THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA HOLDEN AT KAMPALA
LABOUR DISPUTE NO. 218/2014
ARISING FROM HCT.CS. 44/2014

BETWEEN

1. **ASIIMWE APOLLO B.**
2. **MWAITA CHRISTINE**
3. **OJANGULE NELSON**
4. **TWINAMATSIKO ENOTH..... CLAIMANT**

VERSUS

LAW DEVELOPMENT CENTRE..... RESPONDENT

Before

1. The Hon. Head Judge, Ruhinda Asaph Ntengye

Panelists

1. Ms. Adrine Namara
2. Mr. Michael Matovu
3. Ms. Suzan Nabirye

AWARD

Brief Facts

The claimants were employed by the respondent at various dates. The first claimant effective 5/7/2001; 2nd Claimant effective 1/11/1998; 3rdClaimant effective 1/11/1998; and the 4th claimant effective 16/11/1998. The four claimants were later on confirmed and admitted to a pensionable establishment of the respondent. All of them were terminated on 30th May 2011 which was according to the respondent in accordance with the Standing Orders and the respective claimants service contracts but which according to the claimants was unlawful.

Issues

1. Whether the respondent lawfully terminated the claimant's contracts.

2. Whether the claimants are entitled to payment of their loans.
3. Whether the claimants are entitled to other remedies sought.

Representation

The claimants were represented by Prof. Barya Jean of Barya, Byamugisha & Co. advocates while the respondent was represented by Mr. Kyagaba, Mr. Serugendo and Mr. Omara all of Kyagaba & Otatiina Advocates.

Evidence adduced

The four claimants testified in support of their case and adduced no further oral evidence. The respondent adduced evidence from Mr. Lukyamuzi Ddungu, who worked as its Secretary and one Joyce Werike, a former secretary of the respondent.

The evidence of the claimants was similar as they each testified in chief that having worked diligently for the respondent they were each terminated on 30/5/2011 unlawfully without a hearing contrary to the Employment Act and the respondent Standing Orders and that they were denied pension which was their entitlement.

The evidence of the respondent was that the respondent in 1973 operated a Retirement benefits scheme which was in 2003 replaced with establishment of a Pension and Retirement Benefits Scheme in 2003 which due to technicalities related to the similarity to the civil servants Pension Scheme was abandoned in 2006 in favor of **"Retirement Benefits Scheme"** as opposed to the **"Pension scheme."**

Submissions

On issue 1, counsel for the claimants argued that in the absence of any reason for termination and in absence of disciplinary measures having been instituted against the claimant, the termination was contrary to **Clause 18(4)(a) and 4(b)** of the Respondent Standing Orders and Section **68(1) of the Employment Act.**

On the second issue related to payment of loans, counsel argued that in accordance with Uganda Development Bank Vs Florence Mufumba, Court of Appeal, Civil Appeal 241/2015, the claimants having been unlawfully terminated, they were entitled to recovery of the loans they owed to the banks having been serviced by salary deductions.

In discussing pension as one of the remedies sought by the claimants, counsel submitted that all the claimants having been on permanent terms and having been admitted to the Pensionable establishment, were as of right entitled to pension. He argued that since the respondent did not clearly set up a Pension Scheme, court should apply the provisions of **Clause (1)(2) of the LDC Standing Orders** which provides that Government Standing Orders shall apply in the event that LDC Standing Orders were silent on a given issue.

In reply to the above submissions, counsel for the respondent relying on the authority of Bank of Uganda Vs Joseph Kibuuka & 4 others, CACA 28/2016 contended that **"there is no requirement for a reason to be given by an employer for termination of services of an employee, provided that the requisite notice is given or payment in lieu of notice is made".** Counsel also relied on Section 65(1)(a) of the Employment Act which according to counsel expressly provides that an employer may terminate employment by notice.

In counsel's view this was the position in Barclays Bank Vs Godfrey Mubiru SCCA 1/1998, Stanbic Bank Vs Kiyemba Mutale, SCCA 2/2010 as well as Hilda Musinguzi Vs Stanbic Bank SCCA 5/2016.

On liability for the loans by the respondent, counsel argued that this did not arise since the claimants were terminated lawfully.

It was argued that no evidence was adduced as to the existence of salary loans and as such court could not be guided as to the terms of the loans.

Relying on the case of **Irene Nasuna Vs Equity Bank LDC 06/2014**, counsel argued that the claimants had a burden to prove that the loan was guaranteed by the employer as a salary loan and that it was purely unsecured and premised on salary for its repayment. He argued that the claimants having (according to the evidence of Lukyamuzi) authorized the respondent to remit their terminal benefits in settlement of their loans and the respondent having done this, no liability on the respondent arises.

As to entitlement to pension, counsel argued that the respondent staff not being civil Servants could not be entitled to pension simply because the Standing Orders of the respondent were silent. Relying on **Adam Mustafa Mubiru and Anor Vs Law Development Centre**, counsel argued that since the claimants had benefit of NSSF

contributions from both their pay and their employer's contribution they were not beneficiaries of pension.

He argued that it is illegal to contract the respondent's staff into the public service pension regime without approval of the Attorney General, Public Service Commission and other relevant Stakeholders since according to counsel the Pensions Act (cap.281, Laws of Uganda) regulates pension for traditional Civil servants.

Decision of court

The question as to whether an employee may be terminated with or without a reason was finally settled in the case of **Hilda Musinguzi Vs Stanbic Bank SCCA 005/2016**, which at page 14 of the lead judgement of his Lordship Eldad Mwangusya stated

> **"my reading of Section 68(2) of the Employment Act 2006 is that it does not impose such a high standard of proof of reasons for termination as would be required in a court trial. If the respondent believed that the appellant committed acts of and /or omissions which compromised the security of the Bank leading to a loss of some money in a robbery, the respondent was justified in terminating her contract because a lot is expected of an employee charged with the responsibility of running a bank facility as was stated in Barclays Bank of Uganda Vs Edward Mubiru (supra). The respondent was in my view rightly held accountable for the loss in the branch and as already stated the right of an employer to terminate a contract cannot be fettered by the courts 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 wound be entitled to compensation."**

This statement of the Supreme Court is not for a legal proposition, as counsel for the respondent seems to suggest, that an employer can terminate an employee for no reason at all. If the decision in Bank of Uganda Vs Joseph Kibuuka & 4 others was in the opposite direction, the rule of precedent is that the Supreme Court decision takes precedence. The Supreme Court decision is exactly in consonance with the **International Labour Organization Termination of Employment Convention 1982, No. 158** which under Article 4 states:

"The employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service". The provisions of Section 65(1) (a) of the Employment Act relied upon by counsel for the respondent must therefore, be read together with Section 68 of the same Act that provides for a reason for termination and Section 66 that provides for a hearing before termination.

Accordingly, the termination of the claimants having been contrary to both the decision in Hilda Musinguzi and the above Convention, it was an unlawful termination.

The second issue relates to repayment of loans. There is no doubt that an employer who guarantees payment of a loan by salary installments where the loan is only and only serviced by such salary installments and the employee is unlawfully terminated, such employer is liable to pay the remaining loan balance the salary remittances having been stopped. This is the essence of the decisions in the cases of Nimrod Okello Vs Rift Valley Railways, HCCS 195/2009; and Uganda Development Bank Vs Florence Mufumba, court of Appeal Civil appeal 241/2015.

However we agree with the submission of counsel for the respondents that there must be evidence that such a loan existed and that it was solely serviced by salary installments.

Although no salary loan agreements were produced in evidence, we accept the contention that the loans were incurred by the claimants with the recommendation of the respondent. This is because in the evidence of Lukyamuza, the respondent witness, it was clear that the claimants took on the loans which were owing by the time of termination and in respect of which terminal benefits of the claimants were remitted to the bank for settlement.

The basis of the liability of the employer for the loan repayment is that the employee having acqured a loan on the understating that he would continue in employment and therefore be able to complete the loan repayment using his/her salary, the employer unlawfully terminates him or her and therefore unlawfully stops the salary which is the sole source of repayment in accordance with the loan agreement.

The employee must show court that not only did he/she negotiate the loan with the consent of his/her employer but that the loan was solely premised on the salary remittances (see **LDC 06/2014, Irene Nasuna Vs Equity Bank, Uganda**). This being the case we agree with the submission of counsel for the respondent that in the absence of evidence to guide the court on the terms of the salary loan in order to establish whether it was solely secured by salary remittances, the prayer for repayment of the same by the respondent should fail.

Compensatory order

Under **Section 78, of the Employment Act,** the labour office is given leverage to order a basic compensation of 4 weeks and where circumstances allow an additional Order of compensation which cannot be above 3 months' wages. In other words, unlike this court, the labour office is limited by law as to how much it can award in compensation (or damages). For this reason, the award of compensation is limited to the labour officer and this court which is empowered to grant general damages cannot at the same time grant compensation under **section 78 of the Employment Act.** This prayer fails.

Pension

Counsel for the claimants in his submission acknowledged that the programme of establishing a Pension Scheme was abandoned by the respondent. His contention was that under **Clause (1)(2) of the LDC Standing Orders, the Government Standing Orders** would apply.

The Government Standing Orders, in our view are mainly meant to govern and are applicable to the main stream civil service. The clause in the LDC standing orders that makes Government Standing Orders applicable was not meant to convert the LDC employees into civil servants. Consequently, the silence of the LDC Standing Orders on the provision of pension to LDC employees did not make them beneficiaries of the Pensions Act. The reason that the respondent abandoned the establishment of a Pension Scheme was because of the contradictions and practical difficulties that would arise in implementation of the same since its employees were not civil

servants entitled under the Pensions Act. For these reasons, the prayer of Pension fails.

Severance pay

This court having declared that the claimants were unlawfully terminated, they will be entitled to severance pay under **Section 87 of the Employment Act.**

Counsel for the respondent argued that the package received by the claimants upon termination automatically off-set any claim of severance **under Section 90 of the Employment Act.**

Section 90 of the Employment Act provides

"**90. Bonus and other payments**

(1) Any gratuity, bonus, or pay other than what is provided for in this Act paid by an employer to an employee on the cessation of his or her employment shall be taken into account in the calculation of any severance allowance, and the amount of the gratuity, bonus, or any other similar payment shall be deducted from any severance allowance which is due.

(2) Subject to this section, the right to a severance allowance shall be in addition to any other rights enjoyed by an employee in relation to his or her employer, and shall be subject to the same rights of set-off or compensation or counterclaim as are available against wages or any other remuneration due under a contract of service.

It was upon the respondent to show that the payments made to the claimants were not provided for under the Employment Act; that they were all gratuitous of the respondent. In the absence of such evidence the prayer that severance is not payable or is deductible under **Section 90 of the Employment Act** is not acceptable.

Consequently, in accordance with the authority of **Bank of Uganda Vs Joseph Kibuuka & 4 others, C.A 281/2016 (Court of Appeal**) which upheld the decision of this court in **Donna Kamuli vs Dfcu, LDC 02/2015** on Award of severance, each of the claimants shall be entitled to 1 months' pay per year served.

Penalty for want of hearing

Section 66(4) is about compensation of an employee in the event of having been dismissed/terminated unfairly or under **Section 69** for having fundamentally breached obligations under the contract. Under **Section 66(5)** a Labour Officer is given leverage to order compensation in either of the situations. Since this court is empowered to grant general damages, it is our opinion that it can only grant 4 weeks for failure of the employer to accord a hearing to an employer who is dismissed for fundamental breach under **Section 69** and only grant damages where the employee is terminated unlawfully and unfairly in other circumstances other than under **Section 69 of the employment Act.** We consider granting both remedies as double payment for the same item: damages/compensation. Only the labour officer may grant both because he/she is limited in the scope of how much he/she can order in compensation.

This prayer is therefore denied.

Leave

Whereas under **Section 34 of the Employment Act** a worker is entitled to a certain number of rest days in a year, such rest days are required to be taken out at such times as agreed between the employer and the employee, thus the requirement of an application for the days when an employee intends to rest. In the absence of an application for the rest days in a given year and in the absence of evidence that the application was rejected by the employer, no payment in lieu of leave arises (see Lubega Moses Vs Holy Cross Orthodox Hospital, LDA 21/2015).

Long Service Award

By virtue of **Clause 33 of the LDC Standing Orders** (exhibited at page 26 of the claimants Trial bundle) each of the claimants was entitled to a long service Award in a certain sum of money as provided there under.

(a) 1st claimant was employed effective 15/7/2011 and was terminated on 30/05/2011. He would have served 10 years if he had been terminated on 30/7/2011. Since he served less, he shall not be entitled to any long service Award.

(b) 2nd claimant, Mwaita Christine was employed effective 1st Nov 1988 and terminated 30/5/2011. She served slightly more than 10 years but not 15 years and so she shall be paid 1 month's gross salary.

(c) The 3rd claimant, Nelson Ojangole was employed effective, 1st Nov 1995 and was terminated on 30/5/2011. He served slightly more than 15 years. He shall be paid 2 months gross salary.

(d) The forth claimant, Twinamatsiko Enoth was employed effective 16/12/98 and therefore served slightly more than 10 years. He shall be paid 1 month gross salary.

Repatriation

Under **Section 39 of the Employment Act,** an employee is entitled to repatriation only on satisfying the court that

(1) He/she was recruited more than 100kms from home or that he/she was in employment with the employer for over 10 years.

(2) the period of service expired

(3) Termination was by agreement between the parties.

(4) Termination was by order of court or labour office.

Since the termination of the claimants' contracts did not satisfy the above circumstances, none of them shall be entitled to repatriation. (see also, **Okello Jane Vs Enhas, LDC 200/2014).**

General damages

The claimants were employed on permanent terms and their termination without a hearing, without any reason was not justifiable. Because of the stress and inconvenience imposed upon each of them, they shall each be compensated with 15,000,000/= in general damages.

Certificate of service

In accordance with **Section 61 of the Employment Act** each of the claimants shall be entitled to a certificate of service.

Interest

The above sums awarded shall attract an interest of 15% per year from the date of this Award till payment in full.

Costs

No order as to costs is made.

In conclusion, the claim succeeds in the above terms.

Delivered & signed by:

1. Hon. Head Judge Ruhinda Asaph Ntengye .....

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PANELISTS

1. Ms. Adrine Namara .....
2. Mr. Michael Matovu .....
3. Ms. Susan Nabirye .....

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Dated: 25/03/2022