



THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE NO. 212 OF 2017
(Arising from Labour Dispute No, 10.16.17)

AKEWA MILLY :::CLAIMANT

VERSUS

LOVING ONE BY ONE MINISTRIES :::RESPONDENT

Before:

The Hon. Mr. Justice Anthony Wabwire Musana:

Panelists: Hon. Adrine Namara, Hon. Susan Nabirye & Hon. Michael Matovu.

Representation:

1. Messrs. Geoffrey Kwotek, Joel Kakona, John Kamarabe, Charles Mukasa and Ronald Onyol of M/S Kakona & Kowtek Advocates for the Claimant.
2. Mr. Richard Rwabogo of M/S Rwabogo & Co Advocates for the Respondent.

Case Summary

Employment law-termination of employment- Where an employer terminates an employee on the grounds of insubordination and misappropriation of money-A teacher employed by a school was terminated for alleged insubordination, abscondment, and embezzlement. After her termination, she filed a complaint with the District Labour Officer, who found that she had been unfairly terminated without a fair hearing. The matter was referred to the Industrial Court. On the lawfulness of termination, the Court found the termination unlawful, as the Respondent did not provide a fair hearing or sufficient evidence to support the allegations against the Claimant. The Claimant sought a refund of UGX 6,978,000/= for National Social Security Fund (NSSF) contributions, but the Court dismissed this claim due to lack of evidence. The Court awarded the Claimant UGX 6,420,000/= in general damages for mental anguish, loss of reputation, and wrongful termination, UGX 5,216,250/= in severance pay and UGX 1,070,000/= as payment in lieu of notice. Interest was set at 12% p.a from the award date until payment in full. The Claimant got the costs of the claim.

Heard: 29th April 2024

Delivered: 4th October 2024

AWARD

Introduction

- [1] On the 1st of August 2007, the Respondent, a Christian-founded school located in Ntinda in the district of Kampala, employed the Claimant, a graduate teacher. On the 6th of February 2008, she was given a one-year contract, which was subsequently extended annually over the next nine years. Then, on the 11th day of June 2017, the Respondent terminated the Claimant for insubordination or failure to take lawful orders, abscondment and embezzlement. It was alleged that the Claimant had refused to meet the Respondent to discuss her misconduct. Aggrieved by this decision, on the 16th of June 2017, the

Claimant lodged a complaint with the District Labour Officer at Wakiso District. The Labour officer convened two unsuccessful mediations. He then observed that the Claimant had been unfairly terminated because she was not given a fair hearing. On the 16th of August 2017, the Labour Officer referred the dispute to this Court.

- [2] In a claim for breach of the employment contract filed in this Court on the 12th of September 2017, the Claimant sought UGX 12,668,000/= being payment in lieu of notice, salary for the unexpired term of the contract and a refund of deductions made since 2007 as employees' contribution to the National Social Security Fund(NSSF). She also sought general damages, interest, and costs of the claim.
- [3] In its memorandum in reply filed in this Court by M/S Rwabogo & Co Advocates, the Respondent opposed the claim, contending that the Claimant was responsible for losing some UGX 1,750,000/= due to Kalinabiri Primary and Secondary School and Kampala Bright School for student fees. She also disappeared when instructed to file some documents at the Wakiso District Education Office. The Respondent reported a case at the Kasangati Police Station and asked the Claimant to attend a disciplinary meeting. It was contended that the Claimant refused to participate in the meeting. And because the Claimant breached the employment contract, she was not entitled to any of the relief sought.

The proceedings and evidence

Procedural History

- [4] The matter was called before this Court on the 29th of August 2018 when filing directions were issued. On the 13th of November 2018, Mr. Okoth, holding a brief for Mr. Kwotek for the Claimant, informed the Court that the Claimant's scheduling notes, trial bundle and witness statement had been filed on the 19th of September 2018. On the 27th of November 2018, Counsel informed the Court that discussions on an amicable resolution were ongoing. The matter was called on the 6th of May 2019 and mentioned on the 12th of August 2019, when Mr. Rwabogo, appearing for the Respondent, informed the Court that he had been instructed to offer some UGX 3,990,000/= as a settlement. When no agreement was reached, the matter was set for a hearing on the 25th of March 2020. On the 29th of April 2024, Mr. John Kamarabe, appearing for the Claimant, sought leave to proceed exparte. Upon perusing the affidavit of service sworn by Mr. Brian Mutebi, a Court process server, we were satisfied that Messrs. Rwabogo and Co. Advocates had been duly served. There was no reason for the Respondent and its' Advocates' absence. Thus, we granted the Claimant leave to proceed exparte. The amended joint scheduling memorandum dated 19th June 2023 was adopted with three issues framed for determination viz;

- (i) Whether the Claimant's termination was lawful?
- (ii) Whether the Claimant is entitled to a refund of her monthly deductions of UGX 6,978,000/=unlawful termination? and
- (iii) What remedies are available to the parties?

The documents in the Claimant's trial bundle dated 19th August 2018 were also admitted in evidence and marked "CEX1" to "CEX4".

Claimant's evidence.

- [5] It was her evidence that on the 30th of May 2017, Sherry Roberts, the School Director, telephoned her from the United States of America and terminated her services. She was denied access to the school premises. She was later asked to report to Kasangati Police Station regarding a theft case against the Respondent. Upon establishing that there was no merit in the offence, the Respondent agreed to compensate her in the sum of UGX 9,000,000/=, but the Respondent's lawyers suggested that they did not have a mandate to mediate.
- [6] After that, the Claimant abandoned her second witness and closed her case.
- [7] We invited the Claimant to file and serve the Counsel for the Respondent with the written submissions. The affidavit of service of Mr. Donus Bwambale indicates that M/S Rwabogo and Co Advocates were served on the 2nd of August 2024, and Mr. Jamie Rogers Muhumuza, Advocate, acknowledged receipt thereof.

Determination

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

Claimant's submission

- [8] Counsel for the Claimant cited Sections 2, 65(1)(now 64(1)), 66(now 65) and 68(now 67) of the Employment Act Cap. 226 and the cases of *Imelda Nassanga v Stanbic Bank*¹, *Hilda Musinguzi v Stanbic Bank(U) Ltd*² and *Alex Akankwasa v Equity Bank Ltd*³ for the proposition that where an employer is terminating or dismissing an employee, the employee is entitled to reasons for dismissal. It was submitted that the Respondent did not state a valid reason for the Claimant's termination, and she was not allowed to be heard. As such, it was argued that her termination was substantively and procedurally unfair.

Determination

Issue I Whether the Claimant's termination was lawful.

- [9] First, the oft-cited dicta of the Supreme Court of Uganda is that "... *the right of the employer to terminate a contract cannot be fettered by the Court so long as the procedure for termination is followed to ensure that no employee contract is terminated at the whims of the employer and if it were to happen the employee would be entitled to compensation...*"⁴

¹ LDC 227 of 2014

² SCCA 05 of 2016

³ LDC 302 of 2014

⁴ Per Mwangutsya JSC(as he then was) in *Hilda Musinguzi Vs Stanbic Bank (U) Ltd* SCCA 05/2016.

- [10] The short point is that termination must follow procedure. Otherwise, it is unlawful.
- [11] The Claimant contends that her termination was unlawful because she was not given any reason. The notion that there is no legal requirement for an employer to give a reason for termination provided that the requisite notice is given is to be found first in the decision of the Court of Appeal in *Bank of Uganda v Joseph Kibuuka*⁵. In that case, the Respondents were long-serving employees of the Appellant and were informed of the Appellant's decision to retire them early with benefits. In their claim before the Industrial Court, the Respondents argued that they had been discriminated against because a short while after their early retirement, the Appellant had commenced a voluntary retirement scheme with benefits better than those extended to the Respondents. The Industrial Court found for them granting damages of UGX 100,000,000/= each. It held that this contravened Article 4 of the International Labour Organisation Termination of Employment Convention, 1982 (No. 158), requiring an employee to be given a reason in all cases of termination.
- [12] On appeal to the Court of Appeal, one of the questions considered was whether the Bank of Uganda had a legal obligation to give reasons for termination. Mulyagonja JA concluded that forced early retirement was unlawful. 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) (*now Section 64(1)(c)EA*) 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*. The Appellate Court also held that ILO Convention 158 had not been enacted into the Employment Act Cap.226.⁶
- [13] In *Egimu v Henly Distributors Ltd*⁷ we held that a Section 64(1)(a)EA termination, which is a no-fault termination, requires no reasons for termination provided it is with notice. In all other forms of termination where there is verifiable misconduct, the termination is, in effect, a dismissal and is unlawful if the provisions of Section 65 are not adhered to. We relied on *Kibuuka and Stanbic Bank Uganda Limited vs. Deogratus Asiimwe*⁸ which was applied in *Stanbic Bank (Uganda) Limited v Nassanga*⁹ for the dicta that where there is no reason for termination, there is no need for a hearing. But since in *Egimu*, the Respondent terminated the Claimant for negligence and causing a substantial financial loss, the failure to give a hearing rendered the termination unlawful.

⁵ [2021] UGCA 33

⁶ A similar scenario obtains in Nigeria where the Appellate Courts maintain the common law rule of the right to hire and fire for a reason or no reason at all after the National Industrial Court of Nigeria had suggested that it was no longer fashionable to terminate an employee without reason, ousting the common law rule as being a practice that runs contrary to international best labour practices and standards. Per Lifu J. in *Momoh v. Dear Communication Plc NICN/ABJ/36/2013*(13th October 2014)

⁷ LDR 178 of 2020, Industrial Court(30th September 2024)

⁸ [2020] UGSC 37

⁹ [2023] UGCA 342

[14] We think these dicta are particularly applicable to the case before us. The Respondent asserts that the Claimant was in breach of the employment contract and culpable for the loss of UGX 1,750,000/=. It was pleaded that she was not entitled to compensation for these reasons. But what is the procedure when an employer wishes to dismiss for misconduct or poor performance? Section 65EA requires an employer to notify an employee if it considers dismissal for misconduct or poor performance.¹⁰ The Respondent suggested that it asked the Claimant to attend a disciplinary meeting, but she refused. In *David Mugabi v Centenary Bank Uganda Ltd*,¹¹ we cited *Ebiju v Umeme Ltd*¹² and concluded that the right to be heard entails the essential elements of procedural fairness or a fair hearing, which we listed as follows:

- (i) There must be a notice in writing,
- (ii) It should allow for sufficient time to prepare a defence,
- (iii) It should set out the allegations levelled against the employee and
- (iv) It should explain his or her rights at the hearing, the right to respond, be accompanied, cross-examine, produce witnesses, and present their case before an impartial committee.

[15] In the case before us, no notice was produced. While the Respondent filed several witness statements, it did not attend Court to prove its case. This significantly compounds the Respondent's difficulty because, under Section 68EA, the employer must prove the reasons for termination. We have held in *Egimu*, citing *Kibuuka* and *Nassanga*, that proof of the reason for termination would require a hearing. As there was none held to prove the misappropriation of UGX 1,750,000/= and the insubordination, we cannot agree with the Respondent's plea that the termination was lawful. It was not proven that there was a hearing, and we find the termination unlawful.

[16] The other plea by the Respondent is that the Claimant disappeared or failed to attend the disciplinary meeting. By their non-attendance of the proceedings before this Court, the Respondent lost an opportunity to prove this point. We cannot accept this plea without any evidence in support thereof.

[17] In all, issue number one is answered in the affirmative.

Issue II. Whether the Claimant is entitled to a refund of her monthly deductions totaling to UGX 6,978,000/=

[18] On the strength of Section 46EA, it was argued that deductions for social security contributions are permitted deductions. The Claimant's case was that for the ten years she worked for the Respondent, it deducted social security contributions but did not remit the same to the NSSF. We were thus asked to order a refund of UGX 6,978,000/=.

[19] Our dicta in *Cyprian Mugisha v Uganda, Small Scale Industries Association*,¹³ is that for a Claimant to succeed on a claim for social security fund contributions, it must be proven

¹⁰ See *Ogwai v Kampala Pharmaceutical Industries Limited* [2023] UGIC 68 and *Mugisa v Equity Bank Uganda Limited* [2023] UGIC 62

¹¹ LDC No. 26 of 2017

¹² [2015] UGHCCD 15

¹³ LDR 002 of 2023

that the employer deducted the money and did not remit it. In the instant case, the Claimant did not obtain a national social security fund statement or account number for our consideration. She did not break down the monthly deductions and for which period. Without proof, we cannot grant the order for a refund.

Issue III. Whether the Claimant is entitled to general damages

- [20] On general damages, it was submitted, on the strength of *Ahmed Bhaku v Car & General Ltd*, that in a case of wrongful termination, an employee is entitled to damages equivalent to remuneration of the balance of the contract period or the period stipulated in the contract for notice. Counsel also cited *Akeny Robert v Uganda Communications Commission LDC No. 023 of 2015* to support the prayer for general damages. Because of her unlawful termination and the falsified charges of theft and embezzlement, mental anguish, and loss of reputation, we were asked to consider an award of UGX 20,000,000/= in general damages.

Determination

- [21] First, we could not find a copy of the *Ahmed Bhaku v Car & General Ltd* case cited by Counsel for the Claimant. The directions of this Court on filing submissions include attaching copies of authorities relied upon with relevant portions highlighted. That direction is intended to avoid circumstances such as the present one where the citation provided by Counsel (SCCA 12 of 2002) is shared with a significant case on employment jurisprudence. Perhaps Counsel for the Claimant intended to refer to *Ahmed Ibrahim Bholim v Car and General Limited*¹⁴ which decision bears near similarity in name to the case cited by the Claimant. In the case cited by the Counsel for the Claimant, an extract is attributed to Mulenga JSC, and we think that it could not have been a very accurate reading of the case text. In the decision in *Bholim*, which this Court cites, Tsekoko JSC with Oder, Kanyeihamba, Mulenga JJSC and Odoki CJ concurring, agreed with the lead judgment of Mulenga JSC (*as he then was*) in *Gullabhai Ushillingi Vs Kampala Pharmaceuticals Ltd*¹⁵ to the effect that where a fixed contract does not provide for termination by notice, the employee would be entitled to remuneration for the entire term of the contract. In contrast, where a fixed contract is terminable by notice, a wrongfully terminated employee would be entitled to damages equivalent to the notice period. It is, therefore, possible that Counsel extracted a quotation from *Ushillingi* and attributed it to 'Bhaku' erroneously. The statement of the law on termination of a fixed contract that provides for notice and one that does not was from *Ushillingi* and quoted with approval in *Bholim*.
- [22] The position in *Bholim* has now been modified. In *Sadat Serungoji v Guinness Transporters T/A Safe Boda*,¹⁶ this Court, in a broad discourse of the legal position on damages in employment disputes, followed *Uganda Post Limited v Mukadisi*,¹⁷ where the Supreme Court settled the position obtaining at the time *Bholim* was decided. Our apex

¹⁴ [2004] UGSC 8

¹⁵ SCCA No. 6 of 1999

¹⁶ LDR 47 of 2022 Industrial Court of Uganda (16th August 2024).

¹⁷ [2023] UGSC 58 This Court had an expansive application of *Mukadisi* in *Sadat Serungoji v Guinness Transporters T/A Sale Boda* LDR 47 of 2022(16th August 2024).

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. It was held that general damages are not tied to specific financial losses, are not restricted to the salary or pecuniary benefit stipulated in the employment contract and 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. It departs from the position in *Bank of Uganda v Betty Tinkamanyire*¹⁸, which had restricted damages in employment disputes to the notice period.

- [23] Therefore, in the circumstances that we have found that the Claimant was unlawfully terminated, we would find that she is entitled to general damages. The question is quantum. For this, we are guided by *Mukadisi* above and *Stanbic Bank (U) Ltd v Constant Okou*,¹⁹ where it was held that general damages are based on the common law principle of *restituto in integrum*, which is based on employability or prospects of employment, age, and manner of termination as considerations for the quantum of general damages. Other considerations per *Donna Kamuli v DFCU*²⁰ include the earnings of the Claimant, age, position of responsibility, contract duration, value of the subject matter or the salary, and length of service.
- [24] In the matter before us, the Claimant was unlawfully terminated. Because of the falsified charges of theft and embezzlement and, the resultant mental anguish and loss of reputation and, her length of service being ten years, and the fact of her earning of UGX 535,000/=, we think that the sum of UGX 6,420,000/= would suffice in general damages and we award the same.

Issue IV Other remedies.

Severance pay.

- [25] Citing Section 87EA and *Donna Kamuli v DFCU Bank Ltd*²¹ the Claimant sought UGX 5,350,000/= in severance pay. In *Umeme Limited v Harriet Negesa*²² 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 the court declares the termination unlawful. The Claimant joined the Respondent's employment in August 2007 and was terminated unlawfully on the 30th of May 2007. This was nine years and nine months. At a salary of UGX 535,000/=, she is entitled to UGX 5,216,250/= in severance pay, which we hereby award.

¹⁸ [2008] UGSC 21

¹⁹ Civil Appeal No. 60 of 2020

²⁰ [2015] UGIC 10

²¹ *DFCU Bank Limited v Donna Kamuli* [2019] UGCA 2088 (30 October 2019)

²² *UMEME Limited v Harriet Negesa* [2019] UGIC 34 (26 July 2019)

Payment in lieu of notice.

- [26] On the authority of *Mukadisi*, payment in lieu of notice is awardable for unlawful termination. Such notice is reckoned from the duration of employment. The Claimant had been in employment for nine years and nine months. Under Section 57(3)(c)EA, an employee who has been in service for five years but less than ten years is entitled to not less than two months' pay in lieu of notice. At a salary of UGX 535,000/=, we award the Claimant the sum of UGX 1,070,000/= as payment in lieu of notice.

Costs

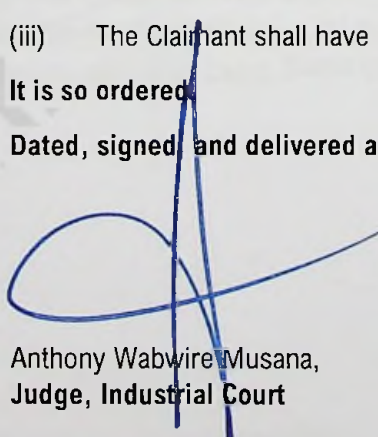
- [27] The dicta of this Court on costs in employment disputes are the exception on account of the employment relationship except where the losing party has been guilty of some misconduct.²³ In the present case, the Claimant served the Respondent with the process at every point. The Respondent was represented by Counsel, who did not attend the hearing of this matter. The Respondent's Advocates received the Claimant's final submissions and did not respond. In our view, there has been palpable misconduct on the part of the Respondent, and we are persuaded to ward the Claimant's costs of the claim.

Final Orders

- [28] In the final analysis, we find that the Claimant was unfairly and unlawfully terminated, and we so declare. We make the following orders:
- (i) We order the Respondent to pay the Claimant the following sums:
 - (a) UGX 6,420,000/= as general damages;
 - (b) UGX 5,216,250/= in severance pay; and
 - (c) UGX 1,070,000/= as payment in lieu of notice.
 - (ii) The sums above shall carry interest at 12% p.a. from the date of this award until payment in full.
 - (iii) The Claimant shall have costs of the claim.

It is so ordered.

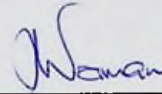
Dated, signed and delivered at Kampala this 4th day of October 2024.


Anthony Wabwire Musana,
Judge, Industrial Court

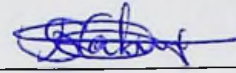
²³ See *Kalule v Deutsche Gesellschaft Fuer Internationale Zusammenarbeit (GIZ) GMBH* [2023] UGIC 89

The Panelists Agree:

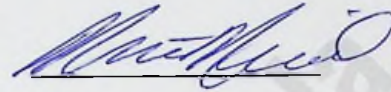
1. Hon. Adrine Namara



2. Hon. Suzan Nabirye



3. Hon. Michael Matovu



4th October 2024.

10:30 am

Appearances

1. For the Claimant:

Mr. Ivan Mugema.

Claimant in Court

Respondent absent

Court Clerk:

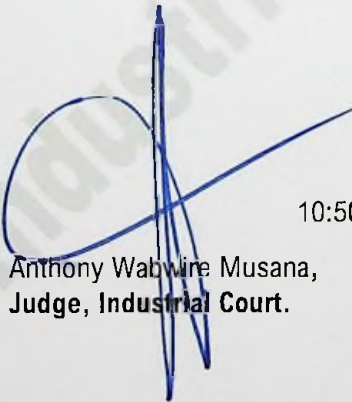
Mr. Samuel Mukiza.

Mr. Mugema

Matter for award, and we are ready to receive it.

Court:

Award delivered in open Court.



10:50 am
Anthony Wabwire Musana,
Judge, Industrial Court.