

UGANDA / JUDGMENT

Odikiria v Securex Agencies(U) Limited (Labour Dispute Reference No. 139 of 2017) [2021] UGIC 22 (26 February 2021) [2021] UGIC 22

COURT

Industrial Court of Uganda

BEFORE

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

CASE / FILE NUMBER

Labour Dispute Reference No. 139 of 2017

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THE REPUBLIC OF UGANDA

IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA LABOUR DISPUTE
REFERENCE No.139 OF 2017

[ARISING FROM No. LABOUR COPLAINT 496 OF NAKAWA]

BETWEEN

ODIKIRIA SAMUEL BAKERS..... CLAIMANT

VERSUS

SECUREX AGENCIES (U) LTD RESPONDENT

BEFORE

- 1. Hon. Chief Judge Ruhinda Ntengye
- 2. Hon. Lady Justice Linda Tumusiime Mugisha

PANELISTS

- 1. Mr. Rwomushana Reuben Jack
- 2. Ms. Beatrice Achiro

- 3. Ms. Rose Gidongo

AWARD

The Claimant filed a memorandum of claim alleging that he was unfairly terminated by the respondent on unjustified reasons.

The facts as set out in the claim are as follows:

The Claimant being an employee of the respondent, on 18/9/2012 received communication from one crew commander that stores of one of the respondent's 7 th street clients could have been broken into. Both the operation manager and his assistant could not be reached on phone and so he, the claimant, summoned mobile patrols of the respondent to surround the scene as he asked Mr. Ogwal, one of the drivers of the respondent, to drive him to the

scene. The claimant together with the Patrol Crew arrested two suspects. Minutes later the claimant was arrested by four police officers who arrived with a saloon car that had just left the scene on the arrival and arrest of the suspects by the claimant and his crew. The claimant was led to the police post where he made a statement and was detained. The police found he had no case and he was later on discharged as the two suspects kept in detention.

He was with others summoned orally to appear before a disciplinary committee on 19/9/2012 at 8:00am which he attended. On 22/09/2012 he was dismissed with two other employees. The claimant in the memorandum under paragraph 9 prayed for various orders.

The respondent filed a memorandum in reply in which it was stated that the claimant was believed to have participated in commission of an offence and was arrested by police for being in possession of suspected stolen property at a location where he was not expected to be by deployment. He was charged and given time to respond to the charges and when he appeared before a disciplinary committee hearing he was found culpable and dismissed.

The issues as agreed by both parties in a Joint Scheduling Memorandum signed by both counsel and filed in court on 18/12/2018 are:

1) Whether the claimant was wrongfully dismissed from work by the respondent.

2) Whether the claimant is entitled to the remedies sought.

This case was called for hearing on 9/3/2020 having been fixed on 16/09/2019 in the presence of Mr. Gregory Byamukama for the respondent and Mr. Tamale Badru for the claimant. At the time of hearing none appeared for the respondent and we agreed with the claimant that the matter proceeds exparte. The evidence of the claimant as filed in his written witness statement is in support of what is contained in his memorandum of claim as described above.

In submissions filed on 21/7/2020, the claimant through his advocate contended that having been informed verbally on 19/09/2019 to appear before the disciplinary committee on 22/09/2019 the claimant was not given sufficient time to defend the charges and this constituted unfair hearing. It was argued for the claimant that in the words of the termination letter the claimant was not guilty of any fundamental breach as spelt out in **Section 69 of the Employment Act**.

It was the submission of counsel that the claimant having reported the theft incident to his supervisors who did not pick their phones, it was incumbent upon him to leave his colleague in the control room and proceed to the scene and that doing this did not tantamount to a fundamental breach of his duties as prescribed in his job description

Surprisingly the respondent filed submissions on 21/1/2021 without any explanation as to why it did not attend the hearing. We strongly take exception of this conduct since having not participated in the hearing though aware of the proceedings, the respondent at law put itself outside the jurisdiction of the court. We shall therefore not refer to or consider the submissions of the respondent since its evidence was not adduced so as to form part of the basis of the Award.

We have no doubt on the evidence adduced that the claimant upon receiving information that there was a theft at one of the respondent's client's premises took steps to inform his supervisors and that on failure of them to answer his phone, he called patrol security of the respondent and together they went to the scene of crime.

In a memorandum in reply it was stated that the claimant was supposed to be in the control room but instead he went to participate or was believed to have participated in the commission of an offense. The evidence of the claimant was that he left one Chemongeni Leonard in the control room as he dashed to the scene of crime. No evidence to the contrary was adduced by the respondent and so we agree with the submission of the claimant that he did not abandon his duty station. We think that in the circumstances having attempted to inform his supervisors about the theft and having not received any reply, as a security guard of the respondent the claimant had a duty to do everything possible to interrupt the process of theft that was going on at his employer's client's premises.

Counsel for the Claimant submitted that his client was not accorded sufficient time to prepare for his defence and that this constituted unfair hearing. We have perused both the trial bundle of the claimant and that of the respondent but we have failed to trace any notification of a hearing to the claimant. In his evidence the claimant stated that he was verbally suspended on the 18th September 2021 and asked to report for disciplinary hearing on 19/09/2020 which he did and on 22/9/2020 he was dismissed. In the absence of a notification of the hearing we have no alternative but to believe the claimant that he was orally summoned. We have looked at the reply to the memorandum of claim which states that the charge was on 22/09/2020. We have also perused the charge sheet attached to the memorandum in reply and marked "A". It is very clear that the charge sheet is at the same time a dismissal letter because on the same charge sheet is the offence of "**Theft, fraud or other acts of Dishonesty**", a plea in mitigation by the claimant and a punishment of dismissal. This is evidence that the claimant was summoned on 18th September,

2020 to appear on 19th September 2020 only the decision to be communicated to him on 22/09/2020.

We have no doubt that one day's notification is not sufficient to enable an employee prepare his defence and this was made clear in the case of **Benon H. Kanyangoga vs Bank of Uganda LDC 080/2014**. Once the nature of the offence committed by an employee is not sufficiently explained to him or her and once he or she is not given sufficient time to be able to defend the allegations before an impartial committee and once he/she is not given opportunity to appear with a person of his or her choice before the committee, then in the absence of evidence that he or she committed a fundamental breach of his or her contract of service, it follows that a termination arising from such proceedings is fundamentally irregular, unfair and unlawful. This is the essence of **Section 66, 68 and 69 of the Employment Act**. It is also the essence of the decision in the case of **Ebiju James Vs Umeme H. C. C. S 133/2012**.

Evidence in the instant case point to the above scenario. The claimant was given less than 24 hours to defend the allegations, nothing shows that he understood the allegations, nothing shows that the he was given a right to appear with a person of his choice, and nothing shows that his conduct fundamentally breached his obligations to his employer. Accordingly we find that his termination was irregular, unfair and unlawful. The first issue is answered in the affirmative.

The second issue is **whether the claimant was entitled to remedies sought**.

a) Payment in lieu of notice

Section 58 of the Employment Act provides for notice or payment in lieu before termination. Having been in Employment with the respondent since 2005 as admitted by the respondent in **paragraph 5 (a) of the reply to the memorandum of claim**, and having been dismissed in 2012, the claimant had worked for 7 years and under Section 58 of the Employment Act, he was entitled to 2 months' notice or payment in lieu. His salary at the time of termination was 380,000/= and therefore he is awarded 760,000/=.

b) Severance allowance

In accordance with Section 87 of the Employment act as well as the decision of this court in **Donna Kamuli Vs DFCU Bank Labour Dispute Reference No. 002/2015** the claimant having worked for 7 years will be entitled to 380,000/= X 7 = 2,660,000/= as severance allowance.

c) General Damages

General damages constitute compensation that is considered by the court to be sufficient atonement of the loss or injury incurred by the claimant at the instance of the respondent. Damages are not meant to be profit of the claimant arising from litigation but meant to put him or her in the same position that he/she should have been before the loss or injury. The claimant earned 380.00/= per month and had worked for 7 years. At the time of hearing this case on 9/3/2020 he was 25 years and his employment relationship was open ended.

Taking into account the period he had worked and how old he was and the chances that he could be employed once again, we think 3,000,000/= will be sufficient as general damages.

All in all, the claim is allowed in the above terms at an interest of 15% per annum from the date of the Award till payment in full. No order as to costs is made.

Delivered and signed by:

| 1. | Hon. Chief Judge Ruhinda Asaph Ntengye | | |

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| 2. | Hon. Lady Justice Linda Lillian Tumusiime Mugisha | | |

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| | PANELISTS | | |

1. Mr. Rwomushana Reuben Jack 2. Ms. Beatrice Achiro 3. Ms. Rose
Gidongo

Dated: 26/02/2021

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