**THE REPUBLIC OF UGANDA**

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

**LABOUR DISPUTE REFERENCE NO. 115/2016**

**ARISING FROM KCCA CB/34/2015.**

**KASINGYE TUHIRIRWE GENEVIEVE …………………. CLAIMANT**

**VERSUS**

**HOUSING FINANCE BANK LTD ………………RESPONDENT**

**BEFORE:**

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

**PANELISTS**

**1.MS. SUSAN NABIRYE**

**2.MS. JULIAN NYACHWO**

**3.MR. BWIRE ABRAHAM**

**AWARD**

**BACKGROUND**

This claim was brought for a declaration that the Claimant’s termination was wrongful/unlawful and unfair, for an award of General damages, Aggravated damages, exemplary damages, punitive damages, special damages in salary for the remainder of her contract (October 2014 to2020), for wrongful and or unfair termination amounting to 1,140,812,591/=, refund of her contribution to the provident fund amounting to Ugx. 50,132,965,54/= plus interest thereon, which was withheld by the Respondent on or about October 2014 and used to settle an outstanding loan the Claimant had with the Bank, costs and interest on all pecuniary awards, for unlawful termination on grounds of negligence and incompetence.

**BREIEF FACTS**

It is the Claimant’s case that she was unlawfully terminated, 6 years before her full retirement. According to her, the termination was unlawful and wrongful because she was not given a reason for the termination and was never accorded a hearing as required by Law and the Respondent’s Human Resources Manual.

The Respondent on the other hand claim that although she was found culpable of negligence and incompetence, for failing to report a large transaction of 24.7 bn to the Bank of Uganda, she was terminated in accordance with section 65(1)(a) and her contract.

**ISSUES**

**1.Whether the Claimant’s termination was unlawful/wrongful and unfair?**

**2. whether the Respondent breached the law when it employed a portion of the Claimant’s retirement benefits to settle a personal loan?**

**3. what remedies are available?**

**REPRESENTATION**

Mr. James Nangwala together with Mr. Bwayo Richard of M/s Nangwala, Rezida &Co. Advocates, were for the Respondent and Engoru Ivan together with Mr. Arnold Lule of Engoru Mutebi Advocates were for the Claimant.

**SUBMISSIONS**

**1.Whether the Claimant’s termination was unlawful/wrongful and unfair?**

It was submitted for the Claimant that on 15/09/2014, she was terminated by the Respondent’s Board of Directors, sitting at its 51st meeting on 2/09/2014. He submitted that according to the Respondent the Board had done nothing wrong because it exercised its right to terminate the claimant in accordance with her contract of employment , therefore the termination was lawful.

Counsel contended that the series of actions which included; the warning letter, invitations for a disciplinary hearing and the suspension letter, marked as “C8”, “C7, C6 and C5 respectively, could not be isolated from the termination letter C3, therefore they rendered the termination unlawful. He argued that these correspondences contained grave allegations of Negligence and incompetence against the Claimant. She was invited for 2 risk management meetings on the 13/08/2014 and 15/08/2014 and subsequently she was suspended to pave way for an inquiry into the same allegations.

He contended that the Respondent’s assertion that inquiry into the allegations against the Claimant had been overtaken by the enforcement of a contractual clause could not hold. According to him the accusations and subsequent summons regarding the allegations of negligence and incompetence remained active until 2/09/2014 and were the reasons for her termination, because the Respondent’s witness Ms. Abeja testified that, all the information gathered regarding the Claimant, was tabled before the 51st full Board, which considered her appeal and the findings of the inquiry and found her culpable of the allegations of negligence and incompetence in execution of her mandate, hence her termination.

He argued that the Respondent’s staff book which was part of her contract and which provides for an elaborate procedure for terminating an employee was disregarded, because whereas the Policy provided for a right to a fair hearing, as defined in **Levi Malinzi Vs Uganda Printing and Publishing Corporation LDC. No.050/2015,** no evidence was led to show that an inquiry was actually carried out and that the Claimant as an interested party participated in it or that the report of the inquiry was shared with the Claimant before the Respondent reached the decision to terminate her. He maintained, that the decision to terminate the claimant without according her a hearing, yet in her evidence in chief and her appeal against her suspension, to the Board of Directors, she informed the Respondent’s management about the fact that the reports in issue, were generated by the Information Technology Department and the system was defective. According to him, this evidence was not controverted by the Respondent which owned the system. In his view the Respondent must therefore take full responsibility for its defects. Citing **Wilson &Clyde Company Limited Vs English (1938) AC 57**, whose holding is to the effect that an employer had an obligation to provide a safe system of work and therefore an employee would not be found culpable of negligence and incompetence on account of failure by the employer to provide a safe system, he asserted that the Respondent had to first show that It had fulfilled its duty of providing the Claimant with safe materials and a proper system of work before she could lawfully be found guilty of negligence and incompetence. He also cited the Financial institutions (Anti Money Laundering) Regulations SI No. 46/2010 which informed the Respondents actions against the Claimant, and stated that it places the obligation on the Bank and not any individual employee and definitely not on the Claimant. Specifically regulation 13 of the Financial Regulations(supra) placed an obligation on any Financial Institution to make monthly reports on any transactions amounting to USD. 10,000 and above or the equivalent in any other currency involving cash near cash or travelers’ cheques to the national law enforcement agencies and had to serve a copy of the report on the Central Bank in accordance with the large cash transactions Report format, set out under schedule 4 of the Regulations.

Counsel insisted that given that the report was signed off by both the Claimant and the CEO, she should not have been singled out as being culpable. It was his submission that by signing off the report as CEO, the CEO became in law, the author of the report as much as the Claimant did. He contended that the fact that she was the only one who was blamed in this case rendered her a sacrificial lamb and therefore her termination unlawful.

In reply Mr. Nangwala for the Respondent, submitted that Claimant’s contract under Clause 10 provided that after probation, either party could terminate the contract of employment by giving 3 months’ notice notwithstanding any period served by an employee. It was his submission that apart from the changes in her title and the increase in benefits over the course of her employment with the Respondent, the rest of the terms of her initial contract remained the same.

It was his submission that, the Respondent exercised its right to terminate the claimant pursuant to the employment contract. He listed the 3 different modes of termination of employment provided for under the Employment Act as follows:

*a)* Section 65 which provides for termination where:

i) a contract of service is ended by the employer with notice;

ii) a fixed term contract ends and it is not renewed within a week of its expiry

iii) the contract of service is ended by the employee with or without notice because of unreasonable conduct on part of the employer towards the employee and

iv) the employee ends the contract of service where he or she has received notice of termination of employment by the employer but before the expiry of the said notice.

According to him these circumstances do not require a hearing and the notice period referred to is well elaborated under section 58(3) of the Employment Act for an employee who has worked for over 10 years, such as the Claimant who was entitled to 3 months’ notice. He cited the **Supreme Court in Civil appeal No.5 of 2016, Hilda Musinguzi vs Stanbic Bank (U) Ltd** where it was held *“at page 10 that an employer cannot be forced to keep an employee against his will and section 65(1)(a) provides that termination shall be deemed to take place where the contract of service is ended by the employer with notice.”*

b) circumstances under section 66 which provides for termination on grounds of misconduct or poor performance, where a reason for termination is required and the employee is entitled to a hearing in which he or she may make representations in the presence of a representative of his or her choice. The Employee is also entitled to reasonable time to enable him or her prepare to make representations with regard to the allegations misconduct or poor performance.

c) And circumstances where the employer can summarily terminate an employee, where the employee has fundamentally broken his or her obligations under the contract of service. It entails termination without notice or less notice than that provided under the Act.

Counsel submitted that although the Respondent had initially applied option 2 to ending the claimant’s termination, it was abandoned in preference of the 1st mode because the Board

*“…considered the Claimant’s service to the Bank and foreseeable consequences of dismissal, which they found justified in the circumstances, on the claimant’s career and opted to terminate her services in line with her employment contract rather than dismiss her.”*

Counsel emphasized ***the foreseeable consequences of a dismissal***, as the basis of the termination, although under paragraph 14 of her evidence in chief, RW1s testified that this was notwithstanding that the Board had found her culpable of the infractions leveled against her. RW1 stated that:

*14. The Claimant’s matter and all the information that had been gathered were tabled by the committee before the full board at its 51st meeting that sat on 2nd September 2014. The Board then considered the Claimant’s appel and the findings of the inquiry into the execution of her role and found her culpable on the allegations of negligence and incompetence in the execution of her mandate.”*

He submitted that, the Claimant, previously committed a number of infractions which were highlighted under R5, R6 and R7 and for which she received warning, but which the Respondent ignored in the interest of preserving her wellbeing and career, even in light of **Hilda Musinguzi** (supra) which emphasized a very high level of responsibility and duty of care on bankers, and consequential repercussions for any fault on their part. He submitted that the Respondent chose to excuse the Claimant from facing such repercussions which under the circumstances, could injure her career and decrease her benefits from the Respondent and employability, hence terminating her in accordance with section 65(1)(a) of the Employment Act, which was lawful.

He argued that in any case the Claimant received her full benefits under the retirement benefits scheme amounting to Ugx 50,132,965.54/-, which she would not have received, had she been dismissed on the grounds of her omissions, which she admitted although she later shifted the blame to other people/things.

He asserted that by adopting the 2nd mode of ending employment as stated above, the Respondent exercised fairness and complied with the law, her contract of employment and the Human Resources Manual.

He insisted that the fact that C9, the Respondent’s Human Resources Manual did not provide for termination under section 65(1), applying this mode of termination to the claimant’s contract did not render the termination unlawful.

He insisted that the provision of section 66 of the Employment Act, on a fair hearing were followed when the Claimant was given an opportunity to make representations and an explanation to each of the allegations made against her. She was allowed to make a written explanation in respect of the allegations and all this was done within a reasonable time because the matter came to light on 8/08/2014 and she wrote her explanation on 22/08/2014. According to him it was RW1’s testimony that she appeared before specified panels on different occasions, where she made representations in respect of the allegations leveled against her.

He asserted that the totality of the evidence on the record showed that the Claimant was culpable for a certain omission , although at the hearing she laboured to blame it on system inadequacies and the IT department. It was his submission that by stating under paragraph 2 of exhibit C4 that:

*“… as Head of Department I do not rebuff accountability of this reporting anomaly. It lies with my department and conscientious of the same… I went ahead and put in place new processes that will hinder such an issue to re- occur …”*

Under she not only admitted liability, but also showed that the system was not the only cause of the anomaly, therefore the Respondent was justified to terminate her.

**DECISION OF COURT**

**1.Whether the Claimant’s termination was unlawful/wrongful and unfair?**

The contention of the parties as we understand it is that, whereas the Claimant claims that, she terminated based on unjustified allegations of negligence and incompetence and she was not accorded a fair hearing, the Respondent on the other hand contended that she was simply terminated with notice as provided under her contract of employment, Section 65(1) of the Employment Act and she was paid all her benefits, therefore the termination was lawful.

“Termination” is defined under section 2 of the Employment Act as *“the discharge of an employee from an employment 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(1) stipulates in part that:

1. *Termination shall be deemed to take place in the following circumstances-*
2. *Where a contract of service is ended by the employer with notice;*
3. *Where the contract of service, being a contract for a fixed term or task, ends with the expiry of the specified task and is not renewed within a period of one week from the date of expiry on the same terms or the terms not less favorably to the employee*
4. *Where the contract of service is ended by the employee, with or without notice, as a consequence of unreasonable conduct on the part of service from the employer, but before the expiry of notice.*
5. *Where the contract of service is ended by the employee, in circumstances where an employee has received notice of termination of the contract of service from the employer, but before the expiry of the notice…”*

It is not disputed that the Claimant was accused of negligence and incompetence on the grounds that she failed to report a large transaction of Ugx. 24.7 billion, to the Central Bank (Bank of Uganda), as required by law. It is the Respondent’s case that she was terminated with notice in accordance with her contract of employment and section 65(1) (a)(supra), notwithstanding her culpability. It is also not disputed that before her termination, the Claimant was suspended to pave way for further investigations into the allegations, following 2 meetings she had with the risk management Committee on the 13/08/2014 and 15/08/2014, regarding the same allegations. It is also not in dispute that, she appealed against the suspension.

The Respondent’s sole Witness Ms. Ann Abeja, head of legal and compliance and Company Secretary, under paragraph 14 of her evidence in chief, stated that:

*“14. The Claimant’s matter and all the information that had been gathered were tabled by the committee before the full Board at its 51st meeting that sat on the 2nd September 2014. The Board considered the Claimants appeal and the findings of the inquiry into her execution of her role and found her culpable on the allegations of negligence and incompetence in execution of her mandate….”*

Mr. Nangwala Counsel the Respondent, submitted whereas the Claimant was found culpable, she was not dismissed because the dismissal would injure her career and instead the Respondent opted to terminate her with notice in accordance with section 65 of the Employment Act.

In our considered opinion, although section 65(1)(a) provides for termination with notice, we do not think it was the intention of the legislature, to provide for an employer simply terminate an employee by merely giving notice, given that section 66 of the same Act, provides that every dismissal or termination must be preceded by giving the employee reasons and a hearing. Section 68 also provides that the reasons for termination must be justifiable reasons.

The sections provide as follows:

***“66. Notification and hearing before termination***

***(1) Notwithstanding any other provision of this part, an employer shall before (***our emphasis) ***reaching a decision to dismiss an employee, on the grounds of misconduct or poor performance explain to the employee, in a language the employee may be reasonably expected to understand, the reason for which the employer is considering dismissal (****emphasis ours****) and the employee is entitled to have another person of his or her choice present during this explanation,***

***(2) Notwithstanding any other provision of this part, an employer shall before reaching a decision to dismiss an employee, hear and consider any representations which the employee on the grounds of misconduct or poor performance, and the person, if any chosen by the employee under subsection (1) may make.***

***(3) The employer shall give the employee and the person, if any, chosen under subsection (1) a reasonable time within which to prepare the representations referred to subsection (2).***

***(4) Irrespective of whether any dismissal which is a summary dismissal is justified, or whether the dismissal of the employee is fair, an employer who fails to comply with this section is liable to pay the employee a sum equivalent to four weeks’ net pay…***

This Section is premised on Article 4 and 7 of the ILO Convention No. 158 of 1982 on Termination of Employment, which emphasize the principles of natural justice. The Government of Uganda ratified the Convention on 18/10/1990. The Articles provide as follows:

*“*Article 4

*The employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service. ...*

*Article 7*

*The employment of a worker shall not be terminated for reasons related to the worker’s conduct or performance before he is provided an opportunity to defend himself against the allegations made, unless the employer cannot be reasonably expected to provide this opportunity.*

We believe that the enactment of the Employment Act 2006 was to domesticate the and implement principles laid down in Convention 158 among other conventions relating to labour justice. Therefore, this court has taken cognizance of the fact that in interpreting the Act it is important to appreciate the purpose of the Legislation and particularly to balance between text and context. Legislation cannot be construed properly if text and context are separated. The meaning of the words of the text should be weighed up against the broader context of the legislation. That is the purpose of the legislation, the statute as a whole and the surrounding circumstances should be taken into account together with the words of the provision. We are fortified in this by the holding in **PK SEMWOGERERE &ANOR VS ATTORNEY GENERAL (CONSTITUTIONAL APPEAL NO.1 OF 2002,** in whichMulenga JSC (RIP), citing **SMITH DAKOTA VS NORTH CAROLINA 192, US 268** stated that**:**

***“It is a cardinal rule in Constitutional interpretation, that provisions of a Constitution concerned with the same subject should as much as possible, be construed as complementing and not contradicting one another. The Constitution must be read as an integrated and cohesive whole.”***

Therefore, given that the intention of the Employment Act 2006,is to ensure that the principles of natural justice are upheld when handling labour disputes, and given the holding in **PK Semwogwere**(supra), the interpretation of provisions of the employment Act concerned with termination of employment, that is, Sections, 2, 65, 66, 68 among others, should be construed as complementing each other rather than contradicting one another and they should be construed as a whole. (also see ***Akeny Robert vs Uganda Communications Commission LDC 023 of 2015).***

In the circumstances, an employee cannot be terminated basing solely on section 65(1)(a). The proper procedure should be; in addition to giving notice, the employee must be given a reason for the termination, an opportunity and reasonable time to respond to the reason (to be heard) and the reason must be justifiable.

It was Mr. Nangwala’s submission in the instant case that, *“… whereas the termination of the claimant was initially initiated by the Respondent as employer within the second mode (under section 66 of the Act), this was later abandoned in preference for the first mode…)* the first mode was termination under section 65. This assertion as already discussed above can no longer hold.

However,RW1 testified that the decision to terminate the Claimant was taken after the Board found her culpable of negligence and incompetence. There is no evidence to show that the decision was reached after giving the Claimant an opportunity to respond to the infractions leveled against her and based on the findings of the inquiry that was made. There is also no evidence to show that her the appeal against her suspension was responded to.

We are not convinced that having leveled infractions of negligence and incompetence against her for her failure to report a large transaction of 24.7 Bn to Bank of Uganda, and having suspended her to pave way for investigations into these allegations, the Respondent could simply abandon its efforts to prove these allegations and opt to and purport to terminate her merely with notice, in accordance with her contract of employment. It was not disputed that such an allegation of failing to report such a large sum of money to the Central Bank was a very serious, matter, which in our view could not be considered lightly.

We also do not believe, that her termination in accordance with Section 65(1)(a), that is, with notice, was really intended to address the ***“foreseeable consequences of dismissal”*** and were to benefit or wellbeing and career, given the length of service she had rendered to the Bank. It was not in dispute that when she was terminated, she only had about 6 years to her retirement with honour and she was 49 years then. We are inclined to agree with Mr. Engoru Counsel for the Claimant, that given her age of 49 years, she could not easily mitigate her loss by seeking alternative employment. Therefore, if indeed the Respondent intended to ignore the infractions she is alleged to have committed, the least it could have done would have been to offer her an early retirement with all her benefits, rather than terminate her with notice, as it did.

We do not subscribe to the assertion by Mr. Nangwala that, the 2 meetings which the Claimant had with the Risk management committee before her suspension, amounted to disciplinary proceedings as envisaged under section 66(supra). Clearly the meetings fell short of a concluded disciplinary hearing because the Respondent went further to suspend the Claimant to pave way for an inquiry into the matter. According to Section 63(1) of the Employment Act, such a suspension only occurs where the employer believes that the employee committed infractions which could lead to a dismissal. It is also an indication that the disciplinary process is not concluded, because the inquiry was carried out to prove the infractions leveled against the Claimant. She therefore had a right to know the findings of the inquiry and a right respond to them. Section 63(1) provides as follows:

**63. Suspension**

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

RW1’s testified that, “… *The Board considered the Claimants appeal and the findings of the inquiry into her execution of her role and found her culpable on the allegations of negligence and incompetence in execution of her mandate….”*

From this testimony it is clear to us that, the Claimant was not given the report of the inquiry, she was not given an opportunity to respond to the its findings and this was contrary to the provisions of Section 66(1) and (2) supra).

We therefore, do not accept the argument by Counsel for the Respondent that, the Claimant was merely terminated on notice, in accordance with her contract of employment and for no reason at all and that the procedure to terminate her in accordance with section 65(1) alone was proper. As already stated, the proper procedure is stipulated collectively under sections 2, 65 66 and 68 (supra), which entitled the Claimant to be given notice, to know the reasons for her termination and the findings of the inquiry (section 66(1), to be given an opportunity to respond to the reasons and the findings of the inquiry and an opportunity to appear before an impartial tribunal or disciplinary committee to defend herself (Section66(2) and (3), before the termination. There is no evidence that any of this was done.

Therefore, having found nothing on the record to show that the Respondent followed the procedure as laid down under the law(supra) and having found that it only relied on section 65 and that the Board terminated her based on the findings of the inquiry and her appeal against her suspension, but without according her a hearing, we are satisfied that her termination was both substantively and procedurally flawed.

We strongly believe that even if an employer’s right to terminate an employee cannot be fettered by the Courts, it cannot be overemphasized, that the termination must be done in accordance with the proper procedure as provided under the law( that is section 2,65,66 and 68). This legal position was emphasized in ***Hilda Musinguzi Vs Stanbic Bank (U) Ltd SCCA 05/2016,*** which was relied on by the Respondent. His Lordship Justice Mwangutsya JSC(as he then was), stated that:

***“… the right of the employer to terminate a contract cannot be fettered by the Court so long as the procedure for termination is followed to ensure that no employees contract is terminated at the whims of the employer and if it were to happen the employee would be entitled to compensation…” (emphasis ours)***

In the circumstances, having established that the Respondent did not follow the proper procedure for termination as laid down under law(supra), the termination of the Claimant was unlawful and wrongful. This issue is determined in the affirmative.

**2.whether the Respondent breached the law when it employed a portion of the Claimant’s retirement benefits to settle a personal loan?**

It was submitted for the Claimant, that the Respondent should refund the claimant the entire Ugx. 50,132,965.54 being the retirement benefits which was illegally employed to offset her outstanding unsecured loan she held with the Bank. According to Counsel, the actions of the Respondent of attaching the Claimant’s retirement Benefits, were contrary to section 70 of the Uganda Retirement Benefits regulatory Authority Act 2011, UBRA, therefore the whole fund of Ugx. 50,132,965.54. - should be refunded.

In reply Counsel for the Respondent did not deny that the Claimant was entitled to Retirement Benefits Scheme and the amount owing was not contested. He also did not contest the Claimant’s personal Account No.0100136962, in the names of the Claimant, held with the Respondent Bank.

However according to him on 6/10/2014, the Account shows that a sum of Ugx. 50, 132, 965.54 which is the uncontested Retirement Benefits Scheme was credited on the Claimant’s personal Account. However, on 8/10/2014 2 days after the deposit was made, she withdrew Ugx. 22,000,000/= for her personal use while the Respondent recovered Ugx. 19, 353, 668, 96 on account of her personal unsecured loan.

This was not contested by the Claimant. However, this Court has held in Florence **Mufumbo vs UDB LDC No.138/2014, Nassuna Rebbeca Vs Equity Bank, LDC No. 06/2014** and many other cases, that, where an employee has applied for and been granted an unsecured loan whose payment is solely by salary and the employee is unlawfully dismissed, the liability of paying the loan shifts to the employer who unlawfully terminated the employee. However, the employee in this case has to prove that the loan was approved/guaranteed by the employer, it is purely unsecured and solely premised on salary for its payment.

The Claimant’s letter of termination dated 15/09/2014, stated that that the Claimant had an outstanding personal unsecured loan of Ugx. 19,742, 371.14. The Respondent also acknowledged the same when it made the deduction of Ugx. 19, 353, 668. 96 for the recovery of the personal unsecured loan from the Claimant’s provident fund scheme.

We do not think that the decision to recover of the said monies by the Respondent fell within the ambit of Section 70 of the Uganda Retirement Benefits Regulatory Authority Act 2011, UBRA, because the decision to deduct it was not based on an order or Judgement as provided under this section.

In the circumstances having found that the Claimant was unlawfully terminated, the liability to pay the loan shifts to the Respondent who unlawfully terminated her. The Claimant did not controvert the assertion that the Respondents only deducted Ugx. 19, 353, 668. 96 from her Account and not the entire provident fund. In the absence of evidence to the contrary we have no basis to award the full amount as claimed.

The Respondent is therefore, ordered to pay the Claimant the outstanding balance of her unsecured loan of **Ugx. 19,742, 371.14,** as stated in her termination letter and Ugx.**19,353,688.96/-**, which was deducted from her provident fund scheme, for its recovery.

**3.what remedies are available?**

According to the memorandum of claim, filed in court on 22/07/2016, the claimant prayed for the following remedies:

**1.Declaration that termination was unlawful and wrongful**

She prayed for a declaration that her termination was unlawful and wrongful. We already found that she was unlawfully and wrongfully terminated.

**2. Salary for October 2014 to June 2020.**

She prayed for her salary from the date of October 2014 to June 2020 amounting to 1,194,553,875/- being the time she would have retired from the Respondent’s Bank’s employment at a salary per month at a rate of Ugx. 17,312,375/ per month.

The Supreme Court in **Stanbic Bank Vs Kiyimba Mutale SCCA No. 2/2010,** held that:

“… *it is trite law that normally an employer cannot be forced to keep an employee against his will. There can be no order for specific performance in contracts of employment. However, the employer must be prepared to pay damages for wrongful dismissal….”*

In **Richard Kigozi vs Equity Bank Uganda Limited, LDC No. 115 of 2014,** where the Claimant made a claim for future earnings although he termed them salary arrears, this Court in line with **Kiyimba Mutale**(supra), stated that: *“We do not agree with the argument by Counsel for the Claimant that the Claimant should be awarded compensatory damages in form of salary arrears. …Even then it is not a guarantee that an employee will serve the term of employment to the end. There is a possibility that the contract could be terminated by unforeseen reasons such as death, lawful termination, resignation etc. For the same reasons therefore, there was no guarantee that the Claimant would have served the Respondent until retirement…”*  The claim for future earnings has been held to be speculative and therefore there can never be an order for specific performance in employment contracts.

Therefore, even if in the instant case, the Claimant was terminated prematurely, given that she had only 6 years to her retirement, there is no guarantee that she would have served the full term of her contract to retirement, for any of the reasons stated in Kigozi(supra). In the circumstances the claim of Ugx. 1,194,553,875/-for loss of earnings cannot stand. It is denied.

**3.Severance pay**

Counsel prayed that, given that there was no agreed formula for calculating severance pay, the claimant should be paid 1 months’ salary for every year served. She started working for the Respondent in 1998 until she was terminated in 2014 which according to him was 15 years and 10 months.

Indeed, Section 87(a)of the Employment Act is to the effect that an employer shall pay severance allowance where an employee has been in the continuous service of an employer for a period of 6 months or more and the employee is unfairly dismissed. Section 89 of the Act, is also to the effect that the calculation of severance allowance shall be negotiable between the employer and the employee. The law is however silent on what should happen where no formula exists. This was cured in **Donna Kamuli vs DFCU LDC 002/2015,** which provides for the payment of 1 months’ salary for every year served, in cases where there is no agreed formula.

Having found that the Claimant in the instant case was unlawfully terminated she would be entitled to an award of Severance. She however did not plead for severance. It is trite that a Claimant is bound by their pleadings. Counsel prayer for it in submissions did not amount to a pleading. In the circumstances this claim fails. It is denied.

**4.General damages, Aggravated Damages, Punitive damages, Exemplary Damages.**

Counsel made an omnibus submission on the prayer for the award of General damages, Aggravated Damages, Punitive damages, Exemplary Damages**.** He cited **Bank of Uganda Vs Betty Tinkamanyire, SCCA, No 12/2007, Kengrow Industries Ltd vs CC Chandran, SCCA No.7 of 2001, Nsereko Isaac v MTN Uganda Limited, Ebiju James vs Umeme Ltd, HCCS No.0133 of 2012, Augustine Kamagero Vs Rwenzori Bottling Company Ltd HCCS No.027/2012, Gullaballi Ushillani vs Kampala Pharmaceuticals Ltd CA No.6 of 1998,** which he prayed Court should rely on to award the claimant the various heads of damages.

**General damages,**

It was well settled that remedy for a person who is unlawfully terminated is General damages and any other remedies accruing to the employee under his or her contract and or claimed under the Employment Act 2006. In **Stanbic Bank Vs Kiyimba Mutale SCCA No. 2/2010,** Chief Justice Katureebe, (as he then was) on the award of General Damages stated as follows:

*“… Having found that the appellant was wrongfully terminated, the Court should have proceeded to make an award of general damages which are always in the discretion of the court to determine.*

*…*

*In my view, that adequate compensation would have been a payment in lieu of notice, a measure of general damages for wrongful dismissal(emphasis ours) and payment of accrued pension rights. …The High Court could have awarded substantial general damages but in its discretion, it chose to award only shs. 2,000,000/. … I think that the respondent could have been awarded substantial general damages for wrongful termination of his employment, taking into account his status, the manner of termination ”* (*Emphasis ours).*

We take cognizance of the pain and suffering the claimant suffered as a result of the loss of her employment and especially given that she had only 6 years to retire honorably. As already discussed before terminating her in accordance with section 65 as submitted by Counsel did not benefit the Claimant in any way. In our considered view it was only a clever means the Respondent used to disregard the proper procedure of terminating employment. For the pain and suffering and inconvenience caused by her unlawful termination, yet she had only 6 years to retire with honour, she is entitled to an award of general damages. Given that she served the Respondent for 15 years and 10 Months, earning Ugx. 17,212,375/- per month, we think an Award of **Ugx. 490,000,000/=** is sufficientas General Damages.

We found no extenuating circumstances to award Aggravated, Punitive and Exemplary Damages. They are denied.

**6.NSSF remittances**

When the matter came up for hearing on 25/06/2019, Mr. Engoru Counsel for the Claimant informed Court that the Respondent had remitted all outstanding NSSF remittances regarding the Claimant, therefore we did not address our minds to this claim.

**7.Interest**

Interest of 15% per annum shall be paid on all pecuniary awards from the date of judgement until payment in full.

**8.Costs**

No order as to costs is made.

In conclusion we find for the Claimant in the following terms:

1. Declaration that her termination was unlawful and wrongful.
2. An Award of **Ugx. 490,000,000 /=** as General Damages
3. The Respondent is ordered to pay the Claimant the outstanding balance of her unsecured loan of Ugx. **19,742, 371.14/=** and **Ugx.19,353,688.96/-**which was deducted from her Provident Fund for its recovery.
4. Interest of 15% per annum on 2 and 3 from the date of judgement until payment in full.
5. No order as to costs.

Delivered and signed by:

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

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

**PANELISTS**

**1.MS. SUSAN NABIRYE ………………..**

**2.MS. JULIAN NYACHWO ………………….**

**3.MR. BWIRE ABRAHAM …………………**

**DATE: 23RD OCTOBER 2020**