

**THE REPUBLIC OF UGANDA**  
**IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA**  
**LABOUR DISPUTE REFERENCE No. 120 OF 2016**  
**[ARISING FROM LABOUR DISPUTE No. MGLSD/418/2016]**

**BETWEEN**

**LUSIBA DEOGRATOUS .....CLAIMANT**

**VERSUS**

**NATIONAL WATER & SEWAGE  
CORPORATION.....RESPONDENT**

**BEFORE**

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

**PANELISTS**

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

**AWARD**

**BRIEF FACTS**

By memorandum of claim the claimant alleged that the respondent unlawfully and without any reasonable justification suspended him from employment both having been employee and employer respectively. He alleged that in his absence

disciplinary proceedings were conducted but no report or decision arising from the said disciplinary proceeding was ever given to him.

By a memorandum in reply the respondent contended that the claimant with one Mukaaya Henry on discovering an illegal connection solicited a bribe from one Nnalongo Katende upon which both were arrested.

After a fair hearing, the respondent's Branch Manager at Kanyanya referred the matter to Kampala water. Despite being invited to a hearing by Kampala water, the claimant failed to attend and the committee recommended non-renewal of his contract and returned him to Head Office.

On 23/11/2011 the claimant was suspended having been invited by the respondent for a disciplinary hearing on 22/11/2011 and considering the findings of Kampala Water disciplinary committee, the respondent's disciplinary committee meeting on 25/11/2011 decided that the claimant be summarily dismissed for gross misconduct.

## REPRESENTATIONS

The claimant was represented by Ms Amoding Geraldine of Waigo & co Advocates while the respondent was represented by Mr. Stephen Mwanje of Kaddu & Partners Advocates

Through a joint scheduling memorandum signed by both counsel, the following facts were agreed.

- (a) The claimant was an employee of the respondent and in the course of his employment he was arrested and taken to Kanyanya police post on allegations of solicitation of a bribe and thereafter on allegations of transfer of a water meter of a one Nalongo Katende.
- (b) The claimant was invited for a disciplinary hearing by Kampala water which made a decision not to renew his contract and subsequently sent him back to NWSC, head office.
- (c) The claimant was suspended by NWSC Head office and was invited to attend a disciplinary hearing on 25/11/2011 which he attended.

The issues agreed upon by both counsel were:

- 1) Whether the claimant's suspension by the respondent was lawful?

- 2) Whether the claimant is still an employee of the respondent?
- 3) Whether the claimant was given a fair hearing.
- 4) Whether the claimant is entitled to the remedies sought.

In order to resolve the above issues the claimant adduced evidence from himself alone while the respondent adduced evidence from one Peter Makumbi, Human Resource Manager of the respondent and one Edson Muzahura Manager, training of the respondent.

In his evidence in chief, the claimant testified that on 25/8/2011 while on duty with one Mukaaya Henry he witnessed a meter by pass in the name of Nnalongo Katende and Mukaaya executed a disconnection of the meter and both issued an illegal connection notice to Nnalongo and returned a copy to Kanyanya branch. He was on 28/8/2011 arrested on allegation of theft of a water meter and while still at police station on 29/8/2011 a letter was written sending him back to the center (Kampala Headquarters.) On 31/8/2011 he received a letter from Kampala water to attend a disciplinary hearing scheduled for 6/9/2011. The customer (Nnalongo) was fined for a meter by Pass. After being suspended on 23/9/2011, he was on 25/11/2011 called for disciplinary hearing which he attended but whose results were never given to him.

According to Peter Makumbi the 1<sup>st</sup> respondent witness, investigations revealed that the claimant had not reported the illegal meter bypass as immediately as required and on 6/9/2011 after a disciplinary hearing, Kampala Water Disciplinary Committee decided not to renew his contract and sent him back to Head office

According to Mr. Edson Muzahura the second respondent witness, the disciplinary committee of the Head office upheld the decision of Kampala water disciplinary committee not to renew the claimant's contract.

### **Submissions**

In his submission, counsel for the claimant argued that whereas **Section 63 of the Employment Act** allows suspension of an employee to pave way for investigations, the claimant was suspended way long after investigations, rendering the suspension illegal. According to counsel, after investigations the respondent should have instead instituted a disciplinary hearing.

Counsel argued that the claimant having not been formally terminated or having not been informed that his contract was not renewed, he was still an employee of the respondent. According to Counsel this is especially so because Kampala water wrote to return him to the Head office and after the disciplinary hearing of 25/1//2011 he was not informed about the outcome of the hearing.

Counsel argued strongly that no sufficient time was given to the claimant to prepare for his defense and that therefore the hearing was unfair and not in accordance with the law. He relied on the authority of **WAKABI FRED VS BANK OF UGANDA, LDC 041/2014.**

He submitted that the claimant was not given particulars of the alleged misconduct and was not informed of the charges against him. Neither was he informed of his right to be accompanied. According to counsel minutes of the hearing held on 25/11/2011 only indicate that there was no hearing at all since they did not show from whom the hearing was. According to him this was only a meeting meant for committee members to hear from a senior security officer.

By the time we are putting pen to paper there are no submissions from the respondent and they are therefore not included in this Award.

### **DECISION OF COURT**

The first issue to be addressed is **whether the suspension of the claimant was lawful.**

**Section 63 of the Employment Act** provides

**“Whenever an employer is conducting an inquiry which he or she has reason to believe may reveal a cause for dismissal of an employee, the employer may suspend that employee with half pay.”**

From the evidence on the record, the claimant on 25/8/2011 visited an area not being in his own jurisdiction and together with one Mukaya (in whose jurisdiction the area was located) found a water meter belonging to one Nnalongo having an illegal connection. Although the claimant in his evidence in chief informed Court that he with Mukaya issued to Nnalongo an illegal connection notice and returned a copy to the Water branch at Kanyanya, nothing suggests that this return was made on the

date of the discovery of the illegal connection. In cross examination the claimant insisted that he made a report in the office about the illegal connection. Annexure “C” attached to his statement shows an illegal connection notice (office copy) but nothing on it suggests that it was received by anybody in the office. We therefore believe the evidence of the respondent that the claimant did not report the illegal bypass immediately he found it. It was reported at police that the claimant and his colleague tried to demand a bribe from Nnalongo and the claimant was arrested and detained at the police on 28/8/2011 whereupon the Kanyanya branch wrote sending him back to head office on 6/8/2011 only to receive a suspension on 23/09/2011. What is referred to as an investigation report is in fact a statement by the senior security officer dated 1/9/9/2011 about the circumstances leading to the arrest and detention of the claimant and his colleague. The fact that the suspension was effected after this statement in our view does not make the suspension illegal.

**Section 63 of the Employment Act** provides for suspension “**whenever an employer is conducting an inquiry....**” Suspension does not have to be effected before an investigation begins. It may begin in the middle of investigations or it may not even exist. An employer may not have to suspend an employee but may carry out investigations and thereafter call an employee in a disciplinary hearing after notifying him or her about the infractions. Whether or not to suspend an employee is an option that is exercised by an employer at his/her discretion. The claimant was suspended following his return to Head office from Kampala water and the suspension was to be “**until you are called to appear before the Head office disciplinary committee for hearing of your case**”.

**Subsection (2) of Section 63 of Employment Act** provides

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

On 22/11/2011, a letter was written to the claimant suspending him and directing ½ pay of his salary with effect from 1/10/2011. We consider the suspension to have been effective from 1/10/2011. If this is the case it follows that when a letter dated 22/11/2011 called him for a disciplinary hearing on 25/11/2011 this was 54 days after his suspension and this was definitely against the provisions of the above **Section of the law** which provides for four weeks or 28 days.

And in that case, the suspension was illegal having offended the said **Section of the law**. The first issue is therefore in the affirmative.

The second issue is **whether the claimant is still an employee of National Water & Sewerage Corporation**.

It was the claimant's case that he was returned to Head office BY Kampala Water and when Head office held a disciplinary hearing he was never informed about the results of the hearing and consequently he could not be aware that he was terminated and therefore still considered himself an employee of the respondent.

The respondent on the other hand contended that after the disciplinary proceedings, she tried to trace the claimant to inform him of the results but it was not possible. In the words of Edson Muzahura, a 2<sup>nd</sup> respondent witness.

**“...the disciplinary committee considered the case against the claimant and agreed with the findings of the Kampala water Disciplinary Committee and adopted the recommendations of the Kampala water Disciplinary committee forthwith... the respondent made several attempts through its Human Resource Department to communicate the above decision to the claimant but all were in vain.”**

We do not believe that sufficient effort was made to inform the claimant about the result of the Disciplinary committee. Nothing in the evidence of the respondent suggests any methods used to trace the claimant whose address in any case is presumed to have been known by his employer, since ordinarily the employer keeps particulars of his/her employees.

Evidence on the record suggests that the disciplinary committee of Kampala Water decided to return the claimant to Head office for further guidance and resolved that his contract would not be renewed.

In our understanding the information that was to be communicated to the claimant should have been that his contract was not to be renewed, the Head office having adopted the recommendation of the Kampala water disciplinary committee.

Would failure to communicate this decision nullify the same? Was the claimant entitled to remain in employment because the decision to terminate him was not

communicated to him? We do not think so. In the case of **HILDA MUSINGUZI VS STANBIC BANK (U) LTD. SCCA 05/2016** the court stated

**“... as already stated the right of an employer to terminate a contract cannot be fettered by the court so long as the procedure for termination is followed to ensure that no employee’s contract is terminated at the whims of an employer and if it were to happen the employee would be entitled to compensation.”**

This means that when the employer terminates the employee from employment, such termination is effective from the date it is said to be effective. Should the courts find that the termination was irregular, wrongful, unlawful or unfair, the employee would only be entitled to damages. The employee is not under any circumstances expected to hold onto a job when the employer is not interested in employing him/her. Consequently the claimant in this case stopped being an employee of the respondent when they declined to renew the contract as stipulated by the 2<sup>nd</sup> respondent witness. He could not hold onto a job which according to the respondent was not available for him. The second issue is in the negative.

The third issue is **whether the claimant was accorded a fair hearing.**

**Section 66(1) of the Employment Act** provides

**.....an employer shall before reaching a decision to dismiss an employee on the grounds of misconduct or poor performance, explain to the employee in a language the employee may be reasonably expected to understand, the reason for which the employer is considering dismissal and the employee is entitled to have another person of his choice or her choice present during this explanation.**

**Section 66(2)** provides

**.....an employer shall before reaching any decision to dismiss an employee hear and consider any representations which the employee on the grounds of misconduct or poor performance and the person, if any chosen by the employee under sub-section (1) may make.”**

Article 28 of the of the constitution provides

**“28 right to a fair hearing**

**(1) In the determination of civil rights and Obligations or any criminal charge, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal establishment by law.**

From the above provisions of the law it can be safety asserted that a fair hearing is said to exist if:

- (a) A person is informed of the infractions he allegedly committed.**
- (b) A person is given sufficient time to react or to respondent to the said infractions.**
- (c) A person appears before an independent and impartial tribunal.**
- (d) The impartial tribunal takes a decision and provides a remedy after considering submissions of both the offender and the offended.**

The process of hearing and the procedures adopted in the process will always depend on the nature of the tribunal. It has been held that a disciplinary committee need not follow the strict procedures as of a court of law (see **CAROLINE KARISA GUMISIRIZA VS HIMA CEMENT LIMITED HCCS NO. 84/2015, GRACE MATOVU VS UMEME LTD. LDC 004/2014, DFCU VS DONNA KAMULI CIVIL APPEAL 121/2016 (COURT OF Appeal) and Isaiah Gitiku Gikumu Vs Manengai Oil Refineries Ltd., Cause No. 296/2014 (Kenya High court).**

In the instant case following the arrest and detention of the claimant on 28/8/2011, a letter inviting him to attend a disciplinary hearing was written on 31/8/2019 requiring him to attend hearing on 6/09/2019. This letter did not disclose to the claimant the nature of the infraction and did not attempt to disclose any of the rights that the claimant was entitled to as provided for in **Section 66(1) of the Employment Act**. The minutes of the hearing in the respondent’s trial bundle at page 17, show that three cases including that of the claimant were handled.

It was after a brief of the Senior Security Officer that the resolution not to renew the contract of the claimant was made by the disciplinary committee. The record of the



minutes is short of the defense of the claimant but only shows the observations of the committee. These observations were arising only from the brief of the Senior Security Officer. Given this kind of record, this court is not in position to hold that this was a fair hearing since the resolution was reached without hearing a word from the claimant.

On 22/11/2011, the claimant was invited for another hearing to take place on 25/11/2011. The minutes of the disciplinary committee hearing of this date seem to be in tandem with those of 6/09/2011 by not showing any word uttered by the claimant. In Min. 5.0. it is shown that the committee heard that the claimant was arrested and detained for extortion of 1,000,000/= as a bribe and took some observations which could only arise from evidence yet no evidence was recorded. Without any word uttered by the claimant the committee decided to adopt the decision earlier made by Kampala Water, not to renew the claimant's contract.

Given that the claimant was condemned unheard, we are not in position to hold that the hearing was anywhere near a fair hearing.

In conclusion we find that the claimant was not afforded a fair hearing and therefore the 3<sup>rd</sup> issue is decided in the negative.

The last issue is **what remedies are available?**

The claimant prayed for a declaration that his suspension was unlawful which has already been granted.

He also prayed for a declaration that his employment has never been terminated, which as discussed above has not been granted.

The claimant prayed for salary arrears of 70,000,000/=. We have not seen any evidence suggesting that the claimant was not paid any salary as he performed his duties. In his submissions counsel seemed to hinge the claim for salary arrears on the premises that his client was still an employee of the respondent, yet this has been declared not to be the position. Accordingly the prayer for salary arrears is denied.

The claimant also prayed for gratuity of 10,000,000/= for a period of 4 years. This prayer, according to the submissions of counsel for the claimant is also premised on the premises that the claimant was not terminated and that he is still an employee of

the claimant. There is no other evidence to suggest that the claimant is entitled to any gratuity. The prayer of gratuity is therefore denied.

**General damages:**

The claimant was employed by the respondent and remained an employee of the respondent although he was seconded to Kampala Water. Consequently the respondent is responsible for the illegal suspension and for failure to afford a fair hearing to the claimant. However, the terms and conditions of service of the claimant do not seem to us very clear. On 2/2/2004 he was appointed as a Meter Reader to be governed by ‘**OSUL TERMS AND CONDITIONS OF SERVICE until a new KWP HR plan is finalized**’. He had been appointed on temporary terms for 3 months on 5/5/2003 at 200,000/ per month. On 27/6/2006 his contract was extended from 1/7/2006 to 31/8/2006. By the same letter the claimant was informed that his **long term appointment would be effected after the finalization of the IDAMAC’s bidding process**. The record is not clear as to what happened to the terms and conditions of service between 27/6/2006 and 14/7/2009 when the claimant was seconded to Kampala Water. Nothing on the record suggests what the Osul terms and conditions were or if a new KWP HR plan was finalized. It is not clear to us whether at the time the respondent upheld the decision of Kampala Water not to renew the contract, the claimant’s contract with the respondent was still subsisting. In the circumstances, for the illegal suspension and failure to afford a fair hearing to the claimant we hereby award him 1,500,000/ as general damages which will earn interest of 12% per year from date of Award till payment in full.

**Delivered and signed by:**

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

**PANELISTS**

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

Dated: 12/02/2020

