

UGANDA / JUDGMENT

Nsubuga v China International Water and Electric Corporation (Labour Dispute Reference 127 of 2020) [2024] UGIC 51 (11 October 2024)

[2024] UGIC 51

COURT

Industrial Court of Uganda

BEFORE

Wabwire Musana, J, Musimbi, Panel Member,
Bigirimana penal member, Lapenga

CASE / FILE NUMBER

Labour Dispute Reference 127 of 2020

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THE REPUBLIC OF UGANDA

IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA

LABOUR DISPUTE REFERENCE NO. 127 OF 2020

(Arising from Labour Complaint No. KCCA/MAK/LC/036/2020)

DR. NSUBUGA KEVIN WILSON BEN CLAIMANT

VERSUS

RESPONDENT CHINA INTERNATIONAL WATER & ELECTRIC CORPORATION

Before;

The Hon. Justice Anthony Wabwire Musana.

Panelists: Hon. Jimmy Musimbi, Hon. Emmanuel Bigirimana & Hon. Can Amos Lapenga.

Representation:

- *1. Mr. Newton Oturuke of Ms. Kasenene & Co. Advocates for the Claimant.*
- *2. Mr. Timothy Isiko Benon Makumbi of Ms. Ortus Advocates for the Respondent.*

Heard: 19th March 2024

Determined: 1st October 2024

(*Case Summary*

Employment law- unlawful termination-termination without notice- whether Claimant's summary termination is lawful- The claimant was employed as a medical doctor on successive one-year contracts from September 2017, with his last contract ending in September 2020. On April 6, 2020, he was terminated without notice or reason, prompting him to file a complaint for unlawful termination. The Respondent claimed that the Claimant was summarily dismissed for misconduct, but the court found no evidence. The court ruled that his termination was unlawful since he was not given notice, a reason, or a hearing.

Remedies-damages-severance pay- The Claimant was awarded payment in lieu of notice, general damages and severance pay. The court declined to award costs to the Claimant as it found no misconduct on the part of the Respondent.

AWARD

[1] The Respondent is a construction company. On the 1st of September 2017, it employed the Claimant as a Medical Doctor on a one-year contract with a monthly salary of UGX 2,500,000/=.

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The Claimant was required to respond to medical and health issues presented by the Respondent's staff. The Claimant was given a new one-year contract on the 1st of October 2018 at a monthly salary of UGX 3,100,000/= and another one-year contract on the 1st of October 2019. The other terms remained the same. On the 6th of April 2020, the Claimant received a^{^a} termination letter advising him that his term of employment was ending on that date. He was to be paid UGX 3,763,400/= for March and salary until the 5th of April 2020. On the 14th of June 2020, he filed a complaint before the Labour Officer at Makindye. The matter was unresolved, and on the 14th of August 2020, Counsel for the CLaiamnt referred the matter to this Court.

- [2] In his memorandum of claim, the Claimant sought a declaration that he was unlawfully terminated. He asked for general, punitive and aggravated damages, compensation in lieu of notice basic compensation, severance pay and costs of the claim. He said his termination was without notice or payment in lieu of notice, without justifiable reason, and he was not paid severance pay. He asked for UGX 100,000,000/= in general damages, UGX 100,000,000/= for punitive and aggravated damages, UGX 3,100,000/= as compensation in lieu of notice,

UGX 20,000,000/= as severance pay or terminal benefits, interest at 30% per annum for the date the cause of action arose until payment in full and costs of the claim.

- [3] In its defence filed before this Court on the 2nd of September 2020, the Respondent contended that the Claimant's term of employment was summarily ended on the 28th of February 2020 because of gross misconduct. As such, he was served with ^a summary dismissal letter. The Claimant then asked for a termination letter under the guise of seeking alternative employment, but he wished to lodge a claim. It was suggested that the Labour Office at Makindye hastily and unceremoniously concluded the session and was unfair. The Respondent maintained that the Claimant's service ended with summary dismissal, not termination.

The proceedings and evidence

- [4] The parties filed ^a joint scheduling memorandum on the 12th of April 2021.
- [5] On the 19th of April 2024, when the matter was called for ^a hearing, the Respondent was absent and unrepresented. Mr. Oturuke, appearing for the Claimant, asked to proceed ex parte. He suggested that his opposite number, Mr. Abdu Busiinge, was on notice for a hearing, having attended court when the matter was last called on the 28th of November 2023.
- [6] In our consideration and under order 9 Rule 20 (1)(a) of the Civil Procedure Rules S.1 71-1, we were satisfied that the Respondent had due notice of the fixture. Therefore, we granted the Claimant leave to proceed ex parte.
- The following issues were framed for determination. [7]
- *(i) Whether the claimant was lawfully terminated or dismissed from the Respondent?*
- *(ii) What remedies are the parties entitled to?*

The Claimant's evidence.

- [8] In his witness statement, the claimant told us that on the 6th of April 2020, he was summoned by Yang Yi, the Respondent's assistant project manager. The Manager served him with a termination letter, asking him to vacate the Respondent's premises immediately. He was dissatisfied with his termination and lodged a claim for illegal termination. It was his evidence that his employment contract was due to expire on the 30th of September 2020. He said that Mr. Yang irrationally and illegally terminated him. Upon filing his claim, the Respondent's Advocates, M/8 Nazami & Co. Advocates, argued that he had been summarily dismissed on the grounds of misconduct. He said that the notice of dismissal was alien to him and had not been produced before the labour officer during mediation. He also told us that he had never been subjected to disciplinary proceedings during his service. In his view, the notice of dismissal was fabricated and an afterthought. He said that ever since he was terminated, he had been unable to find any other employment because he could not get a

recommendation letter from the Respondent. He said he had suffered immense psychological torture and inconvenience.

- [9] We invited the parties to file submissions after the Claimant's case was closed. We directed the claimant to file and serve his submissions by the 26th of March 2024. We granted the Respondent until the 2nd of April 2024 to file submissions in reply. At the date of this award, the record does not reflect any of the Respondent's submissions.

Decision of the Court

Issue One: Whether the claimant was lawfully terminated or dismissed from the Respondent?

Claimant's submissions

- [10] Counsel cited Section 2 of the Employment Act Cap. 226 for the definition of termination of employment and section 68(1) EA for the proposition that it is mandatory to give reasons for termination, the failure of which makes the determination unlawful. We were referred to *Moses Obonyo vs MTN Uganda Limited¹* and *Barclays Bank vs Godfrey Mubiru²*. It was suggested that clause ten of JEX1 provided the grounds for terminating the Claimant's contract. Because he was terminated immediately, without notice and without reasons, Counsel submitted that his termination was unlawful. For this, we were referred to *Uganda Development Bank v Florence Mufumba.³*
- [11] On the authority of *Makula International Limited v Cardinal Nsubuga & Another⁴*, it was also submitted that the introduction of the notice of dismissal was an illegality which this court could not sanction.
- ¹ Labour Dispute Claim No.045/2015

LDR47/2020 Award. Hon. Justice A. Wabwire Musana. 28.08.2024

² [19991 UGSC 22

³ [20201 UGCA 2051

⁴ 1982(HCB) 11

Determination

- [12] In *Akewa Milly v One by One Loving Ministries⁵* following *Hilda Musinguzi v Stanbic Bank (U) Ltd⁶* we held that termination must follow procedure. Otherwise, it is unlawful.
- [13] What is the law relating to severing the employment relationship? Under the EA, two broad forms of ending the employment relationship exist. First, under Section 64EA, the employment may be terminated by the employer giving notice with payment in lieu of notice. The Court of Appeal elaborated this position in *Stanbic Bank (Uganda) Limited v Nassanga⁷* holding that an employer may terminate with or without reason

with notice or by payment in lieu of notice. Only when an explanation is given must the employer hold a hearing.

- [14] Termination of employment also occurs where a fixed-term contract expires; a task-based contract ends with the completion of the task; a fixed-term contract is not renewed, there is constructive dismissal⁸, or an employee served with notice ends the contract before the expiry of the notice period.
- [15] Where the employment contract is ended by the employer for reasons of misconduct or poor performance, it is termed a dismissal. It is governed under Section 65 EA, which makes it mandatory for the employer to notify the employee and give a hearing.⁹
- [16] In the matter before us, the Claimant suggests that he was unlawfully terminated. He adduced a letter of summary termination by which the Respondent terminated him on the 6th of April 2020 with effect from the 5th of April 2020. The letter did not specify the reason for his termination. It did not specify that the Claimant would be paid his notice. Under Section 68(2) EA, a termination without notice or less notice than is contractually or statutorily stipulated is prohibited. In other words, an employer may not terminate an employee without notice or with less notice than the law permits. In the present case, there was no provision for notice. For this reason alone, we would find that the Claimant was unlawfully terminated. This conclusion answers Issue One conclusively.
- [17] However, in paragraphs 4,5 and 7 of its memorandum in reply, the Respondent's defence merits some comment. The Respondent argued that the Claimant was summarily dismissed for absenteeism. The Respondent filed two witness statements of Yang Yi and Shi Xiaoging who did not attend Court to prove the evidence of summary dismissal. Under Order 18 Rule 5A(5) of the Civil Procedure Rules S.l 71-1, on witness statements, the evidence of a witness who files a statement but does not appear in Court is to be expunged from the record. Therefore, we did not consider this evidence. If we had had to consider the question of summary dismissal,

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⁵ LDR 212 of 2017 Industrial Court of Uganda(30th September 2024)

⁶ SCCA 05/2016 Per Mwangutsya JSC(as he then was),. *the right of the employer to terminate ^a contract cannot be fettered by the Court so long as the procedure for termination is followed to ensure that no employee contract is terminated at the whims of the employer and if it were to happen the employee would be entitled to compensation...*"

⁷* [2023] UGCA 342

⁸ This Court had an expansive discourse on constructive dismissal in *Lubega v Tropical Bank Limited* (2024] UGIC 39 (6 September 2024)

^s In a number of decisions by this Court, we have cited *Ebiju v Umeme* (2015] UGHCCD 15 for the definitive meaning of the right to be heard.

we would have concluded that the Claimant was unlawfully summarily dismissed because of no proof of compliance with the requirements of Section 65EA. The Respondent would not have been found to have notified the Claimant of the reasons for which it was considering dismissal and did not hold a hearing. For these reasons, had we considered the lawfulness of the summary dismissal, we would have found the summary dismissal unlawful and unjustified.

[18] In all, it is our determination that the Claimant was unlawfully terminated. Issue one is answered in the affirmative.

Issue Number Two: What remedies are the parties entitled to?

Determination

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General damages

Submissions of the Claimant

[19] Mr. Oturuke, citing **Hadley v Baxendale'*⁰ and three other cases, argued damages based on **restitute in intergrum.** Counsel contended that given a salary of UGX 3,100,000/= per month, he had six months left on the contract, which would have generated a revenue of UGX 52,434,000/=. It was submitted that the termination was during a difficult COVID pandemic, and a casual termination of a medical doctor who was expected to be of impeccable integrity was ^a malicious act that tarnished his reputation. Citing **Kamuli, Mufumba** and **Angella Birungi v NLS Waste Services, we** were asked to consider UGX 200,000,000/= in damages.

Determination

- [20] **Hadley v Baxendale** set the rule that the measure of consequential damages in a breach of contract case shall only consist of the damages that arise naturally from the breach or those which both parties would have seen as reasonably certain to occur at the time the contract was formed. It, therefore, suggests direct and indirect damages, an idea of remoteness.
- [21] In our jurisdiction, the Supreme Court settled the law on entitlement to damages for unlawful and unfair termination or dismissal in **Uganda Post Limited v Mukadisi.* ¹¹ In that case, it was held that an unfairly or unlawfully terminated or dismissed employee is entitled to compensation for the notice period as the first step in awarding damages, and the Court can then consider whether an award of general or aggravated

damages is tenable. General damages can be awarded in addition to the payment in lieu of notice given to an employee who has been unlawfully dismissed from employment.

- [22] In a recent decision by this Court, **Sadat Serungoji v Guinness Transporters T/A Safe Boda12,** we applied **Mukadisi** to grant the unlawfully dismissed Claimant general damages after the Respondent paid salary in lieu of notice, severance pay, and other statutory terminal benefits.

LDR47/2020 Award. Hon. Justice A. Wabwire Musana. 28.08.2024

¹⁰ (1894) 9 Exch 341

[&]quot; [2023] UGSC ⁵⁸

¹² LDR No. 47 of 2020 Industrial Court (16ln August 2024)

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The Supreme Court, in setting the principle considerations for additional general damages for unfair termination, cited **Stroms v Hutchinson.¹³** for factors that guide the Court in making an award for additional general damages, including pain, suffering, inconvenience and anticipated future loss as monetary compensation for the non-monetary aspects of ^a wrong suffered by ^a plaintiff and the value of the subject matter. The Court of Appeal had previously taken ^a similar approach in **Stanbic Bank(U) Ltd v Okou.^{TM*}* where Madrama Jfas **he then was)** held that appropriate general damages should be assessed on the prospects of the employee getting alternative employment or employability, how the services were terminated, and the inconvenience and uncertainty of future employment prospects.

- [23] Therefore, on the principles set up in **Mukadisi** and **Okou,** the Claimant, having been unlawfully terminated, would first be entitled to payment in lieu of notice and general damages. He had worked for the Respondent for two years and seven months. He was earning ^a sum of UGX 3,100,000/= per month. Therefore, under Section 57(3)(b) EA an employee who has been in service for more than twelve months, but less than five years is entitled to not less than one month's notice. As a first step, we award the Claimant UGX 3,100,000/= as his first level of damages.
- [24] As to general damages, we consider that the manner of termination was abrupt. It is compounded by the Respondent's attempt at sanitising the termination and transforming it into a dismissal. The Claimant's contract had six months to end. Therefore, in the circumstances of his unlawful termination, we award the Claimant UGX 15,500,000/= in general damages.

- [25] Concerning aggravated damages, in **Bank of Uganda v Betty Tinkamanyire*¹⁵ the Supreme Court considered lack of compassion, callousness, degrading treatment, and indifference to the good and devoted services of the employee to be aggravating circumstances that compounded the illegalities in the wrongful termination. On the evidence before us, we are not satisfied that the Claimant established any aggravating circumstances, so that we should award aggravated damages.
- [26] The Court of Appeal in **DFCU Bank v Donna Kamuli*TM held that punitive damages are awardable in employment disputes with restraint as punishment ought to be confined to criminal law and not the law of tort or contract. The Claimant must demonstrate malice or vindictiveness, egregious, highhanded, or oppressive conduct on the employer's part, which the Claimant has not done to warrant any such award.

Severance pay.

[27] Citing Section 87(1)(a)EA, the Claimant sought severance pay. We agree that he is entitled to severance pay. In **Umeme Limited v Harriet Negesa*¹⁷ the Industrial Court observed that the circumstances under which severance pay becomes payable were explicit under Section 87EA

¹⁵ [2008] UGSC 21

¹³ [1905] A. C 515

¹⁴ [2023] UGCA 100

¹⁶ [2019] UGCA 2088

¹⁷ *UMEME Limited v Harriet Negesa* [2019] UGIC 34 (26 July 2019)

and that severance pay becomes payable from the date the court declares the termination unlawful. In **Donna Kamuli v DFCU Bank Ltd*¹⁸ the Industrial Court set the rate of severance pay as one month's pay for every year of work. As the Claimant had worked for two years and seven months at ^a monthly salary of UGX 3,100,000/= per month, we award the Claimant UGX 8,008,333/= in severance pay.

Payment in lieu of notice.

[28] On the authority of **Mukadisi*,^{*} payment in lieu of notice is awardable for unlawful termination. Such notice is reckoned from the duration of employment. The Claimant had been in employment for two years and seven months. Under Section 57(3)(c)EA, an employee who has been in service for more than twelve months, but less than five years is entitled to not less than one month's pay in lieu of notice. At a salary of UGX 3,100,000/= we award the Claimant the sum of UGX 3,100,000/= as payment in lieu of notice.

Costs

[29] This Court has ruled that costs are the exception and not the norm in employment disputes except where the losing party is culpable of some form of misconduct.¹⁹ We hold the Respondent culpable for misconduct in that there was an attempt to sanitize the termination by calling it a dismissal. Additionally, the Respondent filed witness statements and did not attend Court to prove the reason for termination. For these reasons, we are inclined to award the Claimant costs.

Final Orders

- [30] We find that the Claimant was unfairly and unlawfully terminated and make the following declarations and orders:
- (i) It is hereby declared that the Claimant was unlawfully and unfairly terminated from his employment with the Respondent.
- (ii) *We* order the Respondent to pay the Claimant the following sums:
- (a) UGX 3,100,000/= as compensation for termination without notice.
- (b) UGX 15,500,000/= as general damages;
- (c) UGX 8,008,333/= in severance pay; and
- (d) UGX 3,100,000/= as payment in lieu of notice.
- [31] The Claimant shall have costs of the claim.

⁸ DFCU Bank Limited v Donna Kamuli [2019] UGCA 2088 (30 October 2019)

¹⁵ Kalule v Deutsche Gesellschaft Fuer Internationale Zusammenarbeit (GIZ) GMBH [2023] UGIC 89

It is so ordered.

Dated, signed, and delivered at Kampaj is 11th day of October 2024.

bwire Musana, strial Court Anthony^ JjKlgeJiJdi

The PanalistlAgree:

1. n. Jimmy Musimbi
2. Hon. Emmanuel Bigirimana
3. Hon. Can Amos Lapenga

11th October 2024.

9:44 am

Appearances

1. **For the Claimant:**

Mr. Oturuke Court:

Mr. Newton Oturuke Parties absent

Court Clerk: **Mr. Amos Karugaba.**

Matter for award. We are ready to receive it. Award delivered in open Court.

:m wire Musana, itrial Court. Anthony V\ Judged It

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