



THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE No. 048 OF 2019
(ARISING FROM MGLSD/LC/039/2018)

AKOL GEORGE CLAIMANT

v

MARK IMPEX (U) LTD RESPONDENT

Before:

The Head Judge, Linda Lillian Tumusiime Mugisha

Panelists:

1. Mr. Charles Wacha Angulo,
2. Ms. Beatrice Aciro Okeny &
3. Ms. Rose Gidongo.

Representations:

Mr. Tayebwa Cranmer of M/s. Elgon Advocates for the Claimant.

The Respondent did not enter appearance despite being served severally. There are several affidavits of service on the record indicating that the Respondent was always served for the mention of the case and in one dated 6/04/2023, which was deponed by Mutebi Brian the Court process server, the Respondent acknowledged receipt of the summons for the hearing on 2/5/2023. This court was satisfied that the Respondent was effectively served, therefore, when the Claimant prayed to proceed exparte, the Court granted him leave to proceed, hence this award.

AWARD

Introduction

- [1] The Claimant brought this claim against the Respondent for general damages arising out of the unlawful termination of his contract of employment.

Facts of the Case

- [2] According to the Claimant, in 2005, he was employed by the Respondent as a store's supervisor earning Ugx. 350,000/- when the Company shifted its operations he was assigned the responsibility of managing stores. According to him, on 1/06/2018, He received a requisition from the Production Manager, which had not been approved by the Finance Manager as one Bhaskar was required. He asked the delivery boy to return it to the Finance Manager for approval but when it was returned he noted it had alterations and when he sought clarification from Mr. Bhaskar, the Finance Manager he had an altercation with him instead. He was then reprimanded by the Company Director a one Ketan who asked him to leave the premises. A meeting among the Indian employees was subsequently held where it was resolved that he should be suspended indefinitely on half pay. However, he was not given formal communication about this decision. According to him, this amounted to termination without a fair hearing.
- [3] The Respondent on the other hand refuted the allegation that it employed the Claimant because it was only incorporated on 20/05/2009 and by the time of his indiscipline, Mark Impex had already closed. At all material times during his employment, the Claimant was an undisciplined employee, because he was always reported late for work and very drunk, he lacked self-restraint and had evidence to this effect on CCTV footage. He was disrespectful to his colleagues which resulted in continuous altercations with them and with his superiors including one Bahaskar, whom he attacked and threatened to beat up.
- [4] This notwithstanding the Respondent kept him at work out of compassion. He was given several reprimands by Ketan, the Company Director, but because of his drunken

status, he remained rowdy and caused discomfort at the workplace and when he was asked to apologize to his colleagues he refused to do so.

As a result, the Company Director asked him to leave the premises and return when he was sober. He was subsequently invited for a disciplinary hearing which he refused to attend and reported a complaint to the KCCA Labour Office instead, yet he refused to avail himself of their disciplinary proceedings and frustrated conciliation proceedings before the Labour officer because of his outrageous demands.

Issues

1. Whether the claimant was lawfully terminated?
2. Whether the claimant absconded from work?
3. What are the remedies available?

Evidence

- [5] The Claimant adduced evidence by witness statements which was admitted on the record. He testified that he was initially employed as store supervisor by an Organisation known as Super Medic at William Street, in Kampala, which to the Namanve Industrial area, and it was managed by a one Ketan as Managing Director. He maintained the position of supervisor of stores.
- [6] According to him, the procedure, for taking items/materials from the stores, involved the preparation of a requisition form by an officer requiring the item/material, which had to be approved by the Finance Manager after this goods transmission form would be prepared and presented to him.
On 1/06/2018, he received a requisition from the Production Manager by messenger/delivery boy, but he noticed that the same had not been approved by the Finance Manager a one Bhaskar. He asked the delivery boy to return it to him for approval and when it was returned to him, he noticed that it had some alterations. He sought clarification from Mr. Bhaskar, who instead of explaining the alterations had an altercation with him and called him stupid.
- [7] This resulted in the Managing Director a one Ketan intervening and asking him to return to his station. He later asked him to leave the work premises and told him that,



he had ceased to be an employee. He refused to leave the premises until he was given a written communication, but the Human Resources Manager, a one Dan Khasadha convinced him to return to his workstation and wait.

[8] Subsequently, Management held a meeting after which Mr. Dan Kashadha told him to go and wait outside the gate. He then came to the gate and gave him an envelope containing Ugx. 250,000/ being the remainder of his salary for May. This is because he had earlier taken an advance of Ugx.100,000/-. He also informed him that the Managing Director told him not to come back because he was no longer an employee of the Respondent. After 1 week, on 11/6/2018, he reported the matter to the KCCA Labour officer. On 20/06/2018, the labour Officer notified the Respondent about the Complaint and advised the Respondent to settle the matter with the Claimant. Instead, the Respondent sent Mr. Kasadha to his home with a letter inviting him to a disciplinary meeting. He refused to acknowledge receipt of the letter because the meeting was called after he was already dismissed and only after the Labour officer notified them about his complaint.

[9] The Labour officer then invited the parties to an adjudication meeting where the Respondent challenged the geographical Jurisdiction of the labour officer to handle the matter and insisted it ought to have been handled by the Mukono Labour Office. The matter was then referred to the Commissioner of Labour, Industrial Relations and Productivity at the Ministry of Gender Labour and Social Development, who after several failed attempts at conciliating the parties, referred the matter to this Court for Resolution. He further stated that for the 12 years he served the Respondent, he had never been subjected to any disciplinary measures until this fateful incident. In the circumstances court should find that he was unfairly and unlawfully dismissed.

SUBMISSIONS

[10] The Respondents have not participated in the proceedings, only Counsel for the Claimant filed a written submission, for which the court is grateful. Citing *Mufumba v Uganda Development Bank* Labour Dispute No. 138 of 2014, for the proposition that where an employer chooses to dismiss an employee, such an employee is entitled to the reason for the dismissal or termination and Section 65 of the Employment Act, which makes it mandatory for an employer to notify such an employee of the reason

for dismissal or termination and an opportunity to respond to the reasons in writing or before an impartial committee, and *DFCU v Donna Kamuli* Appeal No.121 of 20160, which emphasized the requirement to give an employee a fair hearing, Mr. Tayebwa submitted that in the instant case, the Claimant was not given a fair hearing before his termination.

- [11] He contended that the Respondent did not adduce any evidence to indicate that it suspended him after the altercation the Claimant had with the Finance Manager, on 1/06/2018, as alleged. In any case, the Claimant was paid the salary for the last month he served that is the month of May 2018, after deducting the advance earlier made to him and he was told to go away. He contended that this was a clear case of unfair dismissal/termination.

Decision of Court

1. Whether the Claimant was lawfully terminated?

- [12] It is a settled position of the law that an employer's right to terminate an employee he or she no longer wants cannot be fettered by the Courts as long as the employer follows the correct procedure for termination. see: *Hilda Musinguzi v Stanbic Bank* SCCA No. 005 of 2016, *Stanbic Bank v Kiyimba Mutale*, SCCA No. 02 of 2010. However, in *Stanbic Bank v Deogratius Asimwe*, CA No. 18 of 2018, the Supreme Court was of the proposition that, where the employer assigns a reason for the termination of an employee, in line with the principles of natural justice, such an employee is entitled to a fair hearing.
- [13] This holding is in line with Section 65(1) and (2) of the Employment Act which provides as follows:
- "65. Notification and hearing before termination*
(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,

(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.*"

[14] After Carefully analyzing the evidence on the record, we established that although the Respondent in its reply seemed to deny that they were the Claimant's employer, they went further to state that he did have an altercation with the Finance Manager a one Bhaksar and with other staff members which was the reason the altercation occurred. They attributed the incident to the Claimant's undiscipline and particularly his lack of self-restraint and respect for his colleagues at work. However, they did not deny that sent him away. The Respondent stated under paragraph 4(f) of its memorandum in reply that "...the Claimant was advised to apologize to his colleagues, which he rejected and was advised by the company director to leave the premises and come back when he was sober." (**Hereto attached is the letter demanding an apology marked annexure "c"**).

[15] We had an opportunity to analyse Annexure "C" and established that this was a letter addressed to the Labour officer and not to the Claimant.

The letter reads in part as follows:

" Ministry of Labour Office.

Mukono

Dear Sir/Madama,

RE: MR AKOL GEORGE

This is to inform you that due to misconduct at work on the above 1st of June 2018, the above-mentioned was verbally requested to write an apology for what transpired. He then decided to disappear from work. On 16th June 2018, we decided to deliver a letter to him calling for a disciplinary hearing is alleged misconduct. (sic). He just read through the letter but he did not acknowledge receipt of the same.

Attached is the letter for proof and verification.

The purpose of this letter is to inform you of this incident and seek your advice.

Yours sincerely

Kasadha Dan

Human Resources Manager"

[16] We also had an opportunity to consider annexure "D" dated 16/06/2018, which was addressed to the Claimant regarding an invitation for disciplinary hearing. It reads as follows:

*"Mr. Akol George
Kampala- Uganda*

Dear sir,

Re: Disciplinary hearing

I write to invite you to a disciplinary hearing on Monday 18th June 2018 at Mark Impex (U) Ltd. Head office at 2 pm.

The subject of the disciplinary hearing is the alleged misconduct on your part on including but not limited to

- 1. Reporting for duty whilst under the influence of alcohol*
- 2. Threatening violence on fellow employees*
- 3. Absenteeism*
- 4. Late arrival for work*
- 5. Intemperate behavior and demeanor*
- 6. Insubordination*

These are serious charges for which you shall be expected to offer a defense failure to appear for the said hearing or offer a sound defense to these allegations could lead to summary dismissal.

Please acknowledge receipt of this letter by endorsing the copy appended to this original

Yours sincerely,

Kasanda Dan (+256 752482994)

Human Resource Manager."

[17] The Respondent did not deny that on 1/06/2018, they asked the Claimant to leave the premises and paid him the outstanding salary for the month of May. It is, therefore, peculiar that they summoned him for a disciplinary hearing on the 16/06/2018, more than 2 weeks later!

As already discussed, Section 65 of the Employment Act makes it mandatory for an employer to notify an employee about the infractions the employer is considering the dismissal or termination of the employee and an opportunity for the employee to be heard before the decision to terminate or dismiss is made. The evidence on the record shows that on 1/06/2018, the Claimant was paid the outstanding salary for the month



of May and asked to leave the premises. It was also his uncontroverted testimony that he was told that he had ceased to be the Respondent's employee.

- [18] We are not convinced by what the Respondent stated in its memorandum of reply, that it verbally warned the Claimant about his alleged unbecoming behavior that "*Caused discomfort and paralysed work at the Respondent's premises...*" and that he was only kept at the workout of compassion. We believe that, if indeed he was kept out of compassion, the Respondent would have followed the correct procedure before sending him away. In any case, it is unbelievable that any reasonable employer would keep an employee who was causing discomfort and paralyzing work and treat him or her with "*kid gloves*".
- [19] The fact that he was paid the remainder of his salary and asking him to leave the premises cannot be construed as a compassionate gesture. In our considered view this act amounted to a summary termination. We are fortified by the fact that, when he lodged a complaint before the labour office, the Respondent did not deny the allegations he had lodged against them because they only contested the labour officer's jurisdiction to handle the matter and even after the case was referred to the Commissioner Labour at the Ministry of Gender Labour and Social Development, their only contestation as stated under paragraph 7 of their reply, was that the Claimant made unreasonable demands. No evidence was placed before this court explicitly denying the Claimant's complaint against them.
- [20] We also found nothing to indicate that, the Claimant was notified about any of the allegations listed in the purported invitation for a disciplinary hearing before he was asked to leave the Respondent's premises or prior to being invited to appear for the purported disciplinary hearing which was scheduled for 18/06/2018. It was also suspected that the alleged invitation for a disciplinary hearing scheduled for 18/06/2018 is dated 16/06/2018 and yet the letter addressed to the labour officer about the Claimant's alleged refusal to attend the same hearing and about his disappearance from work after 1/06/2018, is also dated 18/06/2018, the date on which the hearing was supposed to take place.

[21] To compound it all the invitation only gave the Claimant 1 day's notice to prepare his defense. The right to a fair hearing is guaranteed by the Constitution of the Republic of Uganda under Article 42 as follows:

"Any person appearing before any administrative official or body has a right to be treated justly and fairly and shall have a right to apply to a court of law in respect of any administrative decision taken against him or her."

[22] Article 44 (c) also provides that the right to a fair hearing cannot be derogated. It is a fundamental labour standard as well. The right to be heard involves being given adequate notice of the charges against a person, that is adequate both in terms of length, so that there is time to prepare and in terms of detail so that one knows exactly what he or she is being accused of. These principles of a fair hearing are well laid down in *Ebiju James v UMEME Ltd* HCCS No. 133 of 2012, which is still good law as follows:

"...On the right to be heard, it is now trite that the defendant would have complied if the following was done.

- 1) Notice of allegations against the plaintiff was served on him and a sufficient time allowed for the plaintiff to prepare a defence.*
 - 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.*
- 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..."*

[23] The Claimant had a right to be treated fairly and to be given sufficient time to prepare his defense before being terminated. We are of the considered opinion that, to condone the actions of the Respondent in the instant case, would be to condone the use of disciplinary proceedings as a tool to merely vindicate employers and rubberstamp the misuse of disciplinary proceedings as a tool for unfair treatment of employees.

[24] In the absence of evidence to the contrary, it is glaring clear that the purported invitation for a disciplinary hearing in this case, was an afterthought, therefore the Claimant cannot be faulted for refusing to avail himself of this shameful disciplinary process. The Supreme Court's in *Stanbic Bank Uganda Limited v Deogratius Asiimwe* CA No. 18 of 2018, relying on *Ridge v Baldwin* [1964] AC 40 where the appellant was



dismissed of neglect of duty emphasized the fundamental right to be heard when it stated thus:

“... a decision reached in violation of the principles of natural justice, especially the one relating to the right to be heard, is void and unlawful, that an officer cannot be dismissed without first telling him what is alleged against him and hearing his defense or explanation. It was stated that, even if the respondents had power to dismiss without complying with the regulations, they were bound to observe the principles of natural justice and give the appellant an opportunity of being heard...”

[25] We are convinced that the Respondent did not comply with the principles of natural justice before sending the Claimant away from its premises and by paying him the outstanding salary for the last month he served, amounted to a summary dismissal which is unlawful. It is therefore our finding that his dismissal was unlawful.

2. Whether the Claimant absconded from work?

[26] No evidence was adduced to support the Respondent's allegation that the Claimant absconded from duty. The Respondent under paragraph 4 (f) of its memorandum of reply admitted that the Company Director asked the Claimant to leave the premises and did not expressly deny any of the Claimant's claims against it. In fact, under paragraph 7 of the reply, the Respondent contended that the settlement of the case was only frustrated by the Claimant's unreasonable demands and nothing else. In the absence of evidence that he absconded from duty, we have to basis to find that he did.

3. What are the remedies available?

Having found that his dismissal was unlawful, the Claimant is entitled to some remedies as follows:

[27] According to his memorandum of claimant prayed for the following remedies:

a) Payment of 3 months' salary in lieu of notice amounting to Ugx. 1,050,000/-

Section 57 of the Employment Act provides that, an employee shall not be dismissed without notice except where the employee is terminated in accordance with Section 69 or where he or she has attained retirement age. The notice must be in writing and in a form the employee is expected to understand. In the alternative Section 57(5) entitles the parties to agree to pay the employee in lieu of notice. There is no evidence on the record to indicate that the parties entered into an agreement in which the Claimant accepted to receive payment in lieu of notice. Section 57 provides as follows:

"57. Notice periods.

a) A contract of service shall not be terminated by an employer unless he or she gives notice to the employee, except-

(a) where the contract of employment is terminated summarily in accordance with section 69; or (b) where the reason for termination, is attainment of retirement age.

(2) The notice referred to in this section shall be in writing, and shall be in a form and language that the employee to whom it relates can reasonably be expected to understand.

(3) The notice required to be given by an employer or employee under this section shall be

(a) not less than 2 weeks, where the employee has been employed for a period of more than six months but less than one year;

(b) not less than one month, where the employee has been employed for a period of more than twelve months, but less than five years;

(c) not less than two months, where the employee has been employed for period of five, but less than ten years; and

(d) not less than three months where the service is ten years or more.

(4) Where the pay period by reference to which the employee is paid his or her wages is longer than the period of notice to which the employee would be entitled under sub section (3), the employee is entitled to notice equivalent to that pay period.

(5) Any agreement between the parties to exclude the operation of this section shall be of no effect, but this shall not prevent an employee accepting payment in lieu of notice.

(6) Any outstanding period of annual leave to which an employee is entitled on the termination of the employee's employment shall not be included in any period of notice which the employee is entitled to under this section.

(7) During the notice period provided for in subsection (3), the employee shall be given at least one-half day off per week for the purpose of seeking new employment."



[28] We have already established that the Claimant was summarily dismissed therefore, the Respondent did not comply with Section 57. In line with Section 57(5) of the Employment Act (supra), the Claimant is entitled to claim payment in lieu of notice. It was the Claimant's uncontroverted evidence that, he served the Respondent from 2005 to 1/06/2018, he therefore served the Respondent for 12 and half years. In light of Section 57(3) he is entitled to 3 months' notice amounting to 3 months' salary in lieu of notice, at the rate of Ugx. 350,000/- totaling to **Ugx.1,050,000/-** payment in lieu of notice.

b) Untaken leave for the period from 2005-2018 amounting to Ugx. 4,200,000/-

[29] This court has held that although Section 53 of the Employment Act entitles an employee to rest days, leave cannot be taken at the whims of the employee. The employee is expected to apply to the employer for leave so that both parties can agree on the period within which the leave will be taken. Therefore, a claim for accumulated or untaken leave will only succeed where an employee has demonstrated that he or she applied for leave and it was denied. In this case, the Claimant claims for untaken leave for the period 2005-2018.

[30] He however fell short of adducing evidence to prove that he applied for leave and it was denied. In a recent case, in *Ugafode Microfinance Ltd (MDI) v Mark Kyoribona L.D.A 034/2019* this Court held that, if before a given calendar year elapses and an employee is terminated having not taken his leave, such employee would be entitled to the number of days he ought to have taken up to the time of his or her termination. The Claimant in the instant case was summarily dismissed on 1/06/2018. In light of section 53(1) (a) he would be entitled to 7 days in respect of the period of a continuous 4 months service from January to June 2018, at the rate of Ugx. 350,000/- amounting to **Ugx. 116,666.667/=**.

c) Repatriation pay equivalent to a month's salary of Ugx. 350,000/-

[31] Section 38 of the Employment Act is to the effect that where an employee has been in employment for at least 10 years he or she shall be repatriated at the expense of the employer, irrespective of his or her place of recruitment. We have already established that the Claimant served the Respondent for over 10 years. His claim for 1 month's

salary of Ugx. 350,000/- as repatriation pay, in our considered view is reasonable. The Respondent is therefore ordered to pay the Claimant **Ugx. 350,000/-** as repatriation allowance.

d) **Severance pay is calculated at 1 month for each year served.**

[32] Section 86(a) of the Employment Act entitles an employee who has been in an employer's continuous service for a period of 6 months to severance pay, if among other circumstances, he or she is found to have been unfairly dismissed/terminated. Section 88 of the same Act provides that severance allowance should be negotiated between the parties and where no formula for its payment has been agreed upon, this Court in *Donna Kamuli v DFCU Bank* LDC No. 002 of 2015, held that the reasonable method for calculating severance pay shall be payment of 1 month's salary for every year the employee has served. This decision was upheld by the Court of Appeal in *African Field Epidemiology Network (AFNET) v Peter Waswa Kityaba* CA. No.0124/2017.

[33] We have already established that the Claimant served the Respondent from 2005 to June 2018, which is 12 years and 5 months. We found nothing on the record to indicate that the parties had agreed on a formula for calculating severance pay. Therefore, following (*Donna Kamuli (supra)*) the claimant is entitled to payment of 12 months' salary at the rate of Ugx. 350,000/- per month amounting to **Ugx. 4,200,000/-**.

e) **General Damages**

[34] It is trite that general damages are the probable direct consequence of the wrong occasioned to a Claimant by a Respondent. However, the computation of general damages is at the discretion of Court but this discretion must be exercised judiciously. *Stanbic Bank (U) Limited v Okou* CA No. 50/ 2020, is to the effect that where an employee is unlawfully dismissed, he or she is entitled to damages to be assessed based on the principle of "*restitutio in integrum*". Courts are expected to assess the natural or probable consequences of the wrongful act and payment in lieu of notice would not suffice if the employee did not consent to receive it. The Court went further to state the need to consider the employability of the Claimant as well, when it stated thus:



"... where severance allowance was awarded the assessment of general damages should be based on the prospects of the respondent to get alternative employment..."

[35] It is an agreed principle of the law that, General Damages are compensatory in nature and are intended to return the aggrieved person to as near as possible in monetary terms to the position he or she was before the injury occasioned by the Respondent. The Claimant was employed as the Respondent's store supervisor, on 02/5/2023. When he tendered his written testimony in court, he was 70 years of age which means that, at the time of his summary termination on 1/06/2018, he was 66 years of age. We do not think that he had a high chance of being employed at that age.

[36] Although we were not able to establish the retirement age of the Respondent's workers the Respondent stated in its memorandum of reply that it had maintained him as staff on compassionate terms, which we interpreted to be for an indefinite period. In the circumstances of having terminated him unlawfully, he was entitled to an award of damages. In *Stanbic Bank v Kiyimba Mutale SCCA No. 02 Of 2010, Katureebe (JSC)* in agreement with *Kitumba (JSC)* as they then were, held that:

"Having found that the Appellant was wrongfully terminated, the court should have proceeded to make an award of general damages which are always at the discretion of the court to determine. Indeed learned Justice cited Article 126(2) (c) which provides for the courts to ensure adequate compensation is awarded to victims of wrongs. He emphasized however that when applying this principle, "... the courts must address itself to the principles of the law applicable and then within the law determine the measure of adequate compensation. It cannot be based on mere speculation... but stated further that:

"In my view, that adequate compensation would have been a payment in lieu of notice, a measure of general damages for wrongful dismissal and payment for accrued pension..."

[37] The Claimant prayed for an award of UGX 30,000,000 as adequate to restore him to the position he ought to have been. Having established that he served the Respondent for 12 years, but by the time of his dismissal he was of the advanced age of 66 years, we think that an award of **Ugx. 8,400,000/-** is sufficient as general damages for unlawful summary dismissal.

e) **Interest**

[38] The interest of 8 % per annum on items a, b, c, and d shall accrue from the date of Judgement until payment in full.

f) **Costs**

[39] This court has taken the position that costs should only be awarded in exceptional circumstances because of the inequality between the employer who is the holder of capital and the employee whose loss of the job renders him or her unequal to the employer. We do not believe that the circumstances of this case warrant an award of costs therefore none is made.

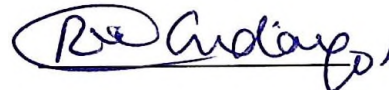
Signed in Chambers at Kampala this 16th day of **August 2024**.

Hon. Justice Linda Lillian Tumusiime Mugisha,
Ag. Head Judge



The Panelists Agree:

1. Hon. Charles Wacha Angulo,
2. Hon. Beatrice Aciro Okeny &
3. Ms. Rose Gidongo.



16th August 2024

9:30 am

Appearances

- | | |
|---------------------|----------------------------|
| 1. For the Claimant | - Mr. Tayebwa Cranmer |
| 2. The Claimant: | - Mr. Akol George |
| 3. Court Clerk: | - Mr. Christopher Lwebuga. |

Delivered and signed by:

A handwritten signature in blue ink, consisting of a stylized 'L' and 'M' intertwined.

Hon. Justice Linda Lillian Tumusiime Mugisha,
Ag. Head Judge, Industrial Court