**THE REPUBLIC OF UGANDA**

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

**LABOUR DISPUTE: REFERENCE NO. 219/2017**

**ARISING FROM LDA NO.08/05.2017**

**MATT BATTANI ……………….. CLAIMANT**

**VERSUS**

**INTERNATIONAL SCHOOL**

**OF UGANDA ……… RESPONDENT**

**BEFORE:**

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

**PANELISTS**

**1. MS. ADRINE NAMARA**

**2.MS. SUSAN NABIRYE**

**3.MR. MICHEAL MATOVU**

**AWARD**

**BRIEF FACTS.**

In October 2014, the Claimant was employed on contract, as a teacher at the Respondent’s school. By the time of his dismissal he was serving a contract dated 1/08/2017 to 31/7/2018. According to him, in February 2017, he sought permission from Caroline Jacoby, the school’s head teacher, to go mountain climbing in Kenya, between 6-10 March 2017. This request was rejected. Nevertheless, he proceeded on leave for 5 working days from 6th to 10th March 2017. On return he was suspended on grounds of gross insubordination and particularly for taking leave without authorization. He was subjected to a disciplinary hearing on 16/03/2017. On 20/03/2017 he was summarily dismissed from employment on the same grounds. He appealed to the Board of Directors of ISU, which upheld his dismissal. According to him, the Respondent paid him salary for the month of March and he vacated the house rented for him on 28/04/2017.

**ISSUES**

1. **Whether the Claimant was unlawfully summarily dismissed from employment.**
2. **Whether the Claimant was entitled to the remedies prayed for in the Claim?**

**REPRESENTATION**

The Claimant was represented by Mr. Ian Mutange and Mr. Ian Mutibwa of Messrs Signum Advocates Kampala and the Respondent by Joseph Luswata of Sebalu and Lule Advocates Kampala.

**SUBMISSIONS**

**1.Whether the Claimant was unlawfully summarily dismissed from employment.**

It was submitted for the Claimant that he was unlawfully summarily dismissed contrary to Section 75(b) of the Employment Act, which prohibits termination of an employee on the ground that he or she took leave which he/she was entitled to take under law or contract of employment. Counsel contended that schedule 1 Clause 3(3) of the Act provided that a first minor infringement such as unauthorized absence from work, only required an employee to receive a written warning.

He argued that, the Claimant’s contract entitled him to take unpaid leave, if it was authorized by the head teacher of the School. According to counsel he had not taken any leave up until March 2017. According to him, the Claimant sought leave to climb Mount Kenya but his requests were arbitrarily denied by the head teacher who testified that he had only taken sick leave. Counsel contended that the Claimant had fervent passion for mountain climbing and the Respondent had benefitted from and exploited this passion in ways that improved the students’ interactions and boosted the school’s publicity and financial growth.

He contended that the head teacher’s refusal to grant him an alternative date other than the school holidays was a violation of the law and the Claimant’s contract. He refuted the Head teacher’s assertion that teachers should only take leave during the holidays when children are not at school. In his view her refusal to grant him unpaid leave was unreasonable, therefore his refusal to comply with her directive, did not amount to insubordination. He insisted that the Claimant did not fundamentally breach his contractual obligations by taking unpaid leave and in any case the Respondent did not adduce any evidence of insubordination by the Claimant.

He contended further that, the Claimant was not given a fair hearing as provided for under Article 28(1) of the Constitution of Uganda 1995, section 66(1) of the Employment Act and Section 62(3) which makes it a requirement for an employee to be heard before dismissal. He also cited, **Bwengye Herbert vs Ecobank(U) Ltd LD No. 132/2015,** in which this court stated that *“an employer is fair and reasonable if he or she investigated the allegations, clearly notifies the employees of the allegations against him/her and generally accords the employee a right to be heard…”*

It was his submission that, the disciplinary hearing in this case was marred with bias, procedural impropriety and ultimately it denied the Claimant a right to fair hearing. He refuted the letter dated 10/03/2017, in which the Respondent suspended the Claimant on ambiguous allegations of insubordination and possibly gross insubordination resulting from taking leave, because the Claimant took leave after the same had been unreasonably refused. He argued that the fact that the letter also stated the hearing date of 16/03/2017 therein, was clear indication that the Respondent had predetermined the fate of the Claimant. Besides, the infractions were not investigated, nor was the Claimant given any investigation report and whereas his investigative suspension was for 5 days, commencing on 13/03/2017, he was expected to attend a hearing 2 days later, on the 16/03/2017.

He also contested the charges, which he submitted were initially stated as insubordination or possibly gross insubordination, but at the hearing focus was placed on unauthorized leave and the Claimant’s demands to be heard on a specific charge of insubordination were declined. He concluded that the Claimant’s summary dismissal on 20/03/2017, on grounds of insubordination or possibly gross insubordination was therefore done without according him a hearing.

It was further argued that the Appeals Committee upheld the Disciplinary committee’s decision without taking in consideration all the relevant evidence and the fact that Caroline Jacoby in cross examination testified the letter of suspension was a ***“statement of what I was feeling…”***showed that the Claimant’s summary dismissal had no legal or justifiable basis. He cited, **Abigaba v Bank of Uganda LDC No. 142/2017** to support this argument.He prayed that Court declares that the Respondent did not follow the principles of natural justice while conducting the disciplinary hearing and therefore the summary dismissal resulting from the Claimant’s enforcement of his right to unpaid leave was unlawful and excessive.

In reply Mr.Joseph Luswata, Counsel for the Respondent submitted that from the pleadings and in cross examination the Claimant admitted that, he was away from the Respondent school from 6th- 10th March 2017. He also stated that it was not in dispute that on 2 occasions, he asked for unpaid leave to undertake mountain climbing, but the Head teacher declined to grant him leave.

It was his submission that the Claimant committed 2 infractions namely- failure to teach students when required to do so and failure to obey the order of the head of the school for him not to be away from school and this was insubordination. According to him, the Respondent was therefore justified to summarily dismiss the claimant. He relied on **section 69 of the Employment Act, Barclays Bank vs Godfrey Mubiru SCCA No. 1of 1997 and laws vs London Chronicles (1959) 1 WLR 698,** which justify the summary dismissal of an employee, where the employee has fundamentally broken the contract of employment and section 66 of the Employment Act, which provides that every dismissal shall be preceded by a hearing.

He asserted that the Claimant’s contractual obligation with the Respondent school was to teach. However, on 22/02/2017 and 23/02/2017, he requested the head of the school via e mail, to be away between 6-10 March 2017, to fulfill his passion for mountain climbing, but these were school days. He quoted the Claimant in part as follows: *“ I ask you to reconsider again … Rescheduling really is not possible, the climbing season is limited and closing….”*

He further submitted that the head teacher in her response to him, reminded him about the fact that he was employed to teach and his absence affected the students’ learning therefore, her refusal was done in the best interest of the students. He contended that despite this response, on 5/03/2017 at 10.09p.m the Claimant in a defiant mood wrote an e- mail marked Pexh 4(ii) at page 28, and stated that:

*“… Being away from the classroom and our student does negatively affect learning on these days… I fully understand the negative consequences of being away from school and feel that these kinds of pursuits are worth it… so I have to take the opportunity to do this mountain now…*

*I haven’t shared my plan with my colleagues. Nobody knows that Iam going to Kenya. If you want me to say Iam sick, I can do that, I don’t want to, but I could. That will at least prevent the possibility of this becoming some sort of precedent. I do not think that it is the best approach. Whatever you need to do I will understand and no hard feelings. We simply disagree. This isn’t the first time. I plan to stay at ISU for the foreseeable future and plan to continue in my craft. I understand I can be extremely difficult. Sorry for that, but at the end of the day, we must do what we feel is right”*

He contended that the Claimant, in full knowledge of the consequences of his absence, went on leave without authorization. He refuted the argument by Counsel for the Claimant that the denial of leave was unreasonable and therefore what the claimants did thereafter did not amount to insubordination. He argued that even if the Claimant was entitled to unpaid leave, it had to be approved, because it was possible for every staff to take leave at the same time and although he was entitled to 7 types, 2 of them required approval of the Head teacher.

It was his submission that the Claimant’ reliance on section 75 of the Employment Act, to take leave at will, would breed chaos at the workplace hence the requirement for approval. In this case the approval of unpaid leave was vested in the Head of the School and she declined to grant it. Counsel contended that the Claimant took it in defiance and stated that ***“He was being “extremely difficult.”*** He restated what transpired after the Claimant returned and insisted that the Claimant was not remorseful of what he had done as demonstrated in his email to the head teacher marked Pexh 6 dated 13/03/2017. In this e- mail the Claimant aggressively indicated that he would careless about losing his job in the interest of what he stated was *“..*. *a rare opportunity to be part of something unique…”*

He was therefore surprised that during cross examination the Claimant turned around to claim he did not think he would suffer any disciplinary action and that in the alternative he should have been given a warning.

According to Counsel although Counsel for the Claimant tried to deny it, taking unauthorized leave amounted to insubordination hence the dismissal and Section 75(b)is therefore inapplicable. He argued that the Claimant fundamentally broke his contract when he defiantly went away from school without authorization. He argued that although it was submitted for the Claimant, that this was a first time offence, according to **Law vs London Chronicles**(supra), one isolated incident which is serious enough can justify summary dismissal. He also relied on **Kabojja international School versus Godfrey Oyesigye, LDA No.0003/2015,** in which the Claimant admitted to wrong doing, and court held that the admission was enough to entitle the employer to summarily terminate him, which they did. He also cited **Nyakahuma Allan Paul Versus Umeme Ltd LDR No. 22 0r 2014,** in which this Court found that failure to abide by the Employers regulations amounted to a fundamental breach of his employment contract and warranted summary dismissal.

With regard to the claim that the Claimant was not accorded a fair hearing, on grounds that the charge of insubordination was vague and the notification about the hearing were in the same communication and that there was no investigation report, less suspension days and the Board refusal to consider all relevant material on appeal, Counsel submitted that these were an afterthought because they were not pleaded as breaches of rules of natural justice during the disciplinary process as pleaded under paragraph 5 of his claim.

Counsel asserted that the right to be heard was not violated because the omissions complained of by the Claimant were not so serious for the following reasons:

1. The matter being about unauthorized leave and not Insubordination. Insubordination is an English word.
2. The hearing being scheduled in the same letter as the suspension; this was done in accordance with the Disciplinary Code.
3. Matter was not investigated; it was investigated and according to RW1 a report was produced although it was not tendered in court.
4. Board decided without considering information; Claimant did not state the information not considered.

In the circumstances the process and substance of the summary dismissal was justified and the summary dismissal was therefore lawful.

In rejoinder Counsel contested the respondent’s submission on “whether the summary dismissal of the claimant from employment of the respondent was justified, because the Claimant did not consent to the issue.

He insisted that the Claimant was dismissed for “gross insubordination”, yet the hearing was conducted for “taking unauthorised leave.”

He argued that Mr.Luswata quoted the Claimant’s various e-mails to the head teacher out of context with the intention of misconstruing his true intentions, that is to demonstrate his passion for mountain climbing and promotion of the same by the Respondent through allocation of various leadership roles such as coordinator of the personal project.

With regard to insubordination he argued that, when the meeting was redirected to the issue of unauthorised leave, the Claimant’s lawyers insisted on discussing insubordination and rejected that he was insubordinate. He insisted that the disciplinary meeting only concentrated on discussing what amounts to insubordination. According to him there were no acts of insubordination therefore the argument by counsel for the respondent that insubordination is an English term was misleading and a complete misinterpretation in the circumstances of this case, therefore it should be disregarded. In his view the case of **Chandia vs Abacus pharma(Africa)** **Ltd, LDC No. 237/2016** should not be read out of context given that it makes a distinction between reasonable and unreasonable directives from employers to their employees. Citing **R vs Darling Stevedoring (1948) 60 CLR 601,** he stated that what a reasonable directive was, “… *depends on the circumstances of each case and may take into consideration factors like; nature of the employment, established usages affecting it, common practices which exist and the general provisions of the instrument governing the relationship.”* According to him these usages are exemplified in by the emails in which the claimant states that being away from the classroom for a few days could positively impact learning in the long run and the same logic justified personal development trips at school. He reiterated, that the claimant had never taken unpaid leave, therefore to deny it to him for purposes of climbing Mount Kenya was unreasonable.

He argued that the instant case was distinguishable with **Kabojja international School versus Godfrey Oyesigye, LDA No.0003/2015,** because in this case the claimant made efforts to mitigate the loss the students could suffer as a result of his absence from school for a period of 4 days. In any case there was no evidence that the students were prejudiced in any way. He insisted that the reasonable thing would have been for Ms. Caroline to consider his plans but she refused to meet with him.

He agreed with **Lamunu vs Krotchet Employees Sacco and Krotchet Kids Uganda LDC No. 6 of 2006,** in which this Court stated that the importance of requesting for or applying for leave is to allow the employer to do proper planning. And court observed that this helps the employer to arrange for somebody to perform the duties of that employee making a leave request.he argued that the Claimant made plans for his classes and he shared with his colleague Laura and liaised with the Librarian to prepare online material for the students research as testified in his witness statement.

He also insisted that an isolated incident did not justify summary dismissal especially given that the claimant did not breach his contract and the Respondent failed to prove that he did.

With regard to a right to be heard he reiterated his submissions on the same and stated that whereas the claimant was accused of not pleading the breaches of natural justice, **Interfreight Forwarders vs East African Development Bank Civil Appeal No.33 of 1992,** *“…issues are formed on the case of the parties so disclosed in the pleadings and evidence is directed at the trial to the case of the parties so disclosed in the pleadings and evidence is directed at the trial to the proof of the case, A party is expected and bound to prove the case as alleged by him and as covered in the issues framed.”*

He reiterated his submissions on the right to a fair hearing and stated that he could not show how the Respondent failed to meet its obligations without making these argumentations.

**DECISION OF COURT**

1. **Whether the Claimant was unlawfully summarily dismissed from employment.**

“Dismissal from employment” is defined under section 2 of the Employment Act, as *“the discharge of an employee from employment at the initiative of his or her employer when the said employee has committed verifiable misconduct.”*

According to the Claimant he was summarily dismissed for misconduct, on the grounds that he was insubordinate yet the disciplinary hearing focused on the charge of “taking unpaid leave without authorization”. He contended that he was not heard on the charge of insubordination, yet it was the reason he was dismissed, therefore the dismissal was unlawful.

The Respondent’s case was that, the Claimant’s act of taking leave without authorization amounted to insubordination, therefore his dismissal was justified.

The Employment Act, 2006, does not define insubordination. However, Black’s law Dictionary defines insubordination as “*A wilful disregard of an employer’s instructions especially behavior that gives an employer cause to terminate a worker’s employment.”* The encyclopedia.lexroll.com, defines it as follows;

“*in the context of employment law, insubordination means an employee’s refusal to comply with the lawful instructions of his or her employer. Insubordination is a valid ground for an employer to impose disciplinary action against the insubordinate employee.”*

We are also persuaded by the holding in the Labour Court of South Africa, in  **Charles Tumelo Sibanda vs Da Pretorrious N O vs Commission for Reconciliation Mediation and Arbitration and Diners Club SA(PTY) Ltd Case No. JR2637/16,** in which Masebo J, cited Professor John Grogan in Grogan Dismissal 3rd Edition(Juta 2017)at page 285, for the definition of insubordination as, to mean the refusal to obey the employers instructions. He also cited **Palluci Home Depot(PTY) Ltd vs Herskowitz and Others (2015) 36 ILJ 1511(LAC),** in which insubordination and insolence were distinguished. Kathree-Setilone AJA, stated as follows:

*“ … The offence of insubordination in the workplace has, in this regard been described by our courts as a wilful and serious refusal by an employee to obey a lawful and reasonable instruction or where the conduct of an employee poses a deliberate(wilful) and serious challenge to the employers authority.(emphasis ours). Whereas in some cases defiance of an instruction may indicate a challenge to the authority of the employer , this is not so in every case. Insubordination may also be found to be present where disrespectful conduct poses a deliberate(wilful) and serious challenge to or defiance of the employer’s authority, even where there is no instruction or defiance of an instruction. It is, therefore, not essential for the instruction to be given or disobeyed to found a challenge to the employer’s authority… .*He went on to state that, …

*As demonstrated, there is a fine line between insubordination and insolence and insolence may very well become insubordination where there is an outright challenge to the employer’s authority. However, acts of mere insolence and insubordination do not justify dismissal unless they are serious and wilful.*

Therefore, for an employee to be dismissed for insubordination, his or her failure to comply with reasonable and lawful instructions of an employer or his or her challenge to or defiance of authority, must be **willful (deliberate) and serious**. The test therefore, is whether the employee’s conduct demonstrated a willful and serious intention to challenge the employer’s authority.

In the circumstances, insubordination cannot be considered as being separate from the acts of wilful(deliberate), refusal to abbey reasonable instructions of an employer which are the ingredients of the offence. We therefore do not agree with Mr. Mutange and Mr. Mutibwa Counsel for the Claimant that, insubordination and taking unauthorised leave are 2 different infractions.

It is our finding therefore that, the charge of insubordination as stated by the Respondent was not ambiguous. In our considered view, the only way that the offence of insubordination could be established was by interrogating the act of “taking leave without authorization.”

**Did the Claimant’s act of taking unpaid leave without authorization amount to insubordination?**

According to the Claimant’s contract, Marked as“RB” and “A” on the record, he was employed by the Respondent as a teacher and his core responsibility was to teach. By the time of his dismissal his contract was running for the school year 2016-2017. Clause 7 of the Contract set out his duties as follows:

*“7.The teacher shall work under the general direction of the Head of School and shall perform all duties and responsibilities in accordance with the Board’s policies, rules and regulations. The teacher shall*

1. *Maintain high standards of professional and personal conduct*
2. *Accept in and out if class assignments deemed necessary by the Head of School*
3. *Follow the school programme and curriculum as outlined by the head of school*
4. *Maintain discipline and security of the student body*
5. *Devote his/ her full working time and attention to school activities*
6. *Make him/herself available to assist students, meet with parents, attend meetings and perform other functions to promote the welfare of the school…”*

It is not in dispute that he requested to take unpaid leave in order for him to fulfill his passion for mountain climbing and particularly climbing Mountain Kenya. Clause (vii) of the contract of service provided that; *“under extenuating circumstances a teacher may request leave without pay subject to approval by the Head of school. The daily rate of pay will be deducted for each day of leave without pay.”*

It is also not in dispute that his request for unpaid leave was denied by the head of school, but the Claimant went ahead and took leave without authorization, on the grounds that its denial was unreasonable. It was his testimony that he took un authorized leave after he applied for it and it was expressly denied, however he stated that he did not understand that his going away would have consequences. According to him, climbing the mountain on this particular expedition was a once in a lifetime opportunity which he could not miss.

After carefully perusing the record and the evidence adduced in court, we established that indeed, on 22/02/2017 at 8.47 am the Claimant via email sought the permission of the head of school to take leave to climb Mount Kenya and particularly the Batian peak. According to his email he informed the head of school that he would miss 4 class days and 4 subjects 2 of which he suggested he would make up for after school sessions and during free periods. The head of school in her response dated 23/02/2017 at 6.41, declined to grant him leave on grounds that staff had very many school holidays in which they could travel and she suggested he goes another time. He made another request on 23/02/2017 at 11.33, giving reasons why he had to go, and stating particularly that, this could be the only chance he had to climb with experienced climbers. He also stated that, it would be impossible for him to reschedule, given that the “*climbing season was limited and closing”*.

The head teacher responded on 23/02/2017 at 5.31 pm, and once again declined his request because according to her, they employed to teach. She emphasised that the absence of teachers from classes affected students’ learning. On 5/03/2017 at 10.09pm, the Claimant responded to her email and insisted that he had to go for the reasons he had earlier stated. He also insisted that he had prepared for his absence and had given a one Laura his plan. What was peculiar however, was the condescending language he used in this e- mail when he stated that:

*“I haven’t shared my plan with my colleagues. Nobody knows that Iam going to Kenya. If you want me to say Iam sick, I can do that, I don’t want to, but I could. That will at least prevent the possibility of this becoming some sort of precedent. I do not think that it is the best approach. Whatever you need to do I will understand and no hard feelings. We simply disagree. This isn’t the first time. I plan to stay at ISU for the foreseeable future and plan to continue in my craft. I understand I can be extremely difficult. Sorry for that, but at the end of the day, we must do what we feel is right”*

This email left no doubt in our minds that the Claimant was determined to on the mountain climbing expedition whether he was authorized or not. The tone and language of the e-mail and particularly, the audacity with which he told his superior that he could lie about being sick if it would prevent him being “some sort of precedent” clearly showed that he understood what he was doing and that it was not correct. He also showed that he really did not care whatever the head of school did, because he disagreed with her and stated that he *“must do what he felt was right.”* We therefore do not accept his assertion that he did not know that his actions would have consequences, especially given his statement that “*whatever you need to do I will understand and no hard feelings…. ”*

His contract of employment under clause(vii)(supra), provided that, unpaid leave could only be taken under “extenuating circumstances”. The question however is whether his passion for mountain climbing was such an extenuating circumstance to warrant the grant of such leave? The answer is No. The Claimant’s Core responsibility under his contract of service was to teach. His request for leave was denied by the Head of school, because his absence would affect the learning of students, who were the primary reason he was employed, that is, to teach them.

In our considered opinion, the fulfilment of his passion for climbing Mount Kenya during school time or for any other hobby, does not qualify to be considered an extenuating circumstance envisaged under clause(vii)supra of his contract, to warrant the Respondent to grant him unpaid leave, at the expense of the students he was hired to teach. We do not subscribe to the assertion that the denial of leave was unreasonable given that by granting him the said leave, at that time, he wanted to take it, would be cause him to abdicate the fulfillment of the most fundamental part of his contract, that is to teach. **(see Chandia Christopher vs ABACUS Pharma (Africa) Ltd LDR No. 237/2016)**. Clause 7(b) of his contract, reserves the right /responsibility to assign extracurricular activities to the head of school not the other way around.

Given the tone of the paragraph cited above, it seemed that the Claimant had was determined to undertake the mountain climbing whether he was given authorisation or not. In fact, in his testimony in court, he admitted that he took unpaid leave without authorization, he said *“ yes I applied for leave and it was expressly denied… despite the refusal I chose to be away… yes I had to go it was very important….”* Therefore his statement that; “*…*  *If you want me to say Iam sick, I can do that, I don’t want to, but I could. That will at least prevent the possibility of this becoming some sort of precedent. I do not think that it is the best approach. Whatever you need to do I will understand and no hard feelings. We simply disagree,… I understand I can be extremely difficult. Sorry for that, but at the end of the day, we must do what we feel is right”,*  left no doubt in our minds that he wilfully and deliberately refused to obey the instructions of the head of School and he understood that by doing so there would be consequences which did not care about. By further stating that, *I plan to stay at ISU for the foreseeable future and plan to continue in my craft. I understand I can be extremely difficult. Sorry for that, but at the end of the day, we must do what we feel is right*…”, These condescending statements were a clear indication that he wilfully and deliberately defied the instructions of the head of school and totally disregarded the fact that his fundamental responsibility was to teach, and not to fuffill personal passion to climb a Mountain instead.

We therefore we have no reason to disagree with the Respondent that, by taking unpaid leave without authorisation moreover during school time, when he was expected to stay and teach, he willfully refused to obey the reasonable instructions of the head of school and this amounted to insubordination which is misconduct. Did it justify his summary dismissal? Section 69 defines ***69(3) An employer is entitled to dismiss summarily and the dismissal shall be termed justified , where the employee has, by his or her conduct indicated that he/she has fundamentally broken his or her obligations arising under the contract of service.”***

We have established that by choosing to go on a mountain climbing expedition without authorization instead of fulfilling his fundamental obligation under his contract of employment, that is to stay and teach, the Claimant committed verifiable misconduct, which was a fundamental breach of his contract of employment as a teacher. The fact that it had occurred once was inconsequential given the holding in **Laws** v**s London Chronicles (1959)1WLR 698,** whose holding was to the effect that one isolated misconduct was enough to justify summary dismissal and therefore the previous good conduct may be irrelevant to in determining whether the summary dismissal was justified. In the instant case the Claimant adamantly stated that he intended to continue “in his craft” and he showed he was determined he would do what he felt was the right thing to do even at the cost of defying authority as was the case. In the circumstances, we find that his summary dismissal was justified.

**Was he accorded a fair hearing?**  Section 66(4), provides that:

***(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…***

It is trite that standards of a disciplinary hearing are not as high as a Court trial. (see **Grace Matovu Vs Umeme LDC No.004/2014).** What is required of the employer is to ensure tha the employee in issue understands the infractions leveled against him or her and that he or she is given an opportunity within reasonable time to respond to them in writing and or before an impartial tribunal or committee. The Claimant in the instant case was notified about the charge of insubordination or possible gross insubordination in his letter of suspension and although he contests the fact that the same letter communicated the hearing date, he was equally notified about the hearing date. Although he also contended that he was condemned unheard on the charge of insubordination because the hearing focused on his “taking leave without authorization, and not on insubordination specifically, we have already established that the 2 are not separate infractions, therefore the disciolinary committee was correct to interrogate the issue of taking leave without authorization, in order to determine whether the claimant was insubordinate or not. It is not disputed that, he admitted that he took leave without authorization because he had to climb mount Kenya, therefore his contention that, there was no investigation report was redundant. We strongly believe that the facts of this case contrary to the Claimant’s submissions is on all on all fours with **Kabojja International(supra)** because the Claimant in the instant case admitted to taking leave without authorization, instead of staying to teach, which was a fundamental breach of his contract of service and it was inconsequential that he had done it once. This admission was sufficient to warrant his dismissal without notice or less notice than he was entitled to and without a hearing. The admission also rendered it unnecessary to undertake an investigation to prove the infraction. In the instant case however, the Respondent went further to conduct a hearing and although the period of suspension and the notice seemed very short, the Respondent complied with section 69(3) and 66(4) supra and therefore it did not breach the principles of natural Justice when conducting the disciplinary hearing.

We therefore agree with the submission of Mr. Luswata for the Respondent’s that both on procedure and in substance the Claimant’s summary dismissal was lawful. This issue is therefore, resolved in the negative.

**2.whether the Claimant is entitled to the remedies prayed for in the Claim?**

According to the memorandum of Claim, the claimant made the following prayers:

1. A Declaration that the Respondent unfairly and or unlawfully dismissed the Claimant.
2. A declaration that the Respondent breached principles of natural justice when conducting the Claimant’s disciplinary hearing.
3. An order for reinstatement of the Claimant as a Teacher of the Respondent.
4. Without Prejudice to the above claims, the claimant prays for an order for recovery of special damages, general damages, exemplary damages and costs of the suit.

Having found that he was lawfully terminated, he is not entitled to any of these prayers. They are denied.

No order for costs is made.

Delivered and signed by:

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

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

**PANELISTS**

**1. MS. ADRINE NAMARA ………………**

**2.MS. SUSAN NABIRYE ……………….**

**3.MR. MICHEAL MATOVU .………………**

**DATE: 4TH NOVEMBER 2020**