**THE REPUBLIC OF UGANDA**

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

**LABOUR DISPUTE NO. 188/2015**

**ARISING FROM KCCA DNO.087/2015**

 **KALIKA ABDUL ………CLAIMANT**

**VERSUS**

**UMEME LTD ……….. RESPONDENT**

**BEFORE:**

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

**PANELISTS**

**1. MR MICHEAL MATOVU**

**2. MS. ADRINE NAMARA**

**3. MS. SUSAN NABIRYE**

**AWARD**

**BRIEF FACTS**

The Claimant was employed by the Respondents on the 26/10/2007. His contract was open ended. On 12/08/2014, he was dismissed from employment on allegations of soliciting a bribe in the course of his duties.

At the time of his dismissal he was at the rank of Technical Officer and he had worked for the Respondent for 7 years.

According to him, his dismissal was based on false, malicious and unfounded allegations and the decision to terminate him was made arbitrarily and in haste, because the allegations were not investigated. He contends that his termination was unfair and unlawful.

The Respondent on the other hand asserts that the termination was founded in law and based on the Claimant’s employment contract. It was the Respondent’s case that the Claimant’s summary dismissal was on the account of a fundamental breach of his terms of service when he solicited money and for working without authorization.

**ISSUES**

1. **Whether the Claimant’s dismissal from employment was lawful?**
2. **What remedies are available to the parties?**

**EVIDENCE**

It was the Claimant’s testimony that his supervisor summoned him to attend to faults on his “off day” on 21/6/2014. He stated that he was always assigned a staff from **MUTTICO TECHNICAL SERVICES** to assist him and on this occasion he was assigned a one Joseph Mayanja. He testified that when he started working, he received SMS’s about work relating to incidence resolutions, from the management Centre and he received 7 SMS’s in total although none of them was about the fault in Bujjuko. He made reference to the statement he made when he was arrested at page 72 of his trial bundle, in which he stated that a one Mwanje Ronald a worker with MUTTICO attached to Umeme Natete District informed him that he was part of a crew that worked on the transformer at Bujjuko but he had received reports from the residents that it had malfunctioned. He said Mwanje asked him to check on the said transformer and that while at the transformer Mwanje’s relative would give him something to bring back to him. Mwanje however did not tell him that it was money. He admitted that when he was at the transformer a certain gentleman gave him Ugx. 100,000/- and immediately after receiving it he was arrested by some people, one of whom was said to be a police man. He admitted that he did not have work permits for the job at Bujjuko and insisted that his role was to inspect the transformer. According to him, when he reached the transformer, someone gave him money which he put in his pocket. He said he only accepted the money because of the mutual relationship he had with Mwanje as a coworker. He attended a disciplinary hearing which found him guilty. He appealed the decision of the Disciplinary committee but the decision to terminate him was upheld.

RW1 Henry Wanda testified that he was working in Saracen a Security company attached to the Respondent. He worked as an investigator in the security department and his role was to investigate complaints referred to him by the security manager. He said he was one of the 3 persons who carried out the investigation into the allegations that the Claimant solicited a bribe. It was his testimony that it was Mwanje Ronald who solicited for the bribe and in his evidence in chief, under paragraph 2.7, he testified that a one Abdu Razak informed him that he had been approached by a gentleman whose telephone number was 0785969405, who asked for Ugx. 300,000/- in order to restore power. He discovered that the telephone number actually belonged to Ronald Mwanje a contractor with MUTTICO which was occasionally hired by UMEME to do installations work. He said that he worked with the police to trap the culprit, resulting in the arrest of the Claimant. He said that Mwanje denied any involvement but he was the one sent the Claimant to pick the money. Mwanje was not arrested because he was contract staff. Instead he was referred back to his employers.

**SUBMISSIONS**

In his submissions Counsel for the Claimant cited Section 2, 69(3), 70(6) and 68(1) of the Employment Act 2006 to define dismissal. According to Counsel the dismissal letter marked C1 reveals that the Claimant was summarily dismissed for soliciting a bribe between 20th and 21st June 2014.

He argued that although the claimant admitted to receiving Ugx.100, 000/= he denied soliciting for it or visiting Bujjuko on the 20th of June. It was the Respondent’s evidence through RW1, one Wanda that a one Mwanje Ronald is the one who solicited for Ugx. 300,000/=.

He asserted that the Respondent did not prove that the Claimant solicited for a bribe yet they terminated him for soliciting for a bribe. Counsel insisted that the Claimant received a phone call from Mwanje Ronald who requested him to check on the transformer in Bujjuko and to pick money from Mwanje’s relative. He argued that Kalika and Mwanje knew each other and according to Kalika’s testimony, he accepted the request out of courtesy and for the fact that the transformer was within the area of his operation that day.

According to Counsel the fact that the money was a solicited bribe was not disclosed to Kalika and he was only identified by his uniform and motor vehicle which was a tactful concealment by Mwanje.

Counsel further stated that whereas the Respondent asserted that the Claimant was not authorized to carry out any works on the transformer at Bujjuko, it was Kalika’s testimony that line inspection did not require an SMS or work permit. Therefore he did not breach any of the provisions of the system operations regulations.

Counsel challenged the authenticity of the report because it was not signed by its makers and the supervisor had not endorsed it. He prayed that court rejects it and disregards all its findings.

He opined that given Kalika’s good track record for the 7 years he worked, and the fact that he was not aware about the Ugx. 100,000 /= he received being a solicited bribe and the fact that he was acquitted of all the charges preferred against him, there was no valid or justifiable reason to dismiss him from employment for soliciting a bribe.

In reply Counsel for the Respondent submitted that the Claimant was dismissed for breach of the human Resource Manual by soliciting and receiving a bribe, which amounts to gross misconduct punishable by summary dismissal.

According to Counsel, the Claimant was caught receiving money from a customer while working on an assignment he was not authorized to undertake in the first place. He argued that the burden of proof of reasons for dismissal of any employee is not as high as on the balance of probability ordinarily required for civil matters and the respondent has only to demonstrate that they had reasonable suspicion that the claimant was guilty of the misconduct. He cited **BRITISH HOME STORES VS BURCHELL [1978] I.R.L.R 379** cited with approval in **MUKEMBO v ECOLAB EAST AFRICA (U) LIMITED CS NO.54 OF 2007).**

Counsel asserted that the Respondent was convinced that the claimant was part of the scheme to solicit and receive a bribe for 2 reasons, he admitted to accepting the money and he failed to satisfactorily explain why he went to work on the transformer without authorisation and without the knowledge of his supervisors. According to counsel the Respondent’s operating regulations made it a requirement for a worker to have a work permit for “**all work on apparatus** or activities performed on any place **on the distribution system.** He argued that the claimant testified that he only worked under the instructions of the operations and management Engineer or whenever he received SMS’s from the work Centre and not from other people.

Counsel contended that the Claimant contradicted himself when asked why he undertook to work without authorisation from his Superviser or from the work Centre because he initially stated that he was on duty that day, but quickly changed to state that he was off duty during the same day and specifically on duty at night. He also testified that he only approached the transformer as routine work but later changed to state that he did the work after being informed about it by Mwanje, who was established as the solicitor of the bribe. He also stated that he did not require a work permit because he was undertaking routine inspection. However when presented with his earlier testimony he sated he only went after Mwanje had informed him about the incident. In light of the operating systems regulations cited above Counsel was of the view that by stating that he did not require a permit for the work on the transformer the claimant was not being truthful.

According to Counsel the claimant made these contradictions to mask the fact that he worked in Bujjuko without authorization and without a work permit contrary to the systems operating regulations which required a work permit for ALL WORKS on apparatus on a distribution system whether it was inspection of repair or faults. He insisted that the only reason Kalika went to Bujjuko without authorisation was because Mwanje called him to do so yet Mwanje had no authority to instruct him to do such work and Mwanje was the same person said to have solicited for the bribe. He concluded that Mwanje solicited for the bribe, he told Kalika about it and Kalika rushed to the transformer to receive it and perform the duty for which the bribe had been solicited. Counsel argued that although Mwanje denied that he demanded for the money and sending the claimant to pick it, it was clear that Mwanje had solicited for the bribe and the claimant was caught receiving it while attempting to undertake work he was not authorized to do.

It was his submission that the Respondent was justified in dismissing the Claimant.

On whether the Claimant was given a fair hearing, Counsel submitted that he was issued notice for the hearing on the 6/8/2014 at 4.00 pm for a hearing on the 7/8/2014 at 11.00 am. In his view this was too short a time to prepare for his defence. He cited **CLOVINCE KALENGUTSA TEMBO VS BUGOYE HYDRO LTD LDR No.138/2015** to support his argument. He also submitted that the report on which the disciplinary committee relied to decide the claimant’s termination was not authentic, because it was never sanctioned by the investigations committee or by the Respondent. He contended that whereas the Claimant was dismissed on 12/08/2014, the investigation report was issued on the 15/08/2014. He further contended that the claimant was denied the right to present witnesses and a representative to accompany him at the hearing. In his opinion the Respondent had already decided to dismiss the Claimant irrespective of the outcome of the disciplinary proceedings. Counsel also refuted the Appeal process on the grounds that there were no proceedings and according to him the letter that set out defective grounds of appeal should be blamed on the Claimant’s previous Counsel and not the Claimant. Counsel insisted that the claimants termination was not justified therefore it should be dismissed.

In reply Counsel for the Respondent submitted that the claimant was accorded a fair hearing before he was dismissed. According to him the Claimant was interviewed about soliciting a bribe on the 25/6/2014 and he made a statement explaining himself, he was subsequently suspended from work and then invited for a hearing on the 1/08/2014, although he actually received the notice on the 06/08/2014. It was his submission that the allegations were clearly set out in the notice as soliciting and receiving a bribe and he already answered to the said allegations in the statement he made on the 25/06/2014. In his view the notice was sufficient. He cited **DR. BARNABAS AMOOTI VS MAKERERE UNIVERSITY KAMPALA LDC 019/2015** to support his argument that determination of what amounted to sufficient time for preparing a defence was on a case by case basis.

He also argued that the alleged witness whom the Claimant intended to call would not have affected his evidence because he did not listen to the call between him and the said Mwanje and he was only present when the he was being arrested. According to him the fact that he did not appear in this court probably meant that he was never available to make any testimony at all. Counsel insisted that given that the Claimant was already aware about the matter having made a statement at police, he was given sufficient time.

He also asserted that the investigation report on which the disciplinary committee relied was authentic and in any case, the Committee relied on the claimant’s explanation before making their decision. He argued that RW1 testified that he was involved in the investigation and he prepared the report which was signed by the Respondent’s security manager.

With regard to the dismissal before the issuance of the investigation report, Counsel was of the view that while the disciplinary minutes were signed days later, this had no effect on the integrity of the Committees mark sheets which formed the basis of the summary termination.

With regard to the appeal process Counsel insisted that the Claimant had not set out proper grounds of appeal save for the ground that the his criminal proceedings had not yet been concluded and even then the charges preferred in the criminal case were different from those before the disciplinary hearing. Counsel cited **MUKEMBO VS ECOLAB** (supra) whose holding was to the effect that disciplinary hearings are not subject to criminal proceedings as alleged by the claimant. He prayed that court finds that the claimant was given a fair hearing?

**DECISION OF COURT**

1. **Whether the Claimant’s dismissal from employment was lawful?**

Section 2 of the Employment Act 2006 is to the effect that a termination of an employee can be initiated by the employer, for justifiable reasons other than misconduct, such as retirement, expiry of contract etc and for misconduct or poor performance.

*Section 2 of the employment Act defines* ***“termination of employment” to mean the discharge of an employee from unemployment at the initiative of the employer for justifiable reasons other than misconduct, such as expiry of contract attainment of retirement age, etc,***

***“Termination” has the meaning given by section 65 …”***

*Section 65 provides that****;***

***65. Termination***

***(1) Termination shall be deemed to take place in the following instances-***

 ***(a) Where the service is ended by the employer with notice***

***(b) Where the contract of service, being a contract for a fixed term 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 the employee, in circumstances where the employee has received notice of termination of service from the employer, but before the expiry of the notice. …”***

***Section 2 also defines “dismissal from employment” 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.***

Our interpretation of Sections 2 and 65 is that employment can be terminated by either the employer under different circumstances, but the termination must be for justifiable reasons other than misconduct and dismissal is the discharge of the employee from employment at the initiative of the employer when the employee has committed verifiable misconduct.

Section 66 and 68 of the Employment Act, provide that before terminating an employee, the employer must give the employee in issue a hearing and prove the reason for the termination respectively. It is mandatory for the employer to notify the employee about the reasons for which he or she is considering the termination or dismissal and to prove the reason or reasons and the employee in issue must be given reasonable time within which to respond to the reasons in a Disciplinary hearing.

**Did the Respondent prove the reasons for terminating the Claimant?**

In the instant case, it was not disputed that the claimant was dismissed from employment on the grounds that he solicited and received a bribe. Section 68 of the Employment Act provides that:

***68. Prove 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***

According to his dismissal letter, the Claimant was dismissed for soliciting for a bribe between the 20th and 21st June 2014. An analysis of the evidence adduced in court and on the record clearly indicates that, whereas the claimant was caught receiving money from a one Abdu Razak on the 21/06/2014, the uncontroverted statement of the same Abdu Razak on the claimant’s trial bundle is to the effect that the person who actually solicited for the money is a one Ronald Mwanje. Mwanje was an employee of MUTTICO, a Company which was occasionally contracted by UMEME.

According to RW1 Henry Wanda’s testimony, we established that Mwanje actually was part of the team that installed the transformer on the 20/06/2014, and he solicited for a bribe of Ugx. 300,000/=, to restore power. The Investigation report states that on 21/06/2014, the Claimant received a phone call from a one Mwanje Ronald a staff of MUTTICO requesting him to attend to the transformer that had been installed the day before, but had been reported as malfunctioned. The Claimant was prosecuted before the Chief Magistrate Mpigi at Bujjuko vide Criminal case No. 0182/2014 for the offence of demanding money with menaces with intent to steal and he was acquitted. He however admitted that he inspected /worked on the transformer, without a work permit and without authorization from Mr. Ndaula his supervisor. It was also not in dispute that while working at the transformer the Claimant received Ugx 100,000/- from Mwanje’s purported brother. Counsel for the Respondent asserted that the Claimant’s actions were a clear violation of the Respondent’s Systems Operating Regulations.

We considered the regulations and found that they were intended to regulate work on high voltage systems such as transformers. Section 7.01 of the regulations provides that;

***7.0. WORK ON THE DISTRIBUTION SYSTEM CARRIED OUT UNDER A WORK PERMIT***

***7.01.1 CIRCUMSTANCES REQUIRING A WORK PERMIT***

*Except as provided for in regulation 7.07* ***a work permit*** *is required for all* ***work*** *on* ***apparatus*** *or activities performed* ***in live chambers, prohibited areas*** *or* ***restricted areas*** *or at any place on the* ***distribution system*** *and may only be issued to a* ***responsible person.***

***Apparatus*** *means any generator, transformer motor, switch ger, isolator, feeder, electrified fence or any other high voltage plant installed at the station.*

***Prohibited area means*** *an approved sign attached to a point of isolation and/or control panel indicating work in progress and prohibiting interference with the apparatus to which it is attached.*

***Restricted area*** *means an enclosed area that is neither a live chamber nor a prohibited area as defined and that is enclosed for the purpose of power system security and the safety of personnel.*

***Responsible person*** *means a person who has been authorized to be responsible for ensuring that the work on the apparatus covered by the work permit can be carried out with safety and within the terms of these regulations.*

The regulations clearly indicate that a transformer was considered within the meaning of “apparatus” which required a work permit to be issued before any work on it can commence.

We strongly believe that the Claimant being a Technical Officer at his level was well conversant with these regulations. Therefore by accepting to make an inspection on the transformer at Bujjuko without a permit, or authorisation from his Superviser, but from a one Mwanje who was not an authorized person or an employee of the Respondent, he violated the Respondents Systems Operating procedures (supra). The Claimant himself testified that it was a requirement for him to be authorized to carry out such duty and he always received either SMS’s from the work centre or notification from his superviser, for any assignments he undertook. Even if Counsel for the Claimant asserted that the findings in the investigation report were not authentic because the report was not signed, the Claimant’s admission, that he inspected the transformer at Bujjuko without authorisation was sufficient to find him culpable of breaching the Systems Operations Regulations. The argument that he was acquitted by the Criminal Court and therefore he was innocent cannot hold. We also do not agree that the acquittal would not bar the Respondent from subjecting him to a disciplinary process for violating the Systems Operations System and for soliciting for a bribe, because a disciplinary process is civil in nature and the standards of proof in a disciplinary process are not the same as those in a Criminal case. In **BONNY ALZEE BINEKA OCHWA vs KYAMBOGO UNIVERSITY LDC 304/2014.**This court held that;

“***Whereas criminal proceedings are governed by the rules governing a Court of law, a disciplinary hearing is an administrative hearing and its character and standards are completely different from a Court of law proceedings. In a disciplinary hearing an employer need not prove a case against the employee beyond reasonable doubt. The employer is only obliged to afford the employee in question, an opportunity of being heard before he or she is terminated.”***

The Disciplinary committee however charged the Claimant with the offence of Soliciting for a bribe and not for violating the Systems Operating Systems. His letter of dismissal stated that he was terminated for soliciting a bribe which was in breach of Section 8.5.13.4 of the human Resource manual and considered gross misconduct. The committee members mark sheets found him culpable of soliciting for a bribe in the course of executing his duties. He was not directly charged for violating the Operating Systems Regulations. The invitation to attend the disciplinary hearing stated in part that;

*“… On 20th, a new replacement transformer was installed but supply was not restored, instead you demanded for UGX. 300,000/- from the residents of Bujjuko to have their supply restored.*

*On the 21st June 2014, a complaint of soliciting for a bribe was raised by the residents of Bujjuko to an SMT member, upon which the investigations were carried out and you were arrested after receiving a bribe from Mr. Abdu Razaka.*

*To this end a disciplinary hearing has been set to investigate facts around the case….”*

Although the Claimant admitted to inspecting the Transformer without authorisation, we were not convinced that he was part of the scheme to solicit money from the residents of Bujjuko because according to the Investigation report, Mwanje solicited for Ugx. 300,000/= and the claimant was given Ugx. 100,000/=. There is no evidence to show that the questioned amount he received and he testified that he did not know he was going to receive money from Mwanje’s purported relative. This was not controverted by the Respondent. Mwanje actually denied ever sending the Claimant to pick the money. The Investigation report however established that he received a call from Mwanje, requesting him to check on the transformer in Bujjuko. Further still, the committee made the decision to terminate him on the 7/08/2014, and issued the termination letter on the 12/08/2014, yet the investigation report was issued on the 15/08/2014, clearly this report was not relied on to determine the dismissal.

We are therefore of the considered opinion that on the preponderance of evidence, the Respondent did not prove that the Claimant solicited for a bribe and therefore it did not prove the reason for which the Claimant was dismissed as was stated in his dismissal letter.

**Was he given a hearing as provided under Section 66 of the Employment Act?**

It is already settled that a hearing before a disciplinary tribunal or committee does not have to be to the standard exercised in a court of law. The employer is only expected to be fair and reasonable. He or she must investigate the allegations, notify the employee of the allegations against him/her and grant the employee a right to be heard to defend him or herself. See **EBIJU JAMES VS UMEME LTD HCCS NO. 0133 OF 2012**,

The Claimant contended that he was given very short notice to prepare to appear before the committee and this was not controverted by the Respondent. Section 66(1), (2) and (3) 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 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)***

The Claimant asserted that he was given less than 1 day to prepare to appear before the committee which is contrary to Section 66(3) (supra). He was therefore he not granted sufficient notice. It is our considered opinion that a minimum of 7 days would be sufficient notice.

Counsel further contended that the Claimant was denied the right to be accompanied to the hearing by a person of his choice and yet it is a requirement under Section 66(2) (Supra), that the employer must allow an employee in issue to be accompanied to the hearing by a person of his or her choice and to call witnesses. This court’s decision in  **STEPHEN MUKOOBA vs OPPORTUNITY BANK LDC NO.51/2015,** is to the effect that the law gives the employee wide scope to choose whoever should appear withhim or her and for the disciplinary committee to respect the employee’s choice. It is not up to the employer to decide whether a witness would add value to the employee’s case or not. We therefore do not agree with the Respondent’s assertion that even if the claimant had called Mr. Mayanja as a witness, he would not have added any value to the Claimant’s case. From Counsel’s submission it is clear that the Claimant was denied the right to call Mr. Mayanja as his witness which was contrary to Section 66(2).

As already discussed, the decision to terminate him was made on the 7/08/2014, and the termination letter was issued on the 12/08/2014, yet the investigation report which was purportedly relied on to make the decision was dated 15/08/2014, which was 8 days after the decision to terminate him was made. Therefore the investigation report was not given to the Claimant to enable him respond to it nor was it relied on by the Committee as we have already established.

Given that the Claimant was given very short notice to prepare for the hearing, he was denied the right to be accompanied to the hearing by a person of his choice and denied an opportunity to respond to the investigation report, the Claimant was not given a fair hearing.

In conclusion, given that the Respondent did not prove the charge of soliciting for a bribe against the Claimant and it did not give him a fair hearing, his summary termination was substantively and procedurally unlawful.

1. **Whether he is entitled to remedies?**

Having found that the claimant’s summary dismissal was substantively and procedurally unlawful, the claimant is entitled to some remedies. This Court has already established that in addition to specific remedies granted under the Employment 2006, the only remedy to a person who was unlawfully terminated is damages.

**Payment of Salary Arrears**

The Claimant prayed for wages for the months’ of June, July and August 2014, amounting to Ugx. 3,000,000/- arising out of the balance on salary for June when he was paid half the salary and non- payment of July and August 2014.

In reply Counsel for the respondent argued that he was not entitled to this payment because he was given full pay for the month of June and half pay for the month of July when he was under investigative suspension. He 9invited court to consider salary pay slips he had attached to his submissions in reply. According to him the Claimant was only entitled to 12 days in August, which preceded his termination.

A claim for salary arrears is premised on the work done in the period for which salary arrears are claimed. Although the Claimant in the instant case stated that he was only paid half of June 2014, in his submission in rejoinder, he did not controvert the pay slips that were attached to the Respondent’s submission in reply. The pay slips indicate that the claimant was paid full salary for the month June 2014 and half pay for the month of July 2014.

It is trite that once a termination occurs whether lawfully or unlawfully it takes effect. The Claimants termination took effect on the 12/08/2014. Having found that he was unlawfully terminated and he had been subjected to half pay while on suspension he is entitled to the remaining half of the month of July and 12 days for the month of August amounting to Ugx.1,083,270/=

**He also prayed for 2 months pay in lieu of notice**

According to Counsel the Claimant was in the continuous employment of the Respondent for 7 years therefore in accordance with Section 58(3)(c) which provides that if an employee has been in continuous employment for a period of 5 years but less than 10 years before dismissal, the employee is entitled to 2 months’ notice or to payment of 2 months’ salary in lieu of notice.

Counsel for the Respondent, submitted that the Claimant was not entitled to payment in lieu of notice because he was lawfully summarily terminated for verifiable gross misconduct and he cited **DR PAUL KAGWA VS PLAN INTERNATIONAL LDC No.175 of 2014.** He also submitted that he was not entitled to compensation for failure to give a fair hearing because he was given a fair hearing and because he was lawfully dismissed, he would not be entitled to severance, or compensation as provided under Section 71(5)(b) of the Employment Act because he was fairly and lawfully dismissed.

It was not disputed that the Claimant worked for the Respondent continuously for 7 years. Indeed Section 58(3)(c) provides that if an employee has been in continuous employment for a period of 5 years but less than 10 years before dismissal, the employee is entitled to 2 months’ notice or to payment of 2 months’ salary in lieu of notice. It is not in dispute that the claimant was summarily dismissed therefore he was not given notice or payment in lieu of notice. Having found that he was unlawfully terminated he is entitled to 2 month’s salary in lieu of notice. According to the Claimant’s salary pay slips, he earned 1,203,634/= per month. We therefore award him Ugx. 2,407,268/- as 2 month’s salary in lieu of notice.

**Payment of severance allowance**

Counsel cited Section 87(a) of Employment Act, which entitles an employee who has worked continuously for 6 months or more, to payment of severance allowance.

Section 87(a) of the Employment Act, entitles an employee who has been in an employer’s continuous service for a period of 6 months or more and was unlawfully dismissed to payment of severance allowance. Section 89 of the same Act provides that severance allowance should be negotiable between the employer and employee. However where there was no negotiation and there is no provision for a method to calculate it, this court in **DONNA KAMULI VS DFCU BANK LDC 002 OF 2015,** held that the reasonable method shall be payment of 1 month’s salary for every year the employee has served. In the instant case The Claimant was employed for 7 years. We found no formula for determining severance pay in his case. In the circumstances he is entitled to 1,203,634/= per year served amounting to 8,425,438- as severance pay.

**General Damages**

Counsel for the Claimant invited Court to consider that the Claimant’s contract with the Respondent was open ended and he had served them continuously for 7 years, to consider his arrest, detention and trial by court and the Respondent’s failure to adhere to the principles of natural justice, in determining the quantum of justice. He cited **MOSES OBONYO VS MTN LTD LD No.45/2015.**

Citing **FLORENCE MUFUMBO Vs UGANDA DEVELOPMENT BANK LABOUR DISPUTE 138/2014**, Counsel for the Respondent asserted that general damages are awarded to an employee who was unlawfully terminated. According to him the claimant was dismissed after he was caught receiving money while attempting to undertake work without authorization of the Respondent which was a clear breach of the respondent’s systems regulations therefore he was not entitled to damages.

As already stated above this Court has held in many cases that, the only remedy available to an employee who was unlawfully terminated, in addition to the specific remedies granted under the Employment Act, are Damages.

Damages are awarded at the discretion of Court and are intended to return an aggrieved party to the position he was in before the injury caused by the Respondent occurred.

Although the Committee did not prove the charge of soliciting a bribe against the Claimant, and did not accord him a fair hearing, we established that he inspected the transformer in Bujjuko without a permit or authorisation from his supervisor thus violating the Respondent’s Systems Operating Regulations. In the premises we think that an award of Ugx. 10,000,000/= is sufficient as General Damages**.**

**Compensation**

He prayed for 1,200,000/- being 1 months’ pay for failure to give a fair hearing in accordance with Section 66(4) of the Employment Act.

The claimant also prayed for compensation as provided for under Section 71(5) (b) of the Employment Act, that “if court finds that a dismissal is unfair, the court may-

1. Order the employer to reinstate the employee
2. Order the employer to pay compensation to the employee”

We think the award of general damages is sufficient. The prayer for compensation is therefore denied.

**Interest**

He also prayed for interest on all the above in accordance with Section 26 of the Civil Procedure Act and costs in accordance with section 27 of the Civil Procedure Act.

In conclusion an award is entered in favour of the claimant in the following terms:

1. A declaration that the claimant’s termination was substantively and procedurally unlawful.
2. Award of Ugx. Ugx.1, 083,270/= for the remaining balance of Salary for July 2014 and 12 days for August 2014.
3. Award of Ugx.2, 407,268/- payment for 2 months’ salary in lieu of notice.
4. Award of Ugx.8, 425,438/= as Severance pay.
5. Am award Ugx. 10,000,000/= as General Damages
6. Interest of 20% on 2-5 from date of award until payment in

Delivered and signed by:

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

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

**PANELISTS**

**1. MR MICHEAL MATOVU ……………**

**2. MS. ADRINE NAMARA …………….**

**3. MS. SUSAN NABIRYE ……………..**

**DATE: 7/MAY/2019**