

**THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE CLAIM NO. 159 OF 2015
[ARISING FROM HCT-CS No. 342/20112]**

BETWEEN

1. JOSEPH MATOVU
2. ANDREW SAJJABI
3. DOREEN KICONCO
4. RICHARD WASSWA SSENGENDO
5. GRACE NAKIRANDA.....CLAIMANTS

VERSUS

STANBIC BANK UGANDA.....RESPONDENT

BEFORE

1. Hon. Head Judge Ruhinda Asaph Ntengye

PANELISTS

1. Ms. Adrine Namara
2. Ms. Susan Nabirye
3. Mr. Micheal Matovu

AWARD

Brief facts

The five claimants were employees of the respondent in different capacities and under different contracts. When the case came up for hearing on 10/10/2019, the second claimant Andrew Sajjabi and the third claimant Doreen Kiconco were not available to adduce evidence and get cross examined. Consequently, their evidence was expunged from the record and their claim was struck off the record. This Award is therefore in respect to the rest of the claimants.

During the month of May and June 2011 there were allegations of fraudsters having penetrated the respondent bank and having fraudulently withdrawn millions of shillings from various accounts held by various customers of the respondent. An Internal investigation was carried out and on the basis of the investigation the claimants were notified of a disciplinary hearing which they attended. They were subsequently found by the disciplinary committee to have been guilty of negligence in handling of the Inter Account transfer processes leading to the fraudulent withdrawal of the money from the customer's accounts. They were consequently terminated. Having not been satisfied with the legality of the process of their termination they filed this claim.

Issues

- 1) Whether the termination of the claimant's employment was lawful.
- 2) Whether the respondent defamed the claimant's?
- 3) Whether the claimants are indebted to the respondent.
- 4) What remedies are available to the parties?

Representation

The Claimants were represented by Mr. Sunday Mpagi of Mpagi Sunday & Co. Advocates while the respondent was represented by Mr. Moses Adrico S. C. and Mr. Alex Ntale both of MMAKS Advocates.

Evidence

Evidence was by written witness statements. The first claimant Joseph Matovu testified that he followed all procedures contained in **part 1 and 2 of the Inter Account transfer process** which was a guide to an IAT transaction. He particularly told court that he positively identified the customer by comparing his signature and his appearance with the photo in the I.D document and with the photo in the bank system as well as the particulars filled by the customer with the ones in the system.

It was days after the transaction when he was called to be questioned as to whether he was involved in the transaction and when his answer was in the affirmative before the fraud and forensic department, he was a few days later informed by the same department that investigations revealed that the transaction he had performed was fraudulent. According to the witness, no

complaint from any customer was showed to him as having formed the basis of the investigation. While on duty, two days to the hearing he was served with a notification of hearing. He was not served with an investigation report or formal charge containing the particulars of the infraction and he was denied appearance with a person of his choice. He testified that at the hearing he was only asked one question: Whether he saw the person represented in a photo on an identify card.

The fifth claimant, Grace Nakiranda testified that she performed her duties as teller and that she strictly followed instructions dated 26.10.20 by positively identifying the customer through comparing signatures and physical appearances with those in the bank system. Her supervisor also did the same and sent back to her with instructions to dispatch the money which she did. She was later suspended on allegations of having caused the bank loss of 20,000,000/=. Later on before the forensic and fraud department she admitted she was involved in the transaction upon which they informed her that the transaction had been performed fraudulently causing loss to the bank of 20,000,000/= and 40,000,000/= respectively.

She was called to her former branch where she was served with a hearing notice at 9:00am to appear at 2:00pm. She was not availed with a complaint from a customer or an investigation report. At the hearing she was questioned as to whether she physically identified the client to which she replied in the affirmative although she was denied presence of her advocate whom she had preferred to be present during the hearing.

The fourth claimant, Richard Wasswa SSendendo testified in the same terms as the rest of the claimants and insisted that he identified the customer as the true owner and beneficiary of the questioned account before he forwarded the list of the particulars to the customer service consultation. He received a hearing notice at 9:00am calling him for the hearing at 2:00pm. It was alleged that he had failed to identify physically the customer leading to loss of 20,000,000/=. The witness denied any hearing taking off. He testified that he acquired a salary loan which according to him should be paid since he was unlawfully terminated.

SUBMISSIONS

It was the strong submission of counsel for the claimants that the respondent having relied on the investigation report to terminate the claimants, the said report ought to have been availed to the claimants and failure to avail it made the termination unlawful. He argued that even the transactions that were executed by the claimants were not part of the investigation report or the handwriting expert's report because the claimant's transactions were never submitted to the handwriting expert to determine whether they were forged or not. He therefore contended that the allegations that the claimants worked on forged documents and forged signatures were not true and were not based on proved evidence. For this reason, relying on Moses Obonyo Vs MTN Limited Labour Dispute Claim No. 045/2015 and Florence Mufumba Vs Uganda Development Corporation Labour Dispute Claim No. 138/2019, counsel submitted that the reasons based on to terminate the contracts of the claimants were *"Unjustified, fabricated, fanciful and ill motivated in breach of the Employment Act in particular Section 71 and 68 (i) of the Act."*

Counsel for the claimants submitted that the claimants were not afforded a fair hearing in accordance with **Section 66 of the Employment Act**. In his view summoning the 4th and 5th claimants at 9:00 a.m. for a hearing fixed at 2:00pm and summoning the 1st claimant to a hearing only 2 days before, denied each of them sufficient time to prepare for their defense. Counsel argued strongly that the claimants were denied appearance of persons of their choice during the hearing and this together with failure to give to the claimants the investigation report that was relied on compromised the hearing. He relied on the authorities of Wakabi Fred Vs Bank of Uganda & Another, Labour Dispute Claim No. 041/2014 and Benon Kanyangoga & Others Vs Bank of Uganda, Labour Dispute Claim No. 08/2014.

It was the contention of counsel that both the investigation report and the handwriting expert's reports ought to have been tendered in court by one Okelowange and one J.B. Mujuzi who never turned up and that since they were tendered in by another person who could not explain or be cross examined on the same, the contents therein could not be accepted as true. He relied on the case of Attorney General Vs Barange (1976) HCB which was relied upon in Sheikh Mawanda Abdu Jabbes & Another Vs Kobil Uganda Ltd and 2 others HCCS 350/2008. According to counsel the transactions that were handled by the hand

writing experts were those handled by one Kiconco Doreen and not by either of the claimants.

On the second issue, counsel for the claimants contended that the basis of termination of the claimant contracts was negligence and fraud which was in fact false and this injured the reputation of each of the claimants. Counsel also asserted that the respondent published the claimant's names in the Uganda Banking Council Register for Employees dismissed for dishonesty.

In response to the above submissions, counsel for the respondent on the first issue argued strongly that during the hearing before the disciplinary committee all the elements in the tort of negligence as described in the authority of Acaye Richard Vs Saracen (Uganda) Limited & 2 others, HCSS 63/2021 were proved against the claimants. Counsel submitted that the respondents' forensic team that investigated the case found that the claimants did not follow the Inter Account Transfer Rules. According to counsel the claimants admitted during the hearing to have breached the rules and procedures. Counsel referred court to page 46-47 where the fifth claimant stated that she could not positively describe the customer and where she stated "*the mistake may be there, but it is the customer denying.*" Counsel also referred to the handwriting experts report, EXB 50 at pages 209-2013 of Respondent's additional trial bundle which according to him corroborated the customer's evidence that his signature was forged. Counsel insisted in his submission that the fifth claimant did not positively identify the customer before her and did not ascertain that the signature on the ID form was similar to that which the customer availed in the bank's electronic system.

According to counsel, the fourth claimant in his evidence, authored payment on a signature that he had noticed had differences. Counsel asserted that when at the hearing the committee revealed that the customer had not come to the Bank and the 1st claimant kept quiet the deduction was correctly that he did not take due care to identify the customer and this constituted negligence. As to whether the claimants were afforded a fair hearing, counsel strongly submitted that all the guidelines as spelt out in the case of Ebiju James Vs Umeme Ltd HCSS 0133/2012 and as applied by this court in Batwale Augustine Vs Madhavani Group, DCR 146/2019, were all followed by the disciplinary committee. He contended that the claimants were served with notices of the allegations and

during hearing they all confirmed that they had been notified. According to counsel all the claimants informed the committee that they were ready to proceed and none asked for postponement of the proceedings on the ground that they had not been informed early to prepare for defence despite having been given a chance to do so. In counsel's view the argument that they did not have sufficient time to prepare defence was an afterthought. Counsel strongly submitted that the facts before court were distinguishable from those in the case of Wakabi Fred Vs. Bank of Uganda, Labour Dispute Claim No. 041/2013 mainly because in Wakabi Fred no details of the alleged offence were given to the claimant before the hearing which was not the case in instant case.

On the admissibility of the investigation report and the handwriting expert's report counsel argued that the investigation report bore an electronic signature of Jane Okelowange who prepaid it and that under **Section 30 (b) of the Evidence Act** such a report could be tendered by Potian Kay Byomuhangi who tendered by it in evidence. Counsel submitted that the claimants having been involved in the investigation that led to the findings in the report and having written statements in respect of the investigations, they were aware of the allegations and therefore failure to avail the investigation report to them did not violate their rights to a fair hearing. He relied on the case of Soon Yeon Kongllim & Kwanga Mao Vs Attorney General, Constitutional Reference 06/2007 and the authority of this court in Ekemu Jimmy vs Stanbic bank Labour Dispute Claim No. 308/2014.

On the second issue, relying on Esther Kisakye Vs Sarah Kadama HCCS 194/2013 counsel for the respondent submitted that the words in the termination letters of the Claimants did not constitute defamation since the words or statements were about the claimants and the said termination letters were not read by third parties. Counsel argued that by stating that the respondent published their names in the Uganda Banking Council Register for dismissed employees, the claimants were departing from their pleadings contrary to the Supreme Court's authority of Interfreight Forwarders (U) Limited Vs East Africa development, SCCA 33/1992. According to counsel, the claimants pleaded that the defamatory remarks were in their suspension and termination letters. Counsel argued there was no evidence led to prove defamation in the absence of the Uganda Banking Council Register on the court record.

Decision of Court.

The first issue: Whether the termination of the claimants' employment was lawful.

In the case of Ekemu Jimmy Vs Stanbic Bank Uganda, Labour Dispute Claim No. 308/2014 this court stated that

"A lawful termination is said to have occurred if;

- a) An employee resigns.*
- b) The contract lapses because of limitation in the contract or retirement of the employee or any other reason to which the employee is not a party through any misconduct*
- c) An employee is dismissed as a result of his misconduct or non-performance and such employee has been informed of the misconduct or non –performance and has been given sufficient time to defend the same before an impartial tribunal."*

The above definition of lawful termination was depicted from a combination of Sections 2, 65, 68 and 66 of the Employment Act. Section 2 clearly defines the terms "*termination*" and "*dismissal*". Whereas at the centre of "*termination*" there must be "*justifiable reasons*", at the centre of "*dismissal*" there must be "*verifiable misconduct*". Section 65 stipulates circumstances under which termination is deemed to take place. Section 68 specifically provides that there must be a reason for termination, thus reinforcing provisions of section 2, the definition section. Section 66 provides for particular steps that an employer is expected to take before terminating or dismissing an employee. For avoidance of doubt, Section 2 of the Employment Act defines "*Dismissal*" as "*discharge of an employee from employment at the initiative of his employer when the said employee has committed verifiable misconduct*".

Under the same section of the law, termination is defined as "*discharge of an employee from an employment at the initiative of the employer for justifiable reason*" other than misconduct, such as, expiry of contract attainment of retirement age, etc.

Section 65 provides"

“65. Termination

- 1) Termination shall be deemed to take place in the following instances-***
- a) where the contract of service is ended by the employer with notice;***
- b) where the contract of service, being a contract for a fixed term or task, ends with the expiry of the specified term or the completion of the specified task and is not renewed within a period of one week from the date of expiry on the same terms or terms not less favourable to the employee;***
- c) where the contract of service is ended by the employee with or without notice, as a consequence of unreasonable conduct on the part of the employer towards the employee; and***
- d) where the contract of service is ended by employee, in circumstances where the employee has received notice of termination of the contract of service from the employer, but before the expiry of the notice”.***

Section 66 provides

“66. Notification and hearing before termination

- 1) Notwithstanding any other provision of this Part, an employer shall, before reaching a decision to dismiss an employee, on the grounds of misconduct or poor performance, explain to the employee, in a language the employee is reasonably expected to understand, the reason for which the employer is considering dismissal 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 any 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.***
- 3) The employer shall give the employee and the person, if any, chosen under subsection (1) a reasonable time within which to prepare the representations referred to in subsection (2).***
- 4) Irrespective of whether any dismissal which is 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 employer a sum equivalent to four weeks' net pay."

Section 68 provides

"68 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 time of dismissal, genuinely believed to exist and which caused him or her to dismiss the employee."

To our mind, each of the instances provided for under section 65 of the Employment Act cannot be read independently from first and foremost, the definition section of *"termination and dismissal"* and later on from the rest of the above sections.

A lawful termination therefore can only occur if the circumstances spelt out in the above Ekemu Jimmy Vs Stanbic Bank, Uganda case are complied with.

In the instant case the applicable legal provision is under

c) An employee is dismissed as a result of his misconduct or non-performance and such employee has been informed of the misconduct or non- performance and has been given sufficient time to defend the same before an impartial tribunal.

Before going any further, we would like to state clearly the role and duty of a banker to a customer. This duty was spelt out in the case of Barclays Bank of Uganda Vs Godfrey Mubiru, SCCA 01/1998 when the court stated

"managers in the banking business have to be particularly careful and exercise a duty of care more diligently than managers of most businesses. This is because banks manage and control money belonging to other people and institutions, perhaps in their thousands and therefore are in a fiduciary relationship with their customers whether actual or potential....."

Although the mind of court in the above case particularly addressed the duty of a manager, we form the opinion that the same statement is equally applicable to any other officer of the bank who makes a decision or whose action or inaction may be relied upon by the manager to take a decision that eventually causes loss.

This court in the case of Anyango Beatrice Vs Kenya Commercial Bank, Labour Dispute Claim 325/2015 remarked that the probability that actions or omissions of a manager of a bank in given circumstances constitute negligence was higher than where the same actions or omissions were originated by any other person in an organisation other than a bank. Thus a manager of a bank or an officer of a bank will only be cleared of negligence if in the circumstances of a given case he/she took greater care than ordinary to prevent the loss/fraud.

The basis of termination of the claimants was that each of them did not physically identify the customer before him or her and did not take care in ascertaining the signature on the Inter account transfer form as compared to the signature in the bank system and as a result the bank lost money. Each of the claimants testified that they identified physically the customers and ascertained the signatures as they were in the bank system. Each of them implied that the real customers were the ones who were fraudulent. It was contended for the claimants that no evidence attributing negligence on their part was adduced against them.

There is no doubt on the evidence that each of the claimants handled inter account transfer of money in respect of certain customers who later on alleged that their accounts had been fraudulently debited using the said inter account transfers.

During the investigation, Joseph Matovu, the first claimant made a statement admitting that he handled an inter account transfer of 6,000,000/= whereby he verified the signature and amount, photocopied the I.D of the customer and physically saw the customer and verified his identify with details in the system. This statement is at page 133 of the Respondent's additional trial bundle. According to the investigation report at page 8, the concerned bank account was in the names of Kabanza Leon at Kisoro branch. The investigation report goes on to say at page 9 that "Mr. Gabinga and Mr. Kabanza produced a copy of their

voters' cards- this confirmed that the ones the fraudsters presented were forgeries" (annexture J). The investigator did not believe the claimants assertions that IAT forms were presented by account holders themselves because of what the investigator considered contradictions in the statements of one Doreen Kiconco (who withdrew her claim) and Grace Kiranda, the fifth claimant. These contradictions are revealed at page 10 of the investigation report. Surprisingly, no contradictions are mentioned in the instance of the 1st Claimant, Joseph Matovu, but as a result of the contradictions the investigation deduced that all implicated officers did not physically see the account holders and therefore the IATS were brought by unknown persons who processed the same without the account holders' instructions.

At page 72 of the respondent's trial bundle are the proceedings of the disciplinary hearing of Joseph Matovu. He insisted during the hearing that he verified the customer by physically looking at him against the available documents and the picture on the system.

The disciplinary committee relied on the investigation report to draw a conclusion that the 1st claimant, Joseph Matovu did not physically look at the picture in the bank system but on internalising the investigation report, it is clear that the first claimant was blamed on the assumption that the contradictions detected in Doreen Kiconco and Grace Nakiranda's statements applied to him as well.

In the submission of counsel for the Respondent, the fact that the Claimant kept silent when informed by the committee that the investigation revealed that he had not properly identified the customer was an indicator that in fact he had not properly done so and the committee therefore properly found him negligent. We respectfully disagree. The claimant did not during the hearing which was by question and answer, at all contradict himself on whether he properly identified the customer. Since in his written statement during the investigation he had insisted that he looked at the customer physically and compared his identity with the picture in the system, and during the hearing he was consistent with his evidence on proper identification, it was incumbent upon the respondent to call evidence to disapprove this assertion. The investigation report should have contained a statement of Kabanza Leon expressly stating that he did not at all appear in the banking hall on the date that he was said to have appeared and

presented the alleged Inter account transfer forms. We do not think that the investigator was right when she used the statements of Kiconco Doreen and Grace Nakiranda which were in respect to completely different transactions and in respect to different accounts to conclude that the same applied to the first claimant, even when Doreen Kiconco was not one of the claimants, having withdrawn her claim from this court. The investigation concentrated on an account in the names of Turyazayo Gard & Birungi Peace in whose respect an inter account transfer was handled by Kiconco Doreen and the fraud and forgeries detected on this account, were assumed by the investigator to have been exactly the same as in the account that the first claimant handled.

Our view is that each of the accounts alleged to have been defrauded should have independently been investigated with evidence of forgery and fraud revealed in respect to each of them independently. In the absence of evidence from Kabanza Leon, the customer or from Jane Okelowange who as an investigator took a statement from or interviewed Kabanza, and in the absence of a CCTV replay to ascertain who in fact presented the IATS, it is difficult to dispel the first claimant's consistent assertion that it was the account holder that he identified as the one who presented the Inter account transfer forms.

Counsel for the respondents correctly identified the ingredients of Negligence as spelt out in the case of Acaye Richard Vs Saracen (Uganda) limited & 2 others as

- a) A legal duty on the part of the defendant towards the plaintiff to exercise care in such conduct as falls within the scope of the duty
- b) Breach of that duty
- c) Consequential damage to the plaintiff

The breach of duty by the claimant fell in the respondent's duty to adduce evidence that the first claimant did not properly identify the customer as required by the inter account transfer rules one of which was to positively identify the customer by comparing his physical appearance with the photo in the ID document and the details of information filled out in the form and that on the bank system. In our view the respondent having failed to dispel the assertions of the 1st claimant, the aspect of breach of duty by the 1st claimant was not proved.

The fourth claimant, Richard Waswa Ssendo is not mentioned as having interfaced with the investigation team unlike Joseph Matovu, the first claimant. However, in cross-examination and re-examination while testifying before this court he insisted that he looked at the customer to physically identify him as the one whose details were on the form and as the same person in the bank system. He had received an inter account transfer of 20,000,000/= from Nakiranda Grace, the fifth claimant. On perusal of the investigation report, it is clear the investigation team only interfaced with Nakiranda Grace. Nothing in the investigation report particularly connects the fourth claimant to the infraction of negligence. As in the case of the 1st claimant, the investigation team drew its conclusion from the interface it made with Kiconco Doreen on an inter account transfer in respect to one Turyazayo Gard, and with the customers whose statement are not on the record.

During the hearing which constituted a question and answer session, the fourth claimant informed the committee that he did not interface with the customer and that he was sure that it was the customer who took his money basing on what his colleagues were telling him, what was on the system and from the documents he processed.

In the submission of counsel for the claimants, his clients followed the guidelines/instructions of the inter account transfers. We have perused and internalised Part I of the instructions at page 44 of the claimant's trial bundle one of which provide that

“a signatory to the account or authorised agent must present the completed application form to the customer service consultant...”

We have also perused part 2 of the same instructions at page 45 of the same trial bundle one of which provides for the duties of a customer service Consultant one of which includes performing **“duties of care i.e. verifies signature, checks balance on customer account, date stamps and signs application form, among others.”**

The duty of care clearly includes physical interface with the customer in the verification of the identity of the person as compared to the person in the bank system. The fourth claimant having conceded during the hearing that he did not interface with the customer, he breached his duty of care to the respondent.

The fifth claimant interfaced with the investigation team according to the investigation report. In her statement to the team exhibited as EX28 at page 143 of the respondent's additional trial bundle, she says the customer who transferred the 40m/= and 20m/= came personally to do the inter account transfers but the one who did the 1m/= transfer informed her that the owner of the account had filled the form and was seated in the bank hall. According to the investigation report the fifth claimant, Grace Nakiranda when asked to describe one of the account holders she failed to do so. Given that she admitted during the hearing that she handled a person who informed her that the owner of the account was in the banking hall, she failed her duty to personally interface with the owner of the account. This was in breach of her duty of care to prevent loss on the part of her employer.

Were the claimants subjected to a fair hearing?

As correctly put by counsel for the respondent, whether or not the proceedings constituted a fair hearing was elaborately put in the case of Ebiju James Vs Umeme Limited HCCS 0133/2012 and applied by this court in Batwala Augustine Vs Madhvan Group in the following terms:

- (a) A notice of allegations has to be served on the claimant who has to be given sufficient time to prepare a defence.
- (b) The notice has to set out clearly what the allegations are and the claimant's rights which include the right to respond to the allegations either orally or in writing, the right to cross-examine the witnesses and the right to call witnesses.
- (c) The plaintiff/claimant to be allowed to appear and present his case before an impartial committee in charge of disciplinary issues.

It was the case for the claimant's that they were not given sufficient time to defend the allegations and that having not been availed the investigation report which the respondent relied upon, they could not properly defend themselves before the disciplinary committee. It was also their case that they were denied the right to appear before the committee accompanied by a person of their choice. Counsel for the

claimants contended that failure of the makers of the investigation report and the handwriting expert's report to tender them in court so as to be cross-examined rendered the hearing unfair. It was argued that the transactions considered by the handwriting expert having been transactions not effected by the claimants, no proof existed that the claimants acted on forged document.

It is well established through case law that the process of a disciplinary hearing need not be at the same standard as that of a court of law. The authority of Caroline Kalisa Gumisiriza Vs Hima Cement Limited HCCS 84/2015 which was applied by this court in Grace Matovu vs Umeme LDC 004/2014 is of the legal proposition that a disciplinary committee need not follow the procedures as applied in the courts of law but the committee is merely required to grant an opportunity to an employee to defend himself or herself without the requirement of the standards of a court of law. We must add however, that the defence must be before an impartial tribunal

The first claimant in the instant case was called to a hearing after 2 days of being notified of the alleged infraction. The recorded minutes of the hearing do not reveal anywhere that the 1st claimant was not prepared for the hearing or that he asked for time and the committee refused. Although the courts of law provide for 14 days within which to file a defence, in the case of a disciplinary committee whether or not sufficient time was granted to an employee to prepare a defence will depend on the circumstances of each case, especially so when no specific time is spelt out either in the contract of service or in the Human Resource Policy of the employer. Given that the first claimant during the hearing did not raise the issue of being unprepared to defend the infraction alleged, despite having been asked if he was prepared, we form the opinion that he prepared his defence. The case of Wakabi Fred Vs Bank of Uganda & Anor LDC 41/2014 cited by the claimant's which held that 6 days were insufficient for preparation of defence is distinguishable from the instant case. Whereas in Wakabi case the particulars of the infraction were not revealed to the claimants until they appeared before the disciplinary committee, in the instant case, the claimant had the details of the charges two days before the hearing. This distinction was clearly spelt out by this court in Ekemu Jimmy Vs Stanbic Bank Uganda Limited LDC. 308/2014. However, the claimant was entitled to cross-

examine the complainant who claimed he did not personally come to the bank and that his signature was forged. This is because through the investigation the claimant was consistent that he properly identified the customer physically and at the hearing before the committee he maintained this position. Secondly, the transaction that was alleged to have been a forgery which the claimant himself is alleged to have handled was not part of those that were examined by the handwriting expert.

It is very clear to us, therefore, that by failure to avail the complaint that sparked off the investigation or the complainant for cross-examination by the claimant and by failure to avail the inter account transfer transactions processed by the 1st claimant to the handwriting expert, the respondent breached the guidelines spelt out in the case of Ebiju James Vs Umeme (supra) and in **Section 66 of the Employment Act.**

The fourth and the fifth claimants were given notification of a hearing at 9.00am and the hearing was fixed at 2.00pm. Ordinarily this was not sufficient time for the claimants to prepare their defence. When the fifth claimant was asked if she would like to have a representative she answered **“not now, it is late”** and when asked whether the committee should post pone the hearing to allow her to prepare, she opted to proceed.

The suspension letter dated 23/6/2011 in so far as the charges were concerned against the fifth claimant stated

“The bank is concerned with your alleged gross negligence as a consultant, customer service at Kikuubo branch, which resulted into loss of funds totalling to Ugx. 20,000,000/= and Ugx. 40,000,000/= on two different occasions” while that of the fourth claimant stated the charges in the same way

The details of how each of them was negligent i.e. by failure to properly identify the customer was not disclosed in the suspension letters.

It is at the hearing of 5/2/2011 that both of them were informed of the particulars of negligence that they were alleged to have committed i.e. by failure to identify the customer to ascertain that he was the signatory to the account. Although the investigation report indicates the dates when the alleged fraud

occurred, it does not state when the investigation itself started and when the claimants were interviewed. However, the fifth claimant, Grace Nakiranda wrote her statement on 26/06/2011 in which she explained the part she played in the questioned inter account transfers in which she admitted that in one instance she dealt with a customer other than the owner of the account. The investigation report does not indicate whether the claimants were informed of the particulars of the negligence they were alleged to have committed. The report does not show that the investigation team interacted personally with the fourth claimant, Richard Wasswa Sengendo who, like the fifth claimant got to know the particulars of negligence at the hearing but who during the hearing admitted not to have personally interacted with the owner of account. In the absence of evidence that both claimants were aware of the particulars of negligence before the hearing it is our finding that the aspect of knowing the details of the charge against them before hearing was breached by the respondent. We do not accept the contention of the respondent that by both claimants agreeing to proceed, they conceded to the fairness of the hearing. As a matter of fact, the fifth claimant agreed to proceed because it was late – she could not organise her defence or the person to accompany her. Although the fourth claimant told the committee that he was ready to proceed, he had earlier informed them that the notification was abrupt and that he **“wanted to gain confidence to meet the committee.”**

In the circumstances, the fact that the two claimants informed the committee that they were ready to proceed did not in any way indicate that they had been given sufficient time to prepare their defence having been given a notification a few hours before the hearing.

Having said this, we take cognizance of the fact that during the hearing both claimants agreed not to have properly identified the owner of the account in respect of which they processed the inter account transfer. This admission on a balance of probability, correctly led to the respondent’s belief that the owner of the account was telling the truth that his signature had been forged.

Although the questioned transaction was not availed to the handwriting expert, we are still convinced that the admission was sufficient to implicate the two claimants. This is because as employees of the bank, proper identification of the customer while processing an inter account transfer was their fundamental

obligation breach of which entitled the employer to summarily dismiss them under **Section 69 of the Employment Act**. Consequently, we, just like in Benon Kanyangoga & Others Vs Bank of Uganda, LDC 08/2014 hereby fault the respondent for failure to afford the claimants a fair hearing and because of this the respondent shall in accordance with **Section 66(4) of the Employment Act** pay to each of them a four weeks' net pay.

Accordingly, the first issue in respect to the 1st claimant is resolved in his favour while in the respect to the fourth and fifth claimant it is in favour of the respondent.

The Second issue is whether the respondent defamed the claimants.

It was the contention of the claimants that they were defamed by the respondent's writing dismissal letters alleging that they had fraudulently and negligently executed transactions upon forged documents. According to the claimants this ruined their reputation as it made them look like irresponsible, negligent, reckless, fraudulent, dishonest and not fit to be employed in the banking sector or anywhere to a third party. The definition of defamation was properly cited by counsel for the claimants as

**“a malicious and groundless harm to the reputation
or good name of another by the making of false
statement to a third party”**

Following an investigation by the respondent, the claimants were found to have acted on forged documents which caused a loss to the respondent and by a letter of dismissal addressed to each of them, their employment with the respondent was terminated. **Would a letter addressed to an employee terminating employment and indicating the reasons for termination, constitute defamation?**

The respondent argued strongly that publication constituting an element of defamation could not be to the party itself and that therefore the suspension or termination letters addressed to the claimants and not to third parties could not constitute defamation. The claimants were under a duty to prove publication of the said letters to the third parties by the respondent.

In order for an employee to succeed in defamation as a result of termination or dismissal, it is our view that such employee must prove that the reason for dismissal was as a result of malice on the part of the employer and that such a malicious reason was maliciously published to a third party. This was not the case in the instant matter.

It was also argued that the reasons for dismissing the claimants were published, posted and registered on the Uganda Banking Council Register for employees dismissed on grounds of dishonesty to be viewed by all employees and employers in the Uganda Banking sector.

We have perused the amended plaint filed in the High court on 22/04/2014 which under paragraph 4j, k, l, m and n, alleged that defamatory remarks were contained in the letters of dismissal and therefore we agree with the respondent that allegations of publishing reasons for dismissal in the Uganda banking council Register was a departure from pleadings which as clearly put in Interfreight Forwards (U) Limited Vs East African Development, SCCA 33/1992 cannot be acceptable by the court. Even then, the said publication was not adduced in evidence and consequently the second issue is resolved in favour of the respondent.

The third issue is whether the 4th claimant is indebted to the respondent.

This issue arises from the fact that the claimants secured loans from the respondent while they were employed. The claimant's relied on the cases of Moses Obonyo Vs MTN (U) Ltd LDC 45/2015 and Florence Mufumba Vs UDB, LDC 138/2014 both of which relied on Okello Vs Rift Valley Railways (U) Ltd, HCCS 195/2009 for the legal proposition that where an employer unlawfully dismisses an employee who has secured a loan solely payable by the employee's salary, such loan is not recoverable from the employee.

Having found that only the first claimant was unlawfully dismissed, the above decisions only apply to the 1st claimant and are not applicable to the fourth and fifth claimant.

Consequently, the outstanding balances on the loan account of the 1st respondent shall not be payable by the first claimant.

However, in accordance with the decision of **DFCU Bank Vs Donna Kamuli Civil Appeal 121/2016**, the fourth and fifth claimants will be charged the interest as provided in the loan agreements, as if they were still employees of the respondent.

The last issue is what remedies are available to the parties

(a) **Unlawfulness of the termination and dismissal of the claimants.**

As discussed above, our finding is that the first claimant was unlawfully terminated and it is so declared as prayed for by the first claimant.

(b) Defamation of the claimants

As discussed above, we did not find elements of defamation in the statement comprised in the dismissal letter and publication to third parties was not proved. The prayer for declaration that the claimants were defamed is therefore denied.

(c) General damages

The first claimant having been unlawfully terminated, he was deprived of earning for his family and the satisfaction of being employed. He had been employed on 2/8/2011. His basic salary according to the pay slip (EXR at the page 89 of the respondent's trial bundle) was 926, 941/=.

Given the time he had worked and was yet to work before the unlawful termination and given the amount he earned per month and the position he held in the bank, we award him 10,000,000/= as general damages.

(d) **Special Damages**

I. 1 month's salary

We do not see from the evidence or the pleadings how this arises. Special damages must be strictly proved. This prayer is denied.

II. 1 month in lieu of notice

This is provided for under **Section 58 of the Employment Act**. The 1st claimant having been employed for 12 months was entitled to 1month's notice or salary in lieu of notice. He shall be paid 926,941/=.

III. Leave pay due

This was not proved by evidence or pleading. It is denied.

IV. Severance

The first claimant having been unlawfully terminated, and having been employed for more than 6 months was entitled to severance allowance as per **Section 87 of the Employment Act**. In the absence of a negotiation or calculation of the allowance, the applicable calculation is the one espoused in the case of **Donna Kamuli Vs DFCU bank, LDC 02/2015** i.e. **1 month's salary per year worked**. The first claimant shall therefore be entitled to 926,941/=

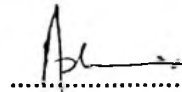
V. Interest

The respondent shall pay interest of 15% per year on the monetary awards in respect to the 1st claimant from the date of the Award till payment in full.

In the final analysis the first claimant's claim succeeds in the above terms while the fourth and fifth claimants' claims fail and are hereby dismissed although they shall be paid 4 weeks' dues in accordance with **Section 66(4) of the Employment Act** for failure of according them a fair hearing. No order as to costs is made.

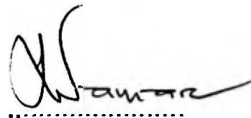
Delivered & signed by:

1. Hon. Head Judge Ruhinda Asaph Ntengye



PANELISTS


1. Ms. Adrine Namara



2. Ms. Susan Nabirye



3. Mr. Micheal Matovu



Dated: 14/01/2022