



THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE NO. 79 OF 2019
(Arising from Labour Dispute Complaint No. MGLSD/LC/032/2018)

LABAN ATUZARIRWE.....CLAIMANT

VERSUS

STANDARD CHARTERED BANK LTD.....RESPONDENT

BEFORE:

The Hon. Mr. Justice Anthony Wabwire Musana,

PANELISTS:

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

REPRESENTATION:

1. Mr. Peter Arinaitwe of M/S Arinaitwe Peter & Co. Advocates for the Claimant.
2. Mr. James Samuel Zeere of M/s S & L Advocates for the Respondent.

AWARD

Introduction

- [1] The Respondent Bank employed Laban Atuzarirwe for 11 years. In 2014, while he was serving as Branch Operations and Services Manager Mbarara Branch (*from now BOSM*), the Bank embarked on a standardization, digitization, and reorganization strategy. It informed its employees of the possibility of redundancy. In January 2015, Mr. Atuzarirwe was terminated on the grounds of

redundancy. He was paid a redundancy package. The Labour Officer at Mbarara District Local Government Labour Office determined the termination unfair and imposed compensatory orders. The matter was referred to this Court. In his memorandum of claim, the Claimant sought a declaration for unlawful termination, an unpaid performance bonus, general damages, interest, and costs. The Respondent opposed the claim raising a point of law that the claim was premature and filed out of time. The Respondent contended that over ten positions in the Respondent Bank were made redundant following standardization, digitization, and reorganization. Clearance was sought and obtained from the Commissioner for Labour. The termination was, therefore, lawful, and no loss or inconvenience was caused to the Claimant.

Issues for determination by Court

- [2] At the scheduling conference, two issues were framed for determination viz:
- (i) Whether the Claimant's termination was lawful?
 - (ii) What remedies are available to the parties?

The proceedings and summary of evidence

- [3] The Claimant led evidence of two witnesses while the Respondent called one witness. Counsel were invited to address the Court by way of written submissions. The Court expresses its gratitude to Counsel for the succinct arguments.
- [4] The Claimant testified that he performed well after his appointment and was elevated to BOSM. In 2014, a circular was passed intimating a prospective restructuring exercise. On the 9th of January 2015, he was served with a letter indicating that his position had been rendered redundant and he had been laid off. He did not protest and left the Respondent's employment. Later he was shocked to learn that one Olive Marie Karungi, hitherto Portfolio Manager, had been appointed to the position and had not been abolished in other branches. Only after the complaint was made to the Labour Officer that the Respondent suggested that the position had been merged, he was found not to have the relevant skills. He testified that this was unfair because his skills and superior performance had not been questioned before. He had missed his performance bonus and had difficulty getting alternative employment because of the circumstances relating to his termination. He testified that his career had been

cut short. Mr. Lwanga Amir Zziwa (CW2) testified he was BOSM at the Respondent's Kikkubo Branch when the Claimant was terminated. Mr. Lwanga resigned in June 2015 and was unaware of any requirement for new skills for the position, nor did he receive any information regarding the merger of the work with that of the Portfolio Manager.

- [5] Mr. Hilary Ndungutse testified on behalf of the Respondent. He led evidence as the Head of Human Resources and testified that the Claimant did not have any disciplinary issues and performed to the standards required of him. Toward the end of 2014, the Respondent initiated standardization, digitization, and efficiency improvement, and the employees were informed. The Commissioner of Labour was duly notified and granted a letter of no objection. The position of BOSM in upcountry stations was affected. For the Mbarara Branch, it was merged with that of the Portfolio Manager, and it was decided that the employee with the least remuneration be retained. The Claimant was terminated and paid a redundancy package. He also testified that CW2 was not employed on the same terms and conditions as the Claimant. The Claimant was not entitled to any performance bonuses as these were discretionary and had left the bank at the time the bonuses were paid. He was not unfairly terminated.

Analysis and decision of the Court

Preliminary point

- [6] Regarding a premature reference, the present jurisprudence of the Industrial Court is that matters referred to it by the Labour Officers are heard *denovo*. It follows that the objection to proceedings on the ground that is premature is not to be taken.¹

Issue I: Whether the Claimant's termination was lawful?

Submissions of Counsel

- [7] Mr. Peter Arinaitwe, appearing for the Claimant, citing the case of *Hilda Musinguzi v Stanbic Bank (U) Ltd SCCA No.28 of 2012*, Article 4 of the Termination of Employment Convention No. 158 of 1982 and **Section 68 of the Employment Act, 2006** (*from now "EA"*), submitted that the employer is obliged to give

¹ See Labour Dispute Reference 244 of 2019 Adilo Patrick v Afroplast Enterprises Ltd.

reasons for termination and where the employer fails to give reasons for termination, the termination becomes unfair termination. Learned Counsel submitted that the Claimant was not given a fair hearing in accordance with Section 66EA on the question of termination for want of performance or competence. The Claimant was appraised at the end of 2014, and his performance was outstanding. Counsel argued that the position of BOSM was given to another person. Counsel contended that the person, not the position of BOSM, was phased out. The failure to conduct an appraisal and communicate the outcome as to why the Claimant could not be retained rendered the termination unfair and unlawful.

- [8] Mr. James Zeere, appearing for the Respondent, submitted that the termination was lawful because it was based on lawful grounds. The Respondent was not obligated to give the Claimant a hearing before the termination. The reason, as disclosed in CEX3, was redundancy. Mr. Zeere argued that Section 66 (1) and (2) EA require an employer to give a hearing where the employer is considering dismissal for misconduct or poor performance. In Counsel's view, the section was inapplicable to the present case. It was submitted that the Respondent followed due process, and termination by restructuring had been held to be just and equitable where the employees affected were given prior notice. Counsel cited *Kimuli v Sanyu FM 2000 Ltd (LDR 126 of 2015)* to support this proposition. The notice was exhibited in CEX2, was confirmed by RW1, and the Commissioner's consent was obtained in REX2. As such, the termination was just and equitable.
- [9] It was also submitted for the Respondent that this Court had confirmed that a job becomes redundant when the employer no longer desires to have it performed by the employee and that redundancy did not amount to a dismissal. Counsel cited the case of *Adam Kafumbe Mukasa v Uganda Breweries Ltd LDR No. 191 of 2015*. The Claimants were duly informed, and the role of BOSM was merged with that of Portfolio Manager, and Oliver Karungi was appointed to the merged role. Counsel submitted that the termination on the grounds of restructuring and redundancy was justified.

Analysis and Decision of the Court

- [10] There was common cause that the Respondent terminated the Claimant because of redundancy. The Claimant did not initially protest the termination. The law relating to termination on the grounds of redundancy is well spelled out under Section 81EA. It is provided that where an employer contemplates

termination of not less than ten employees over a period of three months for reasons of an economic, technological, structural, or similar nature, they shall inform representatives of the labour union where the employees are represented of the contemplated terminations at least four weeks before the first of such terminations begin. The employer must also notify the Commissioner in writing of the reasons for the terminations, the number of workers affected, and the period within which the terminations are likely to occur. The starting point is, therefore, **notification** of the affected employees, the labour union, and the Commissioner.

- [11] In the case of **Ben Kimuli v Sanyu FM 2000 Ltd LDR 126 of 2015**, the Industrial Court² held that termination as a result of a restructuring process is acceptable and is in conformity with not only the Termination of Employment Convention above mentioned but also with the Employment Act and is covered under Section 81EA. An employer could restructure its business for commercial reasons by declaring positions redundant.
- [12] In the case of **Adam Kafumbe Mukasa & 2 Others(supra)**, the Industrial Court citing **R v Industrial Commissioner of South Australia Exparte Adelaide Milk Supply Co. Ltd(1977) 16 SASR** where redundancy was defined as;

“simply this, that a job becomes redundant when the employer no longer desires to have it performed by the employee. A dismissal for redundancy seems to be a dismissal, not on account of any personal act or default of the employee dismissed or any consideration peculiar to him but because the employer no longer wishes the job the employee has been doing to be done anymore”

Simply put, an Employer is entitled to declare a redundancy for business or commercial reasons when they do not wish the employee to perform a job.

- [13] As demonstrated in the Kimuli case (supra), termination for redundancy is a legitimate means of ending employment. However, not all termination cases require the approach engendered by Counsel for the Claimant. Mr. Arinaitwe contested the reason for termination. He argued that there was no appraisal and no communication of the outcome of the appraisal to justify the Claimant’s termination. While it is true that termination or dismissal on the grounds of misconduct or poor performance requires the employer to give the employee a

² Per Ntengye H.J, Tumusiime Mugisha J.Bwire, Mavunwa and Nyachwo(Members)

fair hearing and must pass the procedural and substantive fairness tests,³ the tests for termination by redundancy are at variance with the position taken by the Learned Counsel for the Claimant. The statutory provisions contained in Section 81EA are precautionary in nature. The section is clear in that the reasons for termination on redundancy are economic, technological, structural, or similar nature. There is nothing to do with the conduct or misconduct of the employee. It is not to do with the employee's performance or under-performance, which would, in a termination under S68EA, require a hearing under S66EA. The substantive tests⁴ for collective termination are economic, technological, structural, or reasons of a similar nature. There are, to put it otherwise, business decisions. By analogy, the impact of COVID-19 has caused many businesses to rethink and reorganize their procedures. Such reorganization would render some jobs redundant for economic reasons or the advent of technology to perform given tasks. In this way, the reason for termination would be lawful.

- [14] The procedural fairness tests in termination for reasons of redundancy require the employer to inform the labour union representatives (where applicable) four weeks before the first of such terminations are expected to begin, the employees, and seek the consent of the Commissioner for Labour. To re-emphasize the dictum in the Kimuli case, the employer must notify either the labour union, the employee(s), or the Commissioner for labour. In our view, the rationale for the provision considers the need for preparedness on the part of the employee for the eventual termination. This is to mitigate the negative impact associated with the job loss. In other words, the law makes provision for notice of an impending termination. Termination for redundancy cannot be instant, therefore.
- [15] In the case before us, according to the Circular admitted as CEXH 2, the Respondent's staff were informed of an ongoing standardization, digitization, and efficiency improvement exercise. The Respondent intended to declare staff redundant. There was to be a skills rationalization, and redundant staff were to be paid in accordance with the law and bank policy. In our view, this communication is part of the precautionary procedures set out under S81EA. S81 (1) (b) EA requires an employer to notify the Commissioner of an intended collective termination. By its letter dated the 8th of January, 2015; the Respondent complied with the requirements of the law. By giving the Claimant and other employees notice of redundancy, the Respondent adhered to

³ See Nicholas Mugisha vs Equity Bank Ltd LDR 281 of 2021

⁴ And this is akin to the reason for termination in other forms of termination.

procedural (by giving notice) and substantive (because of redundancy) fairness. The communication was delivered in a reasonable time. The principle enunciated in the Hilda Musinguzi case (supra), which case was cited by the Claimant in his submissions, is that the right of an employer to terminate a contract cannot be fettered by the Court so long as the procedure for termination is followed. The Respondent followed the procedure under S81EA by giving notice to the Claimant and other employees. Further, the Respondent notified the Commissioner for Labour, who did not object to the contemplated collective termination. According to REXH2, the Commissioner for Labour wrote:

"This is to inform you that this office has No Objection to the intended collective termination since you have complied with Section 81(1) of the Employment Act, 2006, and Regulation 44 of the Employment Regulations. You may therefore proceed without any encumbrances."

Mr. Arinaitwe's argument does not gain much purchase, given jurisprudence and the legal provisions regarding collective terminations that we have cited above. We agree with Mr. Zeere's submission that the termination was lawful. Accordingly, the Claimant's termination was procedurally correct and fair.

- [16] Mr. Arinaitwe submitted that there was no valid reason for termination. In effect, he suggests substantive unfairness. It is trite that an employer contemplating collective termination may do so on economic, technological, structural, or grounds of similar nature. In the case before us, the Claimant makes the case that the position of BOSM was given to Olive Karungi. He called CW2 to confirm that the position of BOSM was not eliminated. In his view, the position was not rendered redundant. On its part, the Respondent contends that the position of BOSM was merged with that of the portfolio manager and offered to the employee with the least remuneration or the most affordable employee. According to RW1, the branch was eventually closed. This evidence supports the conclusion that the Respondent needed to reorganize its business. The eventual closure of the Mbarara Branch would be consistent with an expectation of diminution of the role hitherto carried out by the Claimant. As such, the termination was justified.
- [17] For the reasons above, we determine that the Claimant's termination was lawful. We are not persuaded and cannot fetter the Respondent's right to terminate the Claimant's contract. We are satisfied that the process leading up to termination

was procedurally and substantively fair. Issue No. 1 would be answered in the negative.

Issue II: What remedies are available to the parties?

- [18] Having found, as we have regarding Issue No. 1 above, we decline to grant the Claimant any of the remedies sought.


Orders of the Court

- [19] Labour Dispute Reference No. 79 of 2019 is dismissed with no order as to costs.

It is so ordered at Kampala this 31st day of May 2023.


SIGNED BY:

Anthony Wabwire Musana,
Judge, Industrial Court



THE PANELISTS AGREE:

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



Delivered in open Court in the presence of:

For the Respondent: Mr. James Samuel Zeere

The Claimant and his Counsel are absent.

Court Clerk: Mr. Samuel Mukiza.