



THE REPUBLIC OF UGANDA  
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA  
LABOUR DISPUTE REFERENCE No. 60 OF 2017  
(ARISING FROM LD/05/04/2017)

OWINY PATRICK ..... CLAIMANT

v

FRESH HANDLING LTD ..... RESPONDENT

**Before:**

The Hon. Ag Head Judge, Linda Lillian Tumusiime Mugisha

**Panelists:**

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

**Representations**

1. Mrs. Naima Bukenya of M/s. Platform for Labour Action for the Claimant.
2. Mr. Edwin Mugumya of M/s. Katende Sempebwa & Co. Advocates for the Respondent.

## AWARD

### Background

- [1] The Claimant brought this claim against the Respondent for compensation for wrongful dismissal and general damages.

### Brief Facts

- [2] The Claimant was employed by the Respondent as a cargo handler from August 2006 to May 2015, earning a monthly salary of UGX 400,000/= In May 2016 while at work, driving the Respondent's ramp car, Registration No. UAT 302B, he met one of the drivers of Rosebud Limited who was alleged to have caused an accident along Entebbe Road and was on the run. He gave him a lift and as a result, the Respondent alleged he was aiding the driver to escape. He was subsequently detained by the aviation police, for 1 night. /05/2016, he attended a disciplinary hearing and was suspended for 14 days pending investigation. On 26/05/2016, the criminal investigation and intelligence department at Entebbe released a report absolving him of any case to answer.
- [3] On 29/05/2016, he was summarily dismissed after his suspension, he however did not receive the investigation report, and his terminal benefits were reduced. He filed a notice of appeal before the board of directors but did not get any response. He contends that his dismissal was unlawful hence this claim.

- [4] The Respondent on the other hand contends that the Claimant was employed by the Respondent Company as a ramp driver from August 2006 to January 2015 and later promoted as a tractor driver until May 2015 when he was dismissed on grounds that he had aided a fugitive to escape. According to the Respondent, the Claimant's acts contravened the provisions of the Human Resource Manual and amounted to a violation of aviation and airport safety rules and gross misconduct, for which he was summarily dismissed.
- [6] Before his dismissal, the Claimant was accorded a fair hearing in accordance with the company's Human Resource Manual and Section 66 of the Employment Act and was duly paid all his terminal benefits as required by the law. Therefore, the dismissal was lawful.

### **Issues**

1. Whether the claimant's summary dismissal was wrongful or unjustified?
2. Whether the claimant was given a fair hearing?
3. What remedies are available to the claimant?

### **Submissions**

***Issue 1: Whether the Claimant's summary dismissal was wrongful or unjustified?***

- [7] Citing *Uganda v Betty Tinkamanyire* SCCA No.12 of 2007 and *Akello Beatrice v World Vision Uganda* HCT -02-CV-Cs, for the legal proposition that a fundamental breach of

an employment contract is one which is so serious that it amounts to repudiation by the employee of his or her obligations under the contract of employment, it was submitted for the Claimant his giving a lift to a driver from Rosebud Limited which is the Respondent's client and its shipper, did not amount to a fundamental breach of his obligations under the contract of service.

- [8] Counsel contended that the Claimant's job as a driver of the Respondent's tractors was not clear because he was expected to drive the tractors to deliver cargo to the airside and at times to drive the ramp van. He contended that, at the time of the incident the Claimant was driving the Respondent's ramp van heading to DAS to get ropes when he met the Rosebud driver and offered him a lift to the airside. He was not aware that the Rosebud driver had committed an offence because they had passed through all three security protocols.
- [9] According to Counsel, this meant that the Claimant found the alleged criminal at the safe side of the airport where he ought to have passed through all the security checkpoints. He further stated that the Claimant was a well-behaved employee and as evidenced by his from the position of cargo handler to the position of tractor driver, promotion in 2014, and until this incident that led to his dismissal, he had no work incidents. He insisted that the Claimant innocently gave a lift to the Rosebud driver who was well known to him and was a staff member of one of the Respondent's clients where he occasionally delivered cargo and he was no stranger to the Company.
- [10] In any case, they passed through the three security points and protocols at the Respondent's premises from the new west gate, AVSEC security gate, up to the airside. In the circumstances, the Claimant had not committed any wrong because an

unauthorized passenger would have been arrested at the various security points that they went through to access the airside.

- [11] It was further his submission that the Claimant's innocence was confirmed when the police exonerated him for aiding a suspected criminal. In addition, the police report dated 26/05/2015 which was addressed to the Respondent's General Manager cleared him on the grounds that he unknowingly gave a lift to an unidentified person who had caused an accident and his file was closed.
- [12] Counsel further contended that the Claimant was not accorded a fair hearing, because he was invited for the hearing by phone and was given short notice to look for members of the union to accompany him and he was also not given sufficient information about the charges leveled against him. According to Counsel, all this rendered the hearing fundamentally irregular, unfair, and unlawful because it was all contrary to Article 44 (c) of the Constitution Section 66 which makes it mandatory to be heard, and Section 68 of the Employment Act which requires proof of a reason.
- [13] Counsel for the Respondent in reply, cited Section 69(4) of the Employment Act and *Bank of Uganda v Betty Tinkamanyire*, SCCA No.12 of 2007, and stated that the act of using the Respondent's Company property/tractor to carry an unauthorized fugitive who was evading police arrest amounted to misconduct, disobedience of lawful orders and therefore a fundamental breach of his contract with the Respondent, for which he was dismissed.
- [14] Counsel asserted that the Claimant testified that the tractor was strictly for carrying Cargo belonging to the Respondent and he was not allowed to carry passengers in it.

He relied on *Eletu v Uganda Airline Corporation* (1984) HCB 39, which was cited in *Akello Beatrice v World Vision Uganda* (HCT 72 of 2007, for the legal proposition that a fundamental breach is such a breach of the employment contract that is so serious that it amounts to repudiation by the employee of his or her obligations under it. He insisted that the Claimant's actions amounted to misconduct, disobedience, and neglect of duty which justified a dismissal, and the Respondent was well within the law to summarily dismiss him.

- [15] It was further his submission that the Claimant was accorded a fair hearing because he was issued with a notice dated 19/05/2015 and the notice comprehensively disclosed the charges against him, and he appeared for the hearing on 16/05/2015. According to his testimony, he was given the opportunity to explain his case which he did. He concluded that the dismissal was lawful.

### **Decision of Court**

#### ***Issue 1: Whether the claimant's summary dismissal was wrongful or unjustified?***

- [16] Section 2 of the Employment Act defines dismissal to mean:

*"... the discharge of an employee from employment at the initiative of his or her employer when the said employee has committed verifiable misconduct."*

- [17] Section 58 of the Employment Act provides that except where a contract of employment is terminated summarily in accordance with Section 69 or for the reason

of attainment of retirement age, no contract of service may be terminated without notice.

Section 69 Employment Act 2006 is to the effect that:

- i. *Summary dismissal means a dismissal without notice or with less notice than the employee is entitled to under the contract or under the Act.*
- ii. *Summary dismissal is justified when an employee, by his conduct, shows that he has fundamentally broken the contract of service.*

[18] It is not in dispute that the Respondent employed the Claimant as a Cargo handler on 1/10/2011. According to his dismissal letter dated 29/05/2015, the Claimant was dismissed for transporting an unauthorized passenger (who had no uniform, reflector jacket, or airport pass) who had caused an accident in the Respondent's ramp car, Registration No. UAT 302B, and aided him to escape through the airport airside.

[19] During cross-examination, the Claimant admitted that he transported one Aron Mugabe who was not the Respondent's staff in its ramp van yet he was not allowed to do so. He testified that: "... *No Aron Mugabe was not staff...I was not allowed to carry Aron Mugabe... the person stopped me and requested for a lift and I gave him a lift without knowledge that he had committed an offence and he was running away from police...*" However, the police investigation report established that he unknowingly gave a lift to an unidentified person who had caused an accident, but it cleared him of any wrongdoing. This evidence clearly demonstrates that he was aware that he was not allowed to transport Mugabe, but he disregarded this order.

[20] Section 66 of the Employment Act provides that, before terminating an employee for misconduct, the employer must notify him or her of the infractions leveled against

him/her and give him or her sufficient time to respond to the charges in writing and or orally before an impartial tribunal.

[21] He contended that the Respondent's actions violated his right to a fair hearing because on 16/05/2015, he was called on the phone for the hearing and he appeared on the same day. He however testified that "*I requested the panel to give me time to prepare myself but the General manager refused ...they told me to explain what happened I did. I was given a chance to explain what happened. I was then suspended following the hearing where I was given a chance to state my case...*"

[22] It is clear that despite the short notice the Claimant was given an opportunity to explain himself and he did not deny the allegations against him. He categorically stated that he was not supposed to transport any other cargo or person without authorization and yet he did transport Aron who was not staff of the Respondent. Even if he was exonerated for aiding a fugitive because he was not aware that Aron had committed an offence he disobeyed the Respondent's lawful orders when he transported him in the ramp yet he was prohibited from doing so. It is not sufficient that Aaron was a staff member of the Respondent's Client, Rosebud, the Claimant was aware that he was not authorized to transport any other cargo other than the Respondent's. And he admitted that he was aware that he was not supposed to carry Aron.

[23] It is the position of the law under section 66 of the Employment Act that before dismissing an employee on grounds of misconduct and employer must notify the employer about the misconduct and give him or her an opportunity to respond to the allegations in writing or orally before an impartial tribunal.

[24] Article 7 of the I.L.O convention No. 158 on termination of Employment is emphatic the requirement to follow due process and provides that:

*"The employment of a worker shall not be terminated for reasons related to the worker's conduct or performance before he is provided an opportunity to defend himself against the allegations made, unless the employer cannot be reasonably expected to provide this opportunity".*

[25] This Court in *Kabojja International School v Godfrey Oyesigire* LDA No.003/2015, was of the considered opinion that whereas it is a requirement for an employer to accord an employee in issue a hearing as envisaged under Section 66 of the Employment Act, where the employee admits to the commission of the infractions leveled against him or her the employer would not be required to accord him or her such a hearing. The Court held that *"an admission was sufficient to entitle the employer to summarily terminate the employee and ... the contention that an employee was entitled to a hearing was rendered redundant after admission of the misconduct."*

[26] As already discussed his dismissal letter stated in part as follows:

*"...You did not have any reason to pick up the person who did not have a uniform, reflector jacket, or airport pass to airside. Your actions constituted a gross violation of aviation and airport security and safety rules.*

*In your statement, you mentioned clearly that you picked up the unauthorized person from near the New West compound at the airside, drove him first to the DAS gate, then drove him to the AVSEC security gate where you turned the vehicle around and drove him to the airport aircraft apron through airside..."*

[27] The Claimant having admitted to committing the infraction leveled against him entitled the Respondent to summarily dismiss him and the contention that he should have been subjected to a hearing was rendered redundant after he admitted his misconduct. It is, therefore, our finding that the Claimant's admission was sufficient to entitle the Respondent to summarily dismiss him without a hearing, therefore his summary dismissal was lawful.

***Issue 3: What are the possible remedies?***

[28] Having established that by his own admission the Respondent was justified to summarily dismiss the Claimant and therefore, the dismissal was lawful, he would not be entitled to any of the remedies sought.

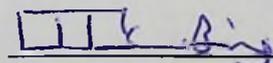
[29] This claim therefore fails, it is dismissed, with no orders as to costs.

Signed in Chambers at Kampala this 18<sup>TH</sup> day of **August 2023**.

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

**The Panelists Agree:**

1. Hon. Charles Wacha Angulo,



2. Hon. Beatrice Aciro Okeny & \_\_\_\_\_

3. Hon. Rose Gidongo. \_\_\_\_\_

**18<sup>th</sup> August 2023**

**9:30 am**

**Appearances**

1. For the Claimant: - Ms. Erina Kawalya.
2. For the Respondent: - Mr. Edwin Mugumya.
3. Court Clerk: - Mr. Christopher Lwebuga.

Delivered and signed by:

Hon. Justice Linda Lillian Tumusiime Mugisha,

**Ag. Head Judge, Industrial Court**