THE REPUBLIC OF UGANDA
THE INDUSTRIAL COURT OF UGANDA HOLDEN AT KAMPALA
LABOUR DISPUTE REFERENCE NO. 126 of 2015
(*Arising from MGLSD 206 of 2014*)

BETWEEN

BEN KIMULI……**CLAIMANT**

VERSUS

SANYU FM 2000 LTD…….**.....RESPONDENT**

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

PANELISTS
1. Mr. Bwire John Abraham
2. Mr. Mavunwa Edison
3. Ms. Julian Nyachwo

AWARD

In this claim the claimant was represented by Mr. Y. Kagere and the respondent by Mr. D. Haguma.

By offer of an appointment dated 1/10/99, the claimant was employed by the respondent as an **"on air presenter"** at a monthly salary of 450,000/=. Overtime the claimant's performance was recognized by increase of salary. By 1st October 2013 when he was terminated he earned Ugx. 2,450,000/= per month as salary.

It was the respondent's case that the claimant was not unlawfully terminated since the termination was as a result of an on-going restructuring exercise and that he was offered all his payments which he declined to collect.

It was the claimant's case that his termination was unlawful having been of immediate effect without any prior knowledge about anything to do with restructuring of his job.

It was submitted for the claimant that the procedures adopted by the respondent in reaching a decision to dismiss the claimant were not in accordance with justice and equity as required under **Section 73(1)(b) of the Employment Act.** According to him **"termination with immediate effect"** was unlawful as it offended **section 65 of the Employment Act.** He relied on **STANBIC BANK VS KIYEMBA MUTALE – supreme court civil Appeal 2/2010**. The same termination, according to counsel offended **Section 58(3)(d) of the same Act** that provided for notice of termination.

It was submitted for the respondent that the circumstances in the instant case did not disclose unfair termination as provided for under **Section 73 of the Employment Act** since the

claimant was offered payment in lieu of notice which he rejected. According to counsel payment in lieu of notice is sufficient to terminate a contract of service.

Section 73 of the Employment Act provides:

……"**A termination shall be unfair for the purpose of this section if….**

(a) A termination is for any of the reasons specified in Section 75

(b) It is found that on the circumstances of the case, the employer did not act in accordance with justice and equity in terminating the employee from service;

Ordinarily the recruitment of personnel in organizations is not a sudden occurrence or a sudden event. It is a thought out process as management targets the most efficient performers to enable the business generate profit and hence become self-sufficient. In the same way the termination of personnel who have been performing for the organization, ordinarily should be through a process of identifying the non-performers unless there are other reasons for terminating the otherwise good performers.

Whereas in **Section 65 of the Employment Act,** termination may be by notice or payment in lieu of notice, **Section 68 of the same Act** provides that no termination should ensue without reason and **Section 66** provides for a fair hearing before termination. **Section 2** defines what exactly constitutes termination as**"the discharge of an employee from Employment at the initiative of the employer for justifiable reasons other than misconduct…"**

In our considered opinion all these provisions in the Employment Act relating to termination/dismissal were inserted in the law because of the Uganda Government's ratification of the **Termination of Employment Convention, 1992 (No. 158).** This convention (among others) provides that the employment of a worker should not be terminated unless there is a valid reason for such termination connected with the worker's capacity or conduct or based on the operational requirement of the establishment that the worker is serving.

The evidence of the claimant was to the effect that he was only informed of the reason of termination as he received the termination letter and that the reason was restructuring. The only witness of the respondent corroborated this evidence by stating in her evidence in-chief in paragraph 5 that "**due to the prevailing economic conditions, the respondent company undertook a restructuring process where a number of employee contracts were terminated."**

Termination as a result of a restructuring process is acceptable and is in conformity with not only the Termination of Employment Convention above mentioned but also with the Employment Act. However termination of this nature is covered under **Section 81 of the employment Act** which provides for collective termination or termination of more than 10 employees over a period of not more than 3 months for reasons of economic, technological, structural or similar nature.

The procedures to be followed under this section would include informing a representative of the labour union if any, unless the employer can show it was not practically possible, and also notify the commissioner (of labour) of the reasons of the termination.

Although in the instant case the witness of the respondent testified that a number of the employees were affected by the restructuring, no evidence was adduced to show how many they were and whether the above section of the law was complied with.

Section 2 of the Employment Act mentions a justifiable reason other than misconduct. We appreciate the right of the respondent to rearrange, restructure, abolish or combine certain positions in the structure of the business. The only disturbing question that this court needs to answer is whether the way it was done was in accordance with Justice and equity as provided for under **Section 73(b).**

It seems to be the contention of counsel for the claimant that the offer of 3 months **"gratuity"** as the termination letter provided, was just and equitable in satisfaction of the above section of the law since according to him it sufficed under **section 58 of the Employment Act** and lawfully terminated the contract.

In case of **MUFUMBA FLORENCE VS U.D.B Labour Dispute Claim NO, 138/2014** this court held that since in employing the employee the employer had reason to do so, equally in dismissing or terminating the employee, the employer had to offer reason for the same. Reason for termination or dismissal is embedded in **Section 68 as well as Section 66 of the Employment Act.** Under Section **69 of the same Act** fundamental breach of the contract is the reason for summary dismissal.

In the instant case the reason for termination according to the termination letter and accordingly to evidence on the record was that the services of the claimant would not be required because of the on-going restructuring. This was only known to the management of the respondent and those affected did not have a clue until they were terminated. At least the evidence on the record suggests that the claimant only became aware of the restructuring at the time he was given marching orders.

We take the position that in the event of restructuring the employee or employees to be affected ought to have prior knowledge of the possibility of being terminated as a result of restructuring and that in the event they are not given prior knowledge, the subsequent termination is not just and equitable within the meaning of **Section 73(b) of the Employment Act.** Consequently the payment in lieu of notice would not be sufficient to lawful discharge of the respondent from the obligations to provide a reason for terminating the claimant. The burden was on the respondent not only to prove that in fact there was a restructuring in the organization but that the reason for terminating the claimant was the existence of the restructuring. This could not be done by merely stating in evidence and in the termination letter that there existed a restructuring and that as a result the claimant lost a job.

Accordingly it is our finding that the claimant was unfairly terminated from employment and the first issue is resolved in the affirmative.

REMEDIES

Compensation for unfair termination:
Under **Section 78 of the Employment Act** a labour officer is mandated to grant compensation to the claimant for unfair termination and the circumstances to be considered are listed thereunder. The Section limits the labour officer to award a total of compensation not exceeding 3 months wages of the dismissed employee.

This court has held that it is not bound by this Section of the law since it is not constituted by a labour officer but is a court of law at the same stature as High Court. consequently compensation awarded to an unlawfully dismissed employee by this court is measured in terms of damages at the courts discretion taking into account all the circumstances with a view of putting the claimant in the position he/she would have been had he/she not been unfairly dismissed.

The claimant was earning Ugx. 2,450,000/= per monthly by the time his employment was terminated unfairly. There is no evidence as to his age and his attempts to get a job or the possibility of his re-employment elsewhere. He lost means of survival for his family and given the circumstances under which he lost the job. we form the opinion that 05,000,000/= Uganda shillings thirteen million only) is sufficient as general damages.

Having been terminated without notice, the claimant shall in accordance with **Section 58 of the Employment Act** be entitled to 3 months in lieu of notice equivalent to 7,350,000/= (Uganda shillings seven million three hundred and fifty thousand only).

REPATRIATION ALLOWANCE

It was not disputed that the claimant had worked for the respondent for more than 10 years. Whereas **Section 39(1) of the Employment Act** provides for repatriation of employees recruited more than 100kms from home, **Section 39(3)** dispenses with the minimum mileage for employees who have worked for at least 10 years. Irrespective of the mileage from home to the recruitment place, this category of workers by virtue of this **Section** is entitled to be repatriated. No doubt the claimant was from Mukono and having worked for 10 years he falls in this category. Given the distance from Kampala where the respondent is based, we form the opinion that Ugx. 500,000/= (Uganda shillings five hundred thousand only) would be sufficient for this purpose and we hereby grant this as repatriation allowance.

SEVERANCE ALLOWANCE

This court having declared that the termination of the claimant was unfair, severance allowance is payable. Since the evidence does not reveal any arrangement in the contract of service between the claimant and the respondent as to how severance allowance may be payable as provided for under **section 89 of the Employment Act,** we hereby order as we ordered in the case of **Donna Kamuli Vs DFCU Bank Labour Dispute Claim NO 002/2015** that the claimant will be entitled to the equivalent of 1months salary per year for the 13 years he worked for the respondent.

Costs

We decline to award costs and hereby declare that each party shall bear own costs.

SIGNED BY:

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

PANELISTS

1. Mr. Bwire John Abraham ……

2. Mr. Mavunwa Edison ……

3. Ms. Julian Nyachwo ……

Dated: 15/03/2019