

UGANDA / JUDGMENT

Norah Nabuuma v C.B.S LTD (Labour Dispute Claim 68 of 2014) [2019] UGIC 220 (29 May 2019) [2019] UGIC 220

COURT

Industrial Court of Uganda

BEFORE

Ruhinda-Ntengye, J, Tumusiime-Mugisha, J

CASE / FILE NUMBER

Labour Dispute Claim 68 of 2014

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THE REPUBLIC OF UGANDA

IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA

LABOUR DISPUTE CLAIM NO.64 OF 2014

ARISING FROM HCT-CS-94/2014

NORAH NABUUMA KAWESA CLAIMANT

VERSUS

C. B. S LTD RESPONDENT

BEFORE:

- 1. THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE
- 2. THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA PANELISTS
- 1. MR. EBAYU FIDEL
- 2. MS. SUSAN NABIRYE
- 3. MS. JULIAN NYACHWO

AWARD

The Claimant was employed by the Respondent on 10/5/2005 on an oral contract, as an announcement Reader on account of her voice and fluency in English and Luganda. After 3 years of service she was elevated to the office of announcement Assessor which is similar to an editor and given charge over the announcements desk/office. She however continued to serve as announcement reader. According to her she was paid Ugx. 900,000/- per month. On 20/08/2013 she was summarily dismissed by the Respondent. The termination letter cited "restructuring exercise" as the reason for her dismissal. Which she contends was unlawful.

The matter was partially settled on 4/8/2017 and a partial consent agreement was signed on 16/11/2017 and filed in court on 11/12/2017.

The residue issues were as follows:

- **1 . Whether the Claimant was entitled to any payment during the period the radio Station was closed by the Regulatory Authority?**
- **2 Whether the Claimant was entitled to damages?**

When the matter came up for hearing Counsel for the Respondent raised an objection to the effect that the ground that the Claimant was party to HCCS NO.234/2009 against the Attorney General for the same issue. In reply Counsel for the Claimant was of the View that this court should entertain the issue given its mandate to resolve employment disputes.

Court ruled that the parties should proceed and make submissions on damages Respondent. only. Counsel for the Claimant sought leave to allow him call witnesses which was granted. The Claimant adduced her own evidence and the Respondents adduced evidence through one Robert Kasozi the Human Resources manager of the

SUBMISSIONS

It was submitted for the Claimant that, RW1 Robert Kasozi, the Respondent's Human Resource Manager testified that she was dismissed because of her persistent misconduct by allegedly broadcasting "illegal" announcements and that she would not have been terminated in the restructuring exercise if it had not been for her misconduct. He had also testified that the claimant had undergone witness did not produce any documentary evidence of the disciplinary proceedings or recordings of the same. He contended that the Claimant in her testimony denied ever being subjected to any disciplinary proceedings for any misconduct and that the programs director coerced her to write an apology or else she would be fired. According to Counsel the apology and suspension were not imposed because of the alleged "illegal" announcements but because she was alleged to have disrespected the Director programs. He also contended that the alleged "illegal" announcements were about reports of the Claimant's clan meetings, the Civet heart (Ffumbe) held at Bulange Mengo and such announcements were allowed in as far as they promoted the Buganda Culture, which was one of the Respondents policy objectives. It was Counsel's submission that the claimant testified that all announcements concerning the

promotion of health, environment, conservation and social responsibility were broadcast free of charge and their broadcasting did not require special permission from the Director programs. disciplinary processes in which she was asked to apologize but she was suspended for the same "illegal" announcements. Counsel however contended that, the

According to him, by entering into a partial Consent with the Claimant on this matter, the Respondent had conceded that her termination was unlawful and therefore she should be awarded general damages.

In reply counsel for the respondent admitted that the Claimant was employed by the Respondent. He also admitted that by consent the Claimant was paid for accumulated leave, 2 months' pay in lieu of notice, severance allowance, provident contribution and all her social security benefits were updated with the Fund. He imply that the Respondent conceded that the termination was wrongful. however refuted the assertion that by paying these monies the Respondent had conceded that it unlawfully terminated the claimant. According to him, the Respondent was always ready and willing to pay all that was due to her at the time of her termination. It was his submission that the consent should not be used to

He asserted that the Claimant was terminated on grounds of restructuring the commissioner in writing, if the organization contemplated the termination of not less than 10 employees over ^a period of not more than 3 months for reasons of an economic, technological, structural or similar nature. He argued that in the instant case the restructuring was done in phases and it only affected departments of less than 10 people at ^a time and it was gradual and lasted for more than 3 months. It was his submission that restructuring was ^a justifiable reason for termination and Section 68 of the Employment Act. He was therefore of the view that there was no need to award the Claimant general damages. He also cited **OMODING SIMON VS RAKAI HEALTH SCIENCES PROGRAM DEPARTMENT LDC No.39 OF 2016** in which it was stated that having found that the termination was lawful, no damages arise out of lawful termination. Respondent's departments and her termination letter clearly stated so. He argued that Section 81 of the Employment Act, only required an employer to notify the justifiable reason for termination. He invited Court to find that the in the instant case, the termination was forjustifiable reasons and it was done in accordance with in support of his assertion, he cited **DAVID KALYANGO VS RAKAI HEALTH SCIENCES PROGRAMME LDC No. 038/2016** which was to the effect that restructuring was ^a

Counsel further submitted that according to RWI's testimony, the Claimant appeared before ^a disciplinary committee and was suspended and even after the suspension she was not remorseful and repeated the same conduct.

He argued that general damages flowing from employment matters are restricted to the notice period provided either in the employment contract or implied under compensation for unlawful dismissal of an employee should be limited to the monetary value of the period that was necessary to give proper notice of termination which is commonly known in law as compensation in lieu of notice, ^a position he stated was affirmed in **BARCLAYS**

BANK VS GODFREY MUBIRU SCCA No.1/1998. Section 58 of the Employment Act. He relied on **BANK OF UGANDA VS BETTY TINKAMANYIRE SCCA No. 12/2007** whose holding was to the effect that

He contended that in the instant case, the Claimant admitted that she received 2 months' pay in lieu of notice amounting to Ugx. 1,483,000/= and given that she had worked for the Respondent for 8 years she would still be entitled to 2 months' notices in lieu of notice as provided under Section 58(3) (c) of the Employment Act, 2006. He also cited **ENG. PASCAL GAKYARO VS CIVIL AVIATION CACA. No. 60/2006** and **GUMISIRZA CAROLINE KALISA VS HIMA CEMENT LTD HCCS No. 84/2012** to support the assertion that General damages should be limited to the notice period.

He contended that the Claimant already received compensation in lieu of notice therefore she is not entitled to any other damages from the respondent.

DECISION OF COURT

The Claimants termination letter dated 20/08/2013, states that;

"Due to the ongoing restructuring in the company, management has found it inevitable to downsize its staffbase.

We regret to inform you that you are one of the many employees who have been affected by this development.

In this respect we write to advise you that your services at CBS have been terminated with immediate effect...."

According to her testimony the claimant admits that her department initially comprised of 4 announcers but she was singled out for termination because she made announcements about the outcomes of her clan meeting held at Bulange without authorisation. According to her, authorisation was not required, given that she was promoting Buganda culture. She said she had a responsibility to inform the public about the meeting at Bulange and although the announcements were not endorsed, it was her responsibility to inform the Public. The Claimant does not deny that she made announcements about her clan's meetings without clearance. It is apparent from her testimony that she did not think she had made ^a mistake to broadcast such announcements without authorisation to air them, because according to her it was her responsibility to inform the public. She further testified that she was asked to stop playing her clan song, but she insisted it was part of the announcements and it was promoting culture. Counsel for the Claimant also submitted that she was suspended on allegations that she disrespected the general manager. She said

> *"... I informed the Public that the Clan leader was not the correct person to be in that position.*

The consent of CBS was not required before I could air the announcement about the meeting....

Yes I remember it was Abbey Mukiibi who told me to stop playing my clan song on air...

Yes my clan song was part of the announcements. I was promoting culture during the slotfor announcements"

From her testimony it seems to us that the Respondent singled her out for redundancy because of her failure to obey lawful orders. It seems that the Claimant used her position as the Respondent's announcer and assessor of announcements of restructuring. to push her clan's agenda without seeking authorisation to do so, under the pretext that she was promoting culture. It is also clear that her termination was as ^a result

follows: However termination of employment through redundancy being an involuntary termination, must be procedurally fair and substantially justifiable and must follow the law as provided under section 81 of the Employment Act 2006 which states as

***"81. Collective termination"**

Where an employer contemplates termination of not less than ten employees over a period of not more than 3 months for reasons of an economic, technological structural or similar nature he or she shall

a) Provide the representative of the labour union, if any that represent the employees in the undertaking with relevant information and in good time which shall be a period of at least 4 weeks before the first

out, and the information in paragraph (a) shall include the names of the representatives of the labour Union in any that represent the employees in the undertaking. of the terminations shall take effect, except where the employer can show that it was not reasonably practicable to comply with such a time limit having regard to the reasons for the terminations contemplated, the number and categories of workers likely to be affected and the period over which the terminations shall be carried

b) Notify the commissioner in writing of the reasons for the terminations, the and categories of workers likely to be affected and the period over which the terminations are intended and the period over which the terminations are intended to be carried out.

2) An employer who acts in breach of this section commits an offence.

Our interpretation of this Section is that the termination should be of 10 or more employees, it must be for valid and justifiable reason or reasons and the period within which the exercise will be undertaken should be communicated to the targeted employees. The said employees that are considered for termination under the redundancy exercise should be notified at least 4 weeks before the termination and the commissioner labour must be notified about the said termination in writing.

We respectfully do not agree with the Respondent's submission that because the restructuring was done in a phased manner the procedure under section 81 did not have to be followed. It is our considered view that the Respondent ought to have notified the staff in the department that

was being considered for restructuring about the reasons for the restructuring and when it was scheduled to take place. Although Section 81 does not make it ^a requirement to communicate the selection criteria, it is our considered view that the employees should be involved and informed about the process of restructuring or re- organization, before it takes place. The Respondent did not adduce any evidence to show that it had complied with the provisions of Section 81 in as far as notifying the targeted employees in the announcement department about the said restructuring of the department.

However even if the restructuring procedure was flawed, the fact that it happened and there was a reduction in the number of staff in the announcement department was not in dispute.

In the circumstances the Claimant's termination by restructuring was not unlawful. We however fault the Respondent for failing to follow the proper procedure, when they failed to inform the Claimant about the restructuring.

Whether the claimant was entitled to the award of general damages?

1-002 at page 14 as follows: Counsel for the Claimant cited **LIVINGSTONE V RAWYARDS COAL CO. LTD(1880) 5 APP CAS 25 AT 39** quoted with approval in McGregor on Damages 18th edition par

" that sum of money which will put the party who has been injured, or who has suffered in the same position as he would have been if he had not sustained the wrong for which he is now getting compensation or reparation."* He also cited **PREHN V ROYAL BANK OF LIVERPOOL (1870) LR.5 EX.92 AT 99-100** quoted in McGregor(supra), that:

complained of." "General damages ... are such as the jury may give when the judge cannot point out any measure by which they are to be assessed except the opinion and judgment of a reasonable man. Special damages are given in respect of any consequences reasonably and probably arising from the breach

Indeed this court in many cases has decided that the only remedy for an employee who was unlawfully dismissed is damages. Therefore where an employee employed under a contract of personal services is wrongfully dismissed, he or she has no claim under the contract after repudiation. The employee's only claim is for damages for having been prevented from earning his or her remuneration and the employee must do everything he or she reasonably can, to mitigate them.

We have carefully examined the submissions of both Counsel made on the issue of damages which the Claimant categorized into damages for unlawful termination, damages for wrongful termination, damages for prospective earnings and damages for unlawful enrichment.

We have no doubt in our minds that the claimant was terminated as ^a result of ^a restructuring process which in fact took place, therefore the termination was lawful. Although the Respondent had a right to restructure its organization in accordance with section 81 of the Employment Act (supra), the Claimant was entitled to be informed about the

restructuring before it occurred, just like anybody else that was likely to be affected by it. We appreciate the effect the termination had on the Claimant's mind when she became aware of her termination as ^a result of the restructuring which was aware of.

In the circumstances the Claimant is entitled to an award of General damages for not being informed about the restructuring before it occurred. We think Ugx. 900,000/- is sufficient.

In conclusion this claim substantially fails, save for the award of Ugx. 900,000/= for the Respondent's failure to notify the Claimant before undertaking the restructuring of her department. No order as to costs is made.

Delivered and signed by:

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

PANELISTS

1. MR. EBAYU FIDEL
2. MS. SUSAN NABIRYE
3. MS. JULIAN NYACHWO DATE

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