**THE REPUBLIC OF UGANDA**

**IN THE INDUSTRIAL COURT OF UGANDA AT JINJA**

**LABOUR DISPUTE REFERENCE No. 021 OF 2023**

**ARISING FROM JCC/LAB/005/JULY/2023**

**AKUMU DOREEN:::::::::::::::::::::::::::::::::::::::::::::::::::::::::::: CLAIMANT**

**VERSUS**

**NILE PLYWOODS (U) LTD ::::::::::::::::::::::::::::::::::::::: RESPONDENT**

**Before:**

The Hon. Justice, Linda Lillian Tumusiime Mugisha

**Panelists:**

1. Hon. Bwire John Abraham
2. Hon. Katende Patrick
3. Hon. Julian Nyachwo

# AWARD

## Background

The Claimant's claim against the Respondent is for a declaration that the termination of the Claimant was unlawful, payment in lieu of notice, payment in lieu of hearing, Severance pay, salary arrears for three months, compensatory order, general, punitive damages, interest, and costs

## Summary of Facts

The Claimant worked with the Respondent from 2002 until 17/04/2023, when she was accused of stealing the Respondent's Steel wire. She was stopped from accessing the Respondent's premises. By the time of her termination, she was a supervisor, at the Dye department and she was earning a gross salary of Ugx. 501,138/= per month.

She only found out that she had been dismissed from her employment on 25/07/2023, through the Personnel Manager's letter addressed to NSSF Jinja indicating that she ceased to be employed by the Respondent in in April 2023. She contended that the termination was unlawful and unfair and she sought several reliefs including, severance allowance, payment in lieu of notice, general damages, punitive damages, interest, and costs of the claim.

The Respondent on the other hand claimed that she was employed in 2007, at a salary of Ugx. 354,000/= and her termination were based on grounds that stopped by security agents of the company for a check and she was found with two pieces of steel wire in a polyethylene bag that contained leftovers and cabbage. According to the Respondent, she recorded a statement admitting culpability. Therefore her

dismissal was lawful and it was done in accordance with the terms and conditions of her employment and the laws of Uganda.

**Issues**

According to the Joint scheduling memorandum, the following were the issues for resolution:

1. Whether the termination of the claimant's employment is unlawful and unfair?
2. Whether the claimant is entitled to the reliefs sought?

**Representations**

1. Mr. Kizito Kasirye of M/s. Tumwebaze, Kasirye & Co. Advocates for the Claimant.
2. Mr. Ongwen John Timothy of M/s. Mangeni Law Chambers for the Respondent.

**Resolution of Issues**

**Issue 1: whether the termination of the claimant's employment is unlawful and unfair?**

Citing **Hilda Musinguzi vs Stanbic Bank (U) Ltd SCCA No. 5/2016,** It was submitted for the Claimant, that courts cannot fetter an employer's right to dismiss an employee so long as the employer follows procedure and this court in **Eva Nazziwa Lubwoa vs National Social Security Fund, LDR, No. 001 of 2019** cited sections 65,66,68,69 and 70(6) of the Employment Act as the provisions that provide for termination.

According to Counsel, Section 2 of the Employment Act, defines termination to mean the discharge of an employee from employment at the initiative of the

employer for justifiable reasons other than misconduct such as expiry of contract, attainment of retirement age, and dismissal is defined as *"... the discharge of an employee from employment at the initiative of his or her employer when the said employee has committed verifiable misconduct."* Counsel contended that whereas the Respondent in the instant case alleged that the Claimant was subjected to a hearing for allegedly stealing steel wire on 17/04/2023, no minutes were adduced as evidence of the hearing contrary to section 68 and 70(6) which require that the employer proves the reasons for dismissal. He further submitted that Sections 58(1), 65(1) (a) 66, and 69 (2) of the Employment Act, make it mandatory for an employer to conduct a fair hearing before terminating an employee on grounds of misconduct and Articles 28(1) and 42 of the Constitution make it mandatory for a hearing to be conducted before dismissal. He insisted that the Respondent had the burden of proving that the claimant was given sufficient notice of a disciplinary hearing and evidence that a hearing took place. He relied on **Hot Loaf Bakery Limited Vs Ndugutse Xavier & 28 others, CACA No. 154 of 2016,** and **Ebiju James vs UMEME Ltd HCT-CS-0133 -2012.** He prayed that this court ascertains that the claimant was unlawfully terminated.

In reply, counsel for the respondent submitted that the claimant stole the company steel wire and admitted to the offense. He stated that RW1 testified that 2 security guards (Wandera and Sizomu) recorded the Claimant's statement that, she stole the two pieces of steel wire and the statement read" theft of steel wire ¼ Kg (2 pieces). He also relied on REXH E, the mediation report, in which he submitted that the claimant stated that she took the steel wire. It was his submission that having admitted to committing the offense there was no requirement for the Respondent to hold a formal hearing as was held by this Court in **Kabojja International School**

to subject such an employee to a hearing is rendered redundant. Therefore, the Claimant having admitted that she stole the steel wire her dismissal was lawful.

**Decision of Court.**

It is indeed the correct position of the Law that the employer's right to terminate an employee he or she no longer wants cannot be fettered by the courts so long as the employer follows the correct procedure for termination. (See **Hilda Musinguzi vs Stanbic Bank (U) Ltd SCCA 5/2016).** This court in Eva Nazziwa Lubowa vs NSSF LDR No. 001 of 2019, is of the position that Sections 58,65,66,68, 69, and 70(6) of the Employment Act, provide for the correct procedure for termination which an employer must comply with.

The Claimant in the instant case testified that on 17/04/2023, she was stopped at the gate, but she was not told why. After she waited for a long time she complained to one of the security guards one Sizomu but he told her to continue waiting. She says another guard one Wandera searched her bag and found nothing. She said she did not make any statement but she made to sign a document which she did not read. According to her, Sizomu coerced her to sign or else she would be taken to police cells. So she signed out of fear. She however did not report the coercion to Management, but she informed the chairperson of the Union. She also stated that she always picked leftovers from the canteen and she was authorized to do so. It was also her testimony that after that she was not allowed to enter the premises again.

RW1 Wandera testified that he intercepted the claimant and found her with things that she said she got from the canteen. He also said that he found her with steel wire. When he arrested her he did not take her to the police, but he called her bosses. He also said that he was not at the gate when she reported to work the following day and

he never saw her again from 17/04/2023. He was however never called to participate in any disciplinary proceedings regarding her case.

RW2 testified that he recorded a statement for Doreen. He said that, before 17/04/2023, the claimant used to take cabbage leftovers to her animals at home. He stated that she was not allowed into the premises after 17/04/2023 because she was stopped at the gate.

The evidence suggests that whereas the Claimant was apprehended at the Respondent's gate and purportedly arrested for being found with steel wire belonging to the Respondent, there was nothing further that was done. As already discussed the correct procedure an employer is expected to follow before terminating or dismissing an employee is well laid down under Sections 58,65,66,68, 69, and 70(6) of the Employment Act. Section 66 in particular is particularly instructive. The Section provides as follows:

> *"66. Notification and hearing before termination*
>
> *(1) Notwithstanding any other provision of this 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.*

*(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 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 employee a sum equivalent to four weeks' net pay..."*

The import of this section is that it makes it mandatory for the employer to notify the employee about the details of the misconduct or poor performance alleged against him or her, to enable the employee to prepare a response within a specified period. It is also mandatory that a date on which a disciplinary hearing is scheduled to take place must also be communicated and the employee must be advised about his or her right to be accompanied during the hearing. In summary, the employee has a right to be given sufficient time to be notified of the infractions leveled against him or her, he or she must be given time to prepare a response to the infractions, a right to fully understand the infractions, therefore they must be particularized and a right to be accompanied at the hearing must be given to the employee. (Also see **Ebiju James vs UMEME (U) Ltd HCCS No. 0133/2012)**

Section 68 further requires the employer to prove the reason the employer is contemplating dismissal or termination and that at the time of dismissal, the reason does exist. The section provides as follows:

***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...."*

The employer must therefore prove the existence, validity and fairness of the reasons set out as the grounds the employer is contemplating the dismissal or termination of an employee. Therefore, it is expected that the employer will undertake an administrative investigation to verify the employee's misconduct or poor performance. The employee has a right to be given a copy of any investigation report or any other documentation the employer intends to rely on during the hearing as proof of the reason and its existence.

It must be emphasized that Article 44 of the Constitution of Uganda, 1995 (as amended) provides that the right to a fair hearing is non-derogable, therefore Section 66 is an irreducible minimum statutory standard that an employer must comply with before dismissing or terminating an employee. This is the reason courts have emphasized the need to document the proceedings of disciplinary proceedings, records, or minutes, which ought to be signed off as soon as possible, even if the proceedings are not expected to be at the same standard as those of a court of law, the hearing must comply with procedural fairness guidelines, and it should not be a mere mechanical appearance before a disciplinary panel, where the employee is ambushed with the grounds and asked to immediately respond( see the Kenyan case of **Andrew Howard Nyerere vs Kenya Airways Limited, ELRC cause number 125 of 2013),** also see **Grace Matovu vs UMEME Uganda Ltd Labour Dispute Claim No. 004/2014.**

After carefully perusing the record in the instant case, we established that after the Claimant was apprehended at the gate on 17/04/2023 and as the RW2 testified that, he recorded a statement for her, nothing further happened until she learned about her dismissal on 25/06/2023. There is nothing on the record to indicate that the Respondent subjected her to any disciplinary hearing or that she was notified about the infractions leveled against her. It is not sufficient that a statement was recorded for her in which she is purported to have admitted to committing the offence as counsel would like this court to believe. We also found it peculiar that the Claimant having purportedly admitted to the commission of theft which is a criminal offense was not subjected to criminal proceedings as is required by law.

It is trite that a confession or admission must be unequivocal. We are not satisfied with the circumstances under which the Claimant was apprehended and made to sign a statement moreover which was not read to her before she signed, because RW2 did not state anywhere that the statement was read back for the Claimant, was one in which any reasonable person could render/make an unequivocal admission. In any case, this admission was not made before Management or before a disciplinary committee constituted by Management as is required under section 66 (supra). As already discussed the Claimant's statement and the evidence that the Respondent purported to have collected against her (as presented in its trial bundle), and as testified by its 2 witnesses should have been put to her in a disciplinary hearing at the Respondent's premises. There is also nothing on the record to indicate that the Respondent's decision to dismiss her based on a purported admission was communicated to her at any point in time.

It must be reemphasized that the role of this court is not to substitute the internal disciplinary procedures of employers but to ensure that the procedures are applied in

accordance with the correct procedure established in the Employment Act (supra). Therefore, even if this court holds the position that an employer need not subject an employee who has admitted to committing the infractions leveled on him or her to such an employee. In the instant case, save for an illegible letter from the Respondent to NSSF which the Respondent notified the fund that she no longer contributed to it, and which was not controverted by the Respondent, there was nothing to indicate that the Claimant was subjected to any disciplinary hearing or that the decision to dismiss her was communicated to her. Instead, she was not allowed to enter the premises again and she was suspended indefinitely with no explanation.

In the circumstances, it is our finding that the Respondent did not prove that the Claimant admitted to committing the offense of theft of steel wire as is required under section 68 of the Employment Act and it failed to adhere to the irreducible minimum statutory requirement under section 66 of the Employment Act, when she not given an opportunity to defend herself. Therefore, her dismissal was substantively and procedurally unlawful.

**Issue 2: whether the claimant is entitled to reliefs sought?**

Having found that her dismissal was unlawful, she is entitled to some remedies. According to her memorandum of Claim, she prayed for the following.

**1. Payment in lieu of notice**

The claimant is seeking UGX 1,503,414 in accordance with Section 58(3) (d) of the Employment Act. In order to determine the notice to which she was entitled, it is important to determine the date on which she was appointed. She claimed she started working for the Respondent in 2002, and the Respondent alleges she commenced in

2007. CE1 on the Claimant's trial bundle indicates that she was confirmed in 2004, however, the position in which she was confirmed was not stated. The letter of appointment marked CE2 dated 2007 which the Respondent also relies on stated in the first paragraph that "*This is a formalization of your appointment with effect from 10/05/2007...*" This in our considered opinion meant that she was already in employment before this formalization took effect. We are persuaded by the Kenyan case of **Mwangi Ngumo vs Kenya Institute of Management Industrial cause No. 851 of 2009,** in which Makau J stated that, *if the contract of employment is drawn by the employer and even if not drawn by the employer, it cannot be shown that the employer entered into it under duress or coercion, anu ambiguities in the contract should be construed against the party who drew the contract (contra proferentem rule)..*" We believe the confirmation that is on the record was a confirmation made by the Respondent and we also believe that the regularization contract of 2007 was also drawn by the Respondent. In the circumstances, we therefore take December 2004, as stated in CE1 in her trial bundle, as the date the Claimant was confirmed in employment with the Respondent because the 2007 Contract only states that this employment was being regularized. Therefore, given that she was stopped from accessing the premises of the Respondent on 17/04/2023, by then she had served the Respondent for 18 years and 4 months. In the circumstances having served the Respondent for more than 10 years, Section 58 which provides for notice periods as follows:

*"58. Notice periods*

*a) A contract of service shall not be terminated by an employer unless he or she gives notice to the employee, except-*

*(a) where the contract of employment is terminated summarily in accordance with section 69; or (b) where the reason for termination, is attainment of retirement age.*

*(2) The notice referred to in this section shall be in writing, and shall be in a form and language that the employee to whom it relates can reasonably be expected to understand.*

*(3) The notice required to be given by an employer or employee under this section shall be*

*(a) not less than 2 weeks, where the employee has been employed for a period of more than six months but less than one year;*

*(b) not less than one month, where the employee has been employed for a period of more than twelve months, but less than five years;*

*(c) not less than two months, where the employee has been employed for period of five, but less than ten years; and*

*(d) not less than three months where the service is ten years or more.*

She is entitled to not less than 3 months' notice or 3 months' salary in lieu of notice. The evidence she furnished to court with marked CE3 indicates that by the time of her termination, she was receiving a gross pay of Ugx. 369,492/= and not Ugx. 501,903/= as she earlier claimed and net pay amounting to Ugx. 259,358/= per month. The Respondent is therefore ordered to pay her Ugx. 259,358/= for 3 months, amounting to **UGX 778,074/-**, as payment in lieu of notice.

**2. Severance Pay**

Section 87(a) provides that where a person works for an employer for a period of 6 months or more and he or she is unlawfully terminated, he or she will be entitled to severance pay. Section 89 provides however that the formula for calculating

severance pay shall be negotiated between the employer and employee and although the Section is silent about circumstances where there is no agreed formula, this Court in **Donna Kamuli Vs DFCU Bank LDC No. 02/2015,** held that where there was no formula for calculating severance pay, the employee in issue would be entitled to the payment of 1 month's salary for every year served as severance pay. This position was upheld by the Court of Appeal in **African Field Epidemiology Network (AFNET) vs Peter Waswa Kityaba CA. No.0124/2017.**

Having already established that the Claimant in the instant case was unlawfully terminated and she served for 18 years, she is entitled to severance Pay for the 18 years she served the Respondent at a 1 month's net salary of Ugx. 259,358/= per year worked, she is therefore entitled to **Ugx. 4,668,444/=** as severance pay.

**3. Salary arrears**

She Claimed Ugx. 1,503,414/= as salary arrears, from the date she was denied entry into the premises on 18/04/2023 until her dismissal on 25/7/2023. Section 63 of the Employment Act provides that,

*(1) Whenever an employer is conducting an inquiry which he or she has reason to believe may reveal a cause for dismissal of an employee, the employer may suspend that employee with half pay.*

*(2) Any suspension under subsection (1) shall not exceed four weeks or the duration of the inquiry, whichever is shorter.*

We have already established that the claimant was suspended indefinitely until she got to know that the respondent ceased to consider her as an employee by its letter to NSSF dated 25/7/2023. It is the position of this court that, when an employee is suspended he or she has reasonable expectation to be reinstated or subjected to

disciplinary proceedings and subsequently for a decision to be taken and communicated to the employee. Therefore, an employee on suspension is still considered an employee until a decision to reinstate, penalize, or terminate him or her is communicated to the employee. Therefore, having suspended the claimant from 17/04/2023 until 25/7/2023, she was still an employee and therefore she was entitled to receive her pay in accordance with section 41(6)(a) because in her case she was prevented from accessing her workplace by the employer as already discussed. We found nothing on the record to indicate that, she was paid half pay as provided under section 63(supra). The Respondent must therefore pay the Claimant 4 months' salary for the months of April, May, June, and July 2023 at a net pay of **Ugx. 259, 358/-** per month, amounting to **Ugx.1, 037,432/=**.

**4. General damages**

It is a settled matter that any person who is unlawfully terminated or dismissed is entitled to an award of damages in addition to statutory remedies he or she may have prayed for. General Damages are compensatory in nature and intended to return the aggrieved person to as near as possible in monetary terms to the position he or she was in before the injury occasioned by the Respondent. The Claimant had served the Respondent for over 18 years without any record of misconduct until that fateful date of 17/04/2023 when she was accused of stealing steel wire from the Respondent, moreover without any proof. We have already established that the Respondent did not prove that she stole the steel wire nor was she subjected to a fair hearing. Therefore she was unlawfully dismissed from her employment and she is entitled to an award of Damages.

The Supreme Court in Stanbic Bank Ltd Vs Kiyimba Mutale(supra), cited *Vires Vs National Dock Labour Board* [1956] 1QB 658 in which it was stated thus:

*"It has long been settled that if a man employed under a contract of personal service* is *wrongfully dismissed, he has no claim for remuneration due under the contract after repudiation. His only money claim is for damages for having been prevented from earning his remuneration. His sole money claim is for damages and he must do everything he reasonably can* to *mitigate them."*

We have no reason not to grant her an award of damages. , She prayed for an Ugx.100, 000,000/= as general damages. It is our considered opinion that this claim is excessive. We think that an award of **Ugx.12, 000,000/=** is sufficient as general damages.

**5. Payment in lieu of hearing**

The award in General damages is sufficient.

**6. Punitive damages**

We found no basis to grant this claim. It is denied.

**7. Interest and costs**

An interest rate of 12% per annum shall apply to all the pecuniary awards made above from the date of this award until payment in full.

No order as to costs is made.

Delivered and signed by:

The Hon. Justice Linda Lillian Tumusiime Mugisha

**Ag. Head Judge**

**The Panelists Agree**

1. Hon. Bwire John Abraham
2. Hon. Katende Patrick
3. Hon. Julian Nyachwo

**21st December, 2023**

INDUSTRIAL COURT OF UGANDA