



THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE NO. 178 OF 2020
(Arising from Labour Claim No. 568 of 2019)

EGIMU BARNABAS:.....CLAIMANT

VERSUS

HENLY DISTRIBUTORS (U) LTD:.....RESPONDENT

Before:

The Hon. Mr. Justice Anthony Wabwire Musana:

Panelists: Hon. Jimmy Musimbi, Hon. Emmanuel Bigirimana & Hon. Can Amos Lapenga.

Representation:

1. Ms. Scolastica Apolot of M/S Asire & Co Advocates for the Claimant.
2. Mr. Bruce Twongyerire of M/S Nambale, Nerima & Co Advocates for the Respondent.

Case Summary

Employment Termination by notice- Where an employer terminates by a notice giving reasons of misconduct or poor performance for termination. The Claimant, employed as a store supervisor by the Respondent company, was terminated for negligence, which allegedly caused financial losses to the Respondent. He sought legal remedies, including notice pay, general and special damages, severance allowance, and interest. He argued that he was not given a hearing before termination and that his termination was unfair. The Respondent maintained that the Claimant had been negligent, was warned, and had admitted his mistakes. The court, however, found that the termination was unlawful because it was a termination with immediate effect, without notice or payment in lieu of notice. The reason for termination was misconduct (negligence), and the Claimant was not given a fair hearing, violating his right to defend himself. The court awarded the Claimant the following remedies: Payment in lieu of notice (UGX 775,700), General damages (UGX 2,543,616) for the distress caused by the unlawful termination, Severance pay (UGX 1,680,684) for his two years of service. The court also denied the Claimant's request for wages for the unexpired contract term, finding it speculative, and awarded interest on the damages at 12% per annum

AWARD

Introduction

- [1] On the 2nd of August 2017, the Respondent employed the Claimant as Stores Supervisor in its sales and marketing department. After his probation, he was confirmed and given a one-year contract valid until the 31st of December 2018. The contract was renewed for a further term of one year. On the 2nd day of October 2019, he was terminated with immediate effect due to his negligence, which caused the Respondent substantial

financial losses. Aggrieved, he lodged a complaint with the Labour Officer at the Directorate of Gender, Community Services and Production General Manager at Kampala Capital City Authority. Mediation was unsuccessful, and on the 28th of February 2020, Mr. Mukiza Emmanuel Rubasha, Labour Officer, was referred to this Court.

- [2] In the memorandum of claim, M/s Asire and Co Advocates sought a declaration for unlawful termination, notice pay, special, general and damages, severance allowance, interest on the monetary awards and costs of the claim.
- [3] The claim did not go unopposed. In its memorandum in reply filed by M/S Nambale, Nerima & Co Advocates, the Respondent contended that the Claimant had been repeatedly warned of the negligence of duty and admitted his errors by letter dated 12th June 2019. He was lawfully terminated on 2nd October 2019 and paid one month's salary in lieu of notice.
- [4] In rejoinder, the Claimant argued that the warnings and apology did not relate to his termination and that he was entitled to a hearing before termination. He denied a "full and final settlement."
- [5] The parties filed a joint scheduling memorandum on the 26th of September 2022 and agreed to the fact of employment, renewal of the contract and termination on the 2nd of October 2019. The issues for determination were framed thus;
- (i) Whether the Claimant's termination was lawful?
 - (ii) What remedies are available to the parties?

The proceedings and evidence

Claimant's evidence.

- [6] The Claimant testified to his appointment, contract extension, clean record, commitment, and exemplary performance. He told us that before his termination, he was not given a hearing, did not appear before an impartial tribunal, nor was he given any justifiable reason for his termination. He acknowledged receipt of UGX 775, 700 as his salary for September 2019 and leave days and said he was not paid any terminal benefits. He told us he had three more months of gainful employment. He said his sudden termination caused him great mental, emotional, psychological, and nervous pain and suffering, embarrassment, and severe emotional distress. He told us he felt humiliated like a chicken thief, and his future employment prospects had diminished. He asked for UGX 29,557,000/= in monetary damages, with interest at 24% and costs of the claim.
- [7] Under cross-examination, he admitted to making a single error, receiving a warning letter, and writing an apology letter. He said he was paid his October 2019 salary. In re-examination, he said his breach was not fundamental and that the warning was for the whole team on whose behalf he apologized.

The Respondent's evidence.

- [8] Mr. Rajesh Muraleedharan, the Respondent's Head of Sales and Marketing, testified that the Claimant had violated Clause 17 of his offer letter, was warned over negligence of duty, and admitted the same by letter of apology dated 12th June 2019. He was lawfully terminated and paid one month's salary in lieu of notice on 2nd October 2019. He acknowledged receipt of his full and final settlement and had no cause of action against the Respondent.
- [9] In cross-examination, he said the Respondent conducted a disciplinary hearing before the Claimant was terminated but conceded that he had not attached the minutes to his witness statement. He also said that the Claimant had been given notice of termination but did not produce the minutes. When shown the termination letter(CEX3), he also conceded that the letter did not say precisely what the Claimant had done. He said after the warning letter, the Claimant had apologised.
- [10] In reexamination, he said the whole sales team signed the warning letter(REX1). He also said REX2 was the Claimant's sole apology.
- [11] We invited the parties to file written submissions, which we have summarized and considered in our determination below. The Claimant's submission focused on the lack of substantive and procedural fairness in his termination. In contrast, the Respondent's submission argued that the termination was lawful as the requisite notice was given.

Determination

Issue 1: Whether the Claimant's Termination was lawful.

Claimant's submission

- [12] It was submitted for the Claimant submitted that his termination was unlawful for lack of substantive and procedural fairness. It was also submitted that there was no justifiable reason for termination. Counsel cited *Obonyo v Mtn (U) Ltd*¹ in support of the proposition that "negligence" was fabricated in the present case. It was also submitted that the Respondent did not prove the reason for termination in accordance with Section 68(1) of the Employment Act, 2006² (the EA).
- [13] It was also argued that the Claimant was not given notice in accordance with Section 58 (now 57) EA and that the warning letter did not constitute a reason for termination. We were referred to *Sserwanga v Uganda Breweries Limited*³ in support of that proposition. It was suggested that the exact offence was unspecified misconduct or poor performance, the company regulations were not produced, and the admissions of

¹ [2016] UGIC 24

² Following the revised edition of the laws of Uganda, this is now Section 67 of the Employment Act Cap.226.

³ [2021] UGIC 23

wrongdoing had been forgiven. We were asked to declare the termination wrongful, unlawful, unfair, and illegal.

Respondent's submissions

- [14] It was submitted for the Respondent that there is no legal requirement for an employer to give a reason for termination provided that the requisite notice is given. We were referred to *Bank of Uganda v Joseph Kibuuka*⁴ and Section 65(1)(a) and (2) EA. This is now Section 64EA. It was suggested that the EA does not impose an obvious duty on the employer to give reasons for termination. However, it was also conceded that the termination letter informed the Claimant that he was being terminated for negligence. It was argued that an employer can end an employment relationship by termination with notice in accordance with Section 58(3)(now 57(3))EA or with payment in lieu of notice, in which case the employer need not prescribe a reason for the termination or hold a hearing.

Rejoinder

- [15] In rejoinder, Ms. Apolot argued that under section 2EA, there must be a justifiable reason for termination. Counsel contended that the Respondent had read Section 65EA in isolation from Sections 2,66,68 and 73EA, with Section 73EA imposing a duty on an employer to act fairly and just when terminating an employee.
- [16] On payment in lieu of notice, it was argued that there must be a justifiable reason or proof of such reason. In the present case, negligence connoted misconduct; therefore, the Claimant had a right to defend himself. It was argued that termination with notice or payment in lieu without reason or a hearing would make Articles 28 and 44 of the Constitution, the Employment Act, and the Industrial Court of no effect. It was suggested that the framers of the Employment Act did not intend to give an employer the automatic right of termination. Counsel for the Claimant reiterated the prayers in the main.

Decision

- [17] It is trite that Court cannot fetter the right of an employer to terminate or dismiss if the employer follows procedure⁵. In the present case, the Respondent contends that the Claimant was lawfully terminated. Does the evidence support this contention?
- [18] The termination letter was admitted as CEX3. It was an agreed document. For its full effect, we have employed the text of the letter below:

“ 2/10/2019

To,
Egimu Barnabas
Nfuufu Zone LC 1
PO Box 30740

⁴ [2021] UGCA 33

⁵ See *Hilda Musinguzi vs. Stanbic Bank (U) Ltd*, SCCA No. 5 of 2016

Kampala

EPN: 005

RE: Termination of your contract

This is in line with a warning letter send(sic) to you on 24th June 2019, we are terminating your contract with immediate effect due to your negligence which has caused the company huge financial losses.

You will receive your full and final settlement after handing in all the company property to Mr. Sabre Alam

For HENLEY DISTRIBUTORS(U)LTD

RAJESH MURALEEDHARAN
HEAD SALES AND MARKETING"

- [19] The letter has two significant elements: First, it was a termination with immediate effect. Secondly, the reason for termination was negligence, which had caused the Respondent huge financial losses. The Respondent's case is that the Claimant was lawfully terminated with notice. The Claimant counters that there was no notice.
- [20] Termination of an employment contract occurs in the circumstances set out in Sections 64 and 68EA. Section 64(1)(a)EA (*formerly 65(1)(a)*) upon which the Respondent anchored its case, deems termination to have occurred-where the contract of service is ended by the employer with notice. In employment terms, notice is provided under Section 57EA and is reckoned according to the duration of service. Therefore, in the present case where the Claimant had worked for two years and two months, he would be entitled to one month's notice under Section 57(3)(c) EA. CEX 3, the termination letter, did not contain any notice period. It was a termination with immediate effect and, therefore, without notice or payment in lieu of notice and for reasons of negligence. In our view, the Claimant's termination cannot be placed within the ambit of Section 64(1)(a)EA as Counsel for the Respondent would have this Court believe because there was no mention of notice in the termination letter.
- [21] Counsel for the Respondent cited *Kibuuka*, in which *Musinguzi* was also cited for the proposition that an employee can be terminated with notice. A revisit of *Kibuuka* is necessary. In *Kibuuka*, the Court of Appeal considered three questions: (i) whether early retirement amounted to termination with notice or payment in lieu thereof, (ii) whether that termination was lawful, and (iii) whether the Bank of Uganda had a legal obligation to give reasons for termination. Mulyagonja JA concluded that forced early retirement was unlawful. On the question of termination with notice, Her Lordship agreed with the dicta of Mwangusya JSC in *Musinguzi* to the effect that termination with payment in lieu of notice is open to an employer. The Court also observed that a termination under

Sections 65(1) (c)(*now Section 64(1)(c)EA*) and 68(1)EA (*now Section 67(1)EA*)required proof of a reason as did Section 69EA which provides for summary termination. The Court considered a termination under Section 65(1)(c) where the employee ends the contract because of the unreasonable conduct of the employer and Section 68(1) and 69 EA(*now Section 68EA*) to be a dismissal under 2 EA *where the employee is discharged from employment at the initiative of his or her employer when the said employee has committed verifiable misconduct.*

- [22] From the above decision, there is a variance between a Section 64(1)(a)EA termination, which is a no-fault termination with notice and other forms of termination where there is verifiable misconduct; such a termination is, in effect, a dismissal. In the case of a no-fault termination, the employer is entitled to terminate with notice. In other instances of verifiable misconduct or poor performance, the employer would not be entitled to terminate with notice.
- [23] What is the effect of the decision in *Kibuuka* on the matter before us? In the present case, the Respondent terminated the Claimant with immediate effect. That would place the termination squarely within the provisions of Section 68(1) EA, which provides for summary termination, which is a termination without notice. Such a termination is prohibited under Section 68(2)EA. However, the decisions in *Musinguzi* and the latter case of *Stanbic Bank (Uganda) Limited v Nassanga*⁶ indicate that where payment in lieu has not been made, the defect is curable by payment in lieu of notice. These decisions would accommodate the Respondent's arguments of the lawfulness of the termination up to this point.
- [24] However, what compounds the Respondent's case is that it terminated the Claimant for negligence and caused a substantial financial loss. These reasons were explicit in the termination letter. Would it be lawful to terminate an employee for negligence and causing financial loss with notice? In *Nassanga*, the Respondent claimed to have been terminated unlawfully because she had instituted a suit against the Appellant. In its termination of the Respondent, the Appellant did not allege any wrongdoing on the part of the Respondent. Gashirabake JA held.

"It is my view, that this was not a dismissal but a termination. For one to invoke the application of section 66(now 65) of the Employment Act, it must be a dismissal on grounds of misconduct or poor performance. Since it is not the case in this matter, it is my view that there was no need for a hearing. *The purpose of the hearing is to establish whether the allegations advanced against the employee are true.* However, in the circumstance where no allegations were made against the respondents, then there was no need for a hearing. As is in the case before this court. In the case of *Stanbic Bank Uganda Limited vs. Deogratuis Asiimwe (Supra)*⁷,Tuhaise, J.S.C held that, *"the authorities cited above are clearly to the effect that an employer can terminate the employee's employment for a reason or no reason at all. To that extent, one would not fault the appellant for terminating the*

⁶ [2023] UGCA 342

⁷ [2020] UGSC 37

respondent's employment immediately and paying him his three months wages in lieu of notice, as indeed it is in this appeal, **but that is if and if only it had gone no further than simply stating that it was terminating the services of the respondent.** To the contrary, however, the termination letter exhibit P3 **stated that the reason for termination letter exhibit P3 stated that the reason for terminating the contract of employment was the respondent's unsatisfactory performance which put the respondent's performance in the issue.** Under such circumstances, it would only have been fair, in line with the principles of natural justice, to avail the respondent a hearing, to allow him to defend himself before his dismissal since the termination was expressly stated to be faulted based against the respondent-" Considering the principle of judicial precedent, I am bound to follow the Supreme Court decision in the above matter, the circumstances are different in as far as there were no reasons granted for the termination of the contract. The appellant is therefore protected from the need for a hearing.....Where no reason for termination is given, then there is no need for a hearing since no allegations are made against the employee."

- [25] The principle that emerges very clearly from *Nassanga* and *Assimwe* is this: An employer is at liberty to terminate with notice provided that it is not for reasons of misconduct or poor performance. In the present case, the reasons of negligence and causing financial loss were stated. In addition to not providing notice, the Respondent terminated the Claimant for negligence, which had caused huge losses and did not give the Claimant a hearing. On the dicta of *Nassanga* and *Assimwe* above, the Claimant was entitled to a hearing at which he would defend himself against the allegations of negligence and causing huge losses. He was not allowed to defend himself, which offends that inalienable right to a fair hearing or the right to be heard. Needless to add, the provisions of Section 65EA make it mandatory for an employer to notify an employee if it is considering dismissal for misconduct or poor performance.⁸ The inescapable conclusion is that the Claimant's termination was unlawful, and we so find. Issue number one is answered in the affirmative.

Issue II. What remedies are available to the parties?

- [26] Having found that the Claimant was unfairly and unlawfully terminated, he would be entitled to the following remedies.

Payment in lieu of notice.

- [27] The Claimant sought payment in lieu of notice under Section 57(3)(b)EA, which provides for notice of not less than one month's payment in lieu of notice when an employee has been employed for more than twelve months but less than five years. The Claimant was employed for two years and two months. He would, therefore, be entitled to not less

⁸ See *Ogwai v Kampala Pharmaceutical Industries Limited* [2023] UGIC 68 and *Mugisa v Equity Bank Uganda Limited* [2023] UGIC 62

than one month's notice. His initial salary was UGX 568,462/=. According to RW1, in his witness statement, it was indicated that the Claimant was paid UGX 775,700/= as one month's pay in lieu of notice as contained in REX3. The Statement was prepared on the 2nd of October 2019, which was the date of the Claimant's termination. It did not indicate whether this was notice pay. Therefore, and guided by the dicta of the Supreme Court in *Bank of Uganda v Betty Tinkamanyire*⁹ we award the Claimant one month's salary in the sum of UGX 775,700/= in lieu of notice.

Aggravated and General Damages

[28] Counsel for the Claimant sought UGX 25,000,000/= in general damages. On the principle of restitution, it was submitted that the Claimant was a young man with a clean track record, treated like a chicken thief, and had had difficulty getting alternative employment. He was 43 years old at termination and suffered mental anguish, self-doubt, embarrassment, and lost the ability to fend for his family. Counsel cited *Florence Mufumba v Uganda Development Bank Ltd*¹⁰ in support of the prayer for general damages. Counsel for the Respondent suggested that this was all conjecture.

[29] In our employment jurisprudence, the principles regarding an award of general damages have been settled by the Supreme Court in *Uganda Post Limited v Mukadisi*¹¹ where the Court observed that general damages can be awarded in addition to the payment in lieu of notice given to an employee who has been unlawfully dismissed from employment. General damages are awarded in addition to payment in lieu of notice and;

- (i) *General damages are not tied to specific financial losses. General damages are assessed by the court and are not restricted to the salary or pecuniary benefit stipulated in the employment contract.*
- (ii) *They are awarded to compensate the employee for non-economic harm and distress caused by the wrongful dismissal. These damages include compensation for emotional distress, mental anguish, damage to reputation, and any other non-monetary harm suffered due to the dismissal."*

The decision of the Supreme Court binds us.

[30] As to quantum, in *Stanbic Bank (U) Ltd v Constant Okou*¹² Madrama, JA (as he then was) held that general damages are based on the common law principle of *restitutio in integrum* as correctly argued by Ms. Apolot for the Claimant. Justice Madrama emphasized employability or prospects of employment, age, and manner of termination as considerations for the quantum of general damages. As with the Supreme Court's dicta in *Mukadisi*, the value of the subject matter or the salary would also be a consideration.

⁹ [2008] UGSC 21

¹⁰ [1965] EA 789

¹¹ [2023] UGSC 58 This Court had an expansive application of *Mukadisi* in *Sadat Serungoji v Guinness Transporters T/A Safe Boda* LDR 47 of 2022(16th August 2024).

¹² Civil Appeal No. 60 of 2020

- [31] In the matter before us, the Claimant was unlawfully terminated. He lost his source of income. He was 43 years of age at the time of his termination. Ms. Apolot argued that his employment prospects had diminished, but the evidence did not show us how these prospects had diminished. He told us of his mental anguish and embarrassment, the failure to fend for his family. Counsel also suggested that the Claimant had been treated as a chicken thief. However, the Claimant did not provide any evidence, including anecdotal evidence, case studies, precedents or reports of how chicken thieves are treated in our jurisdiction to support the proposition that this should be a consideration for an award of general damages.
- [32] That notwithstanding, we think the Claimant has made a case for general damages following his unlawful termination. Considering all circumstances, the Claimant's monthly salary and the fact that his fixed-term employment contract was due to expire on the 31st of December 2019, we would grant the Claimant the sum of UGX 2,543,616/= in general damages.

Balance of the contractual wages on the unexpired term of the contract

- [33] Counsel for the Claimant anchored the prayer for salary payment of the contract's unexpired term on Section 40EA(now Section 39EA). Section 39EA provides for the employer's duty to provide work and a corresponding duty to pay wages for work done. It was suggested that the Respondent had failed to provide work for the three unexpired months, and thus, we should award the sum of UGX 1,953,000/= as salary for the unexpired term.
- [34] Given the noticeably clear and prevailing jurisprudence on the point, this prayer is not tenable. The dicta of this Court is that wages are to be paid for work done, and payment of salary for the unexpired term of a fixed-term contract is speculative.¹³ In the circumstances, we decline to grant this prayer.

Severance pay.

- [35] Citing Section 87(a)EA, the Claimant sought UGX 1,953,000/= in severance pay. In support of the proposition that an unlawfully terminated employee is entitled to severance pay, whether pleaded or not, the Claimant cited *Umeme Limited v Harriet Negesa*¹⁴. We agree with this proposition. In the case, the Industrial Court observed that the circumstances under which severance pay becomes payable were explicit under Section 87EA and that severance pay becomes payable from the date that the court declares the termination unlawful. The Claimant sought UGX 1,953,000/= as severance pay for 2.5 years of service. In *Donna Kamuli v DFCU Bank Ltd*¹⁵ the Court held that the calculation of severance shall be at the rate of monthly pay for each year worked. As the Claimant worked for two years and two months at a salary of UGX 775,700/=, he is entitled to UGX 1,680,684/= in severance pay, which we hereby award.

¹³ See *Nazziwa v National Social Security Fund* (Labour Dispute Reference No. 1 of 2019) [2022] UGIC 36 (22 December 2022)

¹⁴ [2019] UGIC 34

¹⁵ *DFCU Bank Limited v Donna Kamuli* (Civil Appeal 121 of 2016) [2019] UGCA 2088 (30 October 2019)

Interest

- [36] The Claimant sought 24% interest from the date of termination until payment in full. In *Orech Odongo Jimmy v China Wuyi Co. Ltd*¹⁶ we held that interest at 12% per annum was fair for an employee not being a commercial contract. We have not been persuaded to depart from that view, and we award the Claimant 12% per annum from the award date until payment in full.

Costs

- [37] The dicta of this Court on costs in employment disputes are the exception on account of the employment relationship except where the losing party has been guilty of some misconduct.¹⁷ In the present case, we have not been persuaded that the Respondent miscondacted itself so that we may award costs of the claim.

Final Orders

- [38] In the final analysis, it is our finding that the Claimant was unfairly and unlawfully terminated. We make the following orders:

- (i) We declare that the Claimant was unfairly and unlawfully terminated from employment by the Respondent.
- (ii) We order the Respondent to pay the Claimant the following sums:
 - (a) UGX 775,700/= as payment in lieu of notice,
 - (b) UGX 2,543,616/= as general damages and
 - (c) UGX 1,680,684/= in severance pay.
- (iii) The sums above shall carry interest at 12% p.a. from the date of this award until payment in full.
- (iv) No order as to costs.

It is so ordered.

Dated, signed, and delivered at Kampala this 30th day of September 2024.

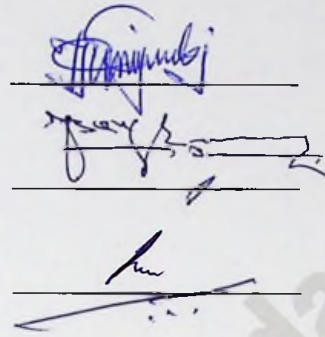

Anthony Wabwire Musana,
Judge, Industrial Court

¹⁶ LDR 47 of 2020

¹⁷ See *Kalule v Deutsche Gesellschaft Fuer Internationale Zusammenarbeit (GIZ) GMBH* [2023] UGIC 89

The Panelists Agree:

1. Hon. Jimmy Musimbi
2. Hon. Emmanuel Bigirimana
3. Hon. Can Amos Lapenga



30th September 2024.

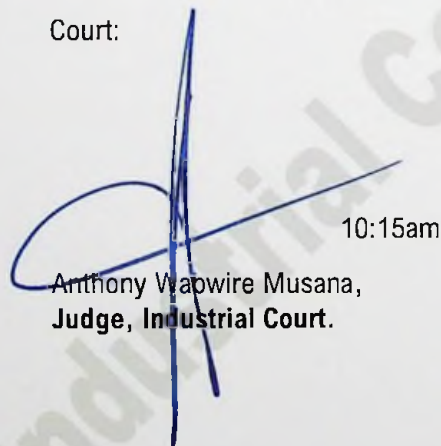
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Appearances

Claimant in Court
Respondent absent

Court Clerk: **Mr. Samuel Mukiza.**

Court: Award delivered in open Court.



10:15am

Anthony Wabwire Musana,
Judge, Industrial Court.