

UGANDA / JUDGMENT

Ssempijja vs D-Light Design Limited (Labour Dispute Reference 350 of 2019) [2025] UGIC 10 (27 January 2025) [2025] UGIC 10

COURT

Industrial Court of Uganda

BEFORE

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

CASE / FILE NUMBER

Labour Dispute Reference 350 of 2019

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THE REPUBLIC OF UGANDA IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE No. 350 OF 2019 *(Arising From KCCA/RUB/
LC/407/2019)*

CLAIMANT SSEMPIJJA ISMA**V****D-LIGHT DESIGN RESPONDENT LIMITED****Before:**

The Hon. Head Judge, Linda Lillian Tumusiime Mugisha

Panelists:

- 1. Hon. Charles Wacha Angulo,
- 2. Hon. Beatrice Aciro Okeny &
- 3. Hon. Rose Gidongo.

Representation:

- 1. Ms. Okumu Stella of M/s. OSH Advocates and Solicitors for the Claimant.

- 2. Ms. Babirye Miriam of M/s. Onyango and Company Advocates for the Respondent.

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AWARD

Background

- [1] The Claimant's claim against the Respondent is for compensation for unfair termination, severance pay, compensatory payment, general damages for unfair termination, exemplary damages, interest, and costs.

The Respondent Company D-light Design is a Company incorporated under the laws of Uganda, trading in solar home systems, and was the employer of the Claimant.

Brief Facts of the Case

- [2] In June 2017, the Claimant was employed by the Respondent Company as a field investigator on an informal contract. On 27/06/2018, he entered into a formal employment agreement with the Respondent as its Fraud investigator. On 27/0/2018, he was elevated to the position of Field Fraud operations supervisor. He was confirmed into this position on 7/08/2019. His contract was for ¹ year from 1/04/2019 to 31/03/2020 at a monthly salary of Ugx.2,000,000/-. According to his employment contract, his role was to provide professional services regarding the identification of fraudulent payment profiles and conduct among the Respondent's Customers, to carry out arrests of customers found defrauding the Company.

On 23/08/2019, the Respondent Company summarily dismissed the claimant for allegedly divulging confidential information to third parties. The Claimant contends that the dismissal was unlawful on grounds that he was not given an opportunity to be heard, the reasons for the dismissal were not proved and he was not paid all his entitlements under the contract of employment, and he has failed to get alternative employment because of his tarnished image.

The Respondent contends that while working in the field in Mbale, the Claimant divulged confidential information regarding an investigation to third parties, contrary to his employment contract. This amounted to gross misconduct, that justified his dismissal. He is therefore not entitled to the remedies and reliefs sought.

Issues

- 1) Whether the Claimant's summary dismissal was unjustified and unlawful?

2) Whether the Claimant is entitled to the remedies sought?

Evidence

- [3] The Claimant Ssempijja Isma adduced his evidence and testified that he worked diligently for the Respondent company for 2 years. He said his role was to carry out field investigations and share the findings exclusively with the company. He was terminated for divulging the Company's confidential information to a third party, which he never did. He was not given a hearing and was not paid his entitlements as prescribed by his contract of employment, including fuel allowance, airtime allowance, car hire allowance, and data. As a result of his termination, his image was tarnished resulting in his failure to secure alternative employment.
- [4] The Respondent testified through Mr. Douglas Gavala, the Respondent's managing Director who testified in chief that between 20th and 22nd August 2019, while conducting an investigation with his supervisor in Mbale Region, they came across evidence of persons who purchased numerous sim cards, to conduct falsified Company sales transactions. Without the knowledge and consent of his supervisor, the Claimant shared this information with unknown persons thus fundamentally breaching his obligations under the contract of employment. This was in breach of the Company's Human Resource Policy, the Confidential Policy and the Laws of Uganda thus amounted to gross misconduct for which he was dismissed. And the dismissal was justified. During cross-examination, he stated that he had no evidence of the unknown person with whom the claimant is alleged to have shared the confidential information.

Issue 1: Whether the Claimant's summary dismissal was unjustified and unlawful?

- [5] Ms. Okumu Counsel for the Claimant argued that whereas the Respondent alleged that the Claimant had shared confidential information with a third party their witness Mr. Gavala RW1, did not adduce evidence of the unknown parties to whom the Claimant divulged this information. She contended that the Respondent relied on the short-term employment contract Marked REX1 as the basis for finding him culpable, yet at the time he was accused he was serving under a different contract with a different job description as field fraud operations supervisor. She argued that this being

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the case the Claimant was not bound by the terms and conditions of the short-term employment contract since he had assumed a new contract. In the circumstances the Respondent contradicted itself when it relied on the contract marked CEX2 which is their REX1.

She also contested the Respondent's reliance on its Human Resource Policy yet it did not file it on the record and the testimony by RW1 that the Respondent has a disciplinary committee consisting of five members, yet the claimant was not subjected to the same. She further contested the assertion that the Claimant was not given any warnings because the case was so sensitive. It was her submission that the Respondent violated the claimant's right to be heard as elucidated in **Ebiju James v UMEME LTD,** HCCS No. 133 of 2012 **and section* 66 *now 65 of the Employment Act.* She also cited *Carolyn Turyatemba & Others v AG** Constitutional Petition No. 15 of 2006, for the legal proposition that the right to be heard is a fundamental basic right, and a cornerstone of the whole concept of a fair hearing, fair procedure, and the whole area of due process of law, which is as old as creation itself.

She insisted that the Respondent did not adduce any evidence of the confidential information the Claimant is alleged to have shared with unknown persons nor did it adduce evidence of the alleged unknown persons. In addition, RW1 admitted that the claimant was not subjected to a hearing contrary to the rules of natural justice. In the circumstances of the Respondent having failed to prove that the Claimant did breach a fundamental obligation under his employment contract, his termination was unlawful.

[6] In reply, Ms. Babirye Miriam submitted that the claimant was summarily dismissed by letter dated 23/08/2019, following his commission of an act of gross misconduct when he shared confidential images of an investigation finding with unknown third parties, which amounted to a complete breach of his contractual obligation under the employment contract.

Counsel cited Section 2 of the Employment Act for the definition of Dismissal to mean the discharge of an employee from employment at the initiative of his or her employer when the said employee has committed verifiable misconduct, and Section 69 (3) of the Employment Act which defines summary termination as where the employer terminates the services of an employee without notice or with less notice than that to which the employee is entitled by any statutory provision or contractual term and submitted that for any employer to summarily dismiss an employee the employee must have acted or omitted to act and it must be an act or omission constituting gross misconduct. She insisted that the dismissal would be justifiable where the employee has fundamentally broken his or her obligations arising under the contract of service.

[8] According to Counsel RW1 testified to court that between 20th and 22nd August 2019, the Claimant and his supervisor at the time carried out investigations in Mbale region and came across evidence of persons who purchased numerous sim cards to conduct falsified respondent's sales transactions. That his contract of employment marked REX1, under clause 15(iii), the employer is entitled to dismiss summarily, and the dismissal shall be termed justified. She also cited **Barclays Bank Uganda vs. Godfrey Mubiru,** SCCA No. ¹ of 1998, for the legal proposition that where the contract is governed by a written agreement between the employer and employee, the termination of employment will depend on the terms of the contract. Therefore, the Respondent was justified to dismiss the Claimant in accordance with .clause 15(iii) of his contract.

Resolution of the case

[9] It is the settled position of the law that an employer cannot terminate or dismiss the employment of an employee without justification and without following the correct procedure for termination, (see *Uganda Post Ltd v Consolata Mukadisi* SCCA No. 13 of 2022, *Stanbic Bank Uganda Limited* v *Deogratiuous Asiimwe,* SCCA No. 18 of 2018, and *Stanbic Bank v Musinguzi Hilda* SCCA No 05 of 2016) which are in line with Sections 65(1), (2) and 67 of the Employment Act. Section 65(1) and (2) provides as follows:

"65. Notification and hearing before termination

(1)Notwithstanding any other provision ofthis 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.

Section 67 (1) and (2) on the other hand provides for proof of the reason, as follows:

67. Proof of reason for termination

(1) In any claim arising out of termination the employer shall prove the reason or reasons for the dismissal, and where the employer fails to do so the dismissal shall be deemed to have been unfair within the meaning of section 71

(2) The reason or reasons for dismissal shall be matters, which the employer, at the tie of dismissal, genuinely believed to exist and which caused him or her to dismiss the employee...."

[10] The principle on which these sections are based is Article 4 of the ILO Convention 158 on Termination of Employment, which prohibits unjustified termination of employment, and provides for a right to be heard as one of the irreducible minimum Labour standards that must be complied with by the employer before termination. The principle of a right to a fair hearing is also emphasized under Article 28 of The Constitution of Uganda 1995 (as amended). Although the Court of Appeal *Stanbic Bank v Nassanga Safina* CA No. 182 of 2021, recently proposed that an employee can be terminated for a reason or none at all and without a hearing as long as he or she is given notice, this Court in light of the prescriptions under Article 4 of ILO Convention No. 158, Article 28 of the Constitution of Uganda and Sections 65 and 67 of the Employment Act, has distinguished this position in cases where a reason for termination has been rendered by the employer and the reason relates to misconduct or poor performance, and as stated that the employer is obligated to give the

employee in issue a hearing before termination. Therefore, the right to a reason and a hearing before any employment can be terminated, are a mandatory irreducible minimum labour standard that must be complied with by an employer, failure of which such termination would amount to unlawful termination.

- [11] After carefully analyzing the evidence on the record in the instant case, it is undisputed that the Claimant was summarily dismissed for divulging Company's confidential information. His dismissal letter reads in part as follows:

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"Reference is made to your employment contract whereby you, were appointed by Delight Design (U) Limited to serve as a Field Fraud Operations Supervisor.

As a Fraud agent, you are expected to abide by a strict code of confidentiality during your investigation. During an ongoing investigation in Mbale region (20th -22nd) August 2019) with your supervisor, you came across evidence of persons who purchased numerous SIM cards to conduct falsified D-light sales transactions. Without the knowledge of your supervisor, you shared these images with unknown parties, and by divulging confidential information during the investigation you hereby fundamentally broke your obligation to the company, (sic).

As per the employment contract Clause (11) and the provisions of section 69 of the Employment Act which states **"An employer is entitled to dismiss summarily and the dismissal shall be termed justified, where the employee has by his conduct indicated that he has fundamentally broken his obligations arising under the contract of service."**

Accordingly, the company has decided to dismiss you with immediate effect from 23rd August 2019 for fundamentally breaking your obligations to the company. Therefore, your last date of employment is 23rd August 2019.

Your terminal dues will be computed less any liabilities owed to the company as follows:

- Your accrued salary as at 23rd August 2019
- © One month in lieu of notice
- Your leave accrued to date...."
- [12] it was the evidence of RW1 Mr. Gavala the Respondent's Managing Director, the Claimant was not given a hearing even though the Respondent has a disciplinary committee comprising of 5 members. According to him, the case was so sensitive that it was not necessary to give him a hearing. This assertion was confirmed by one Margaret Nakyanzi RW2, the Respondent's Human Resource Manager who also testified that the claimant was not given a hearing "because of the sensitivity of the information he was holding, because he was holding the key to the database..."

Both witnesses of Respondent testified that they did not know the unknown persons with whom the claimant is alleged to have shared confidential information, nor did they have evidence of the actual confidential information he purportedly shared with the unknown persons. It is glaringly clear from the evidence adduced by the Respondent that there was no evidence of the unknown persons or the actual confidential information the Claimant is alleged to have shared.

[13] The Respondent relies on section 69 (3) which entitles an employer to dismiss summarily where the employee indicates that he has fundamentally broken his obligations under the employment contract. Our interpretation of this subsection is that before the dismissal, the employer must possess evidence to demonstrate the fundamental breach complained of before terminating such an employee. It is not sufficient to merely state that there was an indication of a breach without evidence to confirm its validity and correctness. Secondly, section 65 (4) of the Employment Act provides that; "Irrespective of whether the dismissal which a summary dismissal is justified, or

whether the dismissal of the employee is fair, an employer who fails to comply with this section is liable to pay the employee a sum equivalent to four weeks net pay".

[14] The import of this subsection is that the employer must notify the employee of the reason for dismissal and accord him or her an opportunity to be heard before summarily dismissing him or her in accordance with Section 69 (3) of the Employment Act.

In the circumstances, the argument that the claimant could not be subjected to a hearing because of the sensitivity of his case cannot hold. It is no longer fashionable for employers to dismiss employees without any justification even if the employee is paid in lieu of notice. The Respondent is expected to have evidence to demonstrate the alleged breach as provided under Section 67 of the Employment Act (supra) and should have given the claimant an opportunity to exculpate himself by giving him an opportunity to respond to the allegations leveled against him in writing and by giving him a hearing. As already discussed, this was not done. The Respondent did not demonstrate that it actually gave the Claimant an opportunity to be heard it did not adduce any evidence to indicate that he had proved that he actually divulged because both witnesses stated that they did not know the confidential information that divulged neither did they know to whom he had divulged it to.

It is, therefore, our finding that the Respondent having not proved the alleged fundamental breach and having not accorded the Claimant a fair hearing, his dismissal was both substantively and procedurally unlawful. This issue is therefore resolved in the affirmative.

2. Whether the Claimant is entitled to the remedies sought?

[15] Having established that the Claimant's dismissal was unlawful, he is entitled to some remedies. According to his memorandum of claim, the following are the remedies claimed.

a) Severance pay.

It was submitted for the Claimant that according to Sections 87 now 86, 88 now 87, 89 now 88, and 90 now 89 of the Employment Act and **Donna Kamuli v DFCU Bank Ltd,** LDC No. 002 of 2015, the Claimant is entitled to severance allowance. Counsel submitted that he was employed from 27/03/2019 and terminated on 23/08/2019, therefore he worked for five months thus he is entitled to Ugx.4,000,000/= as

severance pay. This Court in *Donna Kamuli vs DFCU Bank* cited above held that where there's no formula for calculating severance between the parties an employee who has been serving the employer for more than six months would be entitled to pay of severance pay at a rate of one month salary per year served. This was upheld by the Court of Appeal in *African Epidemiology Network v Peter Wassawa Kityaba* CA No. 124 of 2017. The Claimant in the instant case served the Respondent as field Fraud supervisor for only 5 months, therefore as provided under Section 86 of the Employment Act he would not be entitled to severance pay.

Further, still the argument that the Respondent committed an offence when it did not pay severance allowance as provided under section 92(1) of the Employment Act, does not hold, because such an allowance can only be paid after Court has established that the employee under the circumstances had been unlawfully terminated thus entitling him to the payment of severance allowance. In circumstances, the claim for severance pay having worked only five months cannot stand.

b) Compensatory order

Counsel for the Claimant referred to Section 78(1) now 77(1) and submitted that the Respondent is required to pay a basic compensatory order of four weeks wages totaling to UGX 2,000,000/= as compensatory pay. She cited Section 66(4) which provides for payment of four weeks payment for failure to hold a hearing before termination and submitted that the Claimant is entitled Ugx. 2,000,000/= and to additional compensation as provided under section 77(2). Section 76 of the Employment Act provides that, where a labour officer decides that an employee's complaint of unfair termination under section 70 is well founded, the labour officer shall, subject to subsections (2) and (3) of section 70 give the employee an award or awards of compensation specified under section 77."

It is therefore clear from Section 77 provides for awards of compensation that are to be issued by a labour officer and not the Industrial Court this is because the Court has the discretion to award damages for unlawful termination or dismissal based on the merits of each case, therefore applying Section 77 would limit the Court's discretion. In circumstances, this order cannot be granted and instead, the Claimant shall be granted general damages.

c) General damages

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Counsel for the Claimant submitted that the court in **Stanbic Bank Uganda Limited vs. Hajji Yahaya Sekalega**, HCCS No.185 of 2009, stated that in the assessment of the quantum of damages, courts are guided by the value of the subject matter, the economic inconvenience that the party may have been put through and the nature and extent of the breach or injury suffered. Therefore, damages must place the injured party in the position he or she would have been if she or he had not suffered the wrong. Counsel contended that the Claimant having worked for the Respondent for a period of 5 months ought to be paid Ugx. 100,000,000/= as general damages.

It is trite that general damages are intended to return the injured party to a position he or she was in before the injury occasioned by the Respondent occurred. We associate ourselves with the reasoning in **Stanbic Bank* V *Hajji Yahaya Sekalega** (supra) and apply the same reasoning to the instant case, the Claimant had only served in the position of field fraud supervisor for 5 months out of a contract of 12 months. He was terminated prematurely without proving a reason and without being accorded a hearing. The reason that was given tarnished his image as a future employee of any company and although he did not adduce any evidence to show that the termination affected his acquisition of alternative employment, it is clear that such an accusation of fundamentally breaching the contract by divulging confidential information would have an impact on his employability in future. In circumstances, he did suffer an injury that warranted compensation of damages. However, the claim for Ugx.100,000,000/= in our view was excessive. We think that an award of Ugx. 17,000,000/= is sufficient as general damages.

d) Aggravated damages ;

The Claimant is seeking UGX 50,000,000/= aggravated damages for the humiliation and the manner in which he was summarily dismissed. He has spent a year without employment and his image was tarnished and as a result, he cannot get alternative employment. We hesitate to grant this claim on the grounds that the Claimant did not actually adduce evidence to show that the termination of his employment caused his failure to acquire alternative employment. However, as already stated above, we believe that an allegation that he breached his contract by divulging confidential information would therefore have an effect on his employability. In the circumstances, we award him Ugx. 2,000,000/= as aggravated damages.

e) Cost of the case

It is the principle of this Court that costs are granted in exceptional circumstances. This is because of the unequal contract between the employer and the employee. Whereas the employer has power of capital and therefore he or she can afford to incur costs of litigation, the employee who has lost the means of earning is not in the position to do so. Therefore, to award costs against him or her would amount to condemning him to destitution. To ensure equality in justice the principle applies to the employer as well. We think that this case is an exceptional case in which costs should be awarded to the Claimant. In the circumstances, the Claimant is awarded costs for the manner in which he was treated by the Respondent when they wrongfully alleged

that he had breached his contract by divulging confidential information without proof and without according him a hearing.

Final orders:

- 1. It is declared that the Claimant's dismissal was procedurally and substantively unlawful.
- 2. The Claimant is awarded Ugx. 17,000,000/- as general damages.
- 3. The Claimant is awarded Ugx. 2,000,000/- as aggravated damages.
- 4. The Claimant is awarded an interest rate of 10% per annum from the date of this award until payment in full on the aggravated damages, general damages awarded, and cost of the suit.

In conclusion, this claim succeeds in the above terms.

Signed in Chambers at Kampala this **27th** day of **January 2025**.

Hon. Justice Linda Lillian Tumusiime Mugisha, **Head Judge**

The Panelists Agree:

1. Hon. Charles Wacha Angulo, rni

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2. Hon. Rose Gidongo &

- 3. Hon. Beatrice Aciro Okeny.

27th January 2025 2:30 pm

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