

THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE CLAIM No. 213 OF 2014
[ARISING FROM HCCT-CS No. 731 OF 2014 KAMPALA]

BETWEEN

LYDIA NDAGIRECLAIMANT

VERSUS

WBS LIMITEDRESPONDENT

BEFORE

1. Hon. Chief Judge RuhindaNtengye
2. Hon. Lady Justice Linda TumusiimeMugisha

PANELISTS

1. Mr. Ebyau Fidel
2. Ms. Rose Gidongo
3. Mr. Anthony Wanyama

AWARD

In a memorandum of Claim filed in this Court on 05/11/2014 the clamant (Interalia) claimed for a declaration order that she was wrongfully and /or illegally dismissed from work. It was alleged in the memorandum of claim (interalia) that the claimant was never accorded an opportunity to be heard on allegations leading to her termination and that the termination was not in accordance with the Employment contract and contravened labour laws.

By memorandum in reply filed on 18/11/2014, the respondent stated (Interalia) that the claimant was found to be negligent, unable and unwilling to observe and comply with resolutions, directions and policies, unable to provide professional

management to the business of the respondent which negatively impacted on its profitability. It was alleged in the memorandum in reply that, among other things the claimant failed to institute and observe internal cash control systems or provide adequate oversight and supervision leading to financial loss.

Background

The claimant was an employee of the respondent by virtue of a contract of employment annexed to the memorandum of claim marked "A". She was appointed as Managing Director effective 20/08/2012 on permanent terms. On a date that is not mentioned in the termination letter, the claimant's employment was terminated with immediate effect pursuant to clause 4.2(c) of the employment contract and she was given up to 15/11/2013 to prepare a comprehensive handover.

On 26/04/2016 Ms. Massy Odur on brief for Mr. D. Mpanga for the respondent informed Court that the respondent had been placed under receivership. Thereafter there were a number of adjournments on the ground that the official Receiver was planning to settle the claim amicably out of Court. On 21/06/2017, in the presence of Mr. R. Bogezi for the claimant and the claimant herself, Mr. Turinawe for the respondent informed Court that

"We communicated to the claimant's lawyers that the receiver concluded obligations with the respondent company. There are no sufficient receivables to compensate the company's debts as defined by the insolvency Act. There are no monies to justifiably pursue the legal process. It is up to counsel to see what to do."

Mr. Bogezi seemed not convinced and he prayed Court to continue with the claim as he asserted that the respondent existed having not been wound up or liquidated.

On 18/07/2017 Mr. Turinawe informed Court that he would no longer be in conduct of the case because the official receiver was to file a report the company assets having been sold. Interestingly on 31/01/2018 Mr Turinawe was in Court and informed Court that there was no Official Receiver's report because there

was no audit. In the subsequent 4 mentions there was no official receiver's report and on 26/11/2018 in the presence of M/s. Lydia Kyalimpa for the respondent and M/s. Alulinda Magida for the claimant, the matter was fixed for hearing on 4/04/2019 when none appeared for the respondent. It was adjourned to 18/4/2019 and when none appeared for the respondent the Court decided to proceed without the respondent.

Issues

In a joint Scheduling Memorandum signed by Kabega, Bogezi&Bukenya Advocates for the claimant and A.F.Mpanga advocates for the respondent, the issues agreed were

- i. Whether the claimant's employment was unlawfully terminated.
- ii. What remedies are available to the parties?

Whether the claimant's employment was unlawfully terminated

As already pointed out the respondent was not available in the court room and this Court, considering that before fixing the hearing the respondent was said to be non-existent its assets having been sold in liquidation, took the position that there was no interest in defending the claim and proceeded ex parte.

It was the unchallenged evidence of the claimant that having been employed by the respondent on permanent terms effective August 2012 on 13/11/2013 she was terminated. According to her evidence, she was not given notice or any opportunity to be heard on any allegations.

In her testimony she informed Court that she was handicapped to perform her duties because of the stringent control methods exhibited by the Chairman, who did not allow her to do her duties of supervising the Finance department.

According to her evidence, in an attempt to organize a restructuring of the respondent company there was a clash between her proposals and those of the internal auditor who had gained favour of the Chairman which led to her termination. She testified that whereas during her employment she put in place and implemented procedures not involving finance those involving finance were

undermined by the finance department and Legal Manager supported by the Chairman all of whom controlled the Financial aspects of the business.

It was the submission of Counsel for the claimant that terminating the claimant without being heard on the allegations against her was contrary to rules of natural Justice and the constitution making the termination unlawful. The termination letter provided (Inter alia) that the termination was effected pursuant to clause 4 (2) (a) of the contract agreement.

Clause 4.2 of the Contract provided;

“The company shall have the right to terminate the agreement without liability for compensation or damages upon the happening of any of the following events;

- a) Forthwith if the Director is unable or prevented through incapacity or any other cause for any period or periods exceeding 14 consecutive weeks or for periods totaling more than 91 days in the 52 consecutive weeks.
- b) Forthwith if the Director commits any serious breach preceded by prior warning or not.
- c) Forthwith if the Director is **guilty** of any grave misconduct or wilful neglect in the discharge of her duties herein for instance:
- d) Incompetence or negligence of duty
- e) Unauthorized absence from work for a period of three days without any reasonable excuse.
- f) Conviction by court of law of an offence likely to injure the reputation of the Company.
- g) Theft, misappropriation or conversion of company property and related misbehavior.
- h) Dishonesty to or consumption of intoxicants while on duty
- i) Sexual harassment
- j) Gross insubordination or deliberate failure to obey work related instructions issued by a supervisor.
- k) Obstructing other staff from doing or reaching a place of their work being disruptive or a nuisance to them.

- l) Giving false information to obtain employment or a related benefit, promotion or favor.
- m) Causing unjustified material damage to company property.
- n) Having immoral behavior.

Although the letter of termination points out that the Chairman, Prof. Gordon Wavamuno endeavored to guide the claimant and that she adamantly did not take heed leading to a financial crisis, evidence of the meetings where such guidance was given to the claimant and what transpired in the meetings was not available to the Court. Even if such evidence was available unless presented before a disciplinary committee as proof of the incompetence of the claimant, such evidence would not be sufficient to lead to a legal termination.

There was no evidence adduced by the respondent to prove that the claimant offended clause 4.2 of the contract, the basis on which the termination was effected.

We accordingly find that the termination of the claimant was unlawful.

WHAT REMEDIES ARE AVAILABLE

a) Unpaid salary for days worked for the month November 2013.

The claimant prayed for USD 3,733. **Clause 2.1 of the contract of service** provided for a salary of 7,000 USD per month. The unchallenged evidence of the claimant is that she was given a termination letter on 13/11/2013 stating that termination was of immediate effect and that she declined to do finance work as directed by the chairman after handing over the termination letter. She therefore worked for 17 days in November 2013. We grant the 3,733 USD as salary for the period worked.

b) 3 months payment in lieu of notice.

Section 58 of the Employment Act provides that no employee should be terminated without appropriate notice and the Contract of service between the claimant and the respondent provided for 3 months notice or payment in lieu of such notice **under clause 4.1 of the contract**. We accordingly allow 21,000USD.

c) **Accrued leave**

Although in accordance with **Section 54 of the Employment Act** and **clause 3 of the Contract of service** the claimant was entitled to leave days , such leave could only be granted once the claimant showed interest in taking it. It is only when such interest is expressed to the employer and the employer for various reasons rejects to allow the employee to take the requested leave that the employee is entitled to claim the equivalent of the denied leave days(see: **MBIIKA VS CENTENARY BANK L.D.C. 023/2014**). There is no evidence to show that the claimant requested for leave and that the respondent denied her leave. Consequently the prayer for payment in lieu of leave is denied.

d) **Unpaid NSSF**

The claimant seeks to recover 80,000,000/= as unpaid NSSF contribution.

This Court in the case of **Aijukye Stanley Vs Barclays Bank L.D.C.243/2014** expounded the legal proposition that although the claimant was entitled to N.S.S.F contribution and could sue the employer to recover it, after recovering the same, it could only be paid into the N.S.S.F fund in accordance with the **N.S.S.F Act**. The claimant however had to prove that the money was deducted from his/her salary and was not paid in to the N.S.S.F fund.

We have not seen such evidence adduced by the claimant and therefore this claim is rejected and the claimant is advised to be in touch with N.S.S.F and establish the position of her account before she files a claim for recovery of NSSF contribution.

e) **Recovery of Salary Advance**

This claimant seeks to recover 2,295,000/= being advance to **stall**. No evidence is clear on the record as to how this claim arose. Counsel in his submission never attempted to explain the source of the claim. It is not therefore allowed.

f) **General Damages**

Although counsel for the claimant did not in his submission allude to a claim of general damages, the claimant in her memorandum of claim had this as one of her prayers.

Considering that this is a discretionary remedy, and considering that the respondent was alleged to have been in liquidation, and given that the claimant in submissions did not address us on this aspect, we decline to grant general damages.

The claim is allowed in the above terms with no orders as to costs.

Signed by:

1. Hon. Chief Judge Ruhinda Ntengye
2. Hon. Lady Justice Linda Tumusiime Mugisha

Panelists:

1. Mr. Rwomushana Reuben Jack
2. Ms. Rose Gidongo
3. Mr. Anthony Wanyama

Dated: 12/07/2019