

**THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA HOLDEN AT KAMPALA
LABOUR DISPUTE APPEAL NO. 26 OF 2017
(ARISING FROM KCCA/CENT/LC/048/2017)**

EQUITY BANKCLAIMANT

VERSUS

MUGISHA MUSIMENTA ROGERS.....RESPONDENT

BEFORE

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

Panelists

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

AWARD

This is an appeal against the decision of a labour officer sitting at Kampala city Council. Originally five grounds were set out in the memorandum of appeal but by way of preliminary objections, grounds 2, 3, 4 and 5 were struck out and only the first ground remained and this ground is:

The Labour officer erred in law when he failed to properly evaluate the evidence on record and thereby came to a wrong conclusion.

REPRESENTATIONS

The appellant was represented by Mr. Khalid Mpata and the respondent by Mr. Nuwandinda Jonan Rwambuka.

BACKGROUND

The appellant was employer of the respondent who terminated the services. The respondent lodged a complaint to the labour officer at Kampala City Council and the said labour officer after evaluating evidence concluded that the respondent was unlawfully and unfairly terminated and granted various remedies to the respondent. The appellant was not amused by the decision of the labour officer and therefore lodged an appeal to this court as required by law.

Mr. Nkata argued very strongly that the labour officer did not properly evaluate evidence as to the right of the appellant to terminate the employment as provided for in the contract. According to him the contract gave both parties a mandate to terminate the employment on notice which was reflected under **Section 65(1)(c) of the Employment Act**. He relied on the case of **Stanbic Bank Vs Kiyemba Mutale – Sup. Court Civil Appeal No. 02/2010**. Counsel also argued that the labour officer was not entitled to grant salary arrears as this was beyond his mandate granted

by **Section 71 (1) and 78 (1) (2) (3) of the Employment Act**. He relied on the case of **NETIS Uganda Vs Walakira LD Appeal 22/2016**.

In reply, counsel for the respondent, Mr. Nuwandinda argued that the labour officer properly evaluated the evidence as he considered the Human Resource Manual of the appellant as well as the evidence of the respondent. He argued that the labour officer was right to grant severance and a month's earnings for failure to afford a hearing for the respondent.

Having perused carefully the decision of the labour officer we are satisfied that he correctly evaluated evidence on the record and also correctly applied the law to the evidence available relating to the issue of unlawful/unfair termination.

In reaching his decision, the labour officer correctly observed that the respondent was a permanent employee of the appellant (having done probation and having been confirmed) who was called from Kabale, his station, to Kampala for a meeting only to be handed a letter of termination without a reason. He properly observed and relied on the **Human Resource Manual of the appellant** which in **Paragraph 17.3.3** provided for a justifiable cause for termination. He properly relied on the cases of **Mufumba Vs UDB and Moses Obonyo Vs MTN** as he concluded “**since no justifiable reason was given by the respondent in terminating the complainant who was a permanent employee, it is the finding of this office that the termination was unfair and unlawful both procedurally and substantively**”. On re-evaluation of evidence as it is on record we have no reason to depart from this evaluation of the same by the labour officer since the mere provision of the right to terminate a contract by notice in the contract of service has been held by this court in the above cases not to be sufficient to lawfully terminate the employment without considering **Sections 2, 66 and 68 of the Employment Act** all of which envisage a reason before termination.

We agree with the submission of counsel for the appellant that **Section 78 of the Employment Act** limits the total amount of compensation awardable by the labour officer. The section in our view grants power to the labour officer to initially compensate the dismissed employee with a basic pay for 4 weeks and in addition to consider circumstances enumerated under section 78(2) and come up with additional compensation which in accordance with section 78(3) must not be beyond 3 months wages. Since unlike payment in lieu of notice and wages severance is subjective, and its calculation is dependent on an arrangement between employer and employee, it is considered as one of the parameters for the labour officer to take into account as he/she determines the additional compensation. Consequently once the labour officer wishes to grant an employee additional compensation the severance already granted is used to determine the additional compensation which as pointed out above is limited to a maximum of 3 months wages. In our view therefore the limitation of the Labour officers' Awards under section 78(3) excludes wages and the notice period as well as severance except that the value of the latter is used to determine whether or not to grant and if so how much to grant in additional compensation.

In the instant case the Labour officer granted compensation as follows;

2,666,500shs for failure to give a hearing, 15,519,833 as salary arrears from date of termination to date of Award, 3,990,750shs as severance allowance for 1year and 6 months.

Compensation arising from failure to give a hearing is granted under **section 66(4) of the Employment Act** when an employee is dismissed summarily under **section 69 of the Employment Act** for fundamentally breaching obligations under the contract. This compensation acts as a penalty for not giving the employee a hearing but it does not glorify the employee for fundamentally breaching his /her duties and hence the limit to 4 weeks wages and not general damages as would arise in any other termination declared unlawful by a court of law. since in the instant case termination was not under section 69 above mentioned the order of 2,666,500shs is hereby set aside.

The labour officer relying on **Florence Mufumbo vs Uganda Development Bank LDC138/2014** awarded 15,519,833shs as salary arrears from the date of termination to the date of award. However in subsequent cases including **Kapio Simon vs Centenary Bank LDC 300/2015** this court has taken such an award to be speculative and has instead held that damages as compensation are sufficient without salary arrears not worked for by the employee. Accordingly the order relating to salary arrears is set aside.

The labour officer relying on **Donna Kamuli vs D.f.c.u Bank L.D.C 002/2015** awarded 3,990,750shs as severance allowance for 1 year and 6 months that the respondent worked. On perusal of the record we are satisfied that the respondent by letter of appointment dated 6/7/2015 was engaged at a salary of 4,250,000shs. He was terminated in Jan.2017 which means that he worked for less than two years. The authority of **Donna Kamuli** (supra) provides for severance allowance of the equivalent of salary earned per month for the number of years served. The authority does not peg the entitlement to the number of months served and therefore the labour officer erred to have calculated the severance considering the number of months. Given the salary of the respondent and given the authority of **Donna Kamuli** we hereby set aside the award of severance by the labour officer.

As to the unlawfulness of the termination we agree with the Labour officer and hereby declare that his finding that the respondent was unlawfully terminated is sustained. The Appeal therefore partly succeeds and partly fails. **Under section 94 of the Employment Act** this court is mandated to confirm, modify or overturn the decision of the labour officer. This being the case the compensatory orders having been set aside, we deem it not only necessary but fair to substitute the said orders with the following:

DAMAGES

The labour officer declined to entertain a prayer for damages and in our considered opinion correctly referred this issue to this Court. In considering general damages the court takes into account the nature of employment, the position and salary of the employee, how long he or she has worked with the former employer, how long he/she would likely have worked had he/she not been terminated, the circumstances leading to termination and generally the impact of the loss of employment on the family of the employee. Having considered all these factors including the fact that the claimant had been convinced to leave his job at CENT. BANK only less than 2years before, we form the opinion that 25,000,000shs is sufficient as general damages.

SEVERANCE

Under section 89 of the Employment Act there ought to have been an arrangement between the respondent and the appellant as to how to calculate severance allowance. In the absence of such arrangement and in accordance with the authority of **Donna Kamuli vs D.F.C.U. Bank Labour dispute claim 002/2015** we award one month's salary i.e. 4,250,000 as severance ,the respondent having worked for 1 year.

NOTICE

Section 58 of the Employment Act provides for a months' notice for a person who has worked for less than 5 years and the appellant falls in this bracket. In the event that he was not paid in lieu of notice as stated in the termination letter, it is hereby ordered that he be paid 4,250,000 as such.

INTEREST

Given the inflationary nature of the economy we grant an interest rate of 20% on the sums awarded from the date of this award 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. Rwomushana Reuben Jack
2. Ms. Rose Gidongo
3. Mr. Anthony Wanyama

DATED 26/03/2019