

THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE NO. 096 OF 2016
[ARISING FROM MGLSD/LD. NO. 396/2016]

BETWEEN

TABU CATHERINE.....CLAIMANT

VERSUS

NILE

BREWERIES.....RESPONDENT

BEFORE

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

PANELISTS

1. Mr. Bwire John Abraham
2. Ms. Suzan Nabirye
3. Ms. Julian Nyachwo

AWARD

The claimant brought this claim against the respondent on allegations that having been employed by the said respondent, she was unlawfully terminated. It was alleged in the memorandum of claim that the claimant was investigated on free bar beer promotion issue to certain bars and subsequently she was called to a disciplinary committee hearing where she accounted for all the free beers she had received for promotion, yet the respondent went ahead to terminate her employment.

In reply the respondent claimed that the claimant was terminated for fraud, dishonesty, negligence and failure to account for numerous crates of beer picked up by her and that the termination was after affording the claimant a fair hearing.

REPRESENTATION

The claimant was represented by Mr. Banturaki Benard of Lugolobi Associated Advocates and the respondent was represented by Mr. Mokka Keneth from Okalang Law Chambers.

BRIEF FACTS OF THE CASE

The claimant was employed as a sales representative of the claimant working under one Peter Kinobe who was her sales manager. In the course of her employment she was detailed to issue free beers in certain quantities to certain bars by use of FBI (Free Beer Issue) notes which indicated which bar was to receive how many free beers in the interest of promotion of sales for the respondent.

It was alleged that between July 2014 and December 2014 she was involved in the diversion of the beers and upon the disciplinary committee finding her guilty, she was terminated.

The issues agreed by both counsel are

- 1) Whether the claimant's dismissal was unlawful**
- 2) Whether the claimant is entitled to the remedies prayed for.**

Evidence adduced

The claimant adduced evidence from herself and one other witness while the respondent adduced evidence from 3 witnesses. Evidence in Chief of both sides was by written statements which we have perused and internalized together with evidence adduced in cross-examination.

The claimant in her evidence in chief informed court that she had bad blood with her immediate boss, one Jackie Mukiibi who hatched a promotion proposal that was brought by management and was to be operationalized within her (claimants) area but she was never informed about it. Consequently an audit team was dispatched to whom she accounted for all the beers she had received personally, but as a result of

Jackie's influence she, the claimant, was forced to take annual leave in August 2015 but one week into leave she was summoned to explain issues concerning dispatch of the beers to the assigned bars. She explained that she dispatched the beers as directed by her immediate boss/supervisor.

Subsequently she appeared before a disciplinary committee on 23/9/2015 where she fully accounted for the beers but shortly after she was served with a dismissal letter.

The testimony of the second witness for the claimant's case was one Syaushwa Robert who was the manager of one of the bars which was involved in the promotion.

According to him, he received and acknowledged the beers for promotion from the claimant and from an agent of the respondent. Unknown to him that the claimant had been dismissed, her boss came to inquire if he (witness) had received the beers from the claimant and he answered in the affirmative.

Mr. James Kavuma, a witness for the respondent, told court in his written witness statement that while in 2014 he worked as district Manager (Central) one Peter Kwoba was under him as Sales Manager and the claimant worked under Peter as Sales representative.

According to him during promotions an approved number of specific beer brands are given to outlets and indicated in the planner and Free Beer issue Notes which are generated by the Sales Manager together with the sales representative and sent to the District Manager for approval. All free beer issued to the outlets must be in accordance with the monthly planner after approval.

Each outlet was issued with its own free beer independent of the other and each of them was to receive the approved number of crates of free Beer. The Sales manager and the sales representatives were not allowed to deviate from the approved planners without consent from the District Manager.

According to the witness, all approved free beers were picked by the claimant but she diverted 25 crates of beer from the Fusion auto Shop Spar outlet to Beverly Hills and 10 crates from Orange Country outlet to Labamba outlet contrary to the approved planners.

The second respondent witness, one Agaba Dickson was an internal auditor of the respondent who carried out an audit after irregularities and complaints about the management of free beers was brought to his attention as having caused loss of money. He audited the FBI promotions. He found out that from August 2014 to December 2014 the approved planners showed that Fusion Auto Spar outlet was to get 50 crates but it was only receiving only 25 crates from July-December 2014 yet Orange Country outlet which was to receive 50 crates was not receiving any beer for this period. The claimant revealed to him that, from August 2014, she delivered 25 crates to Orange Country on instructions of her boss, Peter Kwoba and on the same instructions she diverted 10 crates of Beer to Labamba from orange as well as converted some into cash.

In cross examination the claimant admitted having made a statement contained in **exhibit RE16 at page 48 of the respondents trial bundle**. She also admitted having delivered 10 crates of beer to Labamba in July even though the FBI notes showed that Labamba was not to get any free beers from July to December 2014. She admitted delivering 40 crates to orange Country outlet even though the FBI notes directed her to deliver 50 crates. She admitted many other anomalies and irregularities.

SUBMISSIONS

It was the submission of counsel for the respondent that the claimant breached **Section 69 of the Employment Act** and that the respondent was entitled to dismiss her.

Section 69 provides

69 summary termination

(1)

(2).....

(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 or she has fundamentally broken his or her obligations arising under the contract of service.**

Proof of fundamental breach will always depend on the nature of the breach, the effect of the breach and generally whether the breach affected the fundamentals of the duties of the employee. Therefore in order for the court to determine whether a given conduct of an employee constitutes a fundamental breach the whole circumstances of a given case in light of the contract of service must be taken into account.

In the instant case, the claimant was employed as a sales representative and as such her main duty constituted increase of sales for the respondent. In an effort to facilitate the claimant, the respondent created a system of free beers to be given to specific outlets for the purpose of promoting sales. We consider any diversion of the beers for any other purpose other than to promote sales as a fundamental breach of the obligations of a sales representative.

Exhibit RE 16 at page 48 of the respondent's trial bundle is an admission of the claimant that she converted the free beers into cash.

Although in her evidence she told court that she was forced to write this statement, we do not believe her. This court would require evidence of being coerced or forced to write such a self-incriminating statement in order to believe the claimant. Without such evidence a written apology was rejected by this court in the case of **Lamunu Faith vs Krotchet employee Sacco and Krotchet Kids Uganda, LDC No. 6/2016.** In the case of **Kabojja International School Vs Godfrey Oyesigye LDA No. 3/2015** an admission of misconduct was held sufficient justification for summary termination not necessitating a hearing.

We agree with the submission of counsel for the respondent that participating in the diversion and fraudulent sale of the FBI by the claimant was to the detriment of the respondent and fundamentally breached her obligations. Evidence is ripe that either she colluded with her supervisor Peter Kwoba or she independently committed the diversion and sale of the FBI and in accordance with the above cited authorities of this court, the dismissal was **not unlawful**.

Given the admission, it is not necessary to go into the question whether the hearing accorded her was fair or not.

We find that the dismissal of the claimant was fair and in accordance with the law.

This being the case and judging from the pleadings and prayers of the claimant in the memorandum of claim, she will not be entitled to any remedy. The claim is dismissed with no orders as to costs.

DELIVERED & SIGNED BY:

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

PANELISTS

1. Mr. Bwire John Abraham
2. Ms. Suzan Nabirye
3. Ms. Julian Nyachwo

Dated: 28/2/2020