



THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE NO. 244 OF 2019
(Arising from Labour Dispute Complaint No. 188 of 2018)

ADILO PATRICK:.....CLAIMANT

VERSUS

AFROPLAST ENTERPRISES LTD:.....RESPONDENT

BEFORE:

The Hon. Mr. Justice Anthony Wabwire Musana,

THE PANELISTS:

1. Hon. Adrine Namara,
2. Hon. Susan Nabirye &
3. Hon. Michael Matovu.

AWARD

Introduction

- [1] The Respondent employed Mr. Patrick Adilo as a Machine Operator in 2004. In December 2017, his employer found him away from his workstation and asked him to leave the premises. He was denied access to his workplace. He filed a complaint with the labour office. The Commissioner for Labour found that while the Claimant's suspension from employment was lawful, it had not been managed under the Employment Act. The Commissioner concluded that

the Claimant was entitled to UGX 5,764,000/= representing his terminal benefits. This sum was paid to him. The Claimant then filed this reference. By a consent deed, the Counsel for both parties agreed to file their respective written submissions by the 15th of March 2022. When this matter came before this Court on 15th September 2022, we directed the parties to complete their written submissions on 7th October 2022. We reserved our ruling, which we now hand down.

Issues for determination

- [2] From the pleadings and submissions of Counsel, there are two issues for determination, namely: (i) whether the reference for damages is properly before this Court and (ii) whether the Claimant is entitled to general, punitive, and aggravated damages for unlawful termination. We shall address a preliminary point raised by the Respondent.

Issue One: (i) whether the reference for damages is properly before this Court?

Resolution of Preliminary Point

- [3] The Respondent submitted that this matter was improperly before this Court. In his view, there was no reference from the Labour Officer as provided for under Rule 3 of the Labour Disputes (Arbitration and Settlement) (Industrial Court Procedure) Rules, 2012. The Claimant countered that the Labour Officer made a reference on the 16th of May 2019.
- [4] This objection goes to the propriety of the reference. The circumstances under which disputes are brought to the Industrial Court are very well laid out;

- (i) A Labour Officer may refer a dispute to the Industrial Court if it has not been resolved within four weeks or two weeks of extension.¹
- (ii) A party may refer the labour dispute to the Industrial Court within eight weeks from its report date.²
- (iii) A party may pursue a matter at the Industrial Court if there has yet to be a decision on the complaint within 90 days from the date it is reported.³
- (iv) A party may prefer an appeal to the Industrial Court against the decision of the Labour Officer.⁴

Procedural History

- [5] The procedural history is that on the 12th of December 2017, the Claimant filed a complaint of unfair dismissal and unlawful suspension with the Commissioner of Labour at the Ministry of Gender, Labour, and Social Development (MGSLD). On the 10th of January 2018, the Commissioner invited the Respondent to consider reaching an amicable settlement. Following a series of unsuccessful meetings, the matter was arbitrated, and the Commissioner found that the Claimant had been lawfully suspended but that the suspension was not properly managed. The Respondent still considered the Claimant, its employee. It was noted that the Claimant did not believe that he could consider returning to work for the Respondent.
- [6] Applying **Section 93(3) of the Employment Act, 2006**, (*from now EA*), the Commissioner ordered the Respondent to pay the Claimant UGX 952,000/=

¹ Section 5(1) of the Labour Disputes(Arbitration and Settlement) Act 2006(LADASA)

² Section 5(3) of the LADASA

³ Section 93(7) of the Employment Act 2006

⁴ Section 94 of the Employment Act 2006,

being four month's salary in lieu of notice, UGX 3,094,000/= being severance pay for the 13 years of service, compensatory payment of 2 month's salary, UGX 1,218,000/= for repatriation, UGX 500,000/= being transport refund for the proceedings and ordered the Respondent to give the Claimant a certificate of service. The above payments would be made within seven days from 18th March 2019. On 1st April 2019, the Claimant requested the Commissioner of Labour to forward the matter to this court because the Respondent had failed to "turn up and follow the instructions given by the Labour Officer." On 16th May 2019, the Claimant extracted a decree which was executed. On the 28th of August 2019, the Claimant filed a memorandum of claim before this Court seeking a declaration that his termination was unfair or unlawful, contrary to general principles of natural justice, for which he sought general and punitive damages.

- [7] The Claimant submitted that there was a reference on the Court Record dated 16th May 2019. In our perusal of the record, we found that on the 16th day of May 2018, the Claimant filed a reference that the Labour Officer, Moses Mupapa, had failed to dispose of the dispute within eight weeks. The issues the Claimant wished resolved were unlawful termination, terminal benefits, salary arrears, and other related benefits. We also found that on the same day, the Labour Officer filed a reference to this Court on the ground of unlawful termination and failure to honour a decision made by the Labour Officer. It would follow that there is a reference before this Court. However, the difficulty that the matter raises is the propriety of the reference or references because, in this case, both the Labour Officer and the Claimant filed references to the Industrial Court.



- [8] Section 5(1) Labour Disputes(Arbitration and Settlement) Act 2006(LADASA) (*from now LADASA*) provides for reference of a dispute where the Labour Officer has not resolved it within four weeks after receipt. This provision relates to the settlement of a matter by way of conciliation under Section 4(1)(a) and (c) LADASA. Section 4(1)(c) LADASA provides for a meeting by the Labour Officer to resolve the dispute, and Section 4(1)(c) provides for the Labour Officer to propose terms of settlement that may be negotiated. In the present case, the Labour Officer arbitrated the matter and concluded an arbitration by his decision dated the 18th of March 2018. Having completed the matter, the option of a reference under Section 5(1)(a) LADASA was closed to the Claimant.
- [9] Under Section 5(3) LADASA, where a matter is not resolved within eight weeks from being reported to Labour Officer, any or both parties would be entitled to refer the matter to the Industrial Court. For avoidance of doubt, the Labour Officer concluded the matter on the 18th of March 2019, and a decree was entered on 16th May 2019. The avenue of self-referral by the Claimant was therefore not available to him. What was open to the Claimant were execution proceedings, and the decree was accordingly executed.
- [10] Under **Section 93(7) of the Employment Act, 2006**, a complainant may pursue a matter before the Industrial Court if the Labour Officer has not resolved it within ninety days. In the case before us, there is a decree dated 16th May 2019, executed on the 7th day of November 2020, when the Claimant acknowledged receipt of the sum of UGX 6,764,000 from the Respondent. The Claimant purposed to move this Court under Section 93EA. However, the

matter was resolved by a decision dated 18th March 2018, a decree dated 16th May 2018, and full payment of the decretal sum on 7th November 2020.

- [11] Under Section 94(1) EA, a party dissatisfied by a decision of a Labour Officer may appeal to the Industrial Court. Appeals lie on questions of law and, with leave, on a question of fact forming part of the decision. In the matter before us, the Claimant moved Court through a memorandum of claim under Section 93EA. It was, therefore, not an appeal.
- [12] The Claimant also cited Section 40(2) LADASA. This section allows the Industrial Court to set its own procedure where the rules have not been made. From our observations in Paragraphs 6 to 10 above, it is not plausible that the present matter did not have a specific provision relating to its filing.
- [13] Therefore, given our conclusions in paragraphs 6 and 7 above, the references before this Court by both the Claimant and labour office were irregular, given the existence of a decree and decision.
- [14] However, the Court of Appeal has, in the case of **Engineer John Eric Mugyenzi v Uganda Electricity Generation Co. Ltd**⁵ held that the Industrial Court has jurisdiction to arbitrate on references made by the Labour Officer and to adjudicate upon questions of law and fact. The present reference has, as we have found, has some procedural flaws. These irregularities do not forestall the resolution of the dispute before this Court. The question before this Court, and as was agreed upon by Counsel, is the matter of damages. In the Mugyenzi case, the Court of Appeal was emphatic that the Industrial Court should use its jurisdiction to adjudicate on issues of fact or law referred to it.

⁵ C.A.C.A No. 167 of 2018

The Court found it disturbing that litigants would be uncertain about which forum to file an action in.

[15] Further, in **Industrial Promotion Services v Nelson Kasingye Agaba**⁶, this Court held that where a matter is referred to this Court by a Labour Officer the Court deals with it as if it was not entertained by the Labour Officer at all. We, therefore, find that while the reference and the pleadings thereto were not properly within the ambit of LADASA, Counsel for the Claimant rightly abandoned the claim for unlawful termination and restricted the submissions to damages which is the sole question for determination before us. We will therefore proceed to consider the dispute.

Issue Two: (ii) whether the Claimant is entitled to general, punitive, and aggravated damages for unlawful termination

The Claimant's Submissions

[16] Messrs Okecha, Baranyanga & Co. Advocates, appearing for the Claimant, submitted that during the process of his suspension, the Claimant was humiliated, insulted, and dismissed in a very degrading manner. He lost his job without justification. Counsel suggested that the Claimant was wrongfully dismissed or unlawfully terminated. Having worked for the Respondent for 13 years, Counsel prayed for an award of general damages of UGX 100,000,000/= (One Hundred Million Shillings). Counsel cited the cases of **Bank of Uganda v Betty Tinkamanyire S.C.C.A No. 12 of 2007, Dr. Omona Kizito**

⁶ LDMA 001 of 2021

v *Maries Stopes Uganda LDC No. 033/2015*, and *Bank of Uganda v Joseph Kibuuka & 4 Others C.A.C.A No 281 of 2016* in support of this claim.

- [17] In support of aggravated damages, Counsel for the Claimant submitted that the Respondent's Manager acted with ill will and total disregard for the Claimant's dignity, reputation, and feelings.

The Respondent's submissions

- [18] Messer Murungi, Kairu & Co Advocates, submitting for the Respondent, advanced the view that the Claimant was not dismissed but suspended. Regarding damages, the Labour Officer's decree settled whatever compensation was due to the Claimant.

Decision of the Court

- [19] From scrutinizing the procedural history leading to this reference and perusing the lower record, the evidence demonstrates that the Claimant was suspended from employment. It was established that the lawful suspension needed to be appropriately managed. It exceeded the statutory four weeks. At the resolution of the dispute, the Claimant was of the mind that he could not return to work with the Respondent. The Labour Officer and Commissioner for Labour were of the common position that the Claimant was entitled to remedies derived from the Employment Act, 2006, for the unlawful suspension. The Commissioner for Labour was specific in awarding four months' salary in lieu of service (notice) by **Section 58 of the Employment Act**. Further, the Claimant was awarded severance pay by Section 87 of the Act. The Respondent was also required to repatriate the Claimant and refund transport costs incurred in pursuit of the claim. In our view, these awards are

in the category of damages set by statute or statutory damages for breach of provisions of the Employment Act. To borrow from the dictum in **Stroms v Hutchinson [1950] AC 515**, they are a direct and natural statutory consequence of the breach of an employment contract.

[20] In labour disputes, the current jurisprudence on when general damages are awardable is where the employee has proven liability in the loss of employment due to the employer's conduct. General damages are awardable for a wrongful dismissal or unfair termination⁷. In the case before us, while the Claimant sought a declaration that he has been unfairly or unlawfully dismissed, at the hearing, it was settled that the reference to this Court was purely on damages. Mr. Alexander Kafeero, appearing for the Claimant, informed this Court that he had filed written submissions on the sole question of damages and that the matter of unfair termination had been dealt with by the labour officer. From the lower record, it is common cause that the Labour Officer found that the Respondent lawfully suspended the Claimant, but the suspension was not correctly managed. On this basis, the Labour Officer granted statutory remedies. We do not intend to and neither were we asked to revisit the findings of fact of the Labour Officer.

[21] It was submitted that the Claimant did not wish to return to employment with the Respondent. The Respondent, for its part, considered the Claimant its employee. In our view, the Claimant's loss of employment was occasioned by the Respondent's wrongful act of not managing the suspension lawfully. As pointed out in paragraph 18 above, for damages to be awardable, they are a

⁷ Stanbic Bank (U) Ltd v Constant Okou Civil Appeal No. 60 of 2020, See also David Bosa v Post Bank Uganda Ltd LDR 79 of 2018



direct and natural consequence of the Claimant's loss of employment. The Labour Officer made a finding of fact that the Respondent improperly suspended the Claimant from employment. It was also common that the Respondent did not terminate the Claimant. Ordinarily, he would be entitled to an order of reinstatement. For the remedy of reinstatement to apply, in the case of **Mariam Kaggwa vs. V.G.Keshawala & Sons**,⁸ we considered Section 71(6)EA for the conditions for reinstatement. It is provided that:

"The court shall require the employer to reinstate or re-employ the employee unless;

- a) The employee does not wish to be reinstated or re-employed.*
- b) The circumstances surrounding the dismissal are such that a continued employment relationship would be intolerable*
- c) It is not reasonably practical for the employer to re-instate or re-employ the employee or*
- d) The dismissal is unfair only because the employer did not follow a proper procedure."*

In the case before us, the Claimant does not wish to be re-employed or is unwilling to return to work for the Respondent. The nature of the employment relationship is built not only on the contract of employment but confidence, cohesion, honesty, and trust, among other things. The absence of these elements is unlikely to foster and support workplace harmony. Trust, as between the Claimant and Respondent is broken. He has, by reason of the unlawful suspension, lost his employment. In these circumstances, despite

⁸ LDR 120/2020

the Respondent's reassurance, we do not think reinstatement to be an appropriate remedy. We believe the improper suspension resulted in the Claimant's eventual loss of employment. For this reason, the Claimant would be entitled to damages.

[22] The principles in considering an award of general damages in cases of wrongful dismissal or unlawful termination have been clarified by the Court of Appeal in the case of Stanbic **Bank (U) Ltd v Constant Okou (supra)**. The principle of *restituto in integrum* applies analogously to loss of employment and future prospects of re-employment. The Court must consider the actual loss of earnings up to the date of the award and any prospective losses. Other considerations are age and monthly earnings. The Claimant was earning UGX 238,000/= per month. He had been employed for 13 years. Mr. Kafeero was contending for the sum of UGX 100,000,000. We think Counsel did not lay a firm foundation for an award in this sum. In the case of David Bosa vs Post Bank Uganda Ltd⁹, the Claimant was unfairly dismissed. He was earning UGX 1,200,000 per month and had worked for nine years and ten months. The Court awarded him UGX 35,000,000/= in general damages. In the case before us, considering the Claimant's earnings and his period of employment, we consider the totality of UGX 6,902,000/= to be appropriate as general damages.

[23] Regarding costs of the claim, we have ruled in the case of **Joseph Kalule v GIZ**¹⁰ that whereas costs follow the event, in labour disputes, the award of costs is the exception rather than the rule. The exceptions include some form of

⁹ LDR No. 79/2018

¹⁰ LDR No. 109/2020(Unreported)

misconduct by the unsuccessful party. In the present matter, the Respondent's failure to properly manage the suspension and timely honour the Labour Officer's orders invites culpability for misconduct. As such, the Claimant shall have costs of the claim.

Final orders of the Court

[24] The orders of this Court are as follows:

- (i) The Claimant is entitled to general damages in the sum of UGX 6,902,000/= and;
- (ii) The Respondent shall pay the Claimant his costs of the claim.

It is so ordered, signed, delivered, and dated at Kampala this ___ day of ___ 2023.

SIGNED BY:

ANTHONY WABWIRE MUSANA, JUDGE

Anthony Wabwire J

THE PANELISTS AGREE:

1. Ms. ADRINE NAMARA

Adrine Namara

2. Ms. SUZAN NABIRYE

Suzan Nabirye

3. Mr. MICHAEL MATOVU

Michael Matovu

Delivered in open Court in the presence of:

For the Claimant: Mr. Emmanuel Mushabe

Court Clerk: Mr. Amos Karugaba.