

THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE NO.005 OF 2019
ARISING FROM LD. NO.482/2017.

DRAGA MICHEAL

.....CLAIMANT

VERSUS

JESA FARM DAIRY LTD

..... RESPONDENT

BEFORE:

1. HON.AG. HEAD JUDGE LINDA LILLIAN TUMUSIIME MUGISHA

PANELISTS

1. MR. RWOMUSHANA JACK

2.MS. ROSE GIDONGO

3.MS. BEATRICE ACIRO

AWARD

FACTS

The Claimant was employed as Head Engineering by the Respondent Farm from 22/02/2016 on a 3-year contract. According to him on 19/12/2016, there was an unfortunate death of a child at his home. He requested his superiors the Plant Manager, Dennis Sibanda and Geoffrey Mulwana to be released from work to attend to this emergency in vain. He decided to leave without authorization. He returned to work on 24/12/2016, after being away for 5 days. On 27/12/2016, the Respondent's Human Resources Officer served him with a notice for a disciplinary hearing scheduled for the 29/12/2016. He attended the Disciplinary hearing in which it was decided that he is suspended for 12 days with effect from

1/01/2017. On 13/01/2017, he did not return to work and instead sent an email requesting for sick leave for 3 months. On 15/01/2017, his request was denied on grounds that he had not complied with the requirements for application for sick leave as provided under the Respondent's Human Resource Manual. He was given 5 days within which to make a fresh application. He declined to do, by email dated 20/01/2017, on grounds of ill health. On 24/01/2017, he was summoned for a disciplinary hearing scheduled for 2/02/2017. He did not attend the hearing Subsequently he was terminated on 3/02/2017. He contends that the dismissal was unlawful hence this suit.

ISSUES

- 1. Whether the Claimant's summary Dismissal by the Respondent was lawful?**
- 2. Whether the Claimant was entitled to the remedies sought?**

REPRESENTATION

The claimant was represented by Ms. Ngonde Davis and Anena Samantha of M/s Okello-Oryem& Co Advocates Kampala and the Respondent by Mr. Ferdinand Musimenta od S&L Advocates Kampala.

RESOLUTION OF ISSUES

1. Whether the Claimant's summary Dismissal by the Respondent was lawful?

Section 2 of the Employment Act defines 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.*”

Sections 66 and 68 of the Employment Act are to the effect that, before terminating or dismissing an employee, he or she must be notified about the reasons for the termination and be given an opportunity to respond to the reasons

in writing or orally before an impartial tribunal or disciplinary committee. The reasons for termination or dismissal must be reasons which the employer genuinely believes to exist at the time of the dismissal or termination.

It was the Claimant's evidence that, he took leave without authorization to attend to an emergency, resulting in his suspension for 12 days from 1/1/2017 to 12/01/2017. However, on 13/1/2017, he did not return to work on grounds that, he was unwell and when he applied for sick leave it was denied and instead, he was summoned for a disciplinary hearing and eventually dismissed for absconding from duty. he testified that: *"...yes suspension was to end on 12/1/2017, but I did not return to work...yes JF3(Jf3 was the Claimant's application for sick leave) I applied for leave... no it was not supported by medical evidence... yes the company wrote to me that I was supposed to give documents in support ... yes leave was denied...yes I was advised to reapply with medical documents ... yes it was a requirement to include medical documents... I did not reapply...yes I was supposed to reapply in 5 days... yes I was summoned for disciplinary hearing I did not attend the hearing...yes I was informed that the disciplinary hearing would proceed if I did not come..."*

It is very clear from his testimony that, the Claimant was aware that he made a mistake when he took leave without authorization and his email dated 13/01/2017, is testament that, he acknowledged his mistake. The letter states in part as follows:

"Hoping this finds you all well, following the incident at my home , disrupted my attendance to duty and emanated to my two weeks suspension from duty in the past weeks of January 13, 2016 as per the communication by HR on Phone.

I hereby acknowledge growing from my mistakes with the life lessons and wisdom I have attained.

However I kindly hearby submit in my request for sick leave of three(3) months due to my poor health of late....”

He also acknowledged that, he did not comply with the requirements of applying for sick leave and all his witnesses testified that, they were not aware of the requirement for him to furnish medical evidence as proof of his illness. We found it peculiar that CW3, Dr. Atta Joseph who is supposed to have attended to him during his illness did not remember that he treated him because he testified that he asked the Claimant to send him medical documents regarding his illness to enable him refresh his mind. Dr. Atta testified that: “... I received a call from brother Michael about 2 weeks ago and he told me he has a court case. And I had seen him in hospital when he was admitted. I could not remember when he was admitted because it was in 2017... so I told him to send me documents to remind me... he sent medical form 5 and discharge form and review form...when I looked at them ,I recalled I had seen him. I issued those documents...” We found it hard to believe that a medical practitioner and brother of the Claimant could forget that he treated him for high blood pressure and stroke as was stated in the medical documents attached on the record.

Section 40 of the Employment Act, mandates an employer to provide an employee with work in accordance with the contract of service and although it is silent about the employee’s role, it is obvious that, the employee in turn, is expected to execute or perform the work provided, in accordance with the contract of service. It is not in dispute that, the claimant was appointed as the head of engineering at the Respondent, therefore, his role was a fundamental part of the dairy farm. There is no doubt that, his absence from the Respondent could have major implications on the business.

He was well aware that, he had to apply for sick leave and he had to attach medical evidence as a requirement, but he did not do so, even after he was given 5 extra days to enable him do so. Instead on 20//1/2017, he sent an email in which he

categorically stated that, he would rather cater for his health than comply than travel to submit the documents. We found nothing on the record to indicate that, he was required to deliver the medical documents in person. We believe that, all that was required was for him to get them delivered to the Respondent by any other means. In our considered our view, the very persons who testified on his behalf could have taken these documents to the Respondent.

We are also not convinced that he was unable to access the medical records from the hospital, because his supposed Doctor Atta testified that, he was not aware that he was required to do so. We do not think that if they did exist, from the hospital and it refused to give them to him. After all they were his medical records and he was entitled to have them. The fact that, the Doctor testified that he was not aware that the Claimant was required to provide them as evidence of sickness was indication that they either did not exist or he made no effort to request for them from the Hospital. We believe that having notified Mr. Kajubi, the Human Resource Officer about his illness on phone he could have asked Dr. Atta to explain his condition to the HR on phone as well, but he did not do so. Instead, he chose not to send the medical documentation and he continued to absent himself from duty without authorization.

Section 75 of the Employment Act is to the effect that an employee cannot be terminated for taking leave he or she is entitled to under the law. In the instant case, it is clear that the Claimant was not entitled to take leave for personal emergencies without authorization and he was expected to apply for sick leave in accordance with the Respondent's Human Resource Manual, but he failed to comply with the requirements when he refused to provide medical documents in support of his application.

In the circumstances we are inclined to agree with Mr. Musimenta Counsel for the Respondent that, the Claimant fundamentally breached his contract of service when he failed and or refused to report to work without authorization. We

reiterate that, as head of engineering at the Respondent, his role was fundamental to the Respondent's business because he was expected to perform his roles in accordance with the contract of service which he failed to do because he was absent moreover without authorization.

His contention that he was not given time to prepare for the hearing before his suspension, given that, he had less than 24 hours to prepare for the hearing does not hold because, he did avail himself for the meeting without any protestation regarding the time and as already discussed, in his email of 13/1/2017, he acknowledged his wrong doing. We have already established that he, deliberately refused to comply with the requirement to apply for sick leave as provided under the Respondent's HR Manual.

Therefore having not submitted medical evidence of his illness as was required, the Respondent was correct to subject him to disciplinary proceedings which he locked himself out of the disciplinary proceedings when he failed appear and or give genuine reasons for his incapacity to attend.

It is trite that before terminating an employee the employer must notify the employee about the reason for doing so. In this case the Claimant was invited for a hearing to decide his failure to resume his duty after the expiry of his suspension. He was aware that, he was supposed to return to work but instead he requested for sick leave without any proof in form of medical evidence. He admitted that, he did not comply with the requirement to apply for sick leave, by attaching medical evidence, even though he was given an extension of 5 days to do so. We are not convinced that he was unable to comply merely because the documents were in the hospital, because Dr. Atta the medical doctor who supposedly treated him testified that he was not aware that he was required to produce medical evidence of his sickness. As already discussed had he requested Dr. Atta for these documents for purposes of enabling him secure sick leave, we believe they would have been availed to him but this was not the case. On

24/01/2017, when the Claimant was summoned for the second disciplinary meeting scheduled for 2/02/2017, he sent several emails in which he stated that he was still unwell but he did not attach any medical documents as evidence. Given his conduct, we are not convinced that, his illness was genuine. Therefore his absence from duty was not based on genuine grounds as is required under Section 75(i).

As already discussed, we found nothing to show that it was a requirement for him to personally deliver the medical documents to the Respondent. His doctor or any member of his family could have delivered the same to the Respondent.

As an employee, he had an obligation to comply with the lawful directives of his employer such as following the correct procedures when applying for leave of absence and particularly for sick leave. We have established that he failed and or refused to do so. As head of engineering, we believe that, he was one of the important employees in the Respondent's organisation. He was hired to head the engineering department therefore he was expected to be available to undertake his duties in accordance with his contract of service. However, he chose to absent himself without authorization or a justified reason.

We are satisfied that the Respondent followed due process as provided under section 66 and 68 of the Employment Act and as elucidated in **Alex Methodious Bwayo vs DFCU Bank HCCS No 78/2012**. Therefore, having failed and or refused to attach any medical documents as evidence of his illness, we have no doubt in our minds that, he was absent without any authorization and without a justifiable reason, therefore he fundamentally breached his contract of service. We therefore have no reason to fault the Respondent for terminating him.

In the circumstances, it is our finding that, his termination was justified and it was therefore lawful.

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

Having established, that he was lawfully terminated, he is not entitled to any of the remedies sought. This claim fails it is dismissed with not order as to costs.

Delivered and signed by:

HON.AG. HEAD JUDGE LINDA LILLIAN TUMUSIIME MUGISHA

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PANELISTS

1. MR. RWOMUSHANA JACK

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2.MS. ROSE GIDONGO

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3.MS. BEATRICE ACIRO

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DATE: 25/11/2022