

UGANDA / JUDGMENT

Mudusi v Robuda Luuka Sacco (Labour Dispute Reference No. 2 of 2021) [2022] UGIC 41 (18 March 2022) [2022] UGIC 41

COURT

Industrial Court of Uganda

BEFORE

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

CASE / FILE NUMBER

Labour Dispute Reference No. 2 of 2021

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THE REPUBLIC OF UGANDA

IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA

LABOUR DISPUTE REFERENCE No. 002 OF 2021

ARISING FROM CR/LO/CL/01

MUDUSI ROBERT CLAIMANT

VERSUS

ROBUDA LUUKA SACCO RESPONDENT

BEFORE:

1. THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA PANELISTS

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

3. MR. JACK RWOMUSHANA

AWARD

BRIEF FACTS

The Claimant was employed by the Respondent Company from 2002 to November 2018. By the time of his suspension, he was serving a 2-year contract as Manager of the SACCO, from 5/01/2018 earning 600,000/- per month, amounting to Ugx. 7,200,000/ per annum. He was suspended based on a number of allegations, including but not limited to; gross insubordination, assuming powers of chairman loaning SACCO Money illegally among others. To date, he has not received any feedback regarding the status of his employment with the SACCO. His claim in this court is for unlawful termination.

The Respondent alleges that the Claimant took a loan of Ugx. 10 million from the ugazi Women's Empowerment SACCO and gave personal security of his car number : UAU 014 Q contrary to the regulations of the SACCO , therefore, he is not entitled to the remedies sought.

ISSUES

- 1. whether the Claimant was terminated by the Respondent , if so was the termination?
- 2. whether the Claimant is entitled to the remedies?

EVIDENCE

The Claimant testified that he was terminated, although he was not given a termination letter. He said that he was suspended from 8/11/2018 to date, on several allegations as stated at page 7 and 8 of his trial bundle. It was also his testimony that the loan which he acquired was approved by the executive committee of the SACCO but he did not prove it.

Rw1, Magulu John, the Acting Chairperson of the SACCO testified that the Claimant usurped the roles of Management, which included the credit officer, cashier and records officer. He said that, the investigation was concluded in July 2020 and the delay was caused by financial constraints in the SACCO. However, when it was issued it was shared with all the SACCO members in the absence of the Claimant who was invited bt he did not show up. According to him the report revealed gross mismanagement of the SACCO by the Claimant.

SUBMISSIONS

In her submission, Counsel for the Claimant restated the facts of the case and cited Section 63 of the Employment Act to the effect that, whenever an employer

is conducting an inquiry which he has reason to believe may reveal a cause for dismissal, he or she may suspend the employee on half pay for not more that 4 weeks. She contended that, the Respondent suspended the Claimant on 29/10/2018, pending investigations and to date, he has

not received any communication regarding his employment status or a termination letter. It was her submission that given RW1's testimony that, the investigations were concluded in July 2020, and the findings were shared with the SACCO members in the absence of the Claimant, he was not subjected to a disciplinary hearing to enable him defend himself. She further contended that, the Respondent contravened section 63(2) of the Employment Act because the investigations took 1 year and 7 months which was outside the scope of the 1 month provided under sub section 2 of section 63. She relied on **Mudoma Charles vs Kenfrieight LDC No, 042 of 2015**, for the legal proposition that, once the suspension exceeds 4 weeks, and no communication is rendered about the status of investigations or about the possibility of subjecting the employee to disciplinary proceedings, such a suspension is illegal and it amounts to termination which is unlawful. She argued that the claimant's termination was unlawful.

In reply Counsel for the Respondent submitted that the claimant admitted that Lugazi Women Empowerment Group is not a member of the SACCO but it made a fixed saving in the Respondent SACCO of Ugx. 10,000,000/=. He further argued that, whereas the claimant testified that this was a loan, it was established that it was actually a fixed deposit into the SACCO and it was not sanctioned by the Board of the SACCO.

He contended that the Respondent only suspended the Claimant but it has never terminated him because he did not adduce any termination letter. It was further his submission that the Claimant procured the loan fraudulently, that is why the Claimant used his private property to secure it, which is not permitted by the SACCO. He prayed that the Claimant was not entitled to any of the remedies sought.

DECISION OF COURT

We have carefully considered the evidence on the record and both Counsel's submissions and established that, it was not in dispute that the Claimant was suspended by letter dated 29/10/2018, effective 8/11/2018, pending the investigation of several allegations against him regarding his mismanagement of the SACCO. At the time of his suspension, he was serving as the Manager of the SACCO under a 2-year contract effective 1/01/2018. He was earning Ugx.600,000/ per month. It is also not in dispute that one of the allegations against him was that, he applied for a loan of Ugx. 10,000,000/- from the Lugazi Women Empowerment Group, purportedly for and on behalf of the SACCO but he used his vehicle to secure it. It is not in dispute that there is nothing on the record to indicate that the claimant was informed about the findings of the interview or that he was given a hearing and an opportunity to defend himself.

Section 63 of the Employment Act, which provides for suspension, states that:

(1) Whenever an employer is conducting an inquiry which he has reason to believe may reveal a cause for dismissal of an employee, the employer may suspend the employee on half pay.

(2) Any suspension under subsection (1) shall not exceed 4 weeks or the duration of the inquiry whichever is shorter.(emphasis ours).

We have already established that the Claimant in the instant case was suspended from 8/11/2018 until July 2020 when the investigations were concluded. This was clearly outside the 4 weeks period prescribed under section 63(2) (supra). We found nothing on the record to indicate that during the suspension, the Respondent took any steps to communicate the status of the investigation to the Claimant or to how that it subjected him to any disciplinary action as is required under section 66 of the Employment Act. This court in **Mudoma Charles vs Kenfrieght LDC No, 042 of 2015**, which was relied on by the Claimant, is to the effect that, once the suspension of an employee pending investigation exceeds 4 weeks and no communication is given to the employee about the status of investigations or whether the employee would be subjected to disciplinary proceedings as provided under section 66(1) and (2), such a suspension is illegal and it amounts to termination.

However, Claimant admitted that he had applied for a loan in the name of the SACCO, for and on behalf of the SACCO as alleged by the Respondent. We established that, he signed for the loan in his own names, as the borrower and secured it with his own Vehicle (see Exhibit "H"). During cross examination, he testified that, that he applied for the said loan and it was the practice for the SACCO, to secure such loans with personal property. He also said that, this loan in particular, was sanctioned by a resolution of the Executive Committee of the SACCO and it was procured in accordance with the byelaws of the SACCO. He however failed to provide Court with the minutes in which the Executive Committee made the resolution authorising him to apply for the loan and he did not provide the provision in the bye laws which empowered him to apply for the loan for and on behalf of the SACCO. We also established that, his roles as Manager of the SACCO, did not include the role of resource mobilization because the Organisation had a credit Officer, whom we believe was responsible for such roles. We did not find any evidence to show that he was authorized by the Executive Committee of the SACCO to engage in the procurement any loan for and on behalf of the SACCO. In fact, we did not find any evidence to indicate that the loan from the Lugazi Women's Empowerment Group was actually given to the SACCO because the receipt on which it was recorded indicated that it Ugx. 10,Million, was a fixed deposit from the Women Empowerment Group. There was nothing on the record to show that, this group was a member of the SACCO or to indicate that they Loaned the SACCO any money. Therefore the question in our mind was; if it was a loan to the SACCO, why was it receipted as a fixed deposit? Why was it secured by the Claimant's personal property and not that of the SACCO?

In the absence of evidence that the Claimant was authorized by the Executive Committee or that there is a provision in the byelaws which allowed him secure loans for and on behalf of the SACCO, we have no reason to doubt the Respondent's assertion that he used the SACCO to secure a personal loan and that is why he used his personal property to secure it.

We are therefore, inclined to agree with Counsel for the Respondent that this loan was acquired fraudulently and outside the scope of the Claimants role as Manager of the SACCO which in our considered opinion this was a fundamental breach of his contract of Employment. The Respondent was therefore, entitled and justified to summarily dismiss the Claimant in accordance with Section 69 (3) of the Employment Act. Section 69 (3) provides as follows:

"*69. summary termination*

* ... *

(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/she has fundamentally broken his or her obligations arising under the contract of service"

However, Section 66(1) and (2) provides that:

"66. Notification and hearing before termination

*(1) Notwithstanding any other provision of this part, an employer shall before (*our emphasis) *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 (emphasis ours) and the employee is entitled to have another person of his or her choice present during this explanation,*

(2) Notwithstanding any other provision of this part, an employer shall before reaching a 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 subsection (1) may make.

* ... "

As already discussed, the Claimant was under suspension from 18/11/2018 until July 2020 when the investigations against him were concluded which amounted to termination. We have also established that he, fundamentally breached his contract, when he secured a loan, purportedly for and on behalf of the Respondent SACCO, without any authorization, moreover outside the scope of his assigned duties, as Manager of the SACCO as shown in his appointment letter. Therefore, the Respondent was justified to summarily dismiss him. However, Section 66(4) entitles him to a hearing notwithstanding the provisions under section 69(3) (supra). We have already established that, the Claimant was suspended for more than 4 weeks, the investigations into the allegations against him having been completed in July 2020, that is 1 year and 7 months later. We also established that, he was not subjected to the procedure for termination as provided under section 66(1) and (2)(supra). The Respondent is therefore, only faulted for not following the procedure for termination as provided by law.

It is therefore, our finding that the termination in this case was substantively correct because the Claimant fundamentally breached his employment when he used the SACCO to secure a personal loan under the pretext that it was for the SACCO whereas not(see Exhibit "H") but procedurally flawed for not following the correct procedure under section 66(1) and (2), therefore it the termination amounted to unfair termination.

2.what are the remedies available to the Claimant?

According to his memorandum of claim, he claimed for the following:

- a) An order that the Respondent unfairly terminated him from employment. We have already established that his suspension exceeded the 4 weeks contrary to Section 63(1) supra, thus rendering the suspension, a termination and although this court held that the termination would amount to unlawful termination, having established that the Claimant committed a fundamental breach of his contract, in this case the termination would amount to unfair termination.
- b) An order for payment in lieu of notice as follows:
- Ugx, 1,800,000/- as 1 month's payment in lieu of notice. We established that the Claimant's appointment letter marked "A2" entitled him to annual salary of Ugx. 7,200,000/- which amounted to Ugx. 600,000/- per month. By the time of his

termination, he had only served 10 months of his 2-year contract. In the circumstances, he would be entitled to 2 weeks' notice as provided under section 58 of the Employment Act, amounting to half a month pay of Ugx. 300,000/=

- c) Order for compensation for unlawful termination.
- d) We have established that the Claimant's termination was substantively lawful, therefore his only remedy is for procedural impropriety as provided under Section 66(4), amounting to 4 weeks pay. We therefore award him Ugx. 600,000/- as 4 weeks' pay.
- Recovery of the loan amounting to 13,000,000/-. The claimant failed to prove that application for the loan was authorised by the SACCO Executive Committee resolution or the Byelaws or that it was actually deposited into the SACCO Cooffers. In the circumstances this claim fails.
- e) Payment of Ug. 9,600,000/- for the 16 years worked by the Claimant.

This claim is not substantiated, therefore we have no basis to award it. In any case according to his appointment letter marked "A2", the Claimant was serving under a 2-year contract.

- f) Claim for unpaid wages amounting to Ugx. 8,400,000/- for 14 months from 8/11/2018 to 5/05/2020 when the contract expired.

Given that he was entitled to half pay while on suspension and having found that it was unfair to keep him on an indefinite suspension, therefore rendering the status of his employment unclear, we shall award him half of the wages per month for 14 months as provided under section 63(1) (Supra), amounting to Ugx. 4,200,000/- .

- g) General Damages of Ugx. 10,000,000/-

having already established that the Claimant fundamentally breached his contract, he is not entitled to an award of general damages.

- h) An interest rate of 12% per annum shall accrue to all the pecuniary awards made above from the date of this award until payment in full.

In conclusion the Claim partially succeeds in the terms stated above. No order as to costs is made.

2. THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA PANELISTS 1. MS. ROSE GIDONGO 2. MS. BEATRICE ACIRO 3. MR. JACK RWOMUSHANA DATE: 18/03/2022

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