**THE REPUBLIC OF UGANDA**

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

**LABOUR DISPUTE NO. 221/2014**

**ARISING FROM MGLSD LD NO.356/2015**

**MARK ENOTH KAMANZI …………………….. CLAIMANT**

**VERSU**

**UGANDA WILDLIFE AUTHORITY …….………. 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. ANTHONY WANYAMA**

**3. MR. FX. MUBUUKE**

**AWARD**

**FACTS**

On 1/08/2010,the Claimant was employed by the Respondent as its Director Legal and corporation Affairs on a 4 year fixed term contract. According to him he was earning ugx.14,160,000/-, by the time he was terminated. On 1/7/2012, he was suspended on half pay by the Respondent’s Board of trustees, to pave way for investigations into his conduct. He filed Misc. application No. 379 of 2012 in High Court Civil Division and on 8/08/2012, he obtained an interim order interdicting the disciplinary process pending the disposal of Misc. appln. No.378 of 2012 on the same subject. He contends that the Respondent disregarded the interim order and without following due process, he was summarily dismissed on 5/10/2012, the day on which the interim order was lifted, hence this suit.

 The Respondent on the other hand contends that his conduct warranted his dismissal and the dismissal was justified.

**ISSUES**

1. **Whether the Claimant’s dismissal was wrongful?**
2. **If so, whether the Claimant is entitled to the remedies sought?**

**RESOLUTION OF ISSUES**

It was submitted for the claimant that the Claimant’s summary dismissal was done without regard to an interim order he had obtained vide Miscellanous Application No. 379/2012, which prohibited the Respondent from terminating him or undertaking any disciplinary action against him before the determination of Misc. Appln. No.378/2012 and without following due process.

According to Counsel, By disregarding the interim order already stated above, the Respondent violated Section 66 of the Employment Act which provides that before an employer terminates an employee, he or she must explain to the employee the reasons why the employee is being terminated and the employee must be given an opportunity to respond to those reasons, therefore his termination was unlawful. He contended that the dismissal which took place 1 day after the injunction was lifted, denied the Claimant an opportunity to be heard. He contended that the language of the termination letter was biased because it alleged that the claimant had disregarded the Board’s invitation to a disciplinary meeting and instead he challenged the Board in Court. He cited **Eng. Gakyaro vs CAA Court of Appeal Civil Appeal No.60 of 2006.**

He further argued that the reason that the Claimant did not handover officer, which the Respondent advanced as the basis for his termination, was a false allegation, orchestrated by RW1, who according to Counsel had irregularly obtained the position of Ag. Executive Director of the Respondent, yet the Claimant had already been submitted to the Minister for appointment in the same position. He asserted that the Claimant’s suspension was eventually reversed by the Minister when it was proved that the allegations were false and malicious. He insisted that it was the Claimant’s testimony that the handover of office was witnessed by senior members of staff.

It was also his submission that the Respondent did not prove another allegation that the Claimant had failed to account for USD. 6860 and USD 2000. According to him the Respondent failed to prove that the IOU regarding the USD 2000 was actually drafted by the Claimant. He stated that in a memo dated 14/01/2011, the Claimant undertook to repay the USD6860 over a period of 12 months and the same was recovered from him by 20/03/2012, thus satisfying the requirements under Clause 19(a) of the Respondent’s Financial Procedures Manual.

With regard to the Claimant’s failure to stay payment above Ugx. 20,000,000/- and the withdrawal of PAMSU funds from Bank of Uganda, Counsel submitted that contrary to the allegations the Claimant was authorized as Ag. ED to withdraw the same and he withdrew the same before the e-mail that purported to stop him from doing so.

In reply Counsel for the Respondent contended that the Claimant’s contract was inconsistent with the Respondent’s manual because it did not provide for a termination clause as provided therein. although this did not preclude the organization’s policies from applying to him.

Citing section 69 of the Employment Act which provides for summary dismissal and **Paul Kagawa vs Plan international LDC No.175 of 2014,** Counsel argued that it was lawful to dismiss an employee without notice provided the reasons for dismissal are proved in court. He asserted that the Claimants conduct amounted to gross misconduct which warranted summary dismissal. According to him, the claimant’s refusal to make a hand over report despite several reminders was contrary to section 104(1) a Viii and 104(3) (b) of the Respondent’s Human resource Manual and it amounted to gross misconduct, his refusal to stay all payments above Ugx. 20,000,000/- despite directions form the Ag. ED, but went ahead and withdrew US$ 40,000 from Bank of Uganda in respect of the PAMSU project amounted to insubordination, his failure to account for US$ 6860 for an 8 day trip within 7 working days violated clause 19(a) of the Financial Procedures Manual and irregularly obtaining US$ 2000 from the Respondent’s finances was without approval and authorization by the Accounting Officer, was a violation of the Financial Procedures Policy of the Respondent which was prejudicial to the its . He insisted that the Claimant’s move to pay the US$6860 in 12 months installments was a mere afterthought.

He argued that the Claimant was accorded a fair hearing but he chose to lock himself out of the hearing. According to him the tenets of a fair hearing of notifying the employee about the allegations against him or her, the right to respond to the allegations, the right to be heard before an impartial committee of tribunal band to be accompanied to the hearing by a person of the employee’s choice by the as in **Levi Malinzi Vs Uganda Printing and Publishing Corporation LDC No. 50 of 2015.**

It was his submission that on the 11/07/2012, the Respondent notified the Claimant about the allegations against him and asked him to respond within 5 days, but instead he opted to file misc. application No. 379/2012 on 1/08/2012, for which he obtained an interim order on 8/08/2012, restraining the respondent or its agents from subjecting him to any disciplinary proceedings regarding his employment and from terminating or dismissing him from employment. He was notified about the hearing on 10.08/2012 which he refused to attend on the ground of the interim order. The Court dismissed the substantive application for a temporary injunction on 12/10/2012 in **Mark Kamanzi vs Uganda Wildlife Authority Misc. Application No 378/2012**.

He insisted that the Claimant’s action to go to Court was intended to frustrate the proceedings. He cited **Labour Court of South Africa Case No. J 1672/2016, S B Moroenyane Vs The Station Commander of South Africa Police Services Vanderbijilpark,** in which an application to interdict the respondent from proceeding with the disciplinary hearing, but was denied on the ground that the “*Court should not readily interfere in disciplinary proceedings being conducted by an employer”*

He also cited **Supreme Court of Appeal of South Africa in case No 211/2006 Old Mutual Life Assurance Co. SA Ltd vs Thamela Advocate Gumbi** whose holding was to the effect that employers were obliged to grant employees opportunity to be heard but if the employee does not take advantage of the opportunity to attend the hearing and is dismissed he or she cannot challenge the dismissal in Court.

He concluded that the Claimant deliberately wanted to prevent the condition of a fair hearing upon which his dismissal by the employer was contractually dependent. According to him by the Claimant relying on his absence to a disciplinary hearing which he deliberately frustrated amounts to approbating and reprobating, which should not be condoned. He invoked the principle of **ex turpi causa non oritur** to defeat his claim and prayed the issue is decided in the negative.

**DECISION OF COURT**

1. **Whether the Claimant’s dismissal was wrongful?**

Section 2 of the Employment Act provides that dismissal from employment is the discharge of an employee from employment at the initiative of his or her employer when the said employee has committed verifiable misconduct. Section 66 provides that before dismissing the employee the employer must explain to him or her the reasons for the dismissal and give the employee an opportunity to respond to the reasons. Section 68 provides that the employer must prove the reasons and the reasons must be justifiable. Therefore when an employer decides to terminate or dismiss an employee, the employee in issue is entitled to the reasons for the termination or dismissal.

In the instant case it was not disputed that the claimant was employed by the Respondent as Director Legal and Corporate Affairs. It is not in dispute that a number of allegations were issued against the claimant regarding his conduct at the Respondent following which he was dismissed.

The Contention of the Claimant as we understand it is that he was not accorded a fair hearing, because the disciplinary hearing was undertaken during the subsistence of an interim order barring the Respondent from disciplining and dismissing him, therefore his dismissal was wrongful.

The record shows that on the 11/07/2012, the Respondent notified the Claimant about the allegations against him and asked him to respond within 5 days, but instead he opted to file misc. application No. 379/2012 on 1/08/2012, for which he obtained an interim order on 8/08/2012, restraining the respondent or its agents from subjecting him to any disciplinary proceedings regarding his employment and from terminating or dismissing him from employment. He was notified about the hearing on 10.08/2012 which he refused to attend on the because of the interim order he had obtained from high court staying the disciplinary proceedings pending the disposal of the main application. He was dismissed on the 5/10/2012. The interim order was lifted on the 4/10/2012.

From the trajectory of events it is clear that there was a interim order prohibiting the Respondent from disciplining or dismissing the Claimant, the disciplinary process that led to the his dismissal was undertaken during the subsistence of the interim order.

It is trite law that where a court of competent jurisdiction made an Order whether null or void, regular or irregular, remains in force unless it is overturned by a higher court and a person who knows about its existence must obey it, to disregard it amount to contempt of court. See **Wild life Lodgers ltd vs County of Narok and another (2005) 2 EA344(HCK)**. According to Halisbury’s laws of England Volume 1(1) 2001 paragraph 458, cited in **MA 252/2018, Nakandi Edith vs Umar katongole(High Court)**, civil contempt and its consequences are defined as:

*“A civil contempt of Court to refuse or neglect to do an act required by Judgement or order of the Court within the time specified in the Judgement or Order, or to disobey Judgement or order requiring a person to abstain from doing a specified act… and* Volume 9 of the same laws provides that it is … *punishable by way of committal or by sequestration…”*

The Respondent in the instant case, does not deny that the Claimant was granted an interim order prohibiting it from disciplining and dismissing him. In fact its letter dismissing the Claimant, stated that the Claimant’s move to challenge its Board in Court, amounted to *gross misconduct, disregard for established procedures and insubordination, warranting summary dismissal from UWA employment.”* However it disobeyed the order when it commenced to conduct a disciplinary hearing during the subsistence of the order. The letter of termination was issued on 5/10/2012, 1 day after the order was lifted by his Justice Benjamin Kabiito, however the disciplinary process occurred during the subsistence of the interim order. The Respondent had the option to apply to set the order aside or wait for it to be lifted before commencing with the disciplinary hearing but they did neither. The dismissal of the main application did not cure the fact that the hearing took place in contempt of the interim Order. The hearing was therefore conducted in the absence of the Claimant which denied him his right to a fair hearing

In **BAKALUBA PETER MUKASA V NAMBOOZE BETTY BAKIREKE ELECTION PETITION APPEAL NO. 04 OF 2009, KATUREEBE JSC**, stated that a right to a fair hearing is one of the fundamental rights guaranteed by the Constitution of Uganda under Article 28 and it is one of the rights provided under **Article 44 of the Constitution,** that are non-derogable. Article 28(1) on the right to fair hearing states that:

***“In the determination of Civil rights and obligations or any criminal charge, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law.”***

He went on to cite ***BLACK’S LAW DICTIONARY (6th Edition)*** which defines “fair hearing” as follows:-

***“Fair hearing. One in which authority is fairly exercised: that is, consistently with the fundamental principles of justice embraced within the conception of due process of law. Contemplated in a fair hearing is the right to present evidence, to cross-examine, and to have findings supported by evidence.”*** (Emphasis added).

In the circumstances the Court cannot consider evidence adduced about the findings of the Respondent’s Board regarding the allegations against the Claimant, because they were made during an illegal disciplinary process. To do so would mean that the court has to descend into the disciplinary process which is not its role. In A**keny Robert vs Uganda Communictions Commission LDC No. 023/2015, this** Court held that: *“… It is not the role of Court to supervise the disciplinary/grievance process between the employer and employee as Counsel would like us to believe. The role of the Court is to ensure that the disciplinary process is undertaken before the termination or dismissal and it is done within the law.* The Disciplinary process is an internal and private mechanism in which the employer s expected to determine offences at the work place.

Although this court does not condone the interdiction of the internal disciplinary processes the way the Claimant did, the fact remains that the disciplinary process in the instant case was conducted during the subsistence of an interim Court Order which prohibited the Respondent from conducting it. Therefore the argument that the Board commissioned an investigation upon which they based to dismiss the Claimant and that he locked himself out of the proceedings when he did not show up is not acceptable, given that the hearing was prohibited by a court of competent jurisdiction. The claimant had the right to present his case and it was the duty of the Respondent to avail him procedural fairness, which it did not do.

Unlike in cases where certain lapses in the disciplinary procedure may not render the dismissal unlawful, in the instant case the disciplinary procedure was barred from taking place, the Respondent was prohibited from conducting the proceedings by an interim Court Order which was disregarded and as already seen above, this amounted to contempt of court which rendered the whole disciplinary process null and void.

In the circumstances the Claimant’s dismissal was equally rendered unlawful. This issue is resolved in the affirmative.

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

Having found that the Claimant was unlawfully terminated, he is entitled to some remedies. He prayed for the following remedies:

1. **Compensatory Order under section 78**

Section 78 of the Employment Act empowers the Labour officer to make an award of compensation in cases where it is established unlawful terminatin.In **Netis Uganda vs Charles Walakira LDA No. 022 of 2016,** it was settled that this provision only applies to labour officers and not to the Industrial Court . Court found that the section was intended to limit the powers of labour officers in the award of compensation in respect of complaints which they handle hence the prescription of maximum compensation of 4 months wages. Unlike the labour Office, the Industrial court is at liberty to exercise its discretion to award damages. This claim therefore fails.

Citing **OMUNYOKOL AKOL JOHNSON Vs ATTORNEY GENERAL (SCCA NO. 06/2012)** he claimed for the payment of salary arrears from the time of his termination until the full term of his contract. It is our considered opinion that Omunyokol is distinguishable because whereas it dealt with an employee of government, employed on permanent and pensionable terms, the instant case relates to an employee of an Independent Authority in Government on contractual terms. Even if his contract as contended by Counsel for the Claimant did not provided for a termination clause, the termination took effect on the 5/10/2012 and even if it was unlawful, the contract came to an end on 5/10/2012. Section 41 of the Employment Act 2006, is to the effect that an employee can only claim wages for work undertaken. Therefore, an employee cannot claim for wages for prospective earnings after his or her contract is terminated, whether the termination is unlawful or not. This Court in **Kapio Simon Vs Centenary Bank Ltd, LDC No. 300/2015** held that:

**“…** *the claim for prospective earnings cannot stand. We are of the considered view that a claim for prospective earnings was speculative given that a person may not serve or complete his or her employment term, because of circumstances such as death, lawful termination of the employment, decision to change employment, closure of business among many others. …”*

The only remedy available to the Claimant are damages and any other remedies provided under the Employment. Therefore, the Claim for Ugx. $24,8000,000/-, NSSF amounting to Ugx. 98,550,000/- calculated at 15% Of Ugx 657,000,000/-, Gratuity of 15% of the 657,000,000/-, Ugx. 24,000,000/- Ugx. 40,000,000/-, Ugx.36,000,000 for life insurance, Ugx.6,000,000 for airtime allowance, Ugx. 21,240,000/=, cannot stand because they accrued after the termination of his contract.

1. **Un paid leave of Ugx. 42,480,000/-**

Section 54 entitles every employee to take leave. However the date on which the leave is taken must be agreed between the employer and employee. The intention of this provision was to ensure that organizations are not left without staff when they choose to take leave. Therefore an employee must apply for leave and only claim for leave pay if he or she can prove that it was denied.

The Claimant in the instant case did not adduce evidence to show that he applied for and was denied leave therefore he can not claim for the same. The claim for unpaid leave therefore fails.

**General Damages**

Citing **Obonyo and Anor vs Municipal Council of Kisumu 1971 EA 91 at 96** whose holding was to the effect that factors such a malice or arrogance on the part of the Respondent should be taken into consideration when Courts are making an award of general damages, Counsel for the Claimant asserted that the Executive Director of the Respondent through witch hunt and job competition with the claimant used his powers to summarily dismiss him. He prayed for an award of Ugx. 400,000,000/- as general damages for breach of contract, suffering and humiliation.

As already discussed above, the only remedy to a person who was unlawfully dismissed is damages. Damages are awarded at the discretion of Court and are intended to return the claimant to as near as possible in monetary terms to the position he or she was in before the injury inflicted by the Respondent occurred. Damages are awarded at the discretion of Court and based on the merits of each case.

The Claimant in this case worked for the Respondent for 18 months. The fact that he was earning Ugx.14,160,000/- was not disputed by the Respondent. Given that the Respondent acted in contempt of Court when they conducted the hearing therefore unlawfully terminating the claimant, we think that an award of **Ugx. 180,000,000/=**is sufficient as general damages.

Although it is the practice for this court not to award costs. Given the act of contempt committed by the Respondent, in this case we shall award costs.

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

1. Declaration that his termination/dismissal was unlawful.
2. An Award of Ugx.180,000,000/= as General Damages
3. Interest of 12% per annum from the date of this award until payment in full.
4. Costs of the suit.

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. ANTHONY WANYAMA ……………..**

**3. MR. FX. MUBUUKE ………………**

**DATE: 7TH FEBRUARY 2020**