



5

**THE REPUBLIC OF UGANDA**  
**IN THE INDUSTRIAL COURT OF UGANDA AT JINJA**  
**LABOUR DISPUTE REFERENCE No. 015 OF 2023**  
*(ARISING FROM JCC/LAB/MAY/2023)*

10

**BETWEEN**

**ONGOROK GABRIEL :::::::::::::::::::::::::::::::::::::: CLAIMANT**

**VERSUS**

**HARDING CHRISTIAN ACADEMY LTD ::::::::::::::::::::::: RESPONDENT**

15

**Before:**

The Hon. Justice Linda Lillian Tumusiime Mugisha

**Panelists:**

20

1. Hon. Bwire John Abraham

2. Hon. Katende Patrick

3. Hon. Julian Nyachwo

## AWARD

### 25 **Background**

This claim against the Respondent seeks for declaration that the Claimant was unfairly terminated by the Respondent, payment in lieu of notice, severance allowance, unpaid leave, repatriation after service, general damages, exemplary damages, interest, and costs of the suit.

### 30 **Facts of the case**

On 1/02/2019, the Claimant was employed by the Respondent as head teacher. He was earning Ugx.1, 000,000 per month. He worked for the Respondent until he was terminated on 20/04/2023. According to him he worked with utmost diligence and performed all his tasks until his termination. Although his termination letter  
35 indicated that his services would cease with effect from 20/05/2023, he received another letter requiring him to leave earlier on 15/05/2023. He contends that he was terminated without prior notice or disciplinary hearing or suspension on reasons of poor performance, therefore it was unlawful.

The Respondents, on the other hand, contend that the termination was lawful because  
40 the claimant failed to perform his duties diligently and became inefficient, failed to ensure that there was teamwork and collegiality in the school, and in particular he mismanaged the funds for a geography field trip, which led to the students visiting two sites instead of the three sites, thus requiring the school to raise more funds to enable the students complete the said fieldwork. He also failed to superintend the  
45 collection of the registration fees for Candidates, for National Examinations within the deadlines set by UNEB for the registration of, 31/05/2023.

### Issues

- i. Whether the claimant was unlawfully and unfairly terminated?
- 50 ii. Whether the claimant is entitled to the remedies prayed for?

### Representations

1. Mr. Allan Ogoi of M/S. Okalang Law chambers, Jinja for the Claimant.
2. Mr. Onesmus Tuyiringire of Tuyiringire & Co. Advocates, Jinja for the Respondent.

### 55 Submissions

It was the submission of Mr. Ogoi that the Claimant was unlawfully terminated without a fair hearing being conducted, without proper notice or payment in lieu of notice being given to him. He also stated that the Claimant was not paid his terminal benefits contrary to Sections 66 and 73 of the Employment Act, which provides for  
60 a fair hearing to be conducted before an employee is terminated or dismissed from his employment.

He relied on **Grace Tibihikira Makoko vs. Standard Chartered Bank (U) Ltd LDR No. 315 of 2015**, for the legal proposition that it is mandatory under Sections 66, 68, and 73 of the Employment Act for an employer contemplating the dismissal  
65 of an employee on grounds of poor performance or misconduct to notify the employee about the infractions leveled against the employee before the termination but the Respondent in the instant case failed to adhere to this. He contended further that although the Respondent alleged that the claimant committed a list of 7  
70 infractions which were summed up as poor performance and misconduct, he was not given a hearing.



Counsel contended that the staff meeting which was held on 18/03/2023, cannot be considered a disciplinary hearing because the infractions were only brought to the attention of the claimant during that meeting contrary to Article 44(c) of the Constitution which provides that the right to fair hearing is non - derogable and as  
75 guided by the holding in **Ebiju James vs. UMEME LTD HCCS No. 0133/2012**, which set down the principles that constitute a fair hearing, as follows:

1. *Notice of allegations against the plaintiff was served on him and a sufficient time allowed for the plaintiff to prepare a defense.*
- 80 2. *The notice should set out clearly what the allegations against the plaintiff and his rights at the oral hearing were. Such rights would include the right to respond to the allegations against him orally and/or in writing, the right to be accompanied at the hearing, and the right to cross-examine the defendant's witnesses or call witnesses of his own.*
- 85 3. *The plaintiff should be given a chance to appear and present his case before an impartial committee in charge of disciplinary issues of the defendant.*

It was further his submission that the said staff meeting was a review of the Claimant's (head teachers) midmonth report for March and save for the infraction of alleged lack of teamwork, which appears in minutes of the meeting the other  
90 infractions were not a subject of the meeting. In addition, the Claimant was not issued with the proper notice or payment in lieu of notice provided under the terms and conditions of service, yet he served for a period of 5 years.

In reply, Mr. Tuyiringire for the Respondent submitted that the Claimant's conduct as stated in the RW1 witness statement, he became inefficient, failed to collect

95 registration fees for candidate students, and failed to effect teamwork resulting in a strike that qualified him for summary dismissal.

He refuted the assertion that the Claimant worked for the Respondent for 5 years, because he served a first contract which ended, and a second relationship began with a new contract that took effect from 15/04/2021 therefore at the time the Claimant's  
100 contract was terminated he had worked for only 2 and not 5 years. In the circumstances, he was only entitled to 1 month's notice as provided under section 58 (3) of the Employment Act. In any case, the Respondent complied with this requirement when it paid the Claimant Ugx. 1,000,000/= for the month of May 2023 and another Ugx.1, 000,000/- as a token of appreciation. He further submitted that  
105 in the alternative and without prejudice the Claimant sought to rely on the terms and conditions of service filed on his Trial bundle marked as "B". But he did not comply with the same. Therefore the termination was lawful.

### **Decision of Court**

#### **1. Whether the claimant was unlawfully and unfairly terminated?**

110 After carefully considering the evidence on the record and adduced during the hearing, we established that the Claimant's employment was governed by the School's terms and conditions of service, which did not explicitly state his roles as head teacher, save that they provided that all employees of the school were answerable to the head teacher, who was responsible for prescribing their duties and  
115 responsibilities and monitoring and evaluating them. Therefore, based on these terms and conditions, we concluded that, as head teacher, the Claimant was the overall supervisor and Administrator of the school.



The gist of the case as we understood it is that he was terminated without notice, without a reason, and a hearing.

120 It was his testimony that he was falsely accused of mismanaging funds for a field trip and that he failed to ensure that Candidates registered for the National Examinations in time. He also admitted that he reconciled with his deputy whom he considered to be like a son to him and that there was friction between the members of staff who were alleged to be in conflict.

125 The Respondents on the other hand insisted that the Claimant was allowed to explain himself during a meeting in which his performance for the month of March was being reviewed. We had an opportunity to review the minutes of the said meeting which are marked as Annex "A" on the Respondent's Trial bundle and established that the Claimant's failure to ensure teamwork between himself and his deputy and  
130 the conflict between the Director of Studies then with the former Director of studies were discussed and the 2 heads were given a warning to desist from such conduct. Minute 5 stated that "*with much pain, the Board managed to reconcile the head teacher and his deputy...*" therefore there existed a lack of teamwork between the two heads. However, nothing was mentioned about his role in the management of the trip funds  
135 and the registration of candidates.

During cross-examination, the Claimant stated that whereas he was the overall administrator of the school, the funds for the trip were collected by the bursar and disbursed directly to the responsible department which only came to him to account. He also testified that he was aware that the last date of registering candidates was  
140 31/05/2023 and by the time of his termination only 21 out of 50 senior 4 students had registered for the National Examinations and 11 out of the 22 senior 6 candidates had registered.

This evidence suggests that the Claimant was not playing his supervisory roles effectively. This is because as the person who was responsible for assigning duties and monitoring the performance of all employees, it was absurd for him to merely state (in the case of collection and management of funds for the trip) that the bursar collected funds and disbursed them without his knowledge and he only waited for the recipients to account for amounts he was not even aware of. We believe that this is probably the reason why the teacher, who allegedly mismanaged the funds, took advantage of misappropriating the funds in the first place. Although he stated in reexamination that his failure to ensure that candidates registered for the UNEB exams in time was because of late communication by UNEB, a perusal of the record established that UNEB actually issued a notice to all heads of UCE and UACE centers dated 13/03/2023, marked "B" on the Respondent's trial bundle, advising them on the commencement of registration of candidates from 15/03/2023 ending on 31/05/2023, and late registration dates which would attract a surcharge were also indicated. And this was not controverted. In the absence of evidence of the date on which he claims to have received this notice late and given that he stated that he was aware of the deadline for registration. We are therefore not convinced that he received the information late as purported. It seems to us that as was the case in the collection of funds for the Geography field trip, the Claimant was not diligent in ensuring that the students complied with the registration dates. In any case, he did not adduce any evidence to demonstrate how he diligently worked to cause the students to register for UNEB exams before the deadline of 31/05/2023. He simply testified that; "... by the time I was terminated I had collected a tune of Five million, one hundred and thirty-six thousand shillings and it was in the Bank of Baroda. Each student was supposed to pay 200,000/= ..." This did not show the diligence he exercised in collecting this money. We found nothing on the record to demonstrate that he



diligently played his role as the overall Administrator and supervisor of all the employees of the school as prescribed in the terms and conditions of service attached to his appointment, to ensure propriety in the management of the school's funds and also to administer and supervise the staff in the conduct of the duties he was supposed to assign to them as provided in the terms and conditions of service. Citing **Hilda Musinguzi vs Stanbic Bank Ltd, SCCA No. 05/2016**, in **Eva Nazziwa Lubowa vs National Social Security Fund LDR No. 001 of 2019**, this Court observed that, it is settled law that an employer's right to terminate an employee he or she no longer wants cannot be fettered by Courts of law, so long as the employer follows the correct procedure before exercising the right to terminate or dismiss such an employee. It is indeed the correct position as stated by Counsel for the Claimant that Sections 58, 66,67, 68 69, and 70 must be complied with before an employer can terminate an employee.

As already discussed the evidence on the record demonstrates that the Claimant was negligent in the manner he handled his role as overall administrator therefore, it was our finding that the Respondent was justified to summarily terminate his employment in accordance with Section 69(3), because he fundamentally breached his responsibility as the overall supervisor and administrator of the school.

Section 69(3) provides that:

*"(3) An employer is entitled to dismiss summarily and the dismissal shall be termed justified, where the employee has, by his or her conduct indicated that he/she has fundamentally broken his or her obligations arising under the contract of service"*

This notwithstanding he was entitled to be accorded a fair hearing in accordance with Section 66 of the Employment Act 2006 which provides as follows:



- 195 “...(1) Notwithstanding any other provision of this part, an employer shall before  
(our emphasis) reaching a decision to dismiss an employee, on the grounds of  
misconduct or poor performance explain to the employee, in a language the  
employee may be reasonably expected to understand, the reason for which the  
employer is considering dismissal (emphasis ours) and the employee is entitled to  
have another person of his or her choice present during this explanation,
- 200 (2) Notwithstanding any other provision of this part, an employer shall before  
reaching a decision to dismiss an employee, hear and consider any representations  
which the employee on the grounds of misconduct or poor performance, and the  
person, if any chosen by the employee under subsection (1) may make.
- 205 (3) The employer shall give the employee and the person, if any, chosen under  
subsection (1) a reasonable time within which to prepare the representations  
referred to subsection (2).

We found nothing on the record to indicate that, the Respondent subjected the  
Claimant to any disciplinary proceedings regarding the infractions leveled against  
him. We respectfully do not agree with Mr. Tuyiringire that the meeting which was  
meant for the review of the Claimant’s performance for the month of March 2023,  
210 should be construed as a disciplinary hearing. The procedure to be followed when  
undertaking disciplinary proceedings is well established under section 66(supra) and  
section 66(4) is emphatic on the requirement to give an employee a hearing even if  
the dismissal is a summary dismissal. The Section provides as follows:

215 “(4) Irrespective of whether any dismissal which a summary dismissal is justified,  
or whether the dismissal of the employee is fair, an employer who fails to comply  
with this section is liable to pay the employee a sum equivalent to four weeks’ net  
pay...”



It is clear from the record that, the Respondent did not notify him about the infractions for which it was considering his termination, nor did it give him an opportunity to respond to the infractions as required under Section 66(1), (2) and (3) (supra).

In conclusion, the Claimant's termination was substantively lawful but procedurally flawed.

**2. Whether the claimant is entitled to the remedies prayed for?**

Having found that the Claimant's termination was substantively lawful, he is only entitled to 4 weeks' pay for procedural impropriety and no other claims.

Delivered and signed by:

**The Hon. Justice Linda Lillian Tumusiime Mugisha**  
**Ag. Head Judge**

**The Panelists Agree**

1. Hon. Bwire John Abraham

2. Hon. Katende Patrick

3. Hon. Julian Nyachwo

**20<sup>th</sup> December 2023**