

UGANDA / JUDGMENT

Lutaaya v Akamba (U) Limited (Labour Dispute Reference 67 of 2020) [2023] UGIC 82 (27 March 2023) [2023] UGIC 82

COURT

Industrial Court of Uganda

BEFORE

Tumusiime-Mugisha, J, Aciro Panel Member,
Gidongo, Panel Member, Rwomushana, Panel
Member

CASE / FILE NUMBER

Labour Dispute Reference 67 of 2020

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THE REPUBLIC OF UGANDA

IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA

LABOUR DISPUTE REFERENCE NO.67 OF 2020

ARISING FROM KCCA/NDC/LC/40/2014.

LUTAAYA GERALD CLAIMANT

VERSUS

AKAMBA (U) LTD RESPONDENT

BEFORE:

THE HON. AG. HEAD JUDGE, LINDA LILLIAN TUMUSHME MUGISHA PANELISTS

1. MS. BEATRICE ACIRO@KENY
2. MS. ROSE GIDONGO
3. MR. JACK RWOMUSHANA

AWARD

15 FACTS

On 1/02/2012, the Claimant was employed by the Respondents as an Accountant. His initial contract expired on 31/12/2014 and was not renewed but he continued working until his summary dismissal on 4/12/2018. According to him the dismissal was unlawful because he was not accorded a fair hearing, hence this suit.

20 ISSUES

1. **Whether the termination of the claimant was lawful?**
2. **What remedies are available to the parties?**

REPRESENTATION

The Claimant was represented by Mr. Jonathan Elotu of M/S Lukwago & Co.

Advocates, Kampala and the Respondent is represented by Mr. David Ojjambo of Maven Advocates, Kampala.

RESOLUTION OF ISSUES

After carefully considering the evidence on the record the testimonies of both parties and the submissions of both Counsel, we found as follows:

30 1. Whether the termination of the claimant was lawful?

It is trite that before an employer can terminate or dismiss an employee, he or she must do the following; give the employee a reason or reasons for the termination or dismissal and an opportunity to respond to the reasons writing and or orally before an impartial disciplinary committee or Tribunal, within a reasonable time (Section 66 and 73(1)(b) of the Employment Act). The employer must prove the reasons or reasons for dismissal or termination and the reasons must be matters which the employer genuinely believed to exist and which caused him or her to dismiss the employee (see section 68 of the Employment Act).

40 45 50 It was submitted for the Claimant that on 4/12/2018, he was summarily dismissed on baseless allegations of gross misconduct and without giving him a fair hearing. Counsel contested the purported disciplinary meeting held on 1/12/2018, before the Claimant's dismissal, because the Claimant was not given notice about the said meeting. It was Counsel's submission that, on 30/11/2018, the Respondent's Chief Manager a one Kalanda Moses called the Claimant for a meeting at the Four ways group of Companies, where he found the Respondent's heads of departments waiting for him at the venue. According to the Counsel they all bombarded the Claimant with questions about his misconduct, yet he was not prepared to answer any of them. Although Counsel argued that the Claimant was not given enough time to prepare a response to the infractions leveled against him. The Claimant in his testimony confirmed that, he wrote a

letter to management in response to rumours, about his impending termination. In this letter, he sought for another chance of 4 months to enable him to complete his assignments. The letter is marked REX 5 on the Respondent's trial bundle.

Our analysis of this letter indicated that, the Claimant was previously warned about his conduct and particularly, about his late coming, irregularity at office and absenteeism. His letter dated 30/11/2019, stated in part as follows:

"... Rumour has been milling around that I may be sacked/dismissed before the end of this year. Reason being that I don't ' sit in office.

Dear members it is almost two years when I was given a warning letter about the same. In my opinion, I think I changed, and a lot of water has passed under the bridge since. I have tried to work hard for the good of our "

He went ahead to render explanations about his absenteeism and requested for management to give him a last chance. He stated thus *"... I am requesting Management for only one more CHANCE of 4 (four months to wind up all projects I have been handling ..."*

65 70 75 This letter was written on 30/11/2018 one day before the Disciplinary meeting took place on 1/12/2018. Given the contents of this letter, we do not think that, it was a coincidence that, the explanations were rendered a day before the meeting and that they were based on mere rumours. Even if we found the invitation to the disciplinary hearing dated 22/11/2018, unauthentic for bearing a signature of the author, the contents of the letter (supra) indicated that, he was aware of the infractions leveled against him because he rendered an explanation for each them, moreover, on 30/11/2018, before the meeting of 1/12/2018. We are not convinced that the disciplinary meeting was abrupt, and he was bombarded with questions he was not prepared to answer as claimed. This is because he rendered an explanation to all the infractions stated in the unsigned invitation to disciplinary hearing (supra) before the meeting. We also analysed the minutes of the meeting of 1/12/2018, and established that the agenda of the meeting was to discuss

his letter of 30/11/2018. Z]

Even if we disregarded the testimonies of RW2 Christine Nyasana and RW3 Nyapendi Christine and past warnings given to the claimant, in our analysis of the reasons for his termination in 2018, as already discussed the contents of the Claimant's letter/explanation dated 30/11/2018, left no doubt in our minds that he was aware of the infractions leveled against him and it was not a coincidence that, he was able to render such a detailed written explanation about each of the infractions as they were stated in the unsigned invitation to a disciplinary hearing.

85 90 In our considered opinion in addition to rendering a written explanation, he was accorded a hearing where he was further questioned about the same infractions, and he did make responses. Therefore, he cannot turn around now, to say that he was not accorded a fair hearing. As submitted by Counsel for the Respondent, this court is of the legal proposition that, a disciplinary hearing need not strictly conform to trial proceedings. All that is required is for the

accused employee to be notified about the infractions leveled against him or her, to be given an opportunity to respond to the infractions orally or in writing before an impartial disciplinary committee or tribunal. (see **Grace Matovu vs UMEME Ltd LDC No. 004/2014** and **Eseza Catherine Byakika vs National Social Security Fund LDC No. 057/2015**). We are therefore,

satisfied that the Respondent met the requirements of a disciplinary process.

We also found no nexus between the statutory declaration marked CEX 7 on the Claimant's trial bundle, which he purportedly made in December 2014 and the infractions leveled against him in 2018 or his introduction to the Italian Embassy for purposes of enabling secure a Visa and the case before this Court. In our considered view this evidence ought to have been adduced before the disciplinary meeting and not before this court. We are also inclined to agree with Counsel for the Claimant, that the testimonies of RW2 Christine Nyasana and RW3 Nyapendi Christine should have been made before the disciplinary hearing. We must emphasize that, the role of the Industrial Court is to ensure that, a disciplinary hearing is done in accordance with the law and not 105 to descend into the disciplinary arena of any organization or institution as Counsel for the Claimant seems to assert.

When we further analysed the Claimant's explanation and particularly the last part of the explanation where he requested to be given a last chance, moreover for only 4 months, to enable him to complete the projects he was handling at the Respondent, in our considered opinion this amounted to an unequivocal admission to having committed the infractions leveled against him.

In the circumstances we are inclined to agree with Counsel for the Respondent that, based on this admission the Respondent was justified to dismiss him without a hearing as was held by this court in **Kabojja International School vs Oyesige, LDA No. 003/2015**, but in this case he was accorded a hearing, in addition to him rendering a written explanation. We therefore, have no doubt in our minds that his dismissal was lawful. This issue is therefore resolved in the affirmative.

2. What remedies are available to the Parties?

Having found that his dismissal was lawful, the Claimant was not entitled to any of the remedies claimed.

This claim therefore fails. It is dismissed with no order as to costs.

Delivered and signed by:

THE HON. AG. HEAD JUDGE, LINDA LILLIAN TUMUSIIME Xg^USHA

125 PANELISTS

1. **MS. BEATRICE ACIRO OKENY**
2. **MS. ROSE GIDONGO**

3. MR. JACK RWOMUSHANA

DATE: 27/03/2023

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