



The



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General Notice No. 16 of 1987.

THE ADVOCATES ACT.

NOTICE.

APPLICATION FOR ENROLMENT OF ADVOCATE.

IT IS HEREBY NOTIFIED that a petition has been presented to the Honourable Chief Justice by Ambrose Rwabwamba Orwiza, who is stated to be a Bachelor of Laws of Makerere University, and a holder of a Diploma in Legal Practice awarded to him by the Law Development Centre, Kampala, for the entry of his name on the Roll of Advocates for Uganda.

DATED at Kampala, this 27th day of January, 1987.

I. MUKANZA,

Acting Chief Registrar.

General Notice No. 17 of 1987.

BANK OF UGANDA.

NOTICE.

TENDERS FOR TREASURY BILLS.

THE GOVERNMENT of the Republic of Uganda invites applications for tenders for Treasury Bills every week. The Treasury Bills will be issued in accordance with the Treasury Bills Act, 1969.

Tenders may be made direct to Bank of Uganda, Public Debt Office or through a Commercial Bank. They should reach Bank of Uganda not later than 3.00 p.m. for Treasury Bills to be issued every Thursday every week. The maturities will be 35, 63 or 91 days at rates of interest of 20, 21 and 22 per cent per annum respectively, at the option of the tenderer.

HUGH LINDSAY,

Chief Accountant.

Bank of Uganda,

Public Debt Office,

P.O. Box 7120,

Telephone: 58515, Kampala.

26th June, 1985.

General Notice No. 18 of 1987.

THE UGANDA INDUSTRIAL COURT.

THE TRADES DISPUTES (ARBITRATION AND SETTLEMENT ACT, 1964.

TRADE DISPUTE CAUSE NO. 6 OF 1980.

Parties.

NATIONAL UNION OF CLERICAL, COMMERCIAL AND
TECHNICAL EMPLOYEES—*Claimants*.

Versus

COOPER MOTOR CORPORATION (U) LTD. (CMC)—*Respondents*.

TERMS OF REFERENCE.

The parties here above request the Industrial Court to hear, decide and make such awards as considered appropriate whether *Mrs* Betty Serwadda's dismissal was wrongful or not.

Mr. Mukasa of Kitumba & Co., Advocates and *Mr.* Edward Lule for the Claimants.

Mr. Katera from Hunter & Greig, Advocates for the Respondents.

BACKGROUND.

The Claimants are a registered Trade Union in accordance with the Trade Unions Decree No. 20 of 1976. The Respondents recognise the Claimants as the sole negotiators for and on behalf of the Respondents' employees under the Recognition Agreement between the parties. The Respondents are a registered company operating for gains in Uganda.

The brief facts of the matter are that Miss Betty Serwadda, a Union member of the Claimants, was engaged in the services of the Respondents as a clerical officer on 15th July, 1974. On 22nd February, 1980, she was served with a copy of a letter dated 21st February, 1980, from the Managing Director of the Respondents, *Mr.* A. A. Mackie, to *Mr.* N. S. K. Mubiru also an employee of the Respondents, endorsing the dismissal of Betty Serwadda which had been recommended by *Mr.* Mubiru in the morning of the 21st February, 1980. It is this dismissal which is being contested.

Documentary and verbal evidence which the parties adduced before the Court shows that there exists, Terms and Conditions of Service Agreement which the parties ought to adhere to before anyone of them takes action. The purpose of this Agreement is, of course, as usual, to promote and maintain good industrial relations between the workers and the management. This agreement runs into a number of clauses but for our immediate concern we shall only examine clauses 16 and 24 dismissal and warnings respectively.

Clause 16—Dismissal

An employee may be dismissed for reasons defined as misconduct as follows:—

- (i) conviction of a criminal offence having a bearing on his or her suitability for employment;
- (ii) where an employee willfully causes damage to an employer's property or causing loss or damage or exposing to serious risk the lives of other employees;
- (iii) where a worker absents himself or herself as per clause 18;
- (iv) is not really a ground for dismissal but a proviso explaining what would happen to an employee who has been dismissed for any of the reasons of misconduct provided above. It states that, "where an employee is dismissed under this heading the employee shall be paid up to and including the date of such dismissal".

Clause 24—Warnings

All warnings shall be copied to the Shop Steward as well as to the Union headquarters. If an employee is served with a total of three warning letters within a period of 12 consecutive months and then commits a further offence he shall have his or her service terminated.

Warning shall be expunged from an employee's record upon the expiry of twelve months from the date such warning was served. The Claimants called three witnesses. Betty Serwadda gave an account of the events that led to her dismissal. At 8 a.m. on 21st February, 1980, she reported for work and completed her usual schedule of work by 10 a.m. at which time she went to *Mr.* Mubiru, a corporation Secretary with the Respondents, to seek permission to visit Family Planning Clinic to collect her drugs. She had an appointment with a doctor there. Mubiru refused her permission as he had some computer figures sent from their London office. She told *Mr.* Mubiru that she was a human being and ought to be treated as such and could not be expected to work like a machine. It was, therefore, not possible for her to complete the assignment within 30 minutes.

She however executed the work. She gave the completed work to *Mr.* Mubiru at 3 p.m. and she never went to the clinic on that day. She denied she quarrelled with *Mr.* Mubiru or insulted him. She said she got only one warning Exp. P3 dated 24th May, 1977, and she said a letter signed by one D. D. Benzinira dated 18th July, 1979, was not a warning. This letter is now exhibit P2. She said on 22nd February, 1980, she was served with a letter P1 discharging her from

her employment: the word discharge to her meant she was dismissed from her employment; she was told that she had been dismissed for failing to trace an error in the work given to her by Mr. Mubiru.

Pw2 Sarah Sengoba, the then secretary to Mr. Mubiru, denied there was any quarrel between Betty and her boss Mr. Mubiru. She had been present when Betty Ssewadda went to see Mr. Mubiru for permission to go to the family planning clinic and any quarrel could not have missed her ears. Betty Ssewadda merely told her that Mr. Mubiru had given her some work and she did not go to the clinic.

Pw3 Anthony Ntunga Kato, Assistant General Secretary of the Claimants, testified that Betty Ssewadda approached his office on 22nd February, 1980, that she had been dismissed. He contacted Mr. Mubiru who refused to meet them. They later met with Mr. Reid, the then Acting Managing Director of the Respondents. Mr. Mubiru attended the meeting of the 14th March, 1980, and a certified copy of the meeting minutes is now exh. P4. In the meeting Mr. Mubiru said that when he refused Betty permission to go to Family Planning Clinic she abused him inter alia that "A human being cannot be expected to work like a machine. You will also leave this job like others who preceded you. You are not the one who appointed me on the job . . .". He told the meeting and it appears in the minute Exh. P4 that Betty Ssewadda gave him the assignment at 3 p.m. On checking the work at night he discovered an error after being told that Betty Ssewadda merely ticked the figures and never really checked their correctness. He discovered an error at night. He told the meeting that Betty Ssewadda was dismissed for having omitted to trace an error on the computer figures. Mr. Mubiru, however, failed to produce Betty Ssewadda's personal file for the meeting's inspection.

He said the dismissal offended against the Collective Agreement. There was no warning. He said that Memo of 24th May, 1977, now exhibit P3 was not a warning within the hearing of the Agreement, as per Clause 24 because it was not copied to the union, and 12 months had succeeded its issuance and it ought to have been expunged from her record. He said even the words allegedly attributed to Betty Ssewadda could not amount to insubordination.

He said the respondents ignored the advice of the Ministry of Labour official to reverse the wrongfully action. The respondents did not adduce any verbal evidence although they had indicated they would do so in paragraph 6 of their memorandum but relied solely on their written memorandum of the 18th February, 1981.

In the memo the respondents admitted terminating Betty Ssewadda's services on 26th February, 1980. In paragraph 2 it is stated that she had so misconducted herself on 20th February, 1980, that she had to have her services terminated.

She is alleged to have in the particulars of misconduct said and did things calculated to humiliate her superior; shouted abuses at her superior officer in the presence of members of staff and customers; and failed to perform the piece of job given to her properly. She therefore had her services properly terminated in accordance with clause 6 of the contract between her and the respondents and terminal benefits cheque of Shs. 7,238/45 was issued to her. The contract referred to is annexure A of the respondents' memorandum. It provides for Terms and Conditions of Employment and the relevant clause—Clause 6 reads:

TERMINATION OF SERVICE.

"This contract can be terminated by either party giving to the other 30 days notice, in writing, subject to (5) above. The company reserves the right, however, to terminate this contract summarily for gross misconduct or for any other lawful cause. Clause 5 referred to above deals with probationary period and is therefore not material to our consideration here". So according to the memorandum Betty Ssewadda's services were terminated in accordance to Clause 6 of their bilateral contract and not under or in accordance with the Collective Agreement.

Mr. Kateera however did address the Court. He raised some preliminary observations. He admitted Miss Betty Ssewadda's services were terminated but then the respondents offered her terminal benefits of Shs. 7,235/45 and that was enough to fully and finally discharge the respondents of the contract. He argued against any further proceedings because in the end even if the Court was to find against the respondents, all it could do was to award damages which were likely to be smaller than the generous offers already made, since under no circumstances would the Court order specific performance of re-instating Miss Betty Ssewadda.

Mr. Mukasa expressed surprise at the submission saying it side-stepped the Terms of Reference which was for the Court to decide on the lawfulness of Miss Ssewadda's dismissal and not about terminal or any payments at all. He said here the dispute was as to the cause of the dismissal and if the preliminary argument was upheld it would defeat the purpose of which the Industrial Court was established which was to examine the background of the dispute, look at its roots and

resolve it. The Court ruled that it would hear all that the parties had to say. It reserved its reasons. We now give brief reasons for our preference to hold a full hearing.

Mr. Kateera was addressing himself on the remedies but not the cause and the law. He therefore ignored the Terms of Reference, and in doing so, he put the cart before the horse as it were. Our duty and scope were defined by the joint terms of reference of the parties which were to decide on the lawfulness of the dismissal, and nothing more.

Secondly matters before Industrial Court ought to be dealt with in a slightly cautious and liberal manner than an ordinary suit as the goal of the Industrial Court is often wider, that is the promotion of sound and healthy industrial relations. The Court would not be able to do this if it were to prematurely determine disputes without getting to the bones of contention between the parties. If we upheld Mr. Kateera's submission, we would be sweeping dirt under the carpet, and that is no solution at all.

In his final address Mr. Kateera again dwelt at length about benefits to be given to Miss Ssewadda upon the termination of her services. He cited some legal authorities on the method of computing such payments. As already mentioned, our terms of reference do not concern terminal benefits. The only relevant part of counsel's submission is the contention that Betty's services were terminated under Clause 8 of the Collective Agreement. This is a departure from the written memorandum which argues that Betty's services were terminated not under the Collective Agreement but as per Clause 6 of the bilateral contract of employment. Counsel therefore abandoned the contents of the memorandum and we too shall now promptly ignore them. The memorandum itself seems to be talking about curious events not supported anywhere by any of the documents filed or any of the verbal submissions made by the two counsels. It talks about quarrels between Mr. Mubiru and Miss Betty having occurred on 20th February, 1980. It is now agreed nothing relevant here took place on that date. Again the memorandum talks of Miss Betty having been dismissed on 26th February, 1980. We wonder where the author got this information from and yet both parties supported by documents say Miss Betty was dismissed or discharged on 21st February, 1980. Our conclusion is that the document is not helpful and we therefore steer a clear course away from it.

Mr. Kateera argued that Miss Betty was not dismissed under Clause 16 of the Collective Agreement. Mr. Mukasa agreed that Miss Betty was discharged and the word discharged meant dismissed from employment.

He said the reason given for the dismissal was contained in paragraph 1 of exh. P1 the dismissal letter as "having heated words with Mubiru" and for not tracing an error in a computer figure: He said two correspondences including P 1 took place between Mubiru and Mackie in respect of Betty in the morning of 21st February, 1980, and Betty was dismissed that morning although she was allowed to work until 3 p.m. He denied there was any valid warning given to Betty as stipulated under Clause 24 of the Collective Agreement.

There is no doubt that the termination or discharge of Betty Ssewadda's services amounted to dismissal. The word "discharge" ordinarily means dismissal, and in this context it means dismissed from employment. While an employer may be under no obligation to give reasons for termination of an employee's services, it is however, pertinent to say that where he decides to give reasons they must be clear and truthful. I agree with Justice Wright in *Senge v British India Steam Navigation Co. Ltd.* (1929-36) Vol. 46 P 294 at Page 295, "the onus is on the defendant to prove that the dismissal was not wrongful". On the authority of *Re-Rubel Bronze Metal Co. vs WOS (1918) IKE 315* it is generally accepted that a dismissal is wrongful if it is made without justifiable cause and without reasonable notice.

Here, the claimant was on a permanent staff. A temporary employee, may be dismissed summarily but an employee on permanent staff cannot be dismissed summarily without good cause.

Sufficient cause is shown for example if it is shown that she was guilty of a serious breach of discipline or a grave breach of a fundamental term of the contract. This was expressed at long ago as the 19th century. In *Boston Deep Sea Fishing & Ice Co. v Ansell* (1888) 39 ChD 339, Mcardie J. said in *Re-Rubel* (supra) P 321 "Today it is well settled that a master may dismiss his servant for any reasons such as misconduct, substantial negligence, dishonesty and the like. Such matters may we think be said to constitute such a breach of duty as to preclude further satisfactory continuance of the relationship and to justify the master in electing to treat the contract as repudiated by the servant". The sufficiency of justification depends upon the extent of misconduct and whether or not it can be reasonably said that the relationship is struck at fundamentally so to say.

Here the Collective Agreement forms part of the contractual relationship between the parties. It is the duty of each party for their mutual existence and for a good industrial relation to observe its provisions. It is our considered opinion that the

requirement as to the warnings cannot be dispensed with otherwise there is no reason why the parties expressly put it in the Collective Agreement. On record, there is no valid warning served on Betty Sserwadda as stipulated in Clause 24 of the Collective Agreement.

Betty was alleged to have been dismissed for not tracing an error in a computer figure sent from London. There is however, evidence that Betty accepted to check the figures and worked on it until 3 p.m. on that day. It is also agreed that Mr. Mubiru did not check on her performance until later that night. This could not be a basis for recommending and confirming her discharge which took place that morning prior to her giving the assignment to Mr. Mubiru at 3 p.m.

It is also alleged on Exh. 4 that there were heated words between Betty and Mr. Mubiru. The CMC did not adduce any evidence of this. It was the duty of the CMC to tell the Panel the existence of such words, what they were, and what Mr. Mubiru understood by them. On the contrary Betty went ahead to adduce evidence to show that there were no such words. She did, however, admit that she told him she was a human being and should therefore not be expected to work like a machine. Even if the words allegedly uttered by her in Exh. P4 were correct they would not amount to insult. They would definitely be coming from a junior employee in bad taste.

Clause 16 of the Collective Agreement which governs dismissal is exhaustive but does not cover what Betty was alleged to have uttered. We believe that a single instance of insolence in the case of a servant in such a position would hardly justify dismissal. The inalienable rights of an employer to dismiss an employee must be subject to some limitations if we are to expect stable labour market. That right must not violate a fundamental requirement of natural justice that a properly employed person is entitled to a fair hearing before being dismissed on charges involving a breach of discipline or misconduct. See *A. M. Jabi vs Mbale Municipal Council HCS 16/73*.

He is entitled to know the charges against him and to be given an opportunity to give any grounds on which he relies to exculpate himself. Where this be not done, it is proper in my opinion to declare the dismissal wrongful.

It is however, not indispute that Betty was insolent to Mr. Mubiru and this greatly injured his status, vis-a-viz Betty. As a result, Mr. Mubiru, without refreshing his memory about the provisions of the Collective Agreement took a very drastic and erroneous measure. The Panel is of the opinion that Mr. Mubiru acted on a high degree of spur of the moment in recommending Betty's dismissal. The Panel is therefore of the conclusion that what Betty had done or not done on 21st February, 1980, was not sufficient to justify dismissal. Her dismissal was therefore wrongful.

Before we take leave of the matter, the Panel wish to make an observation that there was not proper letter terminating or dismissing Betty's services. It is now customary that such a letter should be addressed to the affected employee and copies can then be sent to interested parties for information. We note that Exhibit P1 is not addressed to Betty but to Mubiru and merely copied to Betty. This is yet another evidence of hurried and unguarded action incited and propelled by angry emotion to get rid of Betty. Such rash action can only damage and retard the growth of industrial peace. For the future we recommend a more sober mannerism in handling such matters.

DELIVERED at Kampala, this 25th day of November, 1986.

J. S. P. P. O'BWANGAMOYI,
President.

A. B. S. IBALE,
PAUL AMANDRUA,
Members.

General Notice No. 19 of 1987.

THE TRADE MARKS ACT.

(Cap. 85).
NOTICE.

NOTICE IS HEREBY GIVEN that any person who has grounds to oppose the registration of any of the marks advertised herein may within sixty days from the date of this *Gazette*, lodge a Notice of opposition on Trade Mark Form No. 6 together with a fee of Shs. 2,000 in case of National applicants or US\$ 250 in case of foreign applicants. The period of lodging Notice of opposition may be extended in suitable cases by the Registrar as he thinks fit upon such terms as he may direct. Formal opposition should not be lodged until after reasonable notice has been given by letter to the applicant so that he may have an opportunity to withdraw his application before the expense of opposition proceedings is incurred. Failure to give such notice will be taken into account in considering any

application by the opponent for an order for costs if the opposition is uncontented by the applicant. Representations of the marks herein advertised can be inspected at the Office of the Registrar of Trade Marks, Parliamentary Buildings, P.O. Box 7151, Kampala.

(21) APPLICATION NO. 16382 IN PART "A".
(52) Class 4 (Schedule III).

54)

HELIX

(58)
(59)
(60)
(57) *Nature of goods*—Industrial oils and greases (other than edible oils and fats and essential oils); lubricants; fuels (including motor spirits) and illuminants.

(73) *Name of applicant*—Shell International Petroleum Co. Limited.

(77) *Address*—Shell Centre, London SE1 7NA, England.

(74) *C/o Messrs.* Kulubya & Co. Advocates, P.O. Box 290, Kampala.

(22) *Date of filing application*—11th October, 1985.

YERI JOY WAKABI (MISS),
Assistant Registrar of Trade Marks.

Kampala,
26th November, 1986.

ADVERTISEMENTS

THE REGISTRATION OF TITLES ACT, 1964.

(Cap. 205).
NOTICE.

ISSUE OF SPECIAL CERTIFICATES OF TITLES.

Kyadondo Block 210, Plots 208 and 209, 021 and 019 acre respectively at Kyebando.

NOTICE IS HEREBY GIVEN that after the expiration of one month from the publication hereof, I intend to issue in the name of Adim N. Nanteza of c/o P.O. Box 371, Kampala, special Certificates of Titles under the above block and plots, the Certificates of Titles which were originally issued having been lost.

SARAH KULATA,
for Chief Registrar of Titles.

Kampala,
18th December, 1986.

THE REGISTRATION OF TITLES ACT, 1964.

(Cap. 205).
NOTICE.

ISSUE OF SPECIAL CERTIFICATE OF TITLE.

Rujumbura Block 21, Plot 109, at Kyamakanda.

NOTICE IS HEREBY GIVEN that after the expiration of one month from the publication hereof, I intend to issue in the name of Charles Tibifumura Bonabantu a special Certificate of Title under the above block and plot, the Certificate of Title which was originally issued having been destroyed.

J. B. KARUHANGA,
for Chief Registrar of Titles.

Rukungiri,
16th January, 1987.