

THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE APPEAL NO. 20 OF 2018
ARISING FROM KCCA/LDC/NO. 189/2017

EQUITY BANK (U) LTD **CLAIMANT**

VERSUS

KAVUMA MOSES **RESPONDENT**

BEFORE:

- 1. THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE**
- 2. THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA**

PANELISTS

1.MR. MICHEAL MAVUNWA

2. MS. SUSAN NABIRYE

3. MS. ADRINE NAMARA

AWARD

BACKGROUND

On 20/01/2014, the Respondent was employed by the Appellant Bank, as a banking officer. His terms and conditions of service were set out in his appointment letter, dated 20/1/2014, on page 7 of the record of Appeal. It is the Appellant's case that during the course of his duties at the Oasis Mall Equity Bank Branch, the Respondent was accused of being part of a fraudulent transaction, causing the Bank financial loss amounting to USD 1,450,000. He was arrested, detained at Police, charged. On 30/04/2015, he was remanded at

Luzira prison, together with other co-accused persons whom the **Anti-corruption Division of the High Court** found guilty of various charges, in **Uganda vs Serwamba & Ors, HCT -00-CN-0024/2015**. The Respondent remained in prison without bond or bail for 2 years. He was released on bail on the 6/5/2015 and terminated on 8/6/2015. He was subsequently acquitted in 2017. When he was released from prison, he filed a complaint against the Appellant and on 21/03/2018, the labour officer awarded in his favour.

The Appellant being dissatisfied with the award, requested for the record of proceedings on 23/03/2018 and again on 30/04/2018. The award and record of proceedings were availed to the Respondent on 4/05/2018 and 20/06/2018 respectively and hence this appeal.

GROUND OF APPEAL

- 1. The Labour Officer erred in law when he failed to properly evaluate the evidence on record and thereby came to a wrong conclusion.**
- 2. The labour officer erred in law when he failed to properly evaluate evidence on the record thereby coming to a wrong decision.**
- 3. The Labour Officer erred in law when he held that no reason was given to the Claimant for his termination and the termination was unfair.**
- 4. The Labour Officer erred in law when he held that the Appellant should have given the complaint a hearing.**
- 5. The Labour Officer erred in law in awarding the respondent Severance allowance without legal basis.**
- 6. The Labour Officer erred in law in awarding the Respondent one month's salary for alleged failure to give him a hearing.**
- 7. The Labour Officer erred in law when he awarded the complainant an additional compensation without legal basis.**

- 8. The Labour officer erred in law when he awarded the complainant salary arrears from the date of termination until the date of the award.**
- 9. The Labour officer erred in law in awarding the Claimant costs for the suit.**

REPRESENTATIONS

The Appellant was represented by Mr. Oosan Thomas holding brief for Mr. Khalid Mpata legal officer, in the Legal department at the Appellant and the Respondent was represented by Mr. Benard Banturaki of Lugolobi & CO Advocates.

SUBMISSIONS

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

Appellant raised a preliminary objection to the effect that the complaint was filed out of time and without following the provisions under Section 71(2) which provide for an application to be made to the labour officer to allow one to file outside the 3 months prescribed under subsection 1 of section 71. He contended that when making his ruling the labour officer did not rule on the Objection and there is no evidence that the Respondent made such an application. He cited **Engineer John Eric Mugenyi vs Uganda Electricity Generation Company, CA No. 167 of 2018** in which the Court of Appeal pronounced itself on labour officers entertaining matters filed out of time without hearing any applications for extension of time, and stated as follows:

“... if anything, the industrial Court could have in the very least declined to hear the matter and could have referred it back to the Labour officer with directions to consider whether the claim should be considered outside the of time limited by Section 71(2) of the Employment Act.”

He insisted that the Respondent did not file any application for extension of time because the Appellant was never party to such an application and the labour officer did not give a ruling on the Preliminary objection when it was raised, therefore the complaint was incompetent before the labour Officer and should not have been entertained.

Resolution

The Respondent did not file a reply to the Appeal. We shall resolve it notwithstanding.

Section 71(2) of the Employment Act, 2006, provides that:

“A complaint made under this section shall be made to a labour officer within three months of the date of dismissal, or such later date as the employee shall show to be just and equitable in the circumstances.”

It is our considered opinion that Counsel cited **Eric Mugenyi**(supra)out of context because the Justices of Appeal went ahead to hold that : *“a labour officer has power to allow a complaint outside the period of three months upon justification by the complainant as to why the complaint was brought outside the three month period or not within three months from the date the cause of action arose. The cause of action arises from the termination of the employment of an employee who has been in continuous employment of the employer for a minimum of 13 weeks immediately before the termination. ...they went further to state that a limitation period provided for by Parliament cannot be extended by a court of law unless the extension is permitted under the same law. With specific reference to section 62(1) of the Advocates Act and section 62 of the Parliamentary Elections Act, the Court of Appeal concluded that a limitation period is a bar to an action but section 71(2) of the Employment Act just prescribes the period within which to lodge a complaint with the labour officer with the rights of the labour officer to allow the complaint outside the period of*

three months. It does not limit the powers of the labour office as to when to allow the application. It only requires the complainant to justify the filing of the complaint outside the period of three months. In this case the labour officer without making any notes allowed the complaint to be filed. In any case he had powers to abridge the time within which to allow the complaint to be filed..”

A perusal of the Labour Officer’s award in the instant case showed that he exercised his discretion to extend the time for the Respondent to file the claim because at the time of his termination, the Claimant was incarcerated. Given the holding of the Court of Appeal quoted above, there is no requirement for a complainant to make a formal application or for the labour officer to explain why he or she chose to entertain a complaint filed outside the three months’ period. The Employment Act or the regulations made thereunder do not prescribe a procedure for making such an application. In the circumstances we cannot fault the labour officer, for choosing to entertain the Claimant’s case outside the 3 months and besides he stated the reason why he decided to entertain it, that is because the claimant was in prison when the cause of action arose. This ground therefore fails.

2.The labour officer erred in law the when he failed to properly evaluate evidence on the record thereby coming to a wrong decision.

We take exception to the drafting of such an omnibus ground, because it does not specify what point of law this court is expected to decide. The grounds of appeal are supposed to be concise and distinct objections which the appellant wants court to resolve and they should contain only matters relevant to the appeal. This ground does not concisely state which evidence which was not properly and which wrong decision was arrived at. We shall therefore not consider it.

2. The Labour Officer erred in law when he held that no reason was given to the Claimant for his termination and the termination was unfair.

Counsel for the Appellant contended that had the labour officer properly evaluated the evidence on the record he would not have found that there was no way a disciplinary hearing could have been conducted when the Respondent was on remand. He insisted that the Respondent on page 93 of the record testified that he could not attend any hearing in person while on remand. According to him the labour officer was wrong in stating that the Appellant should have waited for the Respondent to get bail and grant him a hearing, without any evidence of bail being granted to him.

Resolution.

A perusal of the record and particularly the Labour Officer's award clearly shows that he extensively discussed the Respondents argument that the termination was lawfully undertaken in accordance with section 65(1) supra, to by giving notice. Although Section 65 states one of the forms of termination, is termination with notice, it must be construed together with sections 66 and 68 which provide for giving an employee a reason or reasons for the termination, and an opportunity to respond to the reason or reasons and proof of the reason or reasons before the termination respectively. This Court in **Akeny Robert vs Uganda Communications Commission.....**which relied on **PK Semwogerere &Anor vs Attorney General (Constitutional Appeal No.1 of 2002**, held that *the interpretation of provisions of a Statute concerned with the same subject should be construed as a whole. Sections 66 and 68 are concerned with the procedures to be adopted when considering termination or dismissal of employees, therefore they should be construed together.* For emphasis they should be construed together with section 65(1) which provides for one of forms of termination.

We believe that the intention of the Employment Act 2006, was not to fetter the right of the employer to terminate an employee, the employer did not want anymore, but to ensure that the termination was done in line with the principles of natural Justice, that is that the employee is given notice about the infractions leveled against him or her, sufficient time to prepare a response or defence orally or in writing, an opportunity to an oral hearing before an impartial tribunal or disciplinary committee. see **EBIJU JAMES VS UMEME LTD HCCS NO. 0133 OF 2012.**

The circumstances in the current case however are such that the Claimant was remanded in prison on allegations that he participated in a fraud that occasioned loss to the Respondent. *Was the Respondent expected to wait until the criminal proceedings were brought to a conclusion?*

The Respondent's incarceration was not pre-determined, he was on remand on allegations of committing fraud. From the record however, we found that he was terminated when he was released on bail. He was released on bail on 6/5/2015 and his termination letter was dated 4/6/2015. It was established that, he received the termination letter on 8/6/2015. He was however rearrested on 25/6/2015. The Appellant, therefore had enough time to inform the Respondent about the reasons for his termination and to grant him opportunity to respond to these reasons before he was re-arrested. As already discussed section 65(1) has to be construed with section 66 and 68 and the trio must be invoked before the termination is effected.

In the circumstances the Appellant cannot be exonerated for its failure to give the Respondent a hearing and the excuse that he was in prison cannot stand, given that he was terminated when he was on bail. The position would have been different if the termination occurred when the Respondent was on indefinite remand with no option for bail. In such a situation the employer

would not be expected to wait indefinitely, in such a case, the termination of such an employee would be considered to be lawful.

In the instant case, there was a window of opportunity to ensure that the principles of natural justice are exercised but the Appellant did not use it. We therefore uphold the Labour officers finding that the Respondent was not given a reason for his termination and this rendered the termination unfair.

3.The Labour Officer erred in law when he held that the Apellant should have given the complaint a hearing.

The resolution of ground 2 above resolves this ground.

4.The Labour Officer erred in law in awarding the respondent Severance allowance without legal basis.

It was submitted for the Appellant that the labour officer exceeded his powers when he ordered the appellant to pay the Respondent Severance Allowance. According to Counsel the only remedies available to the Respondent for unfair termination are stated under sections 77(1) and 78(1), (2) and (3) of the Employment Act 2006and specifically basic compensatory order or four weeks wages and additional compensation of up to a maximum of three months wages. In his opinion payment of severance pay was not envisaged. He contended that the Labour officer contradicted himself when he awarded the Respondent severance allowance and in the same vain, he refused to invoke sections 91, 92(1) and 92(2) of the Employment Act, because the Respondent failed to prove that the Appellant had willfully and without good cause failed to pay it.

Resolution:

Section 87(a) of the Employment Act, entitles an employee who has been in an employer's continuous service for a period of 6 months but is unlawfully

dismissed/terminated to severance pay. Section 89 of the Act provides that severance allowance should be negotiable between the employer and employee. The Labour officer awarded the Respondent 1 month's salary for the 1 year he served. This Court in **Donna Kamuli vs DFCU Bank LDC 002 of 2015**, already settled the position where the employee and employer have not negotiated and agreed to a formula for calculating severance pay, to payment of 1 month's salary for every year the employee has served.

The contention that we are called upon to resolve however is the fact that he refused to invoke section 91 and 92(1) and (2) to award severance allowance.

91. Payment of severance allowance

(1) Where severance allowance is payable to an employee it shall be paid on the cessation of employment or on the grant of any leave of absence pending the cessation of employment, whichever occurs earlier.

(2) Where severance allowance is payable in respect of a deceased employee, it shall be paid to the surviving spouse of the employee within thirty days of the employer being informed of the employee's death or, where there is no spouse such other adult, dependent relative or guardian of a dependent relative as the labour officer may decide.

92. Failure to pay severance allowance

(1) An employer who is liable to pay severance allowance and who is willfully and without good cause fails to pay the allowance in the manner and within the time under this Act commits an offence.

(2) An employer who commits an offence under this section shall pay a fine calculated at two times the amount of the severance allowance payable, the fine shall be payable to the same person and in the same way as the severance of allowance is payable.

Our interpretation of section 91 above is that it provides the time within which the severance allowance should be paid in case of cessation of employment and or after the death of an employee.

Section 92 on the other hand provides for punishment of an employer who does not comply with section 91. The employee alleging noncompliance by the employer must however prove that the employer refused to pay severance allowance deliberately and without good cause, before section 92 can be invoked.

The labour officer stated that:

“I however find that the claimant has miserably failed to prove that the respondent willfully and without good cause failed to pay his accrued severance allowance. I therefore decline to invoke sections 91, 92(1) and 92(2) of the Employment Act No. 6 of 2006. ...”

We do not see the contradiction between this statement and his decision to award severance allowance, because having found that the Respondent was unlawfully terminated, section 87 entitled the Respondent to payment of severance allowance. He could only invoke section 91 and 92 if the Appellant refused to pay it willfully and without good cause, but the Respondent did not prove that the Appellant willfully refused to pay. In our considered opinion these sections would only apply where there was no dispute about the termination of the employee. That is in circumstances of cessation of employment or after court orders that an employee is paid severance allowance and it is deliberately not paid.

We therefore uphold the Labour Officer's decision to award 1 month's salary as severance allowance and find no contradiction with his denial of granting the remedy under section 92 of the Act(supra).

5.The Labour Officer erred in law in awarding the Respondent one month's salary for alleged failure to give him a hearing.

Counsel reiterated his submissions in support of ground 3 to the effect that the Respondent was in prison for over 2 years , therefore the Appellant could not conduct a hearing and had the labour officer properly evaluated the evidence he would have come to the conclusion that he Respondent was not entitled to 1 month's salary for failing to give him a hearing. In his opinion the Labour officer did not have jurisdiction to award the Respondent what he awarded save for 1 months' compensatory order, and additional 3 months wages. He cited **Equity bank vs Mugisha Musiimenta Rodger Labour Dispute Appeal No. 26 of 2017** in support of his argument that the Respondent was not entitled to 4 weeks' pay and therefore court should set aside the order for the award of Ugx. 850,000/- for failure to give the Respondent a fair hearing.

Section 78 provides that:

- (1) An order of compensation to an employee who has been unfairly terminated shall in all cases, include a basic compensatory order of four weeks' wages.*
- (2) An order of compensation to an employee whose services have been unfairly terminated may include additional compensation at the discretion of the labour officer, which shall be calculated taking into account the following-*
 - (a) the employee's length of service with the employer*

- (b) the reasonable expectation of the employee as to the length of time for which his or her employment with that employer might have continued but for the termination;*
 - (c) the opportunities available to the employee for securing comparable and suitable employment with another employer*
 - (d) the value of any severance allowance to which the employee is entitled under part IX*
 - (e) the right to press claims for any unpaid wages, expenses or other claims owing to the employee.*
 - (f) Any express reasonably incurred by the employee as a consequence of the termination*
 - (g) Any conduct of the employee which, to any extent caused or contributed to termination;*
 - (h) Any failure by the employee to reasonably mitigate the losses attributable to unjustified termination;*
 - (i) Any compensation, including ex gratia payments, in respect of termination of employment paid by employer and received by the employee*
- (3) The Maximum amount of additional compensation which may awarded under subsection (2) shall be three month's wages of dismissed employee, and the minimum shall ne one month's wages.*

Having found that the Respondent was unlawfully terminated, the Labour Officer was limited to grant compensation as prescribed under section 78 of the Employment Act.

It is settled that an unlawfully dismissed employee is entitled to compensation in form of damages. **In Edace Michel Edace Micheal vs Watoto Child Care Ministries LDA No. 16 of 2015**, this court held that section 78 of the Employment Act, 2006, “... *in our view covers whatever damages that could*

have arisen from illegal termination although section 78(3) provides for maximum amount of additional compensation which in our view is equivalent to damages.

Unlike the Industrial Court, the discretion of the Labour officer to award such damages under section 78(3) is limited to 3 months wages of the dismissed employee's salary..."

Therefore, the Labour officer is limited to award such an employee, a basic compensatory order of four weeks' wages and a maximum amount of additional compensation of between 1- and three-month's wages of the dismissed employee.

Therefore, the award of 1 months' salary, for the Appellant's failure to give the Respondent a fair hearing, in addition to the compensatory order was excessive and it is therefore set aside.

6.The Labour Officer erred in law when he awarded the complainant an additional compensation without legal basis.

Grounds 3, 4 and 5 resolve this ground in the negative. The Labour officer's award of additional compensatory order is upheld.

7.The Labour officer erred in law when he awarded the complainant salary arrears from the date of termination until the date of the award.

Counsel contended that the Respondent having been in prison from April 2015 until he was released in June 2017, he was not entitled to payment of wages as provided under section 41(5) and (6) of the Employment Act. He reiterated his submission about the fact that the labour officer is limited to award of the compensatory order under section 78, therefore the award of salary arrears was excessive. He cited **Netis Uganda versus chares Walakira, LDA No.022 of 2016**, in which this court's holding was to the effect that Section 78 was

intended to limit the labour officer's power in respect of the award of compensation and limits the award of compensatory to 4 months.

Therefore, the award of salary arrears from the date of termination should be set aside.

Section 41 of the Employment Act provides that:

“(1) Subject to subsection (2), wages shall be paid in legal tender to the employee entitled to payment.

...

(5) Wages shall not be payable to any employee in respect of any period he or she has been sentenced and imprisoned by a court of law.

(1) An employee is not entitled to receive wages in respect of any period where he or she is absent from work without authorization or good cause except that, in the case of an employee who has completed at least three months' continuous service with his or her employer, the following shall not constitute absence without good cause-

- (a) absence attributable to the occurrence of exceptional events preventing the employee from reaching his place of work or from working;*
- (b) absence attributable to a summons to attend a court of law or any other public authority having power to compel attendance; or*
- (c) absence attributable to the death of a member of the employee's family or dependent relative, subject to three days' absence on any one occasion and a maximum of six days in any one calendar year.*

(7) An employee who has completed at least three months' of continuous service and is absent from work on account of one of the situations specified in subsection (6), is entitled to receive wages as if he or she

had not been absent from work and had fully performed his or her duties under his or her contract of service throughout the absence, and his or her wages shall not, by reason of his or her absence, be subjected to any deduction.

The purpose of Section 41 is to ensure that an employee is paid for the services rendered to his or her employer in accordance with the contract of employment. Therefore an employee can only claim for payment of arrears where he or she rendered the services as set out in the contract of employment, but he or she was not paid for the said services. However, where the employee is absent from work without authorization or because he or she was sentenced and imprisoned by a court of law, such an employee is not entitled to payment of any wages.

The Respondent in the Instant case, was in prison from April 2015 to June 2017, and although he was acquitted, he was remanded on allegations of causing financial loss to the Appellant. He was therefore lawfully incarcerated. In the circumstances he did not render any services for the period he was in prison and in accordance with section 41(5) he was not entitled to payment of any wages.

We accordingly set aside the Labour officers award of salary arrears to the Respondent.

8.The Labour officer erred in law in awarding the Claimant costs for the suit.

It was Counsel's contention that Section 27 of the Civil Procedure Act cap 71 provides that costs are awarded at the discretion of court and since the labour office is not a court, he had no jurisdiction to invoke this section to award costs as he had done on page 76 of the record of appeal.

Indeed, costs are awarded at the discretion of Court and based on the merits of each case. Following the holding in **Eric Mugenyi vs UMEME** (supra), to the effect that the labour office is not a court, we agree with Counsel for the

Appellant that a labour officer cannot invoke the Civil procedure Act and Rules made thereunder. In the circumstances he made the award for costs in error. His award for costs is therefore set aside.

In conclusion the Appeal partially succeeds, with no order as to costs.

Delivered and signed by:

1.THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE

.....

2.THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA

.....

PANELISTS

1.MR. MICHEAL MAVUNWA

.....

2. MS. SUSAN NABIRYE

.....

3. MS. ADRINE NAMARA

.....

DATE: 28TH APRIL 2020