to section 3 of the Uganda Christian University staff Code of conduct, 2007 as Revised in 2011. According to the invitation to the invitation to appear before the tribunal, it was alleged that the Claimant received and acknowledged delivery of 150 bags of rice to the university whereas only 100 were received, that he gave a false testimony that he received and aknowlwdged 150 bags of rice whereas only 100 received and that he was involved in the theft of 50 bags of rice.

In his Defence marked “F”, he stated that the allegations had not stated the particulars of the place, time and how the offence was committed. He denied ever acknowledging receipt or signing for the rice in issue on 19/07/2016. He however admitted that the alleged rice was received by the Stores Assistant, who signed for them on the goods received note, for verification. He denied all the allegations.

It is not disputed that, he appeared before the tribunal and he tendered his defence. However there is no record of the hearing or the findings of the tribunal. In his submission Counsel for the Respondent simply states that the claimant was heard and found guilty. In our considered opinion even if the Employer is not expected to prove the reason for dismissal beyond reasonable doubt, he or she must demonstrate that the reason was a justifiable reason and as stated in Asaba(supra) there should be evidence, indicating the guilt of the employee. In this case the Claimant was charged with acknowledging receipt of 150 bags of rice yet only 100 were delivered. Although Mr. Bahemuka Geofrey, the Respondent’s witness testified that the Claimant signed the “goods received Note” showing that 150 bags instead of 100 bags had been delivered to the stores, he did not attach the note as evidence. Even if we were to consider holding the Claimant for the omission of his subordinate, the Stores assistant, there was no evidence showing that, the Stores assistant acknowledged 150 bags yet only 100 were actually received. The witness stated that the findings of the investigation were in a report, which was not produced in court. The Witness admitted that the Claimant was entitled to the tribunals proceeding 2 weeks after the tribunal hearing, but no evidence was adduced to prove that the proceedings were issued to him. In the absence of the investigations report or the record of the tribunal proceedings we were not able to establish whether the Respondent established that the Claimant was on duty on the 19//7/2016, the day the alleged bags of rice were purportedly delivered at its store and the security personnel whom purportedly counted the bags were not called to testify nor was anything to prove that they did count the bags was presented to court. In the circumstances, we are not satisfied that the Respondent had any evidence to prove the Claimant’s guilt.

The least that the Respondent should have done would have been to provide this court with the findings of the investigation and the proceedings of the hearing as evidence which they believed justified his dismissal. It is not enough to merely state that the tribunal found him guilty without showing on any evidence of guilt.

Therefore, to the extent that the claimant was given an opportunity to make representations about the allegations leveled against him, the Respondent complied with section 66(1) and (2) (supra), when he was asked to make a written defence and appear before the tribunal in writing. However, to the extent to which the findings of the tribunal and the investigation report were not provided to show how they proved the allegations against him, the Respondent failed to justify the reasons for the Claimant’s dismissal in accordance with the provision of section 68 of the Employment Act (supra).

In the circumstances we find that the Claimant’s dismissal was substantively unlawful.

1. **Whether the Claimant was entitled to the remedies sought?**

Having established that the Claimant was unlawfully terminated, he is entitled to some remedies.

He prayed for an award of Ugx. 200,000,000 as general damages, on the grounds that the staff tribunal was not empowered under section 15.4 of the staff Code of conduct to recommend his dismissal with disgrace and for the respondent’s failure to adhere to the principles on natural justice and constitutionalism. He also discredited the Respondents witness on the grounds that he was not conversant with the proceedings of the tribunal even if he was involved in investigating the Claimant. Counsel also cited **Ebiju James Vs UMEME Ltd(supra),**for the legal proposition that Courts have developed to exercise their discretion to award damages beyond the wages of an employee, to reflect their disproval of the wrongful dismissal of any employee. He also cited **Issa Baluku vs SBI INT Holdings (U) Ltd, HCCS No 792 0f 2005,** for the same legal proposition and prayed that Court awards the Claimant the remedies sought.

According to the memorandum of claim the Claimant, prayed for compensation for lost salary, general damages for loss of income and unnecessary expenditure, general damages for embarrassment and mental anguish caused, interest of

It has long been settled that the only remedy for an employee who has been unlawfully terminated is damages and other remedies pleaded for under the Employment Act. see **STANBIC BANK VS KAKOOZA MUTALE C.A No. 2 OF 2010.** We have already established that the claimant was unlawfully terminated therefore he is entitled to an award of general damages. According to the memorandum of claim the Claimant, prayed for compensation for lost salary, general damages for loss of income and unnecessary expenditure, general damages for embarrassment and mental anguish caused, 30%p. a on the decretal amount from the date of the cause of action till payment in full and costs of the claim.

General damages are awarded at the discretion of Court. They are intended to bring an aggrieved party to as near as possible in monetary terms to a position he or she was in, before the injury occasioned to him or her by the Respondent. The claimant prayed for an award of Ugx. 200,000,000/= as general damages.

It is not disputed that at the time of his dismissal the Claimant had been redesignated as stores superviser for 3 years effective 1/09/2014 to 31/08/2017. His salary fell under salary scale CUB-T with effect from 1/07/2014, at 1,621,861/-per month. He had served in this position for 2 years and 2 months. Court is cognisant of the fact that the loss of employment is a loss of income and therefore a loss of means of livelihood.

Given that the Claimant had only served under the new contract for 2 years and 2 months’ and his employment was abruptly terminated without justifiable cause, we think the claim of Ugx. 200,000,000/ is excessive. We believe an award of Ugx. 20,000,000/= of General damages is sufficient.

The prayer for compensation for lost salary cannot stand because it is considered as a claim for prospective earnings. This Court’s holding in **Kapio Simon vs Centenary** **Bank** **LDC No. 300/2015,** is to the effect that a claim for prospective earnings was speculative because it was not a guarantee that a person would serve or complete his or her employment term/contract for reasons other than dismissal such as death, lawful termination of the employment, resignation of the employee, closure of business among many others. In the circumstances this prayer fails.

Interest of 15% per annum is awarded on the decretal amount from date of this Judgment until payment in full.

No order as to costs is made.

In conclusion an award is entered for the Claimant in the following terms

1. Declaration that his dismissal was substantively unlawful
2. An award of General damages for unlawful termination of Ugx. 20,000,000/-
3. Interest of 15% per annum from the date of Judgment until payment in full.
4. No order as to costs is made.

Delivered and signed by:

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

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

**PANELISTS**

**1.MS. ADRINE NAMARA …………..**

**2.MS. SUSAN NABIRYE …………..**

**3. MR. MICHEAL MATOVU .………….**

**DATE: 4th FEB 2021**