



THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE NO. 161 OF 2021
(Arising from Labour Complaint No. KCCA/NDC/LC/040/2021)

MANDELA SULAIMANCLAIMANT

VERSUS

ROYAL MABATI UGANDA LTD.....RESPONDENT

BEFORE:

THE HON. MR. JUSTICE ANTHONY WABWIRE MUSANA,

PANELISTS:

1. HON. JIMMY MUSIMBI,
2. HON. SUSAN NABIRYE &
3. HON. CAN AMOS LAPENGA.

AWARD

Introduction

- [1] The Respondent employed Mr. Sulaiman Mandela as a Machine Operator. He was charged with a case of embezzlement of the Respondent's property, which was later dropped. By a letter dated 29th October 2020, the Respondent terminated his services on absenteeism and various acts of indiscipline. The Claimant sought this Court's declaration that his termination from employment was wrongful and unlawful, disregarding the principles of natural justice and equity, terminal benefits, general and punitive damages, costs of the claim, and interest thereon.
- [2] The Respondent opposed the claim, in summary, because it was misconceived, vexatious, motivated by bad faith, did not disclose a cause of action, was time-barred, and the Claimant was undisciplined, had an ongoing criminal prosecution, was invited for a disciplinary hearing on two occasions but refused to attend.

Issues for determination by Court

- [3] At the scheduling conference held on the 8th of December 2022, two issues were framed for determination viz:

- (i) Whether the termination of the Claimant was lawful?
- (ii) What remedies are available to the parties?

[4] Each of the parties led the evidence of one witness. There were invited to address the Court by way of written submissions. We evaluated the evidence and considered the submissions to arrive at our decision.

Analysis and Decision of the Court.

Issue 1. Whether the termination of the Claimant was lawful?

Summary of the Claimant's evidence

- [5] The Claimant testified that he had developed some medical complications and missed work for some days. When he resumed work, he was told that seven coils were missing. On 15th October 2020, he was charged with embezzlement of over UGX 245,000,000/=. He was detained and released on bond. The Respondent did not allow him back on the premises. On 29th October 2020, he was dismissed without being heard. He was not invited to any hearing, was not given notice, has suffered anguish and inconvenience, and seeks damages.
- [6] In cross-examination, he confirmed that he did not have evidence in the trial bundle informing the Human Resources department of the Respondent of his medical condition. He confirmed writing several apology letters for various infractions. He denied receiving any invitation to a disciplinary meeting but acknowledged receipt of the termination letter. He also confirmed that he did not have evidence to show that he was not paid for October 2020.
- [7] In re-examination, he testified that the Managing Director had asked him to make photocopies of his medical receipts. He also clarified that he had been asked to write various apology letters. Regarding the incident relating to producing 'mabati' on Mutinda's coil, the Managing Director had asked him to do so. Regarding EXH R6, R7, and C8, he clarified that he did not receive any of these on 19.10.2020, as he had reported to the Police. Regarding R7, he stated that he had reported to Police on 23.10.2020. Regarding C8, he said that the accountant called him on the 14th of December 2020; when he went to the Respondent's premises, he was given a termination letter dated 29.10 2020.

Summary of the Respondent's Evidence

- [8] Esther Kangarua testified that she was the Managing Director of the Respondent. She confirmed that the Claimant did not report any sickness, occupational disease, or injury resulting from his employment. In September 2019, the Claimant missed work for three days, bringing production to a halt. When he returned to work, he

was asked to write an apology. In May 2020, he picked a coil assigned to one Mutinda and made iron sheets. This was against company policy, and he apologized. He also reported late in September 2020 and apologized in writing. He misappropriated some raw materials and missed work on several occasions. The Respondent reported a case at Jinja Road Police Station, and the Claimant was arrested and incarcerated for three days. He was later released on Police Bond and did not return to work. A disciplinary committee was formed, and an invitation letter was sent to the Claimant. He did not attend the hearing set for Friday, 23rd October 2020. A final meeting was set for 29th October 2020, but the Claimant did not appear. The Committee decided to terminate the Claimant. He went silent until 22nd March 2021, when he filed a labour complaint. The Claimant was paid full salary for October 2020.

- [9] In cross-examination, the witness testified that the Claimant's salary of UGX 600,000 p.m. was paid through a bank account, mobile money, or cash. She did not have evidence that the Claimant was paid his salary for October 2020. She did not have formal communication regarding EXH R1, R2, R3, R4, and R5. She was shown EXH R6 and clarified that the Claimant had failed to follow the accountant's instructions. She confirmed various acts of absenteeism and suggested that they had only picked a few. Regarding the police case, she confirmed that she had never appeared in Court to give evidence. She was not sure if he had been convicted. She confirmed that she was the disciplinary committee chairperson and making the allegations against the Claimant.
- [10] In re-examination, the witness clarified that the October Salary was paid to the Claimant, and he did not complain after payment. She explained that warnings and apologies were both formal and oral. She also confirmed no restriction on who sits on the disciplinary committee. She confirmed that the Claimant did not attend any of the disciplinary hearings.

Submissions of the Claimant

- [11] Mr. Joseph Amany, appearing for the Claimant, submitted that termination was unlawful and contravened **Section 66 of the Employment Act, 2006** (from now EA) for not providing a hearing before termination and S.68EA for not stating the reason for termination. He cited the cases of **Mbonyi Julius v Appliance World Ltd LDR 103 of 2016** and **Florence Mufumba v UDBL LDC 138 of 2014** in support of the proposition that the Claimant's termination was tainted with so many illegalities. On the authority of **Makula International Ltd v Cardinal Nsubuga (1982) HCB 57**, it should not be allowed to stand.
- [12] Counsel also submitted that the Respondent could not be permitted to approbate and reprobate. It was satisfied with the Claimant's apologies and could not simultaneously use the same reasons to terminate him. Mr. Amany cited the case of **Mubende Parents School Ltd v UDBL & 2 Ors H.C.C.S No 662 of 2015**.

- [13] It was also submitted that having imposed suspension as a disciplinary penalty; the Respondent was required to give the Claimant a final written warning in accordance with Section 62 (1) and (2) EA and Rule 3(7) of the Disciplinary Code.
- [14] The final submission is that the Respondent's Managing Director was guilty of bias. During cross-examination, she admitted having taken up an issue with the Claimant's conduct. Counsel cited the case of **Kinyara Sugar Ltd v Hajji Kazimbirarae Mohamood & 4 Others HCMA No. 003 of 2020** for the proposition that bias vitiates decisions.

Submissions of the Respondent

- [15] Mr. Micheal Nyambok Omondi, appearing for the Respondent, submitted that the Claimant's termination was lawful under Section 65(1)(a)EA as the employer ended it with notice. He submitted that the termination was lawful following various acts of misconduct for which the Claimant apologized. According to Counsel, the climax was the October 2020 incident where the Claimant sold coils secretly, which resulted in a criminal case. The Respondent invited the Claimant for a disciplinary hearing which he declined to attend. It was the Respondent's view that the meetings were slated for 2:00 pm, and no police bond took an entire day. It was argued that the Claimant frustrated the hearings. It was suggested that the Claimant had not adduced any evidence to prove that the Respondent did not comply with Sections 65 and 66EA and the case of **Ebiju v Umeme Ltd C.S No. 133 of 2012**.
- [16] The Respondent also submitted that by alleging bias, the Claimant was approbating and reprobating. Counsel cited **Verschures Creameries Ltd v Hull and Netherlands Steamship Company Ltd [1921] 2KB 608**. The Respondent's case was that the Managing Director could only terminate the employment contract. In the final submission, Mr. Nyambok submitted that the Respondent needed to continue its business, and the Claimant had fundamentally breached his duty, and the termination was lawful.

Submissions in Rejoinder

- [17] In rejoinder, Mr. Amanya submitted that evidence of the Respondent was that the apologies were accepted and could not be ground for dismissal. In effect, the reasons for termination were extinguished. The Claimant had not been convicted of a criminal offence to warrant dismissal for theft. As to summons for the disciplinary hearing, Mr. Amanya asked why the Claimant was not summoned through the Police.

Determination and decision of the court

- [18] It was common to both parties that the reasons adduced for the Claimant's termination were the various acts of misconduct and the final act resulting into the criminal charges. The evidence, common to both parties, was that the

Respondent had some difficulty with the Claimant's work ethics. According to the Respondent, this resulted in various verbal warnings and written apology letters by the Claimant. The apology letters were admitted in evidence as EXH R1 –EXH R5 with complaints of absenteeism, late coming, and so on. From the evidence, the straw that broke the camel's back was an incident relating to the unauthorized sale of coils. For this incident, the Respondent reported the matter to the Uganda Police, resulting in the Claimant's arrest and incarceration at Jinja Road Police Station. The Claimant contended that the Director of Public Prosecutions closed this file.

- [19] Counsel for the Claimant asserted that there was non-compliance with Section 66EA and that the reasons for termination were matters on which the Claimant apologized and hence not in line with Section 68EA. The allegations of selling off company property were not proven. On its part, the Respondent submits that the Claimant was invited to the disciplinary hearing but refused to attend.
- [20] The threshold for determining whether disciplinary proceedings leading to dismissal are justified requires both procedural and substantive fairness. In the case of **Mugisha Nicholas v Equity Bank Uganda Ltd**, we held that procedural fairness under Section 66EA requires the employer to explain to the employee why the employer is considering dismissal and the employee is entitled to have another person of his or her choice present during this explanation. The employer must allow the employee to present their defence and give the employee a reasonable time to prepare a defence. We cited the case of **Ebiju James vs. Umeme Ltd**,¹ which was held a defendant who provides an employee with notice of the particular allegations in sufficient time to prepare a defence, sets out the rights of the employee to defend himself, be accompanied by a person of their choice, call their witnesses and present their case before an impartial committee meeting. The first step interrogates procedural fairness.
- [21] In the matter before us, the Respondent exhibited R6, an invitation letter dated the 19th of October 2020 addressed to the Claimant, inviting him to attend a disciplinary meeting scheduled for the 23rd of October 2020. It is helpful to employ the full text of the letter:

"19th October 2020

Mr. Mandela Sulaiman

RE: INVITATION FOR A DISCIPLINARY MEETING

As you are aware, there are a number pending allegations against you including failure to follow your superior's instructions, repeated absenteeism, repeated off duty, repeated late arrival, repeated doing production of coils

¹ H.C.C.S No. 0133 of 2012. This Court also cited its decision in the case of *Airtel Ltd v Peter Katongole*. LDA 13 of 2022

without permission, repeated poor recording of company reports and finally illegally selling off company property without disclosing to the management which led to criminal charges against you.

The management has therefore decided to invite you for a disciplinary hearing slated for Friday 23rd October, 2020 at 2 pm at the manager's office. You are therefore required to appear and explain yourself on the above issues without fail. Kindly keep time.

Further and in accordance with the company policy, you will be allowed to come along with a friend or a fellow employee of your choice to witness and assist you in the process.

We look forward you to meeting you then.(sic)

Yours faithfully,

Manager

ESTHER WANJUGU KANGARUA

Cc. -Managing Director

-Stock accountant Accounts

The invitation letter conforms to the threshold set out in the Ebiju case. The letter spells out the allegation of infractions, gives the Claimant four days' notice, and invites the Claimant to attend with a person of his choice. It may well be said that the Respondent was bent on ensuring procedural fairness. However, the Claimant denies having received the letter. His evidence is that he was not permitted to enter the Respondent's premises after the 15th day of October 2020. He also testified that on each of the days in the said letter, he was at the Police Station attending to Police Bond. He exhibited a copy of the Police Bond, which was admitted as exhibit CEX7. It was Ms. Kangarua's evidence that since the Claimant was not picking up calls, he was personally served by the Stock Manager. The Stock Manager did not come to court to testify. The meeting was then adjourned to the 29th of October 2020, and a second letter of invitation was prepared, and the Stock Manager, who was not named, personally served the Claimant. Ms. Kangarua testified that the Claimant refused to acknowledge receipt. Similarly, the stock manager was not called to testify. Under cross-examination, the Claimant admitted that he received the termination letter. It was his evidence that on the 14th of December 2020, the Respondent's Accountant called him and gave the termination letter dated 29th October 2020. He testified that he asked to see the Respondent's Managing Director but was told she was unwilling to see him. He clarified that he was not asked to sign the termination letter.

- [22] On a balance of probabilities, the Respondent does not make a credible case for having effected or attempting to effect the service of the invitation letter on the Claimant. The basis of this finding is that the contents of the bond form support the proposition that the Claimant was at the Jinja Road Police Station on the 19th and 23rd of October 2020, when the disciplinary meeting was supposed to occur. To the Court's mind, this would not be a coincidence. Secondly, the Stock Manager did not come to Court to testify about the circumstances under which the Claimant refused to sign the invitation letters. The Claimant's telephone number was listed, but the Respondent did not produce a call log to demonstrate that attempts were made to contact the Claimant. There was no indication of an effort to reach the Claimant at his home via the Local Council or even on the days he reported to Jinja Road Police Station to answer his bond. Thirdly, the Claimant testified, and the Respondent did not controvert this in cross-examination, that the Claimant had been denied access to the Respondent's factory premises. In **Habre International Co. Ltd v Kassam and others**² Karokora, JSC. observed that: "It is trite law that whenever the opponent has declined to avail himself of the opportunity to put his essential and material case in cross-examination, it must follow that he believed that the testimony given could not be disputed at all. Therefore, an omission or neglect to challenge the evidence-in-chief on a material or essential point by cross-examination would lead to the inference that the evidence is accepted subject to its being assailed as inherently incredible." Therefore, we are persuaded that the Respondent contrived to prepare invitation letters in anticipation of legal proceedings. We would thus find that there was no procedural fairness.
- [23] The second test is substantive fairness. It is common to the parties that the Respondent terminated the Claimant on the 29th day of October 2020. A disciplinary meeting was held, and a decision was taken to terminate the Claimant on the same day. The principle in respect of summary dismissal, is that an employer had to show that the employee had repudiated the contract or any of its essential conditions to warrant summary dismissal. This test is the substantive test on whether summary dismissal is justified. Jurisprudence on what amounts to justification is to be found in a passage by Lord Evershed in the case of **Laws v London Chronicle Ltd CA 1959**³. The passage reads;

"... it follows that the question must be – if summary dismissal; is claimed to be justified – whether the conduct complained of is such as to show the servant to have disregarded the essential conditions of the contract of service. Therefore, one act of disobedience or conduct can justify dismissal only if it is of the nature which goes to show that

² [1999] 1 EA 125 at 138. His Lordship referred to the Court of Appeal decision in *Kabenge v Uganda Court of Appeal Criminal Appeal No 19 of 1977 (UR)* and Supreme Court's decision in *Sowoabiri and another v Uganda Supreme Court Criminal Appeal No. 5 of 1990 (UR)*

³ [1959] 1 WLR 698 The passage is cited in the case of *Airtel Uganda Ltd v Peter Katongole Labour Dispute Appeal No. 13 of 2022*

the servant has repudiated the contract or one of the essential conditions and for the reason therefore, I think what one finds in the passages which I have read that the disobedience must at least have a quality that is willful. In other words it connotes the flouting of the essential contractual terms."

The Court of Appeal of Uganda has in the case of Uganda Breweries Ltd v Robert Kigula⁴ ruled that for summary dismissal, the gross and fundamental misconduct must be verified. Mere allegations do not suffice. The threshold for substantive fairness under S68EA is that the employer is required to prove the reason or reasons for the dismissal. S68 (2) provides that the reason or reasons for the dismissal shall be matters, which the employer, at the time of dismissal, genuinely believed to exist and which cause him or her to dismiss the employee.

- [24] The invitation letters listed several infractions including failure to follow superiors' instructions, repeated absenteeism, repeated off duty, repeated late arrival at work, repeated production of coils without permission, repeated poor recording of company reports, repeated disappearing from work upon instructions given. RW1 was shown various letters EXHR1 to EXH R5 which were letters of apology or explanation for various infractions. The last of the letters, EXH R5, was dated 10th October 2020. It is the position of the law that past misdeeds may not be the basis for summary termination.
- [25] The incident leading to termination was the loss of coils and sale of iron sheets which led to a criminal complaint on the offence of embezzlement. The termination letter made reference to the pending police case. While it is trite that the right of an employer to terminate an employee is not fettered, the employer is still required to ensure substantive fairness. In the minutes of the meeting leading up to the termination, there is no audit report, investigation or other report discussed or alluded to. It follows that the simply noted the alleged infractions, as substantial number of which the Claimant had apologized for, noted his absence and proceeded to terminate him. The minutes did not note the circumstances relating to the Claimant's alleged refusal to acknowledge receipt of the invitation letters. In the *Airtel vs Katongole* (supra) case which we cited in the case of *Mugisa Nicholas v Equity Bank Uganda Ltd.*, the allegations leading up to the termination of the employee were contained in an investigation report which was not produced in Court. In that case, we found that the failure to include an investigation report which contained critical aspects of the allegations did not amount to substantive fairness. In the *Okello Jasper v Kampala Pharmaceuticals Ltd.* case, we found the omission to produce the CCTV footage which allegedly implicated the Claimant did not amount to substantive fairness. In the present case, we find that the Respondent has not proven the alleged infractions against the claimant.

⁴ Civil Appeal No. 36 of 2016

- [26] Accordingly and in conformity with the provisions of **Section 73(1) (b) EA**, we find that the termination of the Claimant was unfair and unlawful. The Respondent did not act justly or equitably and did not at disciplinary hearing, prove the reason for termination. We therefore declare that the Claimant's termination from employment with the Respondent was unlawful.

Issue II. What remedies are available to the parties?

- [27] The Claimant sought various remedies which we shall dispose of individually.

Payment of one month's salary

- [28] The Claimant sought payment of salary for the month of October 2020 on account of no evidence being adduced in proof of its payment. In the minutes, EXH R7, it was resolved that the Claimant be paid his full salary for October 2020. Under **Section 41 of the Employment Act**, an employee is entitled to wages for work performed. This Court has ruled that unpaid salary for wrongful termination is to be paid for the period worked.⁵ In the absence of any proof that the said sum was paid, we award the Claimant his full salary in the sum of **UGX 773,000/=** for October 2020.

Payment in lieu of notice

- [29] Under **Section 58(3)(c) of the Employment Act**, where an employee has been in employment for a period of more than twelve months but less than five years, the employee would be entitled to not less than one month's notice. The Claimant had been in the Respondent's employment from 2nd November 2017 to 29th October 2020, a period of 35 months. In the circumstances, we award the sum of **UGX 773,000/=** in lieu of notice.

Failure to conduct a hearing

- [30] Having found as we have under the resolution on issue I above, under **Section 78EA**, the Claimant would be entitled to a basic compensatory order of four weeks wages. Mr Amanywa was contending for the maximum award under S.78(3). However, there is no evidence that the Claimant had taken any steps to mitigate losses attributable to the unjustified termination and had also admitted some culpability in respect of his conduct at work. We hereby award the sum of **UGX 773,000/=** as the basic compensation.

⁵ LDC 225 of 2019 Olweny Moses vs Equity Bank Ltd

Severance Allowance

[31] Under **Section 87(a) of the EA**, an employee who is unfairly dismissed is entitled to severance allowance. We adopt this court's reasoning in **Donna Kamuli Vs DFCU Bank Ltd**⁶ the Claimant's calculation of severance shall be at the rate of his monthly pay per year worked. Since she was employed 2 years and eleven months he is entitled to UGX 2,254,587/= as severance allowance.

General Damages

[32] We hold that the Respondent should pay the Claimant general damages for unlawful termination. Counsel proposed a sum of UGX 100,000,000 but did not give a firm ground as to why this would be an appropriate sum. The principles in considering an award of general damages in cases of wrongful dismissal or unlawful termination, are laid out in the **Stanbic Bank (U) Ltd v Constant Okou**⁷, the principle of *restituto in integrum* is applicable, analogously, to loss of employment and future prospects of re-employment. The Court is required to consider the actual loss of earnings up to the date of the award as well as any prospective losses. Applying these principles to the case before us, the Claimant was earning UGX 773,000/= per month and was 32 years of age at the time of he made his witness statement. He had worked for the respondent for over 2 years and 11 months. He did not testify as to his employability or future prospects of employment. It is not very discernible that the Claimant would continue to work for the Respondent for a very long time. It is our determination that on the basis of his monthly salary and in view of his position as a machine operator and taking into account his age, the sum of UGX 9,276,000 as general damages, will suffice. And it is so awarded.

Aggravated Damages

[33] The Claimant listed aggravated damages as one of the remedies sought. Aggravated damages are extra compensation to a plaintiff for injury to his feelings and dignity caused by the manner in which the defendant acted. Lord Delvin, in **Rookes vs Banard [1964] A.C 1129** suggested that aggravated damages are damages awarded for a tort as compensation for the plaintiff's mental distress, where the manner in which the defendant has committed the tort or his motives in so doing, or his conduct subsequent to the tort, has upset or outraged the plaintiff. In the case of **Stanbic Bank(U) Ltd v Okou** (op cit) the Court of Appeal considering the decision in **Bank of Uganda v Betty Tinkamayire**⁸ observing the

⁶ LDR 002 of 2015

⁷ Civil Appeal No. 60 of 2020

⁸ S.C.C.A No 12 of 2007

illegalities and wrongs of the employer, found the lack of compassion, callousness and indifference to the good and devoted services of the employee to be aggravating circumstances. Considering the facts of the case before us, we have not found any aggravating factors present to warrant an award of aggravated damages. We decline to award any aggravated damages under this head of claim.

Punitive Damages

- [34] In the case of *DFCU Bank Ltd v Donna Kamuli (opcit)*, the Court of Appeal expressed the view that punitive damages can be awarded in employment disputes but with restraint and in exceptional cases. This is because punishment, ought, as much as possible, to be confined to criminal law and not the civil law of tort or contract. Mr. Amanyia suggested that the respondent had caused the Claimant's arrest and then terminated him. The Respondent reported a case to the Uganda Police who arrested and detained the Claimant. He was later released. This did not, in our view, fetter the Respondent's rights to conduct disciplinary proceedings and take a decision. The conduct is atoned by the award of general damages. In our view, we do not think this to be an exceptional case for the award of punitive damages and we decline to grant the prayer.

Certificate of service

- [35] The certificate of service is a statutory right of every employee under **Section 87EA**. We order the Respondent to issue the same within 21 days from the date of this award.

Interest

- [36] Given the inflationary nature of the currency, the total sum awarded in this Award shall attract interest at the rate of 15% per annum from the date of Award till payment in full.

Costs

- [37] In the case of *Joseph Kalule v GIZ*⁹ we ruled that in the employment law practice, the grant of costs appears to be the exceptional rather than the rule and will be granted to the successful party where there has been some form of misconduct, abusive, improper or unreasonable conduct. In the matter before us, we find that the Respondent ought to have been fairer to the Claimant. We grant costs to the Claimant.

⁹ Labour Dispute Appeal No. 109 of 2020

Orders of the Court

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

- (i) It is declared that the Claimant was unlawfully terminated from employment with the Respondent.
- (ii) The Respondent is ordered to pay to the Claimant the following sums:
 - a) UGX 773,000/= being full salary for October 2020.
 - b) UGX 773,000/= being one month's salary in lieu of notice.
 - c) UGX 773,000/= being four week's pay for failure to hold a disciplinary hearing.
 - d) UGX 2,254,587/= as severance allowance and;
 - e) UGX 9,276,000/= in general damages.
- (iii) The Claimant shall have costs of the claim.
- (iv) The sums in paragraph 2 shall attract interest at the rate of 15% p.a from the date of this award until payment in full.
- (v) The Respondent is ordered to deliver a certificate of service to the Claimant within 21 days of this order.

It is so ordered.

Delivered and dated at Kampala this 3rd day of May 2023

SIGNED BY:

THE HON. MR. JUSTICE ANTHONY WABWIRE MUSANA,
JUDGE, INDUSTRIAL COURT

THE PANELISTS AGREE:

1. HON. CAN AMOS LAPENGA,
2. HON. SUSAN NABIRYE &
3. HON. JIMMY MUSIMBI.

Delivered in open Court in the presence of:

For the Claimant: Mr. Emmanuel Ssemwogerere holding brief for Mr. Joseph Amanyanya for the claimant and assisted by Mr. Norman Mubangizi.

For the Respondent: Absent.

Court Clerk: Mr. Samuel Mukiza.