

**THE REPUBLIC OF UGANDA**  
**IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA**  
**LABOUR DISPUTE No.254/2016**  
**ARISING FROM KCCA/CENT/LC/178/2016**

**KAHUURA MWESIGWA DAN** ..... **CLAIMANT**

**VERSUS**

**HOUSING FINANCE BANK** ..... **RESPONDENT**

**BEFORE:**

- 1. THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE**
- 2. THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA**

**PANELISTS**

- 1. MR. ABRAHAM BWIRE**
- 2. MR. MAVUNWA EDISON**
- 3. MS. JULIAN NYACHWO**

**AWARD**

**BRIEF FACTS**

The Claimant was employed by the Respondent Bank, as an Assistant Banking Officer from 3/7/2008. He commenced duty as a trainee Assistant Banking Officer on a 6 months' probation, and subsequently he was confirmed as Assistant loans officer. He was terminated on 28/06/2016. And at the time he was serving as Relationship Officer, attached to the Respondent's Garden City Branch. He had worked for 8 years. According to him he was unlawfully terminated because he was not given any reasons for the termination, he was not given a hearing and was paid 1 months' notice instead of 2 months.

The respondents on the other had contend that based on CCTV footage, it was established that the Claimant solicited for a bribe from one of its customers, which amounted to a fundamental breach of his obligations to the Respondent. He was subjected to a disciplinary hearing and the Committee recommended dismissal.

#### **ISSUES:**

- 1. Whether the Claimant was accorded a fair hearing before the Respondent reached a decision to terminate his contract?**
- 2. Whether the Claimant was unfairly terminated?**
- 3. Whether the Claimant is entitled to reliefs sought?**

We shall resolve the issues starting with issue 2.

#### **SUMMARY OF EVIDENCE**

The claimant adduced his own evidence, while the Respondent adduced evidence through one Mr. Wilson Katushabe.

CW1. Dan Kahuura.

According to his evidence in chief, on the 23/05/2016 Mr. Kahuura was invited by the Respondent's audit department and informed that a whistleblower had reported that he extorted money from a one Kabaterine Esther, a customer. He was suspended and on the 13/6/2016, and invited via e-mail for a disciplinary hearing scheduled for 15/06/2016. Despite the short notice his lawyers demanded for the whistleblower's statement to enable the Claimant prepare a response to it, but the Respondent declined to avail it. He wrote another letter seeking for an adjournment of the hearing given the short notice but this was also declined.

During cross examination he stated that the Respondent alleged that he extorted money from a customer, a one Esther Kabaterine. He was invited by the Audit department and asked to make a statement about the allegation which he did. It was his testimony that he was not given sufficient time to explain what had happened. He confirmed that he had recommended Esther and David Kabaterine for a mortgage facility and his role in the process was to assess their security. He visited the property on the 13/5/2016 with the Branch Manager, and on 14/5/2016, with the valuer who discovered a discrepancy on the property.

He confirmed that although the customer paid the valuation fees through the bank, she had to pay more money for rectifying the problem on her title. He however denied soliciting any money from her. When shown the images from the CCTV camera he admitted that he walked into the Bank with the valuer and the customer. The Valuer sat on a chair by his table and the client placed an envelope on his table and walked out of the Bank. He admitted that he removed the envelope and walked out of the bank with the Valuer. According to him the envelope belonged to the valuer and although she had a bag, he said that she asked him to carry it for her and he gave it to her when they got outside the bank. He also testified that they both checked the contents of the envelope and found it contained money which they did not count. According to him the money was for rectifying the discrepancy between what was on the ground and what was on the customer's certificate of title, regarding the boundaries of the property. He reiterated that there were no direct payments to the valuer because all payments for valuation had been made through the Bank. He further confirmed that the money which was in the envelope was not put on the Bank Account. It was also his testimony that he was denied employment in KCB Bank because the Respondent advised it not to employ him.

## **RW1 Katushabe Wilson**

Testified that he was head of the investigation team and during cross examination he stated that the Respondent's HR Manual provided for 14 days' notice for a disciplinary hearing. He stated that the bank did not violate its manual when it gave the Claimant 2 days' notice. He said the investigations commenced on 20/05/2016 and he submitted his report on 6/6/2016. The report was however dated 21/6/2016. He said he had all the information he required, because he interviewed the valuer before she made her written statement. He admitted that by the time of the disciplinary hearing the investigation report had not been issued. It was his testimony that he relied on the CCTV camera and the discrepancies mentioned by Barbra, the Valuer in the valuation report. He also got additional information from the Claimant, the whistleblower, the Proprietor and the supervisor at Remax, the Valuation Company and the Respondent's Branch Manager. He said the Claimant was suspected for soliciting money as alleged by the whistleblower because he had power over her given that he was the loans officer. The matter was not reported to police because Management reserved the discretion to do so. He said that the whistleblower alleged that she paid Ugx. 6m. however he was not aware whether there were any discrepancies on the property or not, or whether the money was meant for handling discrepancies. He said that what he found was that, the Claimant picked the money from the customer and he moved out of the bank with it, therefore he recommended that he should be subjected to a disciplinary hearing because the issuance of the money was confirmed and the claimant received the money.

## **SUBMISSIONS**

The claimant was represented by Mr. Richard Mwebaze and Mr. Fred Byamukama of Amanyire & Mwebaze Advocates and the Respondents by Mr. James Zeere of Sebalu and Lule Advocates.

### **Issue 2. Whether the Claimant was unfairly terminated?**

Counsel for the Claimant cited Section 68 of the Employment Act which required the employer to prove the reasons for dismissal and where the employer fails to do so the dismissal shall be deemed to be unfair within the meaning of section 71. According to Counsel the Respondent failed to prove the reason for terminating the Claimant because at the hearing, it was proved that the money was solicited by Barbra of Remax Valuers, for purposes of correcting the discrepancy that was on the Customer's land title. He quoted part of Barbra Ariyo's statement on page 13 of the Respondent's trial bundle, to the effect that an envelope was dropped on top of her bag and she was shocked and surprised, guessing it contained the money discussed, therefore Barbra was the one who negotiated for the money. According to Counsel, given that Mr. Katushabe did not investigate the aspect of who the beneficiary of the money was, he did not find out who the beneficiary was therefore it was Barbra. Counsel insisted that according to Kutushabe testimony, the investigation report was issued on 6/6/2016, the disciplinary meeting was conducted on the 15/06/2016 yet Barbra's statement was recorded on the 21/06/2016, long after the investigation and the decision to terminate had already been taken by the disciplinary meeting. In his view therefore, the Claimant cannot be said to be guilty of the alleged misconduct. Counsel refuted Katushabe's

testimony because he did not interview the vendor whom the whistleblower said had asked her for the money nor did he interview the Whistleblower and Barbra the valuer. According to him the CCTV footage relied on, did not prove that the Claimant solicited the money. He cited **Charles Abigaba Lwanga Vs Bank of Uganda LDC No.142/2014**, where this Court held that a permanent employment will only be terminated lawfully with the employer proving verifiable misconduct on the part of the employee. He further submitted that the Whistleblower refused to make a statement and the Valuer was not brought to court to testify, therefore the Claimant's dismissal was unfair and wrongful because the Respondent did not prove verifiable misconduct.

In reply Counsel acknowledged the employer's obligation to prove the reason or reasons for dismissal of an employee. But hastened to add that the employer is not a court of law and his or her duty is to prove that there was reasonable belief in the circumstances of the case to believe that the employee committed a wrong. He cited **Bwengye Herbert vs Eco Bank (U) Limited, LDC No. 132/2015**. Counsel reiterated that the Claimant was dismissed for extorting and receiving money from a customer for the purposes of ignoring discrepancies on the customer's property which was used to secure a loan application. He refuted the argument that the money was meant for Barbra, the valuer because when she was interviewed prior to the hearing, she denied having requested for or received any money and although she delayed to do so, she reduced her statement into writing. RW1 testified that he had interviewed her during the investigations prior to the hearing and his findings formed part of his report on page 31 of the Respondent's trial bundle.

He further submitted that it was not in dispute that the customer withdrew money and placed it in an envelope and placed it on the Claimant's table, on the bag which belonged to the valuer who at that moment was sitting at the table with the claimant. It is also not in dispute that when the claimant left the banking hall, he and not the Valuer was in possession of the envelope in issue, a situation he failed to explain. Counsel also refuted the Claimant's assertion that he had passed the money on to the valuer, since he did not ask for any money from the customer. Counsel insisted that the evidence adduced shows that the Claimant took the money when he was leaving the Bank and he failed to explain why the valuer who had a handbag allegedly asked him to carry the envelope with the money, to give it to her outside the bank, yet it could fit in her bag. Counsel concluded that the Claimant was not being truthful and he carried the money for himself. It was also Counsel's submission that the claimant failed to explain the circumstances that led to the payment of the money off the Bank Account especially given that the fees for valuation had already been paid to Remax, the Valuation Company through the Bank.

Counsel insisted that the only evidence available to the Respondent and to this Court was that Claimant took the money when he was leaving the bank and no other evidence was adduced to prove otherwise. He was of the view that the money was either taken by the Claimant or shared between him and the Valuer.

He contended that given the Valuers statement on page 12 of the Respondent's Trial bundle, the valuer confirmed that the Claimant requested the customer to pay him in order for him to ignore the discrepancies on the property because the loan would not be granted if the discrepancies were reported to the Bank.

Counsel insisted that had the payment been for legitimate objective of rectifying the discrepancies, then it would have been paid directly to the Bank Account as all the all other payments were made. According to him in order to conceal the payment the customer withdrew cash from the bank account and left it with the Claimant and the Valuer which was an illegitimate transaction which the claimant could not explain.

He reiterated the position of law that the respondent had reasonable grounds to believe that the claimant, whether in cohorts with the valuer or not, had extorted and received money from the customer and this amounted to gross misconduct which was punishable by summary dismissal.

#### **DECISION OF COURT**

Section 68 of the Employment Act provides that:

##### ***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 ..."***

##### **Did the Respondent prove the reason for dismissal?**

We carefully analysed the evidence on the record and established that the Claimant admitted that he was shown the CCTV footage which was relied on during the investigations. During cross examination he admitted all the Scenes on the footage



showing how he, the valuer and the customer entered into the Banking hall, how the customer withdrew the money from the Account, how she moved to his desk and placed an envelope on top of the Valuers bag which was on his desk, how he was walking to the exit with the valuer while holding the envelope. Although the Claimant vehemently denied asking for any money any money, we found it peculiar that he should condone its purported receipt by the Valuer. We also found it strange that he had to "assist" the Valuer to carry an envelope for a lady who had a bag in which the envelope could fit. We have no reason to doubt that this was a suspicious transaction especially given that the initial valuation fees had been paid to the valuation Company through the Bank Account. The question that remained ringing in our mind is why he had to hold an envelope which did not belong to him and only hand it over to the owner when he got outside the Bank. On the preponderance of evidence we find that the Claimant created sufficient suspicion to link him to the allegations of soliciting money from the Customer.

The motive was to cover up a discrepancy that was discovered during valuation and credit rating of the Customers property. He admitted in Court that indeed there was a discrepancy which would preclude the Customer from getting the facility but rather than report the same to the Bank or have it rectified through the correct channels, by allowing the customer to withdraw the money, he encouraged the customer to pay for the rectification off the Account. Even if the money was not intended for him given his position as a credit valuer he ought to have reported the matter to the Bank or ensured that it was considered in his valuation and Credit rating report. Such a report was not on the record.

We think that he did not exercise duty of care and diligence expected of a credit officer in a Bank whose loan portfolios are dependent on its customer's deposits when he condoned the receipt of payment to facilitate the none disclosure of a discrepancy that had the potential to cause loss to the Respondent's cutomers. In **BARCLAYS BANK OF UGANDA VS GODFREY MUBIRU, SCCA No.1 OF 1998**, Mr. Justice Kanyeihamba JSC as he then was held that:

*“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 special fiduciary relationship...Moreover , it is my opinion that in the banking business any careless act or omission , if not quickly remedied , is likely to cause great losses to the bank and its customers ...”*

We have no doubt in our minds that by his conduct, the Claimant was in fundamental breach of his responsibility as the Loans officer with the responsibility of Credit valuation, at the Respondent. We therefore associate ourselves with the assertion by Counsel for the Respondent that the Claimant gave the Respondent reasonable grounds to believe as we do, that the he extorted and received money from the Customer either on his own volition or in cohorts with the valuer because after all they walked out with the envelope, together.

We therefore find that the Respondent was justified to summarily dismiss the Claimant and therefore the dismissal was lawful.

**Issue 2. Whether the Claimant was accorded a fair hearing before the Respondent reached a decision to terminate his contract?**

It was submitted for the Claimant that, the Respondent was required to give the claimant 14 days within which to prepare his case but he was given hours instead. And when he sought an adjournment to a more convenient date the Respondents declined. Therefore he could not adequately defend himself. Counsel also contended that the Claimant was not expressly told about his entitlement to be accompanied by a person of his choice but was only allowed to rely on the Banks advocate, which was contrary to the Respondent's human resources manual and therefore the whole process of terminating him was illegal and unfair. He cited **Moses Obonyo Vs MTN (U) Ltd LDC 045/2015**, where this court held that the claimant who had worked for the Respondent for 10 years was entitled to a fair and decent treatment by the Respondent. Therefore the Claimant in the instant case should have been accorded fair and decent treatment since he had worked for the Respondent for 8 years. He prayed that given that Article 44 of the Constitution of Uganda provides that the right to a fair hearing was non derogable, and in light of Article 50 of the same Constitution, the Claimant should be awarded Salary from the date of termination to the date of award at Ugx. 2,796,620/= amounting to Ugx. 100,678,320/=.

In reply Mr. Zeere Counsel for the Respondent asserted that the claimant was given an opportunity to be heard on the allegations against him and he was provided with all the information relating to the allegations prior to the disciplinary hearing. According to him, the Claimant refused to attend the hearing, which compelled the Respondent to conduct it in his absence.

Counsel further submitted that whereas the Claimant asserts that he was given insufficient time to prepare, on the contrary the claimant was given more than 20

days given that he was asked to make a written explanation on the 23/5/2016 and then asked to attend a hearing scheduled for 15/6/2016. According to him the Claimant in cross examination stated that he was always aware of the allegations against him and even if he had been given more time, he would not have changed his statement.

He argued that all the documents in the Respondent's possession relating to the allegations which included the CCTV footage, the substance of the whistleblowers complaint, were shown to him prior to the hearing, when he was interviewed by Mr. Katushabe, during the investigation. The Whistleblower declined to make a report, therefore there was none to give to him. Therefore he was not denied any statements or exhibits necessary to defend his case.

Counsel rebutted the claimant's contention that he was denied a right to be accompanied to the hearing and that he was only allowed representation by the Bank's advocate because the letter inviting him for the hearing expressly informed him about his right to a fair hearing, right to representation, a witness and a right to appeal. (para 3 of CD4 of the Claimant's trial bundle).

According to Counsel CD6 on which the Claimant relies to assert that he was denied representation was an error on the part of the Respondent's lawyers and it should not be visited on them because the Claimant was entitled to representation of his choice. He insisted that had the Claimant attended the disciplinary hearing and raised the issue it would have been addressed.

Counsel asserted that the Claimant was granted an opportunity to attend a fair hearing which he declined because of his guilt for having committed the offence.

It is trite that an employer who is considering the dismissal of an employee must notify the employee about the reason or reasons he or she is considering to dismiss the employee and reasonable time within which the employee should make a response to the reason or reasons. (See Section 66 of the Employment Act, 2006).

It is not disputed that the claimant was notified about the infractions leveled against him on the 23/05/2016 and asked to make a written explanation about the allegation, which he did on the same day.(see CD2). He was then invited to a disciplinary hearing via e- mail on the 13/06/2015 at 5.08 pm for a hearing scheduled for 15/6/2016 (CD4). On 14/6/2016, the Claimant's lawyers requested for the statements and exhibits including the whistleblowers statement to enable him prepare for the hearing. The Bank's lawyers responded on 15/6/2016 the day the hearing was scheduled to take place, declining to give him statements and exhibits he requested for on grounds that he was already notified about the substance of the allegations against him.

We do not agree with the Mr.Zeere's assertion that given that the Claimant was notified about his infractions on the 23/05/2016 and asked to respond to the same in writing, he had been given sufficient notice for a hearing. The Respondent put him on suspension pending investigations which were intended to verify the infractions against him. The findings of the investigations are the basis of a hearing and they should have been communicated to the Claimant. He should have been given sufficient time to respond to the findings. The Respondent's manual provides for 14 days' notice.

It is our considered opinion that an employee on suspension has legitimate expectations that he or she will be afforded an opportunity to defend him or herself

against the findings that may arise from the investigation. It is therefore erroneous for Counsel Zeere to state that the fact that the claimant was asked to make a written statement 20 days before he was summoned for the hearing, it was sufficient notice for the hearing. The notice for a hearing should be specific and it should set out the allegations leveled against the accused employee, his rights, such as the right to be accompanied, the right to present and cross examine witnesses and reasonable time within which to prepare to present his case. We established from the evidence that at the time the Claimant was asked to make a response to the allegations, the Respondent had not yet substantiated the allegations, therefore the investigation was meant to verify them and determine whether the Claimant had a case to answer. The Claimant should have been availed the findings of the investigation and given reasonable time them to enable him make a response as provided under Section 66(1) and (2) of the Employment Act, which provides that:

***“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 may be 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 a decision to dismiss an employee, hear and consider any representations which the employee on the grounds of misconduct or poor***

Having found that the dismissal was substantively lawful he is not entitled to any other remedy. The only remedy as already discussed is payment of compensation of 4 weeks wages as prescribed by section 66(4) supra.

In conclusion the Claim fails save for the award of 4 weeks wages for procedural impropriety, at an interest rate of 12% per annum from the date of this award till payment in full.

No order as to costs is made.

Delivered and Signed by:

**1. THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE**

**2. THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA**

**PANELISTS**

**1. MR. ABRAHAM BWIRE**

**2. MR. MAVUNWA EDISON**

**3. MS. JULIAN NYACHWO**

DATE.....

2/08/2019

