



THE REPUBLIC OF UGANDA  
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA  
LABOUR DISPUTE REFERENCE NO. 119 OF 2021  
(Arising from Labour complaint No. KCCA/KWP/LC/076/2021)

MOI JUMA:.....CLAIMANT

VERSUS

ISHAKA QUALITY COMMODITIES LIMITED:.....RESPONDENT

**Before:**

The Hon. Mr. Justice Anthony Wabwire Musana,

**Panelists:**

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

**Representation:**

1. Ms. Scholastica Apolot of M/S Asire & Co. Advocates for the Claimant
2. Mr. Kizito Kasirye of M/S Tumwebaze, Kasirye Co. Advocates for the Respondent.

**AWARD**

**Introduction**

- [1] The Claimant was a Shielding Machine Operator of the Respondent earning Ugx. 150,000/= per month from 2011 until he was terminated. During the pendency of the COVID-19 lockdown, the Claimant alleges that he was asked to take leave for two weeks, and on the 8<sup>th</sup> of June 2020 when he returned from leave, he was asked to vacate the Respondent's premises, permanently. The Respondent contends it shifted premises during the lockdown and asked its employees to reside closer to the new premises. The Claimant declined to do so and had absconded from work. He was never terminated.

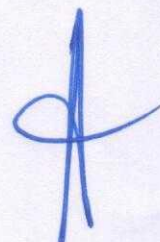
- [2] In his claim before this Court, the Claimant sought a declaration that he was unlawfully and unfairly terminated, an order of payment of UGX 450,000/= as payment in lieu of notice, UGX 2,565,000/= as NSSF savings, severance allowances, accrued leave, repatriation, and general damages.
- [3] The Respondent opposed the claim contending that the Claimant's action was akin to daytime robbery, frivolous, and abuse of the Court process.
- [4] On the 14<sup>th</sup> of March 2023, during the scheduling conference, the following issues were framed for determination, namely:
- (i) Whether the Claimant was terminated, and if so, whether it was lawful?
  - (ii) What remedies are available to the parties?

**Analysis and Decision of the Court.**

**Issue 1. Whether the Claimant was terminated, and if so, whether it was lawful?**

**Submissions of the Claimant**

- [5] Ms. Apolot, appearing for the Claimant, submitted that the Claimant's termination was contrary to **Section 68 of the Employment Act, 2006** (from now on, "EA"). She relied on Section 2EA for the definition of termination and Section 65EA for the meaning of termination. Counsel argued that the Claimant was terminated from employment and not dismissed because the Claimant was not accused of any misconduct. Learned Counsel contended that an employer who contemplates terminating or dismissing an employee with justifiable reason or misconduct must comply with S58, 69(2) EA that is give required notice unless the dismissal is summary under S69EA. For dismissal, the employer must adhere to S66EA and give the employee a hearing. Counsel submitted that the evidence was that the Respondent's Director chased the Claimant away from his job without notice. Counsel also argued that the purported reason "that the job was finished" was not justifiable under Section 68EA. Counsel cited the case of *Moses Obonyo v MTN* in support of this proposition.
- [6] It was also submitted for the Claimant that the Respondent had not proven the reason for termination. Counsel cited the case of **Lusiba Deogratius v NWSC LDR 120 of 2016** in support of the proposition that there was no evidence to show that the Claimant had absconded from work. Finally, it was submitted for the Claimant that this Court should not attach any significance to allegations of a process that



never happened. The case of **Mudoma Charles v Kenfreight (U) Ltd LDC 042 of 2015** in support of this proposition.

#### **Submissions of the Respondent**

- [7] Mr. Kasirye, appearing for the Respondent, submitted that the Claimant absconded from work and had not discharged the burden to prove that leave was given to him. Counsel cited the case of **Awio Rose Filder v School Management Committee Hoffman COU LDR 187 of 2016** and other authorities in support of the proposition that an employee must formally apply for leave which the employer grants and fixes a time to avoid disrupting work. Counsel submitted that the Claimant could not be given leave in such a busy period of the Respondent's business and that efforts to reach the Claimant during this time were futile. It was submitted that the Claimant terminated his employment under Section 65(1)(c)EA. For this proposition, Counsel cited the case of **Mbiika Dennis v Centenary Bank Ltd LDC 23/2014**, arguing that the Claimant's conduct was unreasonable. Citing Rule 6 of the Public Health (Control of Covid-19) (No.2) Rules, 2020, Counsel submitted that the Respondent made provision for the accommodation of the Claimant, but he did not take this up. It was Counsel's view that the evidence was unchallenged in cross-examination. For these reasons, Counsel suggested that the Claimant was not terminated.
- [8] It was also submitted that termination without notice is permissible under Section 58(1)(a) if the employee was summarily dismissed. Counsel cited **Katinda James v NNHP Enterprises LDR No. 169 of 2015 EA** for the proposition that absence from work constitutes a fundamental breach on the part of an employee for which an employer would be entitled to terminate summarily.

#### **Resolution of Issue 1**

- [9] The Claimant testified that in May 2020, he was asked by Hadija Nadgire, the Respondent's Director, to take two weeks' leave, and on his return, he was asked to leave the Respondent's premises permanently. On her part, Ms. Hadija Ndagire, the Respondent's Managing Director, testified that it could not have given the Respondent leave during a busy period of the Coffee season because the Respondent required the services of its shield machine operator. She further testified that on May 5<sup>th</sup>, 2020, the Respondent tried to contact the Claimant, but his known telephone numbers were switched off. Given the nature of the work, the Respondent engaged an alternative worker. Ms. Ndagire also testified that in June 2020, the Claimant said he was not interested in maintaining the job and asked to be paid in appreciation for his work. Ms. Ndagire testified that she declined this request, and the Claimant voluntarily ceased working for the

Respondent. In our view, the Claimant's account of events is not entirely consistent. It was his evidence that he had asked for leave during his work, but it had not been granted. The Respondent produced evidence of exports of coffee in the period May to June 2020. These were admitted as REX 1 to REX3. It was common to both parties that the Claimant was employed as a Shield Machine Operator responsible for packaging material. It was also the Respondent's evidence that it had to engage the services of one Tabu to cover the Claimant's work during his absence. On the balance of probabilities, we find the Respondent's account of events in this respect more believable. We find as a fact that the Claimant was not at work during the period from May to June 2020.

- [10] The Respondent submitted that the Claimant was absent from duty, which constituted a fundamental breach of the employment contract by the employee. Counsel cited the case of *Katinda James (supra)*. The Claimant maintained that he was away from work for two weeks leave between May and June 2020. Ms. Ndagire denied that the Claimant had been granted leave. He returned to work on the 8<sup>th</sup> of June 2020 and said he was not interested in continuing to work. Taking Ms. Ndagire's account, if the Claimant had been away from work and was not authorized, then under Section 75(i) EA that an employee's temporary absence from work for any period up to three months on reliable grounds, including illness or injury, shall not constitute fair reasons for dismissal or the imposition of a disciplinary penalty.
- [11] No evidence was led before this Court to explain what steps the Respondent took after the Claimant returned to work. Ms. Ndagire testified that the Respondent engaged a one Mr. Tabu to carry out the Claimant's work in his absence. This evidence would be consistent with the Claimant's testimony that when he returned to work, Ms. Ndagire advised him that he did not have any role or work to do. It is not plausible, in our view, that the Claimant, who had returned to work on the 8<sup>th</sup> of June 2020, abandoned the job. Under Section 75(i) EA, absence for three months does not invite disciplinary sanction if there can be reliable grounds for the absence. It was submitted for the Respondent that the Claimant did not adduce sufficient reason for his absence from work from May 2020 to 8<sup>th</sup> June 2020. This would not be consistent with Ms. Ndagire's testimony that the Claimant abandoned work. This Court takes cognizance of the global lockdown and attendant events during the COVID-19 lockdown. The first of the lockdowns was declared on the 22<sup>nd</sup> March 2020. The easing of transportation began towards the end of May 2020. With the difficulties associated with the lockdowns, this Court would be of the persuasion that the Claimant had reliable grounds to be away from

work. We would conclude that the Respondent terminated the Claimant's employment on or around the 8<sup>th</sup> of June 2020. This was a no-fault-termination.

- [12] The next question is whether the termination was lawful. As an alternative argument, the Respondent submitted that it was entitled to terminate the Claimant under Section 69(3) EA for a fundamental breach of the contract. The fundamental breach was the absence from work from May 2020 to 8<sup>th</sup> June 2020. It is trite that an employer has an unfettered right to terminate its employee if it follows procedure.<sup>1</sup> Counsel for the Claimant pointed to the Respondent's plea that the Claimant had absconded. In paragraph 4(j) of its reply to the memorandum of claim, the Respondent pleaded that it had not terminated the Claimant but rather "it is the Claimant that absconded from work." According to Black's Law Dictionary abscondment means secretly leaving one's usual place of abode or business to avoid arrest, prosecution, or service of process. The Respondent's evidence is that it tried to reach the Claimant by telephone, but his phone was switched off. This proposition would have been believable had there been telephone printouts to support the effort to contact the Claimant. Following our conclusion in paragraph [11] above, we do not find a fundamental breach on the part of the Respondent. Had this been the case, it is trite that where the Respondent wishes to dismiss an employee on the grounds of misconduct, then the employer must adhere to the provisions of S66 EA.<sup>2</sup>
- [13] S66EA relates to the right to a fair hearing. This court has held that the right to a fair hearing constitutes procedural fairness in employment disputes. The law is that lack of procedural fairness renders a termination unlawful.<sup>3</sup> In the oft-cited case **Ebiju James v Umeme Ltd**<sup>4</sup> for the right to be heard, the Court required that (i) a notice of allegations must be served sufficiently for the employee to prepare a defence, (ii) The notice should set out clearly what the allegations are and the employee's rights at the hearing, including the right to respond to the allegations against him orally and or in writing, the right to be accompanied to the hearing, and the right to cross-examine the employer's witness or call witnesses of his own and (iii) The employee should be allowed to appear and present their case before an impartial committee in charge of disciplinary issues. It was common in the case before us and it was conceded to by Ms. Ndagire under cross-examination that while she understood the essence of a disciplinary hearing, none was held

<sup>1</sup> Per Mwangushya J.S.C in S.C.C.A No. 28 of 2012 Hilda Musinguzi vs Stanbic Bank (U) Limited SCCA 28/2012, See also Bank of Uganda v Geoffrey Mubiru S.C.C.A. No. 1 of 1998. The principle is repeated in a plethora of authorities.

<sup>2</sup> This is the notion of procedural fairness enshrined in the non-derogable right to a fair hearing under Article 42 and 44 of the 1995 Constitution of the Republic of Uganda

<sup>3</sup> See Nicholas Mugisha v Equity Bank Ltd and Ogwal Jaspher v Kampala Pharmaceuticals Ltd

<sup>4</sup> Per Musoke J.( *as she then was*) in Ebiju James v Umeme Ltd H.C.C.S No. 0133 of 2012

regarding the Claimant. For this reason, we hold that the Claimant was unfairly terminated. Issue one is answered in the affirmative.

**Issue II. What remedies are available to the parties?**

[14] In paragraph 3 of the memorandum in reply, the Respondent suggested that the claim was akin to daytime robbery. Given the findings in issue 1 above, the Respondent's contention of daytime robbery would be greatly mislaid. The Claimant sought this Court's determination on the fairness of his termination. The Claimant is entitled to remedies for unlawful termination, which we have considered below.

**Salary in lieu of notice**

[15] The Claimant sought payment of two months' salary in lieu of notice. Counsel contended that the Claimant had been in employment for nine years, from January 2011 to June 2020. There was some conflicting evidence as to the term of service. In the Claimant's view, he was in continuous service from January 2011 to June 2020. The Respondent argued that he was not an employee in 2017 when Ms. Ndagire took the mantle. The Claimant explained that he did not have a valid identity card between 2015 and 2019 when the management of the Respondent transitioned from the late Hajji Kizito Ishaka to Ms. Hadija Ndagire. The Court was presented with two identity cards. CEXH was valid from 12<sup>th</sup> September 2012 to 2<sup>nd</sup> September 2015, and CEXH2 was valid from 2<sup>nd</sup> January 2019 to 2<sup>nd</sup> January 2023. Under Section 59(b) EA, an employee is entitled to receive, in writing, full particulars of employment, including the date the contract began and specifying the employee's period of continuous service. The onus to provide these written particulars rests with the employer. Absent of the particulars, we are inclined to believe the Claimant and shall presume that his employment commenced on 12<sup>th</sup> September 2012 and ended on 8<sup>th</sup> June 2020. This was a period of seven years and nine months. Under Section 58(3)(c)EA, the Claimant would be entitled to two months' payment in lieu of notice. Accordingly, we award the sum of **UGX 300,000/=** as two months' pay in lieu of notice.

**Severance allowance**

[16] Under **Section 87(a) EA**, an unfairly dismissed employee is entitled to a severance allowance. Having found that the claimant was unfairly terminated, we hold that he is entitled to severance pay. We also adopt this Court's reasoning in **Donna Kamuli v DFCU Bank Ltd**<sup>5</sup> that the Claimant's calculation of severance shall be at the rate of his monthly pay for each year worked. Having found that the Claimant

<sup>5</sup> The Court of Appeal maintained this position in *DFCU Bank Ltd vs Donna Kamuli C.A.C.A No 121 of 2016*.

worked for seven years and nine months, earning UGX 150,000 per month. We hereby award **UGX 1,050,000/=**

#### **Accrued leave**

- [17] This Court has held that for a claim for accrued leave to succeed, the employee must prove that leave was requested for and declined.<sup>6</sup> In the case before us, we are not satisfied that, based on the evidence adduced, the Claimant asked for leave, which was denied. We, therefore, decline to award the same.

#### **General damages**

- [18] Ms. Apolot contended that under Article 126(2)(c) of the Constitution, there should be adequate compensation to victims of wrongs. Counsel cited the case of **Florence Mufumba v UDB LDC No. 138 of 2014**, where this court laid down the principles underpinning compensation in employment cases. It was argued that for the nine years of service, the Claimant had significantly contributed to the profits of the Respondent, had a clean track record, and was thrown out, in disgrace, like a chicken thief. He was 33 years old, and his young career ended abruptly without justifiable reason. For these reasons, Ms. Apolot suggested the sum of UGX 30,000,000/-. The Court of Appeal has held that general damages are based on the common law principle of *restituto in integrum*. Appropriate general damages should be assessed on the prospects of the employee getting alternative employment or employability, how the services were terminated, and the inconvenience and uncertainty of future employment prospects.<sup>7</sup> In the Florence Mufumba case cited by Counsel for the Claimant, the Industrial Court, cited the case of **Obonyo and Anor v Municipal Council of Kisumu**<sup>8</sup> where the Court would consider factors such as malice or arrogance on the part of an employer and humiliation and distress of the employee as a basis for general damages. The Claimant in the Mufumba case was an Internal Auditor who had served the Uganda Development Bank for 10 years. Her monthly salary was UGX 5,565,695/= and she had four years remaining on her contract. She was terminated while on leave and the Court granted her UGX 150,000,000/- in damages. This is about 26 months' salary.

- [19] In our view, the principles of the Stanbic Bank and Okou case are helpful to the matter before us, the Claimant was earning UGX 150,000/= per month and was 33 years of age at the time of termination. He is about 36 years now. He had worked

<sup>6</sup> See *Edace Michael v Watoto Child Care Ministries L.D. A 21 of 2015* and *Ochwo John v Appliance World Ltd LDR 327 of 2015*

<sup>7</sup> *Stanbic Bank (U) Ltd v Constant Okou Civil Appeal No. 60 of 2020*

<sup>8</sup> 1971 EA 91



for the respondent for seven years and nine months. He did not testify as to his employability or future prospects of employment. We determine that based on his monthly salary and given his position as a machine operator, and considering his age, the sum of **UGX 7,375,000/=** as general damages will suffice.

#### Interest

- [20] Given the inflationary nature of the currency, the total sum awarded in this award shall attract interest at the rate of 19% per annum from the date of the award till payment in full.

#### Costs of the Claim

- [21] Ms. Apolot premised the Claimant's prayer for costs under Section 27(2) of the Civil Procedure Act Cap. 71. Under **Section 8(2a)(d) of the Labour Disputes(Arbitration and Settlement) Amendment Act 2021**, the award of costs is discretionary. This Court's jurisprudence is that in employment disputes, the grant of costs to the successful party is an exception on account of the nature of the employment relationship except where it is established that the unsuccessful party has filed a frivolous action or is culpable of some form of misconduct.<sup>9</sup> We do not find any such misconduct by the Respondent and decline to award the Claimant's costs.

- [22] The final orders of the court are as follows:

- (i) We declare that the Claimant was unfairly terminated from the Respondent's service.
- (ii) The Respondent is ordered to pay the Claimant the following sums:
  - (a) **UGX 300,000/=** as salary in lieu of notice
  - (b) **UGX 1,050,000/** =as severance pay.
  - (c) **UGX 7,375,000/=** as general damages,
  - (d) The sums above shall carry interest at 19% p.a. from the date of this award until payment in full.
  - (e) The Respondent shall also issue a certificate of service to the Claimant within 21 days of this award.

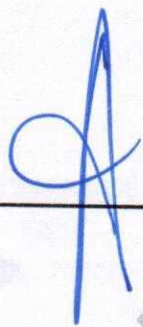
<sup>9</sup> Joseph Kalule Vs Giz Ldr 109/2020(Unreported)



(iii) There shall be no order as to costs.

It is so ordered this 30<sup>th</sup> day of June 2023

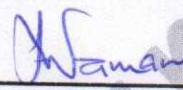
Anthony Wabwire Musana,  
Judge, Industrial Court



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**The Panelists Agree:**

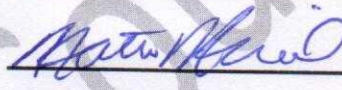
1. Hon. Adrine Namara,
2. Hon. Susan Nabirye &
3. Hon. Michael Matovu.



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Ruling delivered in open Court on **30<sup>th</sup> June 2023** at **10.08a.m/p.m** in the presence of:

- |                        |                           |
|------------------------|---------------------------|
| 1. Claimant:           | <b>In Court</b>           |
| 2. For the Respondent: | <b>None</b>               |
| Court Clerk:           | <b>Mr. Samuel Mukiza.</b> |



Anthony Wabwire Musana,  
Judge, Industrial Court