

THE REPUBLIC OF UGANDA

IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA

LABOUR DISPUTE: APPEAL N0.003/2015

(ARISING FROM MKD/KCCA/201/06-13)

KABOJJA INTERNATIONAL SCHOOL.....APPELLANTS

VERSUS

GODFREY OYESIGYE.....RESPONDENT

BEFORE

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

Panelists

1. MS. DOMINIC HABYALEMYE
2. MR. PENINAH TUKAMWESIGA
3. MR. EBYAU FIDEL

AWARD

BACKGROUND

A. The appellants appeals against the decision of Mr. Kassaga Haanington, the labour officer of Makindye on the following grounds:

1. *The labour officer erred in law and fact when he held that the respondent had not been accorded the right to a fair hearing and thereby came to a wrong conclusion that his job had been unfairly terminated.*
2. *The labour officer erred in law and fact when he held that the employee's respondent's conduct was mere infringement and thereby made a wrong conclusion that the termination of employment was unlawful.*
3. *The labour officer erred when he failed to properly evaluate the evidence on record thereby arriving at wrong conclusions.*

On the 3 of March when the appeal came up for hearing, Mr. Sewaali Jacob holding brief for

Mr. Brain Kabayiza Counsel for the Appellant and Mr. Bernard Namanya learned Counsel for the Respondent were directed to make written submissions.

**The brief facts giving raise to the appeal are as follows:**

The respondent was employed by the appellant school as a full time Geography Teacher. His employment was terminated on the 16<sup>th</sup> of December 2012, whereupon he filed a complaint against the appellant before the Labour officer Makindye.

On the 20<sup>th</sup> January 2014, the Labour Officer found in the Respondents favour and ordered the Appellant to pay him; payment in lieu of notice, basic compensation, severance allowance, salary for the month, salary for the month of December all amounting to Ugx.14,150,308/-.

The Appellant was not satisfied with this decision hence this appeal.

On grounds 1 and 2, Counsel for the appellant submitted that the respondent had been given notice and a fair hearing before his termination. He stated that the appellant had over time observed a number of lapses in the performance of the respondent, which were communicated to and discussed with the Respondent. The Respondent had on several occasions admitted his failures and undertaken to change and improve. No improvement ensued. This prompted the verbal Appellant to notify the Respondent about his misconduct both verbally and in writing. The Respondent was also given an opportunity to respond to the complaints both verbally and in writing. Counsel contended that the respondent had in essence been given a hearing both orally and in writing. In his opinion, a hearing could take any format including consideration of written evidence and argument he quoted H.W.R Wade, Administrative Law, 5<sup>th</sup> edition at pages 482 and 483 who wrote:

***"A hearing will normally be an oral hearing. But it has been held that a statutory Board acting in Administrative capacity may decide for itself whether to deal with applications by oral hearing or merely written evidence and argument, provided that it does it in substance hear them."***

According to counsel the respondent had been given oral hearings, written notices and letter hearings as evidenced by among others, a letter dated 7<sup>th</sup> February 2012 Marked "D", in which the Principal was inviting the Respondent to meet with him and the senior teacher and the Head of department on the 12<sup>th</sup> February to decide a way forward. Counsel contended that the letter had been prompted by a number of omissions on the part of the Respondent, such as his failure to print and deliver examinations to students on time and his failure to issue homework to

learners of year 7, 11, and 13 on the 19/09/2012. Subsequently the respondent was summoned for a hearing to explain his misconduct by letter dated 20th of September 2012. It was the opinion of Counsel that these communications and letters which indicated the venue of the hearing , time of the hearing reason for the hearing and who should attend the hearing were evidence that the Respondent was actually given a hearing contrary to the Labour Officers findings that he was not.

Counsel further submitted that the respondent had admitted to his mistakes in writing and had apologised to the Principal. He had also made undertakings to

improve. He quoted the Respondents response to the letter dated 7<sup>th</sup> February supra, as follows:

***"I humbly apologise for having delayed an examination for year 10 Geography. I sincerely regret the inconvenience caused to you and your office at large."***

Counsel further went on to prove that the respondent had been given a hearing when he attended a meeting with the Principal, the Senior Head teacher and the head of department on the 10<sup>th</sup> February 2012 where he admitted his failure to issue examinations on time because he had misread the examinations timetable in which meeting he had been pardoned with a warning. He also quoted the respondents admission in a letter dated 11<sup>th</sup> December Marked "E", as follows:

***" I request your forgiveness.... I am very sorry for the inconvenience I caused to you and the school at large on Friday 7<sup>th</sup> December. This was the day when students were supposed to pick their reports. Unfortunately; I reached the school late and this caused a delay in issuing the reports to the students and parents."***

***Sir, I request that you give me a last chance and I promise to sort out everything that has been not okay on my side. For long you have always given me your advice as a parent and I do appreciate so much..."***

It was Counsels submission that a hearing was not a mere formality but rather a means to enable the determination of whether an employee was guilty of the charges levied against him or her. It was his opinion that what was important was that the employee should know the charges against him or her and be given an opportunity to respond to the charges through denial or admission.

In conclusion, counsel was of the view that the respondent had at all times known the infractions against him and he had at all time been given an opportunity to respond to them and he had at all times admitted them and sought an apology. Therefore the appellant had every right to take disciplinary action against him based on his admission which the appellant did by terminating the respondent's employment. He prayed that the labour officers ruling that the respondent had not been given a hearing should be set aside because it was wrong.

Mr. Bernard Namanya Counsel for the Respondent on the other hand, submitted that the labour officer came to the right conclusion when he held that the appellant had not accorded the Respondent a fair hearing and consequently the termination of his employment was unfair and unlawful. He argued that the appellant had breached section 66 of the Employment Act 2006,

because no hearing ever took place prior to the termination of the respondent's employment. According to him, the appellant had failed to adduce evidence before the labour officer that summons for a hearing were served upon and acknowledged by the respondent, that minutes and proceedings of the hearing were produced, and evidence of the decisions taken. The respondent also denied ever committing acts of misconduct and negligence of duty as claimed by the Appellant, although he had admitted to coming late to school on the 7<sup>th</sup> December when he was supposed to issue reports to learners and their parents. Counsel argued that this did not amount to a fundamental breach of contract under Section 69(3) of the Employment Act 2006. It was his opinion that terminating the Respondent on this ground exhibited high handedness and offended the provision of Section 75(i) of the Employment Act 2006.

Counsel criticised the Appellant for failing to prove to the Labour Officer that they had issued to the Respondent with a letter dated 20 September, which letter alleged that he had failed to give the learners of year 7, 11 and 13 homework, or that he had attended any meeting on the same date as alleged by the Appellant.

He argued that although the Respondent had admitted to the incident of his failure to print report cards for students on the 7<sup>th</sup> February 2012, it should be considered a normal occurrence in an employee/employer relationship which in this case had been discussed and resolved between them. He noted that in any case the respondent continued working after the incident, till his dismissal on the 11<sup>th</sup> December 2012 and therefore this could not be used as a basis for his dismissal.

**Counsel cited the case of Donna Kamuli vs Dfcu Bank, labour Dispute Claim No. 002 of 2015 in which this court quoted with approval the case of Queenville Atieno Owala vs Centre for Corporate Governance! Industrial Court of Kenya, cause 81/2012), which held that;**

***"It was insufficient that the respondent had various discussions with the claimant. It was immaterial that the claimant was even at one time appraised and found wanting by Dr. Okumbe. Appraisals and discussions held between employees and employers touching the employees work performance , do not add up to disciplinary hearing and can only be evidence of good or poor performance at a disciplinary hearing. Whatever records the respondent had against the claimant were to be subjected to the rigours of a disciplinary process before a decision could be made. Termination was lacking in both substantive validity and procedural fairness...."***

According to Counsel the appellant had not subjected all the allegations against the respondent

to a disciplinary hearing as required under Section 66 of the Employment Act and therefore invited court to find that; no hearing ever took place before the termination of the respondent, the respondents temporary absence from work did not constitute a fair reason for dismissal under section 75(i) of the Employment Act 2006 and that the employer did not act in accordance with the principles of natural justice and equity in terminating the respondent. He prayed that the appeal is dismissed and the Labour Officers decision is upheld.

In rejoinder Counsel for the appellant reiterated his earlier submissions and asserted that the respondent had been accorded a fair hearing and consequently his termination was fair and lawful. It was his opinion that given that the respondent had been informed of his misconduct which he fully understood and admitted rendered the institution of a hearing unnecessary. He further submitted that Section 66 of the Employment Act was not applicable because of the Respondent had admitted to his mistake. Counsel argued that the case of *Queenville Atieno Owala vs Centre for Corporate Governance (Industrial Court of Kenya, cause 81/2012)*, (*supra*) cited by the respondent is distinguishable from this case because in this case the claimant admits liability which rendered a hearing unnecessary. According to him the Respondent's admission removed any contention and therefore did not warrant a hearing.

### **Resolution by Court**

Before we resolve this appeal, we find it is important to state that the Main argument as we see it is whether the Respondent was given a hearing or not. We believe that the resolution of ground 1 will resolve ground 2 so we shall consider them concurrently.

After perusing the record and submissions of both Counsels we find that the respondent claimed that he was not accorded a fair hearing before dismissal. However the Respondents termination letter amounted to a summary dismissal .The letter stated in part that:

44

***We have had several verbal warnings which you seem to neglect...***

*This has come to a climax when on Friday of 7<sup>th</sup> of December 2012; you neglected duty of completing students' reports...*

*Our parents and learners raised concerns of not getting their reports in time and it was a big negative to our institution....*

*We therefore regard this as a serious negligence of duty and I advise you to stop working and hand in the school property in your possession as soon as possible...." Our emphasis.*

According to Section 69 of the Employment Act,

*(1) Summary termination shall take place when an employer terminates the service of an employee without notice or with less notice than that to which the employee is entitled by any statutory provision or contractual term.*

*(2) ...*

*(3) An employer is entitled to dismiss summarily and the dismissal shall be termed 'justified', where the employee has, by his or her conduct indicated that he or she has fundamentally broken his or her obligations arising under the contract of service."*

The Respondent contended that his dismissal was unfair and unlawful because he had not been given a fair hearing. He submitted that the Appellant had failed to adduce evidence before the labour officer to show that a hearing had taken place hence his unfair and unlawful termination.

Indeed we have not found any evidence indicating that a hearing actually took place. That notwithstanding, the Respondent did admit to his failure to issue an examination to learners of year 10 in his letter of apology dated 7<sup>th</sup> February 2012 and to his failure to issue learners report cards as scheduled on 7<sup>th</sup> December 2012, in his letter requesting for forgiveness dated 11<sup>th</sup> December 2012. This omission was the final stroke that led to his dismissal. He contended this omission did not amount to a fundamental breach of his contract under Section 69(3) and should not have been used as a basis for his dismissal. He

*called it a "...normal occurrence in an employee/employer relationship." The*

labour officer supported his assertion in his decision on the matter when he stated that;

*"... having not been able to give parents reports for their children on a scheduled date does not amount to serious negligence of duty. Kabojja International School Ltd is not the only school in this country where reports have not been given on scheduled time before. That was a simple omission that could not warrant a dismissal if that is the reason for the termination and yet if it happened once to the complainant; then I am afraid many teachers will have lost their jobs already in this country "*

We take exception to such an analogy. It is absurd to say the least, for one to assert that because a wrong was being condoned in other schools it should be upheld as norm in another.

Besides some of the fundamental responsibilities of the respondent as stipulated in his letter of appointment dated 01/11/2010 include:

**"... 8. Assessing of learners by setting, giving supervising and evaluating tests and examinations done...**

**10. Filling in Marks and comments on report cards for learners...**

**H. ...to show devotion to the duties and responsibilities assigned to you as well as exercise such duties and responsibilities professionally and with due diligence...'**

The Respondent admitted to failing to give an examination at the scheduled time and to issue report cards as scheduled. This in our view was a fundamental breach of his contract of service and it did not matter that he had done it once. His admission was a clear indication that he had failed to work with devotion and diligence. He stated that:

**"....I reached the school late and this caused a delay in issuing of reports to students and parents...."**

**"Sir I request you to give me a last chance and I promise to sort out everything that has been not okay on my side...."**

This admission was enough to entitle the employer/Appellant to summarily terminate the employee/Respondent which they did. The Respondents contention that he should have been subjected to a hearing was rendered redundant after he admitted his misconduct and the fact that the Appellant had denied him a **"last chance"** could not render the dismissal unlawful.

Further the respondents argument that he had been temporarily absent in accordance with section 75(i) was not tenable. Section 75(i) was not applicable to the facts in this case. The section provides:

***"The following shall not constitute fair reasons for dismissal or for the imposition of a disciplinary penalty-***

***(i) An employee's temporary absence from work for any period up to three months on reliable grounds including illness or injury."***

The respondent was not absent on reliable grounds, he admitted that he was late. He didn't give any reasons why he was late. He stated that:



***"...I reached the school late and this caused a delay in issuing of reports to students and parents...."***

It is our view that he cannot invoke this provision because he failed to provide reliable grounds to warrant his lateness.

We also believe that the Appellant as a private business entity and had a responsibility to delivering value for the fees that the parents had paid by delivering excellent academic services. A failure in this regard would most likely lead to loss trust from the parents and loss of business for the Appellants, a matter that should not be treated lightly. The respondent's failure to issue

\

reports as scheduled, had brought the Appellants into disrepute with the learners and parents. We therefore consider that his omission was not a mere infringement.

In conclusion, we find that the Respondents actions were not a mere infringement because he had fundamentally breached his contract of service and was therefore fairly and lawfully terminated in accordance with section 69(3) of the Employment Act 6 of 2006.

We therefore hold that the Labour Officer erred in law and fact when he held that the respondent had not been accorded a fair hearing and that his conduct was a mere infringement thereby coming to the conclusion that respondent's termination was unfair and unlawful. The Labour Officers decision is therefore set aside.

No order as to costs is made.

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

**Panelists**

- 3. MS. DOMINIC HABYALEMYE**
- 4. MR. PENINAH TUKAMWESIGA**
- 5. MR. EBYAU FIDEL**

**Dated 23<sup>rd</sup> june 2016**