**THE REPUBLIC OF UGANDA**

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

**LABOUR DISPUTE REFERENCE NO: 155 OF 2018**

**ARISING FROM LD 06.04.18**

**MUWAYA NAOMI ………………..CLAIMANT**

**VERSUS**

**MANAGEMENT OF MUGONGO**

**SENIOR SECONDARY SCHOOL …………… RESPONDENT**

 **BEFORE:**

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

**PANELISTS**

**1. MR. ABRAHAM BWIRE**

**2. MS. JULIAN NYACHWO**

**3.MR. MAVUNWA EDSON**

**AWARD**

**BRIEF FACTS**

The Claimant was appointed as the Head teacher at Mugongo Senior Secondary School by the Respondent on 19/10/2006. According to her she worked diligently for 12 years without any complaints about her competence. In 2018 she received a message from the Education Secretary of Namirembe Diocese, Reverend Herbert Paul Kabanda, requesting her to attend an urgent board meeting on 1/02/2018at 2.00pm at St. Steven’s Church of Uganda. She attended the meeting as scheduled. She was asked to respond to several baseless accusations, which she did, but it was decided that she should immediately stop working, until further notice. She was directed to handover office, including all school property in her possession, to one of the Board of Directors, a one Rushangana Frank by the 3/02/2018. She was forced to take 3 months leave and since this leave ended she did not receive any communication from the school Management nor did she receive any salary. She requested Reverend Kalibala for formal termination letter, but he referred her to the Education Secretary Rev. Kanbanda Herbert instead. She contacted then sought the assistance of Rev. Wilberforce Kityoluwalira one of the top members in the hierarchy of Church of Uganda in vain. She contends that she was unjustly summarily dismissed.

**ISSUES**

1. **1.Whether the 3 months’ forced leave was lawful ?**
2. **2. Whether the Claimant at interdiction was entitled to half pay of her salary?**
3. **whether the Claimant was entitled to a fair hearing?**
4. **Whether the claimant is entitled to a certificate of service?**
5. **Whether the claimant is entitled to termination notice?**

We think that the following3 issues are sufficient to resolve of the mattecompletely.

1. **Whether the Claimant was an interdicted and if so whether she was entitled to half pay?**
2. **Whether the Claimant was unlawfully terminated?**
3. **Whether the Claimant was entitled to any remedies?**

Counsel for the Claimant made several efforts to serve the Respondents in vain. She applied for leave to proceed exparte. We were satisfied that the Respondent was effectively served but he failed and or refused to attend Court. We therefore granted her leave to proceed exparte.

**EVIDENCE ADDUCED:**

The Claimant adduced evidence through a one Isaac Muwanika and her own evidence as follows.

Isaac Muwanika, testified that he was an ICT teacher at the Mugongo Secondary school for 6 years. He taught ICT. He said that on 1/02/2018, when the Board meeting between the Claimant and the Board of Governors’ took place, he was at the school registering new students. When the meeting ended the Claimant told him and that she had been dismissed and the deputy head teacher was going to take over her office. He also said that at the beginning of the school term, the Board members informed the entire staff about the Claimant’s dismissal pending further investigations.

In her testimony, the Claimant Muwaya Naomi, restated the facts of the case and added that the Board meeting was attended by the Chairman Board of Governors, Mr. Kalibala and his deputy Mr. Kabogoozat, the school treasurer, Mrs. Rebbecca Wamala, Mrs Sendi Mary and the PTA chairperson, Mr. Walugembe. It was her testimony that, she was falsely accused about several baseless issues to which she responded but after the meeting, the chairperson told her that, he had a directive from the Education to stop her from working, immediately. She was then summarily dismissed without consideration of the fact that she is over 55 years, therefore her termination was unlawful.

**SUBMISSIONS**

1. **Whether the Claimant was interdicted and if so whether she was entitled to half pay?**

It was submitted for the Claimant that section 63 of the Employment Act 2006, provides that suspension should not exceed 4 weeks. Therefore, the fact that the Claimant was placed on 3 months forced leave until further notice, was in her view a suspension to allow the Respondent to carry out further investigations about her alleged unknown issues of poor performance and management. Given that the forced leave exceeded 4 week it was unlawful.

She also submitted that the forced leave would entitle her to half pay given the provision of section 63 of the Employment Act requires an employer to pay an employee who was suspended to pave way for investigations, half pay. She argued that since she was placed on forced leave, she had never salary which was unlawful.

**DECISION OF COURT.**

The literal meaning of the word Force; is to compel, constrain someone against ones will. The Employment Act however does not define “forced leave.” Given the literal meaning we shall define it as compelled leave. Interdiction is defined as an act of prohibiting or forbidding something, therefore it has the same meaning as forced leave. Section 54 (1) (a) of the Employment Act provides

***“Subject to the provisions of this section-***

1. “***An employee shall once in every calendar year be entitled to a holiday with full pay at the rate of 7 days in respect of each period of a continuous four months’ service to be taken at such*** ***time during such calendar year as may be agreed between the parties.*** ( emphasis ours).

Our interpretation of this provision is that an employee is entitled to take leave, and the leave is taken at will and a date agreed between the employee and the employer. Where an employer compels the employee to go on leave moreover on a date not agreed between him or her and the employee, the employer would be violating section 54(1)(a)(supra) and in our considered this would amount to an interdiction or prohibition from work and therefore a termination and not a suspension. Section 63(1) of the Employment Act provides that:

***“… (1) Whenever an employer is conducting an inquiry which he or she has reason to believe may reveal a cause for dismissal of an employ, the employer may suspend the employee with half pay…”***

It was the Claimant’s testimony that she was informed by Mr. Kalibala that the Education Secretary had directed him to stop her from working immediately. She did not state the reasons why he wanted her to stop working immediately. She was subsequently asked to hand over office and take a 3 months’ leave until further notice which she said she did. By the time she filed this dispute she, had never been contacted by the Respondent nor paid any salary. There is no evidence that an investigation took place. Therefore the 3 months’ forced leave cannot be considered as a suspension because it did not meet the criteria of a suspension as provided for under section 63(1)(supra) neither was it ordinary leave as provided under section 54 (supra). It was to be **until further notice.** We think it was intended to fulfill the directive of the Education Secretary, to stop the Claimant from working and therefore it was a termination of her employment. In the circumstances she would not be entitled to half pay as provided under section 63(1).

**Was her termination lawful?**

According Counsel the Respondent violated the provisions of section 66(supra) because she was not notified about the reason for termination, nor was she given reasonable time within which to respond to the reasons. According to her the Claimant was given only 1 days’ notice for her to attend an urgent board meeting on 1/02/2018, in which she was accused of baseless issues. She was subsequently forced to hand over all the school’s property under the guise of creating room to carry out further investigations. In her view this was a clear violation of section 66(3) of the employment Act. She argued that this was a violation of her right to just and fair treatment, as enshrined under Articles 42and 44 of the Constitution and the holding in **Mbiika Dennis Vs Centenary bank LDC No.023 of 2014.**

The Claimant under paragraph 5 stated that “ *That in 2018 I received a message from the education secretary of Namirembe diocese, Rev.Paul Kabanda asking me to attend an urgent board meeting on the 1st day of February, 2018 at 2.00 o’clock in the afternoon at ST. Steven’s church of Uganda without fail, which I did.”* Cw1 Isaac Muwanika the ICT teacher, corroborated her testimony, when he testified that the Board meeting took place on 1/2/2018. He stated that, in a meeting which took place with the Board members at the beginning of the school term, the rest of the staff members were informed that the Claimant was dismissed pending investigations. He also said that, the Deputy headteacher would be acting as head teacher.

It is trite law that when an employer is contemplating the termination of an employee, he or she must expressly and without any ambiguity, inform the employee of the reasons and he or she must give the employee contemplated for termination an opportunity to make representations regarding the reasons. The employer must discharge the statutory burden to hear the employee as provided under section 66(1) and (2) of the Employment Act, 2006, as follows:

***“…***

***(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 (****emphasis ours****) 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 must demonstrate that he or she believed that at the time of the termination the employee actually committed the infractions leveled against him or her and that he or she was able to verify that the infractions were committed by the employee.(see section 68 of the Employment Act).

In the instant case there was no evidence to indicate that the Claimant was notified about the reasons for her termination and she was given reasonable time to responde to them. She said she was accused of baseless issues in the meeting which she clarified and she believed the members of the Board believed her, but she was then asked to immediately stop working. In the absence of any evidence to the contrary, we have no reason, not to believe that the Claimant is no longer the head teacher of the Respondent school and that she was actually summarily dismissed. We have already established that the 3 months forced leave, amounted to a termination of her employment.

Even if the Respondent believed that she had committed a fundamental breach of her contract, and it could summarily dismiss her in accordance with section 69(3) which justifies the dismissal of and an employee by an employer where the employee has by his or her conduct indicated the he or she has fundamentally breached his or her obligations arising under the contract of service, the law makes it mandatory that the proper procedure for dismissal as provided under section 66 of the Employment Act supra), must be followed before the dismissal. Specifically, Section 66(4) of the Employment Act provides that;

***“…Irrespective of whether any dismissal which is a summary dismissal is justified, or whether the dismissal of the employee is fair, an employer who fails to comply with this section is liable to pay the employee a sum equivalent to four weeks’ net pay…”***

We are convinced that the Respondent did not follow the correct procedure for dismissal as envisaged under the law, therefore, the Claimant’s summary was unlawful.

**3.Whether the Claimant was entitled to any remedies?**

Having established that the Claimant was unlawfully terminated she is entitled to some remedies. She prayed for the following:

1. A declaration that the abrupt termination of her employment was wrongful and a declaration that the Respondent’s board of governors and diocesan Education Secretary acted negligently by approving the termination of the claimant without justification.

We have already established that the Claimant was unlawfully dismissed by Respondent.

1. **General Damages**

It is trite that the only remedy for an employee who is unlawfully dismissed is damages and statutory remedies prayed for under the Employment Act, 2006. In **VIRES VS NATIONAL DOCK LABOUR BOARD (1958) 1 QB 658** cited with approval in **STANBIC BANK VS KAKOOZA MUTALE C.A No. 2 OF 2010,** it was held that;

***“It has long been settled that if a man employed under a contract of personal services is wrongfully dismissed he has no claim under the contract after repudiation. His only claim is for damages for having been prevented from earning his remuneration. His sole money claim is for damages and he must do everything he reasonably can to mitigate them. …”***

The quantum of damages to be awarded to such an employee are determined at the discretion of Court which considers the merits of each case. General Damages are compensatory in nature. 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 by the Respondent.

According to the Contract of service she was employed as a head teacher by the Respondents on 19/10/2006 and she was terminated in February 2018, therefore she served for about 12 years. According to her offer of employment her salary was Ugx. 265,000/=per month. It was her testimony that, by the time of her dismissal, she was earning Ugx. 605,000/- per month. We however, found nothing on the record as proof of salary increment from Ugx. 265,000/- to Ugx 605,000/- as claimed. We shall therefore consider her salary as Ugx. 265,000/= as stated in her offer of employment.

Having found that her dismissal was unlawful, she is entitled to an award of general damages. We award her Ugx. 9,000,000/=, as general Damages for the unlawful dismissal.

3.Aggravated damages.

Aggravated damages like general damages are compensatory in nature, but they are enhanced as damages to address the aggravating conduct of the Respondent against the claimant. They compensate the injury resulting from the conduct of the Respondent towards the claimant.

We found no aggravating circumstances to warrant the award of aggravated damages in the instant case. They are therefore denied.

4. Counsel submitted that the Claimant was entitled to Severance pay, a certificate of service and 3 months’notice periods. The prayers were however not pleaded. Citing **Ms. Fang Min v Belex Tours and Travel Limited SCCA No.6 of 2013 consolidated with CA No. 1/2014 Crane Bank Ltd vs Belex Tours and Travel Limited,** in **DFCU Bank Ltd vs Donna Kamuli CA No.121/2016,** the Court of Appeal, emphasized that *“… a party cannot be granted relief which it has not claimed in the plaint or claim.* In the circumstances these claims having not been pleaded, this court has no basis to consider them. They are therefore denied.

**5.Interest of 25% per annum**

An interest of 15% per annum, is awarded on 1 above from date of judgement until payment in full

No order as to costs is made.

In conclusion this claim succeeds in the above terms.no order as to costs id made.

Signed and delivered by:

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

**PANELISTS**

**1. MR. ABRAHAM BWIRE ……………………..**

**2. MS. JULIAN NYACHWO ……………………..**

**3.MR. MAVUNWA EDSON ……………………..**

**DATE: 18/11/2020**