



THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE No. 271/2019
(Arising from Wakiso LD.04.01.2019)

1. UGANDA HOTELS, FOOD, TOURISM AND ALLIED WORKERS
2. KAITESI GERTRUDE:..... CLAIMANTS

v

SPORTS VIEW HOTEL KIREKA LTD:.....RESPONDENT

Before:

The Hon. Head Judge, Linda Lillian Tumusiime Mugisha

Panelists:

1. Hon. Harriet Mugambwa Nganzi,
2. Hon. Ebyau Fidel &
3. Hon. Fx Mubuuke.

Representation:

1. Ms. Namigadde Vicencia Sandra of M/s. Luhuma Advocates for the Claimants.
2. The Respondents did not enter appearance.

AWARD

Background

- [1] This matter has had a checkered history. It was filed in this Court on 20/09/2019, however despite being served severally, the Respondent failed and or refused to file a reply. The matter was mentioned on 25/10/2021, 08/12/2021, 11/02/2022, and on all these occasions the Respondent was absent without any explanation. The matter was set down for hearing on 06/04/2022. On this date, the Respondent did not show up, as

a result, the Claimants applied to proceed ex parte. The court was satisfied that the Claimant effectively served the Respondent and granted the Claimants leave to proceed ex parte.

Brief Facts

- [2] The 1st Claimant is a Labour Union and representative of the 2nd Claimant. The 2nd Claimant was employed by the Respondent Hotel from 02/10/2000 as a receptionist. She rose through the ranks and by the time of her termination on 21/12/2018, she was the front Office Manager. According to her, her employment contract was terminated without notice, her terminal benefits were not paid and other rights that accrued under the collective bargaining agreement entered by the 1st Claimant and the Respondent were not complied with, therefore her termination was unfair. Her claim is for compensation for the loss of employment on the unexpired term of her contract until normal retirement age including monthly salary under sections 78(2) (b) and 78(3) of the Employment Act 2006.

Issues

According to the Claimant's scheduling notes the following were framed as the issues for resolution.

1. Whether the 2nd Claimant's contract of employment with Sports View Hotel was unfairly terminated by the Respondent?
2. Whether the 2nd Claimant is entitled to terminal benefits?
3. What remedies are available to the parties?

Resolution of Issues

Issue 1: Whether the 2nd Claimant's contract of employment with Sports View Hotel was unfairly terminated by the Respondent?

- [3] CW1, Mr. John Whyte Baleke, testified in chief that, he was the Director in charge of organizing education and grievances handling of the 1st Claimant, HTS-Union (formerly UHFTAW) country-wide and stated that the Respondent was a member of the Uganda Hotel Owners Association (UHOA) and she entered into a Recognition Agreement (RA) which recognized the HTS Union as the sole body that represents workers in the hotel Section in Uganda for purposes of any labour industrial relations. According to him both the Recognition Agreement which are referred to as RA and the CBA as the

Collective Bargaining Agreement provided for the dispute handling procedure between the Respondent and its workers. He stated that following her unfair termination the 2nd Claimant requested the 1st Claimant to represent her at will between her and the Respondent. The UHOA also entered into a Collective Bargaining Agreement (CBA) with the HTS Union, on behalf of all its members spelling out the general terms and conditions of employment and with other provisions as endorsed and certified by the Ministry of Gender Labour and Social Development. It was his evidence that both the RA and CBA provided for the dispute handling mechanisms between the members of the Hotel such as Sports View Hotel the Respondent and their respective employees.

- [4] CW2 Kaitesi Gertrude testified in chief that she was terminated on 21/12/2018 without any notice, yet she had worked for the Respondent Hotel for 18 years, from 20/10/2000 to 21/12/2018. She was a member of the HTS Union. According to her, she deserved to be given adequate notice of termination or payment in lieu of notice. She contended that as a result of her unfair termination, she failed to get alternative employment because she did not have sufficient time to search for employment and as a result her family especially the children suffered because they had to relocate to different schools.

She contended that her termination was unlawful and she deserved to be paid compensation. It's trite that before an employer terminates an employee, he or she must give the employee reason for the termination under the opportunity to respond to the reason either orally or before handing her termination see Section 66 of the Employment Act.

Decision of Court

- [5] Collective bargaining is defined by ILO Convention 154 of 1986 as "all negotiations between employers or employers' organizations and workers' organizations for the purposes of determining terms and conditions of employment or regulating relations between them." A Collective Bargaining Agreement (CBA) is one of the sources of the terms and conditions of employment and it binds the parties to it. The CBA usually enhances the individual contractual terms of a unionized employee. The CBA is intended to redress the imbalance between employees and employers.¹ It is not disputed that there is unequal bargaining power between the employees and employers who are owners of capital, therefore collective bargaining has been adopted as an effective tool to balance the power between employee and employer, by

¹ Employment Law, 5th Edition. London, Sweet and Maxwell.

increasing the employee's power to determine and enforce his or her rights in the employment relationship.

Section 39 of the Employment Act is to the effect that the terms of a collective agreement shall so far as is appropriate, be incorporated in the contracts of employment of the employees who are subject to its provisions and shall give rise to legally enforceable rights. The CBA and recognition Agreement also provide for grievance Management procedures.

- [6] The evidence on the record indicates that the Respondent in the instant case, entered into a Recognition Agreement with the 1st Claimant as a member of the Uganda Hotel Owners Association (**UHOA**). The main purpose of the Recognition Agreement was to:
- a) To regulate the relations between them in the interest of mutual understanding and cooperation.
 - b) To ensure the speedy and impartial settlement of real or alleged disputes or grievances between their respective members.

The Respondent also subscribed to a Collective Bargaining Agreement (CBA) between the Uganda Hotel Owners Association (**UHOA**) and the 1st Claimant Union and became a party to the provisions therein and in particular those relating to the terms and conditions of employees who were members of the 1st Claimant Union.

The record further indicates that the 2nd Claimant was terminated on 21/12/2018, on grounds of restructuring which rendered her redundant. Her termination letter reads in part as follows:

".....21st December 2018

Dear Kaitezi Gertrude,

RE: TERMINATION OF YOUR SERVICES AT THE HOTEL

Owing to the catastrophic economic conditions that the Country is going through: The Hotels' economic performance has consequently deteriorated. The Board has therefore decided to restructure and downsize staff in order to reduce costs. The Board, therefore, painfully decided to terminate your services effective from today 21st December 2018.

The Board would like to thank you most sincerely for the services you have diligently rendered to the Hotel. We would therefore like to assure you that should the economic condition improve: the Hotel will not hesitate to employ you at the earliest.

All terms and conditions of service in your contract will be consummated upon departure....."

- [7] According to this termination letter marked "B" on page 32 of her trial bundle, her termination was occasioned by "The catastrophic economic conditions that the Country was

going through. The hotel's economic performance has consequently deteriorated, the Board has therefore decided to restructure and downsize staff in order to reduce costs. The Board therefore painfully decided to terminate your services effective today 21st December 2018. All terms and conditions of service of your contract will be consummated upon departure".

The termination was therefore caused "catastrophic economic conditions of the country" that affected the performance of the Respondent which resulted in downsizing staff/ restructuring, which was therefore not her fault.

Section 81 of the Employment Act provides that employees who are considered for termination during a restructuring process are entitled to 1 months' notice and the court's view or to 1 month's pay in lieu of notice.

This Court in *Sseyiga Hermenegild & 6 Ors Versus ZTE* is of the Legal proposition that, staff must be notified about the intending restructuring and be given an opportunity to prepare to exit or seek alternative employment. There is no evidence on the record to indicate that the Claimant was given any notice or that she was counseled or prepared for the termination before it occurred. We are fortified by the termination letter which is dated 21/12/2018, which was the effective date of termination. Section 81 implies that a termination resulting from restructuring is a no-fault termination and it is one of the lawful means of terminating employment as long as it is done in accordance with the law in this case, the employer must give 1 month's notice to the affected employees or the union to which they subscribe, before termination and to the Commissioner Labour before terminating the employee.

- [8] It was the uncontroverted evidence of CW1, that the 2nd Claimant was a member of the HTS Union, therefore, her Contract was governed by the CBA between the Respondent Hotel and the HTS Union. As already established she was terminated on grounds of redundancy resulting from restricting the Respondent. Clause 31 of the CBA makes provision for the procedure to be followed in redundancy as follows:

"Redundancy/ Layoff.

Redundancy shall have the meaning as expressed in the applicable laws of Uganda. Unless otherwise agreed between the Association, its member establishments, and the Union. In the event of redundancy, the following principles shall apply.

1. *The Union shall be informed in writing at least one month before the day of intended redundancy. In case of special circumstances, the Union may consider a shorter period.*
2. *The Principle shall be adopted of last in, first out, in the particular grade of employees affected, subject to all other factors such as skills, merit, ability, and reliability being equal.*

The redundant employee(s) will be entitled to the following periods of notice or pay in lieu of such notice and any other entitlements covered by the agreement as follows:

3. *An employee with less than five years continuous service with the same employer, two months' notice or pay in lieu.*
4. *An employee with five years or more but less than ten-year continuous service with the same employer, three months' notice or pay in lieu.*
5. *An employee with ten years or more continuous service with the employer, four months' notice or pay in lieu,*
6. *Severance pay shall be at the rate of one-month wages for each completed year of service. Where an employee has not completed a year of service then he/she shall be paid severance on a prorated basis.*

[9] It was the evidence of both Claimants that the Respondent did not comply with any of the provisions under clause 31. As already discussed, the Respondent failed and or refused to appear in court to defend itself, therefore it did not adduce any evidence to the contrary. The record also indicates that despite the 1st claimant efforts to cause efforts to intervene in the matter, the Respondent failed and or refused to comply.

Given the uncontroverted evidence adduced by both Claimants, it is glaringly clear that the Respondent did not follow the procedure laid under clause 31 of the CBA. We are fortified by the fact that the termination letter is dated the same date the termination took effect that is, 21/12/2021.

In addition, apart from stating that the terms and conditions in her contract would be "consummated". There was no evidence on the record to indicate that she was paid in accordance with clause 31 of the CBA (supra). We also found no evidence to indicate that the Commissioner Labour was notified about the impending restructuring as provided under Section 81 of the Employment Act. In the absence of any evidence to the contrary, we have no doubts in our minds that the Respondent did not comply with the procedure under clause 31 of the CBA and section 81 of the Employment Act before terminating the Claimant. It is therefore the finding of this court that the claimant's termination was unlawful. This issue is therefore resolved in the affirmative.

Issue 2: Whether the 2nd Claimant is entitled to terminal benefits.

1. Payment in lieu of Notice

The CBA under Section 31(iii) provides for the entitlements of a person who has been rendered redundant as follows:

(iii) The redundant employees will be entitled to the following periods of notice or pay in lieu of such notices any other entitlements covered by the agreement as follows.

Section 58(3) (d) of the Employment Act provides that an employee shall be given notice before termination therefore Clause 31 is interdem *with* Section 58(3) (d) of the Employment Act.

(iii)(c) An employee with ten years or more continuous service with the employer, 4 months' notice or pay in lieu of notice. We have already established that the Claimant served the Respondent from 20/10/2000 to 21/12/2018. Therefore, she served for 10 years. According to the letter of promotion dated 1/02/2018, the Claimant was elevated to the position of front office manager at a salary of Ugx. 400,000/- per month, although the other terms and conditions remained the same. In the circumstances, she is entitled to Ugx. **400,000/= x 4 months amounting to Ugx. 1,600,000/= as payment in lieu of notices.**

2. Severance Pay

Clause 31(iv) provides for the payment of severance for redundant staff as follows:

iv) Severance pay shall be at the rate of one month's wage for each year of service. When an employee has not completed a year of service he/she shall be paid severance on a prorata basis.

The Claimant having worked for 18 years, she is entitled to severance pay of 1 month for every completed year of service amounting to **Ugx.400,000 x 18 years = Ugx.7,200,000/= as severance pay.**

3. Repatriation Allowance

According to Section 39 (3) of the Employment Act, entitles an employee who has served for at least 10 years to automatic repatriation at the expense of the employer. It provides as follows: where an employee has been in employment for at least 10 years he or she shall be repatriated irrespective of where was recruited from. What is on record her home is in Mukono, which is about 21 kilometers, therefore her claim for Ugx. 5million. In our considered opinion this claim is excessive. In the circumstances, we think **Ugx. 1,000,000/=** is sufficient as repatriation allowance. Regarding the computation of repatriation, however, we were not convinced by the basis of the computation because the computation was based on government rates whereas the hotel is a private entity. In the circumstances, we shall leave the negotiation of repatriation in accordance to Section 39 (3) of the Employment Act to the Claimant and the Respondent.

4. Compensation under sections 71 and 78

The Claimant also prayed for Compensation for unfair termination under Section 71 and Section 78 amounting to Ugx. 20,000,000/=. In *Netis Uganda vs Walakira Charles* this Court held that Section 78 provides for the type of compensation that can be awarded by a labour officer because it is limited in nature. This court as a court of judicature, has jurisdiction to award general damages that are compensatory in nature, the quantum of which is decided at the court's discretion based on the merits of each case. The Claimant having been terminated by the Respondent without following the rules and procedures governing termination under the Employment Act on redundancy and given that she served the Respondent for a long period of 18 years, we think that an award of **Ugx. 15,000,000/-** as general damages is sufficient.

5. Certificate of Service

The law provides that a certificate of service will be issued on request by the Claimant. The Claimant did not adduce any evidence to indicate that she applied for and was denied a certificate of service. This notwithstanding, she's still entitled to a certificate of service. Therefore the Respondent is directed to give her a certificate of service in accordance with the Employment Act.

The Claim for future earnings in our considered view and as decided by this court in many cases is a speculative claim that cannot be granted because a contract could terminate for other reasons such as the death of the claimant that are not necessarily related to unlawful termination. Therefore, The Claimant's claim for the remaining period of her contract cannot succeed. It is therefore denied.

6. Costs

The Claim of costs is granted in this case, this court has held that costs will be granted only in exceptional circumstances because of the unequal contract between the employer and the employee. Whereas the employer has power of capital and therefore he or she can afford to incur costs of litigation, the employee who has lost the means of earning is not in the position to do so. However, the conduct of the Respondent in this case warranted the grant of the costs to the claimant. In the circumstances, costs are awarded to the Claimant. In conclusion, this claim succeeds with costs to the Claimant.

[10] What remedies are available to the parties?

According to her memorandum of claim, she prayed for the following:

- a) A declaration that she was unlawfully terminated. It is hereby declared that the Claimant's termination was unlawful.
- b) A declaration that she is paid 3 months payment in lieu of notice in accordance with section 58(3)(d) of the Employment Act. We have already awarded her 4 months' salary in lieu of notice amounting to **Ugx. 1,600,000/=** under issue 2 that is sufficient.
- c) An order for payment of repatriation allowance as provided under section 38 of the Employment Act. We have already awarded **Ugx. 1,000,000/=** as repatriation allowance.
- d) She prayed for compensation for unfair termination under section 71 and section 78. According to Section 76, the awards under Section 78 are to be made by a labour officer and not the Industrial Court which has wider discretion. In the circumstances, this court has jurisdiction to award general damages which are compensatory in nature and the quantum of which is decided by court based on the merit of each case.
- e) Having made a finding that the Claimant's termination without following the correct procedure for termination as provided under the law, she is awarded **Ugx. 15,000,000/=** as General damages.
- f) She is awarded severance allowance of **Ugx. 7,200,000/=**.
- g) Certificate of service: The Respondent is ordered to issue the Claimant with a certificate of service.
- h) Costs: The Claimant is awarded costs.

Signed in Chambers at Kampala this 23rd day of **August** 2023.


Hon. Justice Linda Lillian Tumusiime Mugisha,
Head Judge

The Panelists Agree:

1. Hon. Harriet Mugambwa,
2. Hon. Frankie Xavier Mubuuke &
3. Hon. Ebyau Fidel.



