

**THE REPUBLIC OF UGANDA  
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA  
LABOUR DISPUTE CLAIM NO. 042 OF 2015  
(ARISING FROM HCT-CS NO. 36 OF 2014)**

**MUDOMA CHARLES.....CLAIMANT**

**VERSUS**

**KENFREIGHT (U) LTD.....RESPONDENT**

**BEFORE**

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

**PANELISTS**

1. Mr. Mubuuke F.X.
2. Ms. Mugambwa Nganzi Harriet
3. Mr. Ebyau Fidel

**AWARD**

By memorandum of claim filed on 22/6/2015 the claimant alleged that the respondent unlawfully suspended him. According to the memorandum of claim the claimant after being suspended, he was required to appear before a disciplinary committee which never took place and he was kept on the suspension without any communication regarding the status of his employment to-date.

By a memorandum in reply filed on 02/07/2015, the claimant denied the above allegations and alleged that the claimant was given opportunity to defend himself whereupon he admitted the charges against him.

The respondent was represented by Mr. Mugenyi Yese while the claimant was represented by Mr. Tumwesigye both of M/s. Mugenyi & co. Advocates and M/s. Talp Advocates respectively.

When on 29/11/2018, the matter was fixed for hearing for 3/05/2019, both counsel were present. On the due date of 3/05/2018 in the absence of counsel for the respondent, this court rejected an application by counsel for the claimant to adjourn the matter since no reason was shown for the failure of both advocate and respondent. Hearing therefore proceeded with adducing of evidence of the claimant who closed the case thereafter. We rejected the application for adjournment because it was coming from the claimant's counsel whose client was in court and yet this was a 2015 case falling in the category of backlog which was fixed for hearing almost five months earlier and which would have taken another 6 months or so ahead if an adjournment was to be granted. We felt such adjournment in the presence of the claimant would be a frustration of justice which this court could not be party to.

Briefly the facts as we understand them are that the claimant was an employee of the respondent from the 16/11/2002 when he was offered employment on a 3 month's probationary period. He was on 1/11/2003 confirmed and employed on permanent terms. By letter dated 21/3/2013 he was put on suspension on allegation of connivance with certain individuals to defraud the respondent by diverting business for selfish gain. Suspension was to be for 15 days without pay and he was to appear before the disciplinary committee on 8/4/2013. According to him this date was postponed to 10/4/2013 but he was never called before the committee to defend himself.

The agreed issues according to a Joint Scheduling memorandum filed on 18/05/2017 are:

- 1) Whether the respondents conduct was fair and lawful in the circumstances.**
- 2) Whether the dismissal of the claimant was lawful.**
- 3) What are the remedies available?**

As already intimated above, the respondent did not adduce any evidence in support of the memorandum in reply to the claim or in support of the disputed/contested facts as per the joint Scheduling memorandum.

The uncontested evidence of the claimant was that when he came for hearing on 10/4/2013 he was informed that hearing was not to take off and that he would be notified in due course but he never got any communication.

Although the respondent's trial bundle contains what is referred to as "**The disciplinary hearing held on 10/04/2013**" at page 3 – 6, without the same being put in evidence by those who attended the hearing, this Court attaches no significance to it given the evidence of the claimant that no such hearing took place. On facts and evidence before Court, it is only Prudent that we find as we hereby do, that no disciplinary hearing took place.

We entirely agree with the submission of Counsel for the claimant that **Section 63 of the Employment Act**, provides for circumstances under which an employer may suspend an employee and that such suspension can only be sustained for four weeks with half pay to allow for investigation of the allegations against the employee.

The claimant was suspended and there seemed to be no investigation being carried out thereafter. He was not called for a hearing to defend himself as provided for under **Section 66 of the Employment Act** and contrary to the authority of this Court in **Margaret Kagendo Vs Civil Aviation Authority, Labour Dispute Claim 016/2014** where a fair hearing was defined to be "**a process where an employee is informed about the infractions or allegations levied against him or her, he or she is given notice of the hearing, he or she is given time to prepare for a response to the infractions or allegations and advised on his or her right to be accompanied to the hearing by a person of his or her choice, he or she is given the opportunity to physically appear before an impartial tribunal or disciplinary body to present his or her response and adduce any other evidence after which the tribunal or disciplinary body then makes a decision.**"

Having found that no such process was followed by the respondent, we find no alternative to holding that the conduct of the respondent (in suspending the claimant and failing to conduct an investigation culminating in a disciplinary hearing) was not fair and in the circumstances the first issue is in the negative.

The second issue is **whether the dismissal of the claimant was lawful.**

Although the respondents trial bundle contains a letter of termination implying that the claimant was terminated by letter, it is not disclosed that the claimant received such termination letter or that any efforts were made to hand over the termination letter to the claimant. The evidence of the claimant was that he did not receive any further communication from the respondent from 08/4/2013 when he received a postponement of the disciplinary hearing which according to him never came to pass.

Even if this Court was to find that such a termination letter existed and that therefore the claimant was terminated by the respondent through the said letter, such termination without a hearing would be rendered unlawful. As provided under **Section 63 (2) of the Employment Act.**

**“Any suspension under subsection (1) shall not exceed four weeks or the duration of the inquiry, whichever is shorter”**

In our understanding once a suspension is beyond four weeks without any communication from the employer as to the status of investigations or whether the employee would be due for a disciplinary hearing, such duration of suspension would be illegal and amounts to termination of employment. Since on the evidence there was no disciplinary hearing and the duration of suspension took a lot more than four weeks, this amounted to termination which in our view was unlawful. The second issue is in the negative.

The third and last issue is: **What remedies are available?**

**a) General damages**

The claimant in his memorandum of claim prayed for general damages. We agree with the submission of the claimant that general damages are compensatory in nature and that they are intended to put the injured in as near as possible to the position he/she was in before the injury complained of. Counsel submitted that since the claimant was terminated he has been in a state of unquantifiable mental suffering and anguish having served the respondent diligently for over 10 years.

We appreciate the state of mind of the claimant after losing his job in an unlawful manner. He was employed on permanent terms and by letter dated 3/1/2008 his salary was raised to 297,440/= per month. It is not clear how old he was when he was terminated and at what age he was expected to retire. It is not clear whether the claimant did anything to mitigate the loss incurred after he was terminated. Given all these factors we think that 5,000,000/= will be sufficient in general damages.

In his submission counsel contended that the claimant would be entitled to salary of the months of May 2013 – January 2014 which he claimed came to 3,176,960/=.

As already pointed out above, it is our position that once an employee contravenes **Section 63 (2) of the Employment Act** by suspending the employee beyond the statutory 4 weeks without preparing or subjecting the claimant to a disciplinary hearing with a view of either clearing him of the charges or finding him culpable, such contravention of Law will tantamount to termination.

Consequently the claimant will no longer be on suspension. In the instant case therefore the claimant will be entitled to ½ pay for the month during which he was suspended. The rest of the time is covered under general damages.

The last salary review was 297,440/= per month and therefore the claimant will be entitled to 148,500/=.

**Special damages:**

These were pleaded under **paragraph 6 of the memorandum of claim**. It was pleaded that the claimant was entitled to 176,220/= as half payment for the month of April 2013. The claimant was suspended on 21/03/2013 for 15 days. According to counsel, the claimant was entitled to half pay in accordance with Section 63 of the Employment Act.

The claimant also prayed for payment in lieu of leave. Although under Section 54 every employee is entitled to leave days in a year, such leave days can only be granted if an employee shows interest in taking the leave.

Consequently payment in lieu of leave can only be granted once the claimant establishes that the employer refused to allow him/her take the said leave (See: **EDACE MICHAEL VS WATOTO CILD CARE MINISTRIES L.D.APPEAL 21/2015 and MBIKA DENIS VS CENTENARY BANK L.D.C. 023/2014**)

In the instant case no such evidence of application for leave or rejection of the leave applied for has been adduced. Therefore payment in lieu of leave is disallowed.

Given the inflationary nature of the Uganda currency, we grant interest of 20% per year on the amounts awarded till payment in full.

No order as to costs is made.

**Signed by:**

1. The Hon. Chief Judge, Asaph Ruhinda Ntengye .....
2. The Hon. Judge, Linda Lillian Tumusiime Mugisha .....

**Panelists**

1. Mr.Mubuuke F.X .....
2. Ms.Mugambwa Nganzi Harriet .....
3. Mr.Ebyau Fidel .....

Dated: 19/07/2019