**THE REPUBLIC OF UGANDA**

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

**LABOUR DISPUTE REFERENCE NO. 119 OF 2015**

**[ARISING FROM MGLSD/CB. NO. 113/2015]**

**BETWEEN**

**MUWONGE GODFREY …….……………………….….……..CLAIMANT**

**VERSUS**

**UMEME LTD...…………..…………...……………..………..RESPONDENT**

**BEFORE**

1. Hon. Chief Judge Ruhinda Asaph Ntengye
2. Hon. Lady Justice Linda Lillian Tumusiime Mugisha

**PANELISTS**

1. Ms. Adrine Namara
2. Ms. Suzan Nabirye
3. Mr. Michael Matovu

**AWARD**

This claim was filed by the claimant claiming that he was unlawfully terminated from his employment.

As a result of what he called unlawful termination, he prayed court to award him special damages in the form of unpaid salary for April 2014, one month’s salary in lieu of notice, unpaid leave for 8 years, repatriation allowance, a severance package, aggravated and general damages, interest at 30% and costs of the claim.

In reply the respondent pleaded that the claimant illegally disconnected power from a client and solicited a bribe from him to have the power restored. He appeared before a disciplinary committee which confirmed the allegations and eventually he was summarily dismissed lawfully since he fundamentally breached his obligations under his contract of service.

The claimant was represented by Mr. Edward Bamwite of M/s. Bamwite & Kakuba Advocates while the respondent was represented by Mr. Ferdinand Musimenta of M/s. Sebalu & Lule Advocates.

The highlighted issues in this claim are:

1. **Whether the claimant was lawfully dismissed from employment.**
2. **Whether the claimant is entitled to remedies sought**.

The claimant adduced evidence from himself and another witness, one Mwesigwa Herbert, while the respondent adduced evidence from one Chanononga Bonny and one Mugisha Rogers.

The evidence in chief of the claimant can be summarized as follows:

He was on duty on 22/4/2014 when he was called on phone by the Human Resource Manager instructing him to report to Headquarters where he was later given a dismissal letter backdated to 17/4/2014. The dismissal letter alleged that he had illegally disconnected power and solicited a bribe. He was not satisfied with the dismissal and lodged an appeal which was never determined. His evidence was that a meter No. U122/1/02 in the names of one Jaafa Francis was discovered tampered with and he issued a disconnection notice, served it onto the customer and took the meter to office. He denied ever soliciting a bribe and on arrest by police no offence was proved against him.

The second claimant’s evidence from one Mwesigwa Herbert was to the effect that after disconnecting power from one Jaafa Francis, one Watwaluma appeared after 2 days to plead for return of power, but before both could talk the claimant was arrested claiming that he took a bribe.

The evidence of Chanononga on behalf of the respondent was that as senior investigating officer, he was asked to investigate a complaint of soliciting a bribe against the claimant from one Watwaluma after power disconnection. He established power was disconnected and the meter removed. Mr. Watwaluma informed him that when he followed up the matter the claimant demanded 700,000/= from him later on reducing it to 500,000/=.

He (witness) laid a trap with one Mulunga Joseph together with Wutwaluma and one Kalebu Peter was arranged to handle the same on behalf of Watwaluma. When Kalebu Peter handed over the envelope the claimant was arrested. According to the witness, the claimant did not issue a disconnection notice and did not notify his supervisor and left the meter in his own store which was improper conduct.

The second respondent witness, one Rogers Mugisha testified that after an investigation into allegations of soliciting a bribe, the claimant was asked to explain which he did, and that after attending a disciplinary hearing, the claimant was found guilty and terminated.

**Submissions:**

At the closure of the respondent’s case, this court gave timelines for both parties to to abide as they filed submissions but by the end of the timelines the claimant had no submission on the record.

For the respondent, it was submitted on the first issue that, there was reason to dismiss the claimant since he was caught being given cash as a bribe which cash had been arranged as a trap. According to counsel for the respondent by the claimant’s statement he made at police he admitted guilt.

**Decision of court**

Issue No. 1: **Whether the claimant was unlawfully dismissed.**

It is the case for the respondent that the claimant contrary to regulations disconnected power from a customer but did not give the disconnection order, did not report the case to his superiors and did not take the alleged tampered meter to the office. He was subsequently arrested for soliciting a bribe from the customer and appeared before a disciplinary committee.

There is no doubt that on the evidence adduced the claimant was arrested after receiving an envelope which contained already marked money.

The claimant denied having been aware of the contents in the envelop and in his testimony informed court that as he was wondering as to who was giving him this envelop and for what reason he was immediately arrested before he even received the same.

Evidence was led to show that even if the customer of the respondent in respect to the questioned power meter was not Mr. Watwaluma, from the testimony of Mr. Chanononga, a witness for the respondent it occurs to us that Mr. Watwaluma was either the landlord or shared the premises with Mr. Jaafa Francis in whose name the meter was. Accordingly we do not accept the insinuation from the evidence of the claimant that Mr. Watwaluma had nothing to do with the matter and he had no business placing a complaint with the respondent. We believe the evidence of chanononga that Watwaluma reported a complaint of bribery by the claimant and that both Chananonga and one Mulunga Joseph, a supervisor of both Chananonga and the claimant arranged a trap for the claimant by having the money marked, and placed in an envelope and sent to the claimant through one Kalebu Peter.

Although Kalebu did not testify before the court, it is clear from the evidence of both the claimant and Chananonga that it was Kalebu who was asked to deliver the envelope and the claimant therefore did not deny the existence of the envelope and the presentation of the same to him. The disciplinary proceedings which the claimant himself signed reveal that he himself informed the committee that the premises belonged to Mr. Watwaluma and that when he recovered the meter he did not inform the management about the meter and he did not keep it in the official store. This information to the disciplinary committee is corroborated by his own police statement which he claims was written by a police officer and therefore the words therein were not his own words.

As this court has held before, the burden of the employer in labour disputes is on a balance of probability and he is only required to establish that the employee more probably than not committed an alleged infraction. Consequently, unlike in a criminal charge of bribery where the burden on the prosecution is beyond reasonable doubt, in the instant case it is on a balance of probability. In our considered opinion, the fact that the claimant kept the recovery of the meter a secret by not informing his superiors, the fact that he kept it in a store other than the official Umeme store and the fact that he did not himself sign the disconnection notice, all lead to an inevitable conclusion that in all probability at the time of the disconnection he had intentions of getting a bribe from the customer. This was completed in our view when one Kalebu delivered an envelope containing the marked money.

The claimant was invited to a disciplinary hearing by letter dated 24/3/2014 to appear on 26/3/2014 and his rights were drawn to his attention in the same letter.

We do not see any major setback to a fair hearing during the proceedings recorded as minutes of the hearing in exhibit R6, of the respondents trial bundle.

**Section 69 of the Employment Act** provides

**“69 Summary termination.**

1. **Summery termination shall take place when an employer terminates the services of an employee without notice or with less notice than to which the employee is entitled by any statutory provision or contractual term**
2. **..**
3. **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**,

In light of the above analysis of the evidence it is apparent that the claimant in the course of his employment and on a balance of probability solicited a bribe from Mr. Watwaluma. **Was this a fundamental breach of the duties of the claimant?**

Fundamental breach of ones terms of contract of service will always depend on the circumstances and the nature of the breach in relation to the duties specified under the contract of service.

In the instant case the claimant was employed as a power line Assistant. Although no specific duties under the contract were tendered as evidence, it is our opinion that soliciting a bribe from a customer of the respondent in return to restore disconnected power was fundamental breach of the contract of service. The claimant having been given a fair hearing, we have no reason to fault the disciplinary committee, later on the respondent, for exercising the right to summarily dismiss the claimant in accordance with **Section 69 of the Employment Act.** The claimant has failed to prove the claim of unlawful dismissal and therefore the first issue is in the affirmative.

Since the claimant was accorded a fair hearing before summarily being dismissed, no remedies arise from such dismissal. The second issue is in the negative.

In the end result, the claimant having failed to prove his claim, it is hereby dismissed with no orders as to costs.

**Deliverd & Signed by:**

1. Hon. Chief Judge Ruhinda Asaph Ntengye ……………
2. Hon. Lady Justice Linda Lillian Tumusiime Mugisha ……………

**PANELISTS**

1. Ms.Adrine Nabirye ……………
2. Ms.Suzan Nabirye ……………
3. Mr.Michael Matovu ……………

**Dated: 06/03/2020**