**THE REPUBLIC OF UGANDA**

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

**LABOUR DISPUTE REFERENCE NO.15 OF 2017.**

**ARISING FROM LABOUR DISPUTE NO. 546 OF 2016**

**ZINABALA MICHEAL ………….. CLAIMANT**

**VERSUS**

**CENTENARY RURAL DEVELOPMENT BANK ……………. RESPONDENT**

**BEFORE:**

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

**PANELISTS**

**1.MR . FIDEL EBYAU**

**2.MS. HARRIET MUGAMBWA NGANZI**

**3. MR. FX MUBUUUKE**

**AWARD**

**BRIEF FACTS**

On 12/06/2006, the Claimant was employed by the Respondent as a trainee loans Officer. He was confirmed in the position with effect from 16/12/2006. According to him he carried out his duties diligently and was even given an award as the best loans officer in February 2012.

On 26/05/2016, he was suspended from duty, following complaints to the Bank by a one Bugembe, alleging that, he wrote a demand letter purporting to recover Ugx. 6,000,000/= from him. He was terminated on 16/07/2016, following a disciplinary hearing and according to him the termination was unlawfulhence this suit.

**ISSUES:**

1. **Whether the Claimant’s employment was unlawfully terminated?**
2. **Whether the decision by the Respondent to withhold the Claimant’s severance allowance and accrued benefits was unlawful?**
3. **What remedies are available to the parties?**

**REPRESENTATION**

The Claimant was represented by Mr. Dennis Wabwire of Sanywa, Wabwire &Co. Advocates Kampala and the Respondent’s by Mr. Andrew Mauso of Sebalu & Lule Advocates, Kampala.

**EVIDENCE**

It was the Claimant’s testimony that although he wrote a letter stating that a one Katende Job guaranteed to pay Ugx. 6,000,000/- for money which he purportedly lent a one Grace Bugembe, he did not do it on behalf of the Bank but on behalf of Katende. He Katende, his cousin asked him *“… to pose as if iam the one who lent the money…”*. He admitted that he wrote the letter but it was not deceitful and it was not written on behalf of his employer, the Respondent Bank, because he signed in his name and the letter was not on the Bank’s letter head. He stated that, *“No I did not act with integrity… my conduct was not fraudulent as provided under paragraph 19.5 of the Bank’s Human Resources Manual….”*  It was also his testimony that he was subjected to a hearing and dismissed with notice for engaging in unethical transactions with a third party , uttering false documents contrary to the Banks core values of professionalism and integrity. He insisted that he did not utter a false document on behalf of the Bank. He said *“… yes whereas I uttered a false document it was not on behalf of the Bank…”* he insisted that the matter was between him and Katende and Bugembe. According to him the Banks Human Resources Manual did not preclude staff from engaging in private matters.

RW1, Ronald Sekidde, on the other hand testified that, the Respondent bank was not involved in the arrangement between Bugembe, Katende and the Claimant, although a complaint by a non-staff against a staff member could lead to an investigation. It was his testimony that an investigation was undertaken into the Claimant’s actions and it culminated into a disciplinary hearing which found him guilty of uttering a false document, and that he acted unethically even though his actions did not implicate the bank. According to him staff were expected to act ethically even when outside the bank. He cited clause 17.0, the Disciplinary code at page 28 of the Claimant’s trial Bundle, which stated that *“ As Financial institution, the nature of the bank’s business demands high standards of ethics and integrity…”.*

According to him, the Claimant in his letter was pretending to be the lender and although it was not done on behalf of the Bank, it became the concern of the Bank because it was likely to reflect poorly on the Bank.

He said that “*it came out clearly that he was writing the letter as if he was lending money. He was pretending.”*

It was his submission that the Respondent exercised leniency when it dismissed him with notice and paid him all his terminal benefits including his contribution to the provident fund, which he would not have been entitled to.

**SUBMISSIONS:**

1. **Whether the Claimant’s employment was unlawfully terminated?**

It was submitted for the Claimant that on 26/06/2016, the Respondent suspended from duty, on grounds that he lent a one Katende Job Ugx. 2,000,000/-. He was invited to a disciplinary hearing, however, the complainant a one Bugembe Grace did not attend the hearing therefore, the Claimant was denied an opportunity to cross examine him over the allegations and yet his complaint was the basis of Claimants termination. He contended that the whereas the disciplinary Committee was comprised of 7 members only 6 members participated, thus rendering their decision a nullity. The Committee also disregarded the report arising out of the investigation which the Respondent commissioned into the allegations, yet the report absolved him of any offence and although it stated that he acted unethically when he wrote a fictitious letter with falsehoods, the letter did not implicate the Respondent. In his opinion the Respondent had no basis to terminate the Claimant because this was a private matter between him, Katende and Bugembe, with no implications on the Respondent’s reputation in any way.

It was Counsel’s submission that in the Claimant’s termination was therefore unlawful.

In reply, Counsel for the Respondent submitted that, the Claimant was lawfully terminated because he wrote a demand letter against a one Bugembe purporting to recover Ugx. 6,000,000/- and made overtures to recover the said money by impounding Bugemb’s vehicle. He argued that although Bugembe refuted the claim that the Claimant lent him money, the Claimant did not retract his demand letter.

According to Counsel, section 68(2) of the Employment Act provides “*that 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/her to dismiss the employee.”*

He further submitted that the Claimant’s dismissal was justified because he was dismissed with notice for *“forging a letter, uttering a false demand notice in favour of Mr. Katende which resulted into a civil suit at Makindye Court, in breach of the Bank’s core values of professionalism and integrity which pose a huge reputational risk to the Bank.”*

He argued that the Claimant issued the false demand letter knowingly. He insisted that the Claimant was given a fair hearing before an objective panel, prior to his dismissal, on 7/7/2016. According to him the Claimant’s actions were found to be a fundamental breach of his terms of employment, which entitled the Respondent to summarily dismiss him from employment, in accordance with Section 69(3) of the Employment Act 2006.

According to the Respondent exercised leniency when it paid him his terminal benefits yet he was not entitled to them. He further submitted that the offence as stated in the Claimant’s termination was one of the infractions under Annex 10 of the Respondent’s Human Resources Rules, procedures and policies manual which lists the various infractions and corresponding disciplinary actions. According to Annex 10 the corresponding disciplinary action to the Claimant’s offence was dismissal. In addition, he argued that the Human Resource Policy provides for integrity and professionalism as one of the Respondent’s core values. He also cited clause 19.2 (c ) of the Policy which provides that:

*“An employee of the bank is expected to conduct himself both in public and in private so as not to bring the bank into disrepute. It may constitute sufficient grounds for disciplinary action if an employee’s conduct in the office or after office hours is deemed to be an embarrassment to the bank.”*

He argued that according to “R4”, the Claimant’s explanation to the Manager Centenary Bank, Najjanakumbi Branch, he admitted that he wrote the false demand letter therefore he committed the infraction as provided by the Policy, that is he forged and uttered a false document.

Counsel further submitted that during cross examination, the Claimant admitted that he was used by Katende to write the false document because of his experience as a banker. According to Counsel this was evident that the Claimant used his position as a banker to write the letter and that is why Bugembe complained to the Bank. He therefore refuted the claimant’s excuse that he wrote the demand letter in his personal capacity because the bank’s name was not involved. He invited court to note that the disputed letter was authored on 28/03/2016, which was a Monday and therefore a work day. According to him no evidence was led to indicate that he was on leave, therefore the infraction was committed in the course of his employment and therefore the argument that it occurred in his private capacity cannot hold.

Be that as it may he insisted that according to clause 11.3 of the Respondent’s Human Resources Policies and procedures, an employee is liable for infractions committed within and outside his scope of work. In the circumstances the Claimants’ employment as a banker ceased to be acceptable because the Respondent as a financial institution, is expected to have high standards of ethics and integrity. He relied on **Leach vs Office of Communications[2012]I.C.R1269,** *whose holding is to the effect that the dismissal of an employee on grounds of misconduct, would be justified where the the mis conduct whether related to the employment or not, if exposed is likely to destroy public confidence in the organisation.* He argued that many courts have held the dismissal of employee’s who have conducted themselves in a manner which damages or poses a threat to an organization’s reputation to be fair, even when the conduct complained of is not directly related to the employment or it is not specified in its Human Resources Policies.

He contended that the infractions committed by the Claimant were at the core of his relationship with the Respondent and once broken it was questionable whether the trust and confidence between them would be maintained. He further stated that the offences were criminal Offences sanctionable under the Penal Code Act Cap 120 and no financial institution worth its name would be expected to keep an employee such as the claimant, in its employ, given that its business thrives on high levels of trust and reputation.

He concluded that the Claimant’s dismissal was therefore justified for ***“forging a letter, uttering a false demand notice in favour of Mr. Katende which resulted into a civil suit at Makindye Court, in breach of the Bank’s core values of professionalism and integrity which pose a huge reputational risk to the Bank.”***

He also argued that the Claimant was accorded a fair hearing as prescribed under section 66(1) and (2) of the Employment Act 2006, because when Bugembe’s complaint was received, the claimant was suspended , to pave way for investigations and the suspension letter detailed the infractions he had committed, the investigation report was availed to him before the hearing and he was given opportunity to make representations at the hearing before he was dismissed with notice.

Counsel refuted the claim as stated under paragraph 6 of the Claimant’s memorandum that:

*“(a)the complainant, Grace Bugembe was not produced during the disciplinary hearing for cross examination and thus the Claimant was not given an opportunity to respond to Grace Bugmebe’s allegations.*

*(b)The respondent disregarded the Claimant ‘s responses to the allegations;*

*( c) the Respondent dis regarded its investigative report which exonerated the Claimant from any forgery or fraud.*

*(d)the Claimant was dismissed for posing a reputation risk to the Respondent yet there have been several scandals by the Respondent’s top manager that passed higher reputational risks to it.*

Because according to him this was an afterthought brought after the Claimant’s dismissal. He insisted that the reason why the complainant was not brought to the hearing was because the Claimant admitted the infractions. And according to **Kabojja International School vs Godfrey Oyesigire Labour Dispute Appeal 003/2015 and Krotchet Employees SACCO vs Krotchet Kids Uganda Ltd LDC No. 006/2016,** this court’s holdings were to the effect that employees who admitted to an infraction were not entitled to a hearing or the formalities of such hearings. He however insisted that in the instant case, the Claimant was heard and he also admitted that he was heard.

He refuted the claim that the investigative report exonerated the claimant because on the contrary it faulted him for writing a deceitful letter and that he *“… acted unethically when he drafted a fictitious demand letter with falsehoods …”*

With regard to assertion that one panelist did not attend the disciplinary hearing, and therefore the hearing was null and void, he argued that this was not pleaded and was a mere afterthought which should be disregarded by Court.

He argued that whereas the investigator observed in his report that the Claimant committed the infraction in his personal capacity, it was not his role to interpret the infractions, because this role was restricted to the Disciplinary committee and the management of the Respondent. The role of the investigator was restricted to fact finding and as a matter of fact he found that the Claimant committed the infraction.

With regard to the scandals committed by other top managers that posed higher reputational risk to the Respondent, Counsel asserted that even if this was the case it did not give the Claimant a right to commit an infraction.

**DECISION OF COURT**

It is trite that the basis of an employment relationship is a contract of employment which sets out the terms and conditions of the employment. An employee is expected to obey reasonable and lawful orders as instructed by the employer under the contract. It is our considered view therefore that the employee has a duty of fidelity to the employer which involves duties of good faith or to give good and faithful service to the employer. The employee in our considered view acts as an agent of the employer, in accordance of the employment contract. In **Eseza Catherine Byakika vs National Social Security Fund LD 057/2015,** this Court citing **Elias J in University of Nottingham vs Fishel[2000]ICR 1462,** stated that “*A contract of employment has both express and implied terms/rights and obligations entrenched in it. The employee’s freedom of action is regulated by the contract and the scope of his or her power are determined by the terms (express or implied) of the contract. As a consequence, the employer can exercise (or at least place himself or herself in a position where her or she has the opportunity to exercise) considerable control over the employee’s decision-making powers. …”*

In the instant case the Claimant’s contract of service included a duty to abide by the Respondent’s Human Resources Policies and Procedures, which provides for among others, the code of conduct and disciplinary procedures.

The Claimant’s case as we understand it is that his dismissal was unlawful because of the following reasons:

*“(a) the complainant, Grace Bugembe was not produced during the disciplinary hearing for cross examination and thus the Claimant was not given an opportunity to respond to Grace Bugmebe’s allegations.*

*(b)The respondent disregarded the Claimant’s responses to the allegations;*

*( c) the Respondent disregarded its investigative report which exonerated the Claimant from any forgery or fraud.*

*(d) the Claimant was dismissed for posing a reputation risk to the Respondent yet there have been several scandals by the Respondent’s top manager that passed higher reputational risks to it.*

The letter of termination attached on the Claimant’s trial bundle at page 22, states that he was terminated *“ for forging a letter, uttering a false demand notice in favour of Mr. Katende… in breach of the banks core values of professionalism and integrity and thus pose reputational risk to the Bank…”*

The impugned letter stated as follows:

 *“…*

*RE MR.BUGEMBE GRACE*

*Refer to the above gentleman. As you are very well aware on 28/12/2013, you guaranteed payment of shs. 6,000,000(sis million shillings) that I lent to Mr. Grace Bugembe.*

*Further to this you gave the security of your property ( a main house an four units of rentals) at Kibiri “A”Busabala Road as security. Up to date Mr. Bugembe has not and or failed to pay the money.*

*As a guarantor, you are requested to pay the money owed to me within 7 days from the date of this letter or else I shall sell the property to recover my money.*

*Your faithfully*

 *ZINABALA MICHAEL.”*

It is not in dispute that the Claimant admitted that he wrote the letter although he argued that the contents of the said letter were not false as alleged and he only intended to compel Bugembe to pay Katende his money. It was also not in dispute that both Bugembe and Katende were not staff of the Respondent Bank, nor was it clear whether they were its customers. The Respondent’s investigative report into this matter, established that indeed the Claimant wrote, although he did it in his private capacity. The report also established that the contents of the letter were false and therefore he acted unethically. The Claimant testified in court and stated that:

 *“… Mr. Katende asked me to pose as if iam the one … My cousin asked me to pose as if aim the one who lent him the money. ...”*

He also stated that: “*That could have been the case that he came to me because I was a loans officer…”*

From the evidence led, it was clear that this letter was written by the Claimant who was a banker but without the Bank’s involvement. The argument that he should have cross examined the Complainant, Bugembe therefore fails. The question however is: **Whether** **he ceased to be a banker when transacting in his private capacity?**

In our considered opinion a person and his or her profession are inextricably connected therefore a person’s profession does not cease when in their private capacity. Similarly, an employee does not cease to be an employee or a professional in his or her private capacity. In the circumstances, an employee’s duty of fidelity to an employer extends beyond the work place and more so where the employee is engaged in matters or transactions related to his or her employment or profession.

The Claimant as seen above admitted to writing a false demand letter and even if he insisted that he did not sign as a banker, the letter he wrote was false and he wrote it on behalf of another person as if he was a collector, making it seem like he was carrying out his duty as a loans officer. Even if it is not clear whether he did it for gain, the fact remains that he acted in a deceitful manner, with the intention of coercing a third party to pay back a debt. Given that as a loans officer it is his job to actually cause the Respondent’s debtors to pay back money borrowed from the Bank, it would not be farfetched to say that If the information about the Claimant’s conduct in this case was disclosed to the Public, it could negatively impact the bank.

Clause 19.2 (c ) of the Respondent’s Human Resource Policies and Procedures Manual on page 65of the Claimant’s trial Bundle provides that:

*“ An employee of the Bank is expected to conduct himself both in public and in private so as not to bring the Bank into disrepute. It may constitute sufficient grounds for disciplinary action if an employee’s conduct in the office or after office hours is deemed to be an embarrassment to the Bank…”*

We can confidently state that this provision means that the employee is expected to uphold the bank’s employment core values, where ever he or she is, whether at work or outside work or in his or her private capacity. One of the core values stipulated under clause 3.4.1 of the Human Resource Policies and Procedure Manual is integrity. Integrity is defined as follows:

*“Integrity is a character trait. It is the willingness to do what is right even when no one is looking.”(emphasis ours). It is a moral measure, the inner voice of self-control; the basis for* ***Trust****- in today’s dynamic and competitive world.”*

The Claimant admitted that he wrote the impugned demand letter which was false, although he did it in his private capacity. His actions in amounted to uttering a false document, which was contrary to the core values of integrity which he undertook to abide by under his contract of employment and therefore he breached his duty of fidelity to the Bank, which is expected to exercise very high standards of ethics and integrity, in its business. We are therefore inclined to agree with Mr. Mauso Counsel for the Respondent that, the Claimant’s conduct if disclosed to the public could pose reputational risk to the Bank as this could be considered as a breach of the trust and confidence in the Bank. The breach thus rendered the Claimant unsuitable for holding the position in the Bank and was therefore justification for his dismissal.

Section 2 of the Employment Act defines *“dismissal from employment as the discharge of an employee from employment at the initiative of his or her employer when the said employee has committed verifiable misconduct.”*

He stated both in his pleadings and in court that he was suspended to pave way for an investigation, which was carried out and he was invited for a hearing which he attended. He admitted to committing the infraction with which he was charged, therefore there was no need for him to cross examine the complainant and as submitted by Mr. Mauso, given the holdings in **Kabojja International School vs Godfrey Oyesigire Labour Dispute Appeal 003/2015 and Krotchet Employees SACCO vs Krotchet Kids Uganda Ltd LDC No. 006/2016, (supra)** he was not entitled to all the formalities of a hearing as provided under section 66 of the Employment Act. In any case, Annex 10 of the Respondent’s Human Resource policies and procedures Manual, provides that the penalty for “*forgery or falsifying or presenting false documents for purposes of disseminating wrong information, obtaining money, reward or favour… i*s dismissal.”

We have no doubt in our minds that the Claimant was conversant with the terms of his contract of employment and associated policies he was expected to abide by, such as the Human Resource Policies and Procedures Manual which he signed and by so doing, he undertook to abide by the provisions of the said contract and any other reasonable orders of his employer. Therefore, by writing the false demand letter, even if he wrote it in his private capacity, he did in breach of the terms of his contract of employment already discussed above. We are persuaded by **Leach vs Office of Communications[2012]I.C.R1269,(supra)** andfurther fortified by the Supreme Court’s holding in **Barclays Bank vs Godfrey Mubiru, SCCA No.1 OF 1998,** that:

*“Managers in the banking business have to be particularly careful and exercise a duty of care more diligently than manager 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 banking business any careless act or omission, if not quickly remedied, is likely to cause great losses to the bank and its customers ….”*

Although **Godfrey Mubiru**(supra) speaks to managers of Banks, we believe it also applies to all other officers in the banking business. In any case, clause 6.0 of the Respondent’s Human Resources Policy and procedures Manual marked ‘R8’ on the Respondent’s Trial Bundle, explicitly states that, *as a Financial institution, the nature of the Banks business demands high standards of ethics and Integrity.”*

In the circumstances we have no reason to fault the Respondent for dismissing the Claimant for the “*forgery or falsifying or presenting false documents for purposes of disseminating wrong information, obtaining money, reward or favour”* because writing the false demand letter, which he admitted that he did, falls within the ambit of this offence which is punishable by dismissal. His actions were clearly in breach the Bank’s core values of professionalism and integrity which posed a huge reputational risk to the Bank. The Respondent was therefore justified to dismiss him and therefore the dismissal was lawful.

**2.Whether the decision by the Respondent to withhold the Claimant’s severance allowance and accrued benefits was unlawful?**

It was the claimant’s submission that having been dismissed unlawfully he was entitled to payment of severance pay.

Section 87(a) of the Employment Act, states that subject to this Act, an employer shall pay severance allowance where an employee has been in his or her continuous service for a period of six months or more and where any of the following situations apply-

1. The employee is unfairly dismissed by the employer;
2. The employee dies in the service of his or her employer, otherwise than by an act occasioned by his or her own serious and wilful misconduct;
3. The employee terminates his or her contract because of physical incapacity not occasioned by his or her own serious misconduct;
4. The contract is terminated by reason of the death or insolvency of the employer.
5. The contract is terminated by a labour officer following the inability or refusal of the employer to pay wages under section 31 o
6. Such other circumstances as the Minister may by regulations provide

We have already found that the Claimant’s dismissal was lawful, therefore he is not entitled to payment of severance allowance as provided in section 87(a)(supa).

**3.What remedies are available to the parties?**

Having found that the claimant was lawfully dismissed he is not entitled to any other remedies. In any case, the Respondent generously paid him in lieu of notice, leave days and his contribution to the provident fund which he was not entitled to, given his conduct.

In conclusion, this claim fails. 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.MR. FIDEL EBYAU ……………..**

**2.MS. HARRIET MUGAMBWA NGANZI ……………..**

**3. MR. FX MUBUUKE ……………..**

**DATE: 7/09/2020.**