**THE REPUBLIC OF UGANDA**

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

**LABOUR DISPUTE CLAIM NO.21/2014**

**ARISING FROM HCCS NO. 256/2012**

**MUWANGA EZEKIEL ……………… CLAIMANT**

**VERSUS**

**STANBIC BANK ……… RESPONDENT**

**BEFORE:**

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

**PANELISTS**

**1. MS. HARRIET MUGAMBWA NGANZI**

**2. MR. EBYAU FIDEL**

**3.MR. FX. MUBUUKE**

**AWARD**

**BRIEF FACTS**

On 15/12/2010, the Respondent appointed the Claimant as a teller at the Luweero branch, effective 20/12/2010. The Branch Manager Ntalo Muhammed, assigned him duties of Customer Service Manager, in the place an officer who was away on leave. On 6th January while working as Customer service Manager, he received an application for an inter Account Transfer worth Ugx. 46,000,000/- in respect of Lucy Nakyobe, a holder of Account No.0121012599501, in favour of Allan Johnson Walaga. His superviser a one Clare Wafula authorised him to post it after she consulted with the main Branch at Garden City.

On 9/01/2012, the Claimant received another Inter Account Transfer application in the names of the same Account holder, Lucy Nakyobe, to be paid to the account of a one Tumusiime Enock. The Claimant also referred this IAT to his superviser Clare Nafula because like the previous one, it was delivered by a non- Account holder. After consultations, with a one Bazirakakye Evas, Ntalo Muhammend, the Luweero Branch Manager, authorised a one Kembabazi Jane to post it. The 2 transactions turned out to be fraudulent transactions leading to the Claimant being summoned for a disciplinary hearing on grounds that he acted negligently thus causing the Bank financial loss. He was blamed for both transactions and was later terminated with effective from 10/04/2012.

He contended that the termination was unlawful, hence this suit.

**ISSUES FOR RESOLUTION**

1. **Whether the Claimant was wrongfully terminated?**
2. **Whether the Claimant is indebted to the Respondent in the sum of Ugx. 12,765,319/=?**
3. **What remedies are available to the parties?**

**REPRESENTATION**

The Respondent was represented by Senior Counsel Moses Juruwa Adriko together with Mr. Alex Ntale of MMAKS Advocates, Kampala and the Claimant by Mr. Katumba Chrysostom of M/s Lukwago and Company Advocates Kampala

**EVIDENCE**

The Claimant adduced evidence through a one Nafula ClareCW2, his former superviser and himself. The Respondent adduced evidence through, RW1 Kitutu Vincent head of Employment Relations, RW2, David Semakula, former Manager Reconciliation and Rw3, Andruma Richard a forensic investigator, formerly attached to the Respondent’s Financial and crime control department.

The Claimant testified that the Respondent employed him as a teller December 2010 and dismissed him in April 2012. He was trained as a teller(blue genes) and the training included the history of the bank, good customer care, and respect of the Bank’s values such as integrity and honesty. His duties involved cash transactions which included; receiving customers, verifying their identity on the computer, specifically their photo and signature and existence of funds on their Accounts. On 24/01/2012, the Bank Manager of Luweero Branch, Ntalo Muhamad redesignated to the position of Customer Service Consultant (CSC) to act in the place of the substantive CSC who was on maternity leave, effective 1/02/2012. The duties of CSC included; handling Inter Account Transactions, issuing out cheque books and ATM cards, among others. Although the redesignation stated he would assume the duties of CSC effective 1/02/2012, he actually commenced in December 2011. The details of his job description were as stated at page 36 -39 of the Joint trial bundle.

It was his testimony that, on 6/01/2012, he received an IAT request in the sum of Ugx. 46,000,000/-. He said that although the person who requested for it was a man, but when he checked the Account, it belonged to a woman, one Lucy Nakyobe. He further testified that, he established that applicant was neither the Account holder or her authorised agent. It was also his testimony that on 9/1/2012, he received another IAT request in the sum of Ugx.52,000,000/- and like the previous one, the person who requested for it was neither the Account holder or the authorised agent. He said he gave both IAT forms to the Manager to handle them and they were both approved. The 1st IAT was cashed by him and the second by a one Kembabazi, but later both were found to be fraudulent.

He said he was called to head office and asked questions and he also made a statement. On 23/03/2012, he attended a disciplinary hearing accompanied by his lawyer, but the lawyer was refused to speak. He was charged with gross negligence and then dismissed. He had taken out a bank loan which he had not paid at the time of the dismissal.

In re-examination he said that he was not trained as a CSC although before he assumed the position, he was given guidance by a one Richard Androma. He said that, the 1st transaction of Ugx. 46,000,000/-, was cleared by a one Bob Mugisha Musunguzi who was Nakyobe’s Executive Banker at head office and this was after his superviser a one Clare Nafula consulted with head office. Nafula then confirmed the transfer by stamping on it authorised the payment and he went ahead and paid. The second transaction in the sum of Ugx. 52,000,000/- was confirmed by a one Evas Bazirakaki another executive banker at head office. The clearance was communicated by Clare Nafula and it was paid out by Jane Kembabazi Jane. According to him he could not be faulted for paying out the Ugx. 46,000,000/- because it was authorised by another branch and his superviser.

CW2, Nafula Clare, the Customer Service Leader at the time the Claimant was dismissed testified that, by the time he was dismissed, the Claimant had served as a Customer Service Consultant for 18 months. She said that, she was aware about the Inter Account Transactions (IATs) in issue. According to her the Claimant came to her because he was not conversant with the process of Inter Account Transactions. She stated the roles of the CSC as stated by the Claimant and reiterated that he held the position of CSC for 18 months until he performed the role in the impugned IATs. It was her testimony that, after receiving the IAT form from the Claimant, when she checked the Account, she found that the Account holder was an Executive Customer who had an Executive Banker based at Head Office at Garden City. She then checked with Executive Banker, who told her to scan the documents and send them to Garden city. Bob Musinguzi who was acting for Fiona Bayiga at the time then later sent an email authorising the payment of the 1st transaction.

With regard to the 2nd transaction, she said that, it was her testimony that, she called a one Evas Bazirakaki, another Executive Banker, although she did not identify the persons transacting in this one but it was not a requirement for her to do so. It was her testimony that, this notwithstanding she authorised the IAT after she received confirmation from Garden city by e- mail. It was further her testimony that, she authorised the payment of Ugx. 46,000,000/- to Johnson Walaga and Ugx. 52,000,000 to Tumusiime Enoth. She also stated that the Claimant, the Manager Ntalo Muhamad herself were later summoned to head office and the Claimant was accused of gross negligence. She said she was familiar with her roles as team leader customer service, as stated at page 17 of the trial bundle.

She also stated that, she was conversant with the Inter Account Transfer Processes at page 47 of the Joint trial bundle, and insisted that the Claimant was not conversant with it. It was also her testimony that the signatory to the Account did not sign the forms in the presence of the Claimant nor did the applicant do so on her behalf. She stated that she could not call Lucy Nakyobe because she was not their customer hence reference to Garden city.

Rw1 Kitutu Vincent Robert, the Respondent’s Manager Employment Relations, testified that the Claimant was employed as a teller on 15/09/2010 and he said he had served as a teller for 2 years, before he was assigned the responsibilities of CSC. He said the redesignation was effective 24/01/2012 and a teller can handle CSC work and there was no need for training, before assuming the position of a CSC. In any case, the Claimant was trained before he undertook the job of teller. He confirmed that the Claimant obtained a loan from the Bank. He did not know whether Lucy Nakyobe was an executive customer. He said, the procedure to be followed by a CSC was provided for in the Bank manual(supra), but what the CSC was supposed to do, was to hand the IAT form to the Client and ensure that it is completed and signed in his presence. Thereafter, he was expected to follow the protocol of verification, before effecting the transaction and the same procedure applied, even where an agent or non-account holder was transacting. He stated that, all information is centralized and one could only consult when in doubt and in the instant case, where the person was not an account holder the Claimant should have inquired and rejected it. That consultation with other branches was allowed and it could be done by email, as was done at page 20 of the Joint trial bundle. He said that where the mother branch confirmed the transaction, the Branch from which it arose would then pay. If the information tallies you pay. It was further his testimony that, according to the email message the transaction was confirmed and the customer’s telephone at page 21 tallied with the one at page 31of the trial bundle.

RW2 David Semakula, a retired Banker formerly with the Respondent, testified that an Executive Customer needed not be present when an IAT was being processed and he or she could be represented by his or her authorised Agent. He stated that a branch where an IAT is requested need not inquire with the mother Branch because all that was required was to establish that the applicant who was handing in the form was the customer or authorised Agent. If the form was not presented by either of the 2, it should be rejected. He could not remember whether the mother branch sanctioned the transactions in the instant case. He was also not sure whether Nafula consulted with the mother branch because, it was not a requirement for her to do so. He further could not remember what position Nafula held at the Bank at the time. It was his testimony that, the Respondent’s Forensic department investigated the fraudulent transactions and he read the report. According to him the report stated that, it was Evas Bazirakaki who okayed the transactions. In re-examination he stated that, the Claimant as one of the frontline staff should therefore, he should have rejected the application when he established that it was not from the customer or her authorised Agent.

RW3 Richard Andruma who was the Banks internal investigator at the time, testified that, he carried out the investigation in the instant case. He stated that, Nakyobe was an executive customer and she had executive bankers. However, he could not remember who they were. It was his testimony that the role of an executive banker was to interface with customers on behalf of the Bank. However, in where IATs were involved, the executive customer was expected to appear in person but where they did not appear in person, the executive banker was not authorised to handle, and IAT. He said that, Nakyobe maintained her Account at Garden city Branch, but he did not establish why she was not at the Luwero Branch when the impugned IATs occurred. He thinks that, it was Clare Nafula who, Evas Bazirakaki and Bob Musingizi Mugisha, who were Nakyobe’s executive bankers. According to him the executive bankers confirmed that they did not authorize the said transactions. He said *“they claimed they called the client on phone and that she confirmed*.” He said that he established that the telephone contacts on the IAT forms were the same as the ones in the Bank’s system, at garden city. He also testified that the details of Nakyobe’s account were the same as those at Garden City Branch. It was also his testimony that there was no need to seek for confirmation because the IAT was brought by a 3rd party.

**REPRESENTATION**

**SUBMISSIONS**

Citing sections 2, 68, **Moses Obonyo Vs Mtn LDC No.045/2015, Barclays Bank vs Godfrey Mubiru SCCA No. 1 of 1998,** Counsel for the Claimant submitted that the termination of an employee must be justifiable and it must be based on the terms of his or her contract. He also cited **Okello Nymlod Vs Rift valley railways (U) Ltd HCCS No. 195/2009**, for the same legal proposition.

Counsel contended that the Claimant was terminated based on alleged fraudulent transactions which he conducted with the approval of his Supervisors. He also contended that the Claimant was assigned duties of Customer Service Consultant for which he had not received any training because he was employed as a Bank Teller and not a Customer Service Consultant. He argued that the two positions were different because, whereas the teller handled cash transactions, the Customer Service Consultant handled IAT, ATMs Cheque books, RTGs and EFT inquiries. In addition, the holder of the position of Customer Service Consultant (CSC) needed at least 2-3 years banking experience and in the instant case the Claimant had only worked for 16 months. Counsel did not refute the fact that, on 6/01/2010, the Claimant posted an IAT in respect of Lucy Nakyobe, the holder of Account number 0140572999301 to be paid to a one Walaga Johnson on Account No. 0121012599501. He insisted that, the Claimant was not trained but because he was diligent and he could not turn a customer away, hence referring him to his superviser, Clare Nafula.

It was not in dispute that, the IAT in respect of Nakyobe Lucy, the Account holder, was presented by a non- Account holder. The fact that the Account was opened at Garden City was also not in dispute. Counsel however, contended that, in the circumstances, a Banker in Luwero Branch would not be able to tell whether the person who delivered the IAT was an authorised Agent or not because they had no access to the details on the Account. He also did not dispute that, the provisions of the Inter Account Transfer Manual at pages 45-47 of the Joint trial bundle, provide that the completed form must be delivered to the Customer Service Consultant by the signatory on the Account or authorised Agent. He argued that since, Executive Bankers had the mandate to transact on behalf of their Executive Customers and in the instant case Nakyobe’s executive bankers authorised the IATs, it was on the basis of their authorization that, Nafula Clare, who was the Claimant’s superviser, authorised him to post the first IAT worth Ugx. 46,000,000/-and for Kembabazi Jane to post the 2nd IAT worth Ugx. 52,000,000/= (supra).

He made reference to pages 31,32 and 33 of the Joint trial Bundle which was a trail of emails between Nafula Clare, Bazirakakye and Ntalo Muhammed which he said was evidence of the due diligence that was taken before the 2 IATs were posted by the Claimant and Kembabazi, respectively. He insisted that the IATs were cleared by Mr. Ntalo Muhammed, the branch Manager Luwero Branch on the basis that, Lucy Nakyobe had been consulted by her executive bankers via telephone No. 0702283477 which appears on the IAT forms dated 6/01/2012.

Counsel also refuted, the findings of the investigation report because according to him, the report was concluded on 3/01/2012, before the transactions took place. He also contended that the Claimant never worked in Tororo as purported by the report and the minutes of the purported disciplinary committee were not signed. In his view, it would not be farfetched to state that the minutes were fictitious. He argued that, the finding that, the Claimant acted negligently and dishonestly, would depend on whether he owed a duty of care, he breached the duty of care and the Respondent suffered loss or injury as a result of the breach. According to him, the Claimant did not breach the duty of care which he owed the Respondent Bank because, he had been categorical in his lack of Knowledge about IAT transactions, he was not given the requisite training and when presented with IATs, he sought the guidance of his supervisors who were more knowledgeable about them. It was only after the Supervisors confirmed the IATs, that he posted the transaction. He reiterated that the person who delivered the IATs insisted on seeing the manager hence being handed over to Nafula, who took it up from there and only returned to him with authorization for him to pay. It was his submission that this was more than enough diligence on the part of the Claimant.

Counsel further contended that, the Respondent’s assertion that the Claimant was negligent and dishonest did not hold water because he was promoted to the position of Customer Service Consultant a day after the suspension of Nafula and Ntalo, effective 1/02/2012.

He also contended that, the disciplinary committee and the Managing Director did not take trouble to consider the forensic audit carried out in respect of Account 0140572999301 belonging to Lucy Nakyobe, which revealed that the systems contact of Lucy Nakyobe was changed by a one Mayanja Simeon, the customer consultant who was based at the IPS branch. The Report further did not establish that the confirmation which was made via phone call was done using the changed phone numbers. According to him the Bank acknowledged its systems weaknesses which led to the fraud. He also contended that whereas the first transaction was delivered to the Bank on 6/01/2012, the investigations were completed on 3/01/2012 before the Act occurred. Therefore, the Respondent was on a “witch hunt” which lead to the Claimant’s unfair termination.

In reply, Counsel for the Respondent cited Sections 2, 65(1), 58(1), (3)(b), of the Employment Act 2006, which are to the effect that, termination of an employee is done at the initiative of the employer for justifiable reasons other than misconduct and with notice. He also relied on **Hilda Musinguzi vs Stanbic Bank(U) Ltd CA No.5 of 2016,** in which the holding of **Mwangusya JSC** (as he then was) was to the effect that, even though the law protects employees from unlawful termination of their employment, they are still accountable for the acts which in the course of their duties may compromise the interests of their employers. It also stated that, Section 68(2) of the Employment Act, 2006 does not impose a high standard of proof of the reasons for termination as would be required in a court of law. His Lordship, also stated that, even though the employer’s right to terminate an employee cannot be fettered by the Courts, he or she should exercise the right in accordance with the correct procedure for termination, to avoid termination of employees at the whims of employers, otherwise the employee would be entitled to compensation.

Counsel argued that the Claimant in the instant case, was faulted for; receiving IAT forms from an unknown person without adhering to the Bank’s procedure on IATs and passing them on for processing. He was also faulted for being negligent when he failed to identify the third party /imposter who delivered the IAT forms.

According to Counsel the Claimant was appointed as a teller and was serving as a Customer Service Consultant (CSC) at the time of the fraudulent transactions. He refuted the assertion that the Claimant did not receive training in handling IATs, in order for him to claim that he was incapable of handling them. It was Counsel’s submission that the Respondent’s IAT Procedure at page 47 of the joint trial bundle, clearly states that once a customer /agent/signatory to the account approaches the Customer Service Consultant, the CSC was required to hand an IAT form to the person, ensure that all the fields in the form are correctly filled, request the signatory to fill the part “delivered by” in front of him or her and perform the duty of care before forwarding the forms to the Manager /Team leader for his or her independent inspection and before capturing the transaction on the computer system and this was confirmed by RW1, which the claimant did not do.

According to Counsel, at the disciplinary hearing, the Claimant admitted that, he underwent training as a teller (see page 57) and he received advice from his supervisors before assuming the position of CSC. He also stated that the impugned IATs of 6th and 9th January 2012, were not the first ones he had handled. He showed that he was knowledgeable about the IAT transactions having handled similar applications at the Luweero Branch. He therefore, could not plead ignorance about handling the IAT application in the sum of Ugx.46,000,000 as claimed.

It was also his submission that, the procedure for IATs applications also applied IAT applications which were done where a person did not hold an Account, because the procedure applied to all forms of IATs. He insisted that the Respondent did not have specific training on IATs and the Claimant having been appointed as a teller, was qualified to do the duties of a Customer Service Consultant (CSC) because both positions required the same knowledge. He argued that the Claimant possessed sufficient knowledge to carry out the role of a CSC and indeed it was his testimony that, when he received the impugned IAT application he checked the Account to establish whether the applicant was the Account holder and found that he was not.

He insisted that the Respondent through its witnesses, indicated that, she did not undertake special training for CSCs regarding the handling of IATs and tellers and CSCs apply the same knowledge. He stated that the training is rendered on assumption of duty.

He insisted that, the Claimant possessed sufficient knowledge through induction/training as a teller, from the guidance of his supervisors and his past experience and this was sufficient to enable him properly handle the impugned transactions. Indeed on 6/01/2012, he checked the account and found that the account belonged to a lady and according to Counsel,

*“… having found that the presenter of the IAT forms was not the customer, agent or signatory of the account and that the forms had not been filled before him, he was obliged to reject them and stop the fraud. Any further consultation merely facilitated the fraud …”*

He further refuted the contention that all due diligence was done by consulting the mother branch because it was not true that the Bank’s employees at the Luweero Branch could not tell whether the person who presented the IAT application was the authorised agent of Lucy Nakyobe or not. He also refuted the submission that, the identification of the person could only be done by consulting with the Branch where the Account was opened. According to Counsel, after the Claimant established that the person who appeared to transact was a man and not a woman, yet the Account holder was a woman, he did not need to consult any further. By consulting he only fueled the fraud. It was also his submission that, whereas the executive Banker represents the interests of the executive customer, the customer or his or her Agent were expected to submit the IAT form in person. In this case, it was neither the customer or her agent who submitted the form, but an unknown person and it was not mandatory to consult the executive banker, but the responsibility of the Branch to verify that the person presenting the IAT, was the person whose details were on the Bank system. He insisted that there was no need to consult with the mother branch, where a document was presented by a person who was neither the customer or the authorised Agent. Therefore, in the instant case, the form should have been rejected and the mother branch should not have authorised the transaction because it was not in order for her to do so.

According to him, RW3 testified that the executive bankers cannot transact IATs transactions on behalf of the executive customers. Therefore, the generalized allegation that the executive bankers manage executive customers’ Accounts on their behalf is untrue.

Counsel contended that the Claimant improperly presented IATs to his Superviser in total non- adherence to the Bank’s procedures, therefore, the Respondent correctly faulted him for the non-adherence to the IAT procedures because, he failed to identify the third party/imposters who delivered fraudulent IAT forms on 6/01/2012, in the sum of Ugx. 46,000,000/- and on 9/01/2012 in the sum of Ugx. 52,000,000/-, from the Account of Lucy Nakyobe. By doing so he caused the loss of Ugx.98,000,000/ to the Respondent Bank, therefore his termination was justified.

Relying on **Grave Matovu vs UMEME Ltd, LDC No. 4 of 2014,** in which this court’s holding is to the effect that, an employer is entitled to summarily dismiss an employer where he or she genuinely believed that the employee fundamentally breached a core responsibility and Section 66 (1) which makes it mandatory for an employer to give an employee reasons for dismissal before the dismissal occurs and section 68(1) and (2) which provides that the employer must prove the reason for dismissal and the dismissal must be for reasons which the employer genuinely believes to exist, Counsel insisted that the Claimant was dismissed for gross negligence of his duties when he failed to follow the procedure on processing of IATs, when he allowed an IAT transaction initiated by an unknown party which resulted into a fraudulent transaction on a Customer’s Account, causing the Respondent Bank financial loss.

Counsel strongly refuted the assertion that the investigation report was issued on the 3rd of January before the act occurred. According to him, this must have been a typographical error because the report was actually issued on 7/03/2012 and this misprint did not prejudice the claimant in any way. It was his submission that he was interviewed by the investigator and he also made a statement and the assertion that he did not attend a disciplinary hearing were not correct because he attended the meeting. On 24/01/2012, after 3rd transaction failed, he was informed that the transactions were fraudulent. Counsel also refuted the allegation that the minutes of the Disciplinary meeting were not signed and prayed that this argument is disregarded given that the Claimant attended the meeting with his lawyer a one Mr. Mukooli Julius, of Asassira & Co Advocates. He also refuted the allegation that the Claimant’s questions were expunged from the Minutes because, there were none. He also contended that, he did not controvert the fact that, the minutes stated that he worked in Tororo nor did he adduce evidence to show that his lawyer was refused to speak. He relied on **Grace Matovu** (supra), in which this court held that:

*“… we further agree with others before us that a disciplinary hearing needn’t apply the strict procedures applied in a court of law. The cases of GENERAL MEDISCAL COUNCIL OF MEDICAL EDUCATION AND REGISTRATION OF THE UNITED KINGDOM VS SPACKMAN 1943 ALLER 340, AND CAROLINE KARISA GUMISIRIZA VS HIMA CEMENT LIMITED HCCS NO. 84 OF 2015, both concluded that a disciplinary committee needn’t follow the procedure applied in courts pf law but merely that an employee appearing before it , is given an opportunity to defend him or herself without the requirement of the standards of a court of law. In this case the claimant the claimant had been given an opportunity to defend herself and she failed to convince the committee hence her dismissal…”*

Counsel insisted that, the Claimant in the instant case, was summoned for a hearing which he attended on 23/03/2012, with a union lawyer and he was charged with gross negligence and dishonesty for receiving IAT forms he was not supposed to receive and he caused financial loss to the Respondent. According to Counsel he was notified about the allegations, he was given sufficient time to respond to them he was heard and therefore he was accorded a fair hearing in accordance with Grace Matovu vs Umeme Ltd(supra) and therefore the termination was lawful.

**DECISION OF COURT.**

Sections 66, 68 and 70(6), of the Employment Act provide the procedure for termination of an employee and require that an employer must explain to an employee in issue the reason for the dismissal/termination, and an opportunity to respond to the reason/s in the presence of a person of the employee’s choice, before the dismissal/termination. The employer is also required to prove the reason for dismissal/termination, although the proof need not be beyond reasonable doubt. The employer is only required to act reasonably based on the facts known to him or her, at the time of the decision to dismiss /terminate.

It is not in dispute that, the Claimant was dismissed for gross negligence for allegedly receiving an IAT application, on 6/1/2012 in the sum of Ugx. 46,000,000/ and another one on 9/01/2012 in the sum of 52,000,000/=. It was the Respondents’ case that, he was not supposed to receive these IATs because they were requested for by third parties and by so doing, he caused the Bank Financial loss of Ugx. 98,000,000/-.

The Claimant admitted that he received the said IATs from third parties on the Account of a one Ms. Lucy Nakyobe, but he was not conversant with handling inter branch IATs because, he had just been assigned the duties of a Customer Service Consultant (CSC) for which he had no training. It was his testimony that, he forwarded the IATs to his superviser a one Nafula Clare who authorised him to pay but later he was informed that the IATs were fraudulent.  **The question is whether he was culpable for the fraudulent IATs?**

The key responsibilities of a CSC as stated at page 37 of the Joint trial bundle are as follows:

“…

* *Attend to customers promptly and where necessary, refer to the correct department or mitigate to a more appropriate, cost-effective channel.*
* *Cross-sell products and services reactively and pass leads on to the relevant areas timeously.*
* *Initiate steps to resolve problems affecting customer service timeously.*
* *Refer queries that cannot be resolved within the customer problem Resolution time frame to appropriate department. …”*

We are not convinced that the Claimant required specific training to enable him handle the responsibilities of a CSC. Indeed he owed a duty of care to the Respondent but he testified that he was not very conversant with inter branch IATs although he had handled IATs at the Luwero Branch. Although it was the Banks assertion that, the Claimant should have rejected the impugned IATs because the applicants were neither the account holders or her Agents, we found not justification to fault him after his superviser Clare Nafula, to whom he referred the applications for approval went ahead and processed them instead of halting the process or reprimanding him. We also found it peculiar that Nafula went further to further to escalate the, request for approval to head office, which also cleared them for payment.

Although the Claimant’s admitted that he received the IATs in issue, It is not disputed that, when he received them, he checked the Account and found that the applicants were neither account holders or agents of the Account holder Lucy Nakyobe. He notified his superviser Nafula accordingly because he was not conversant with inter branch IATs. One of the roles the superviser, as stated at page 17 of the trial bundle was to ensure that,

“*all preventive measures to thwart the fraudulent cashing of cheques and other instruments as well as acceptance of fraudulent deposits are rigidly applied.”*

It was therefore, Clare’s role to ensure this was complied with. She testified that, the Claimant referred the application to her because he was not conversant with processing interbank IATs.

We found no reason to doubt her testimony because the Claimant had only served as CSC for a period of 1 month. Which his supervised acknowledged. In any case, given her knowledge, experience and seniority at the Respondent Bank, she should not have gone ahead to inquire with head office in a bid to process the transaction instead of stopping it all together. The Head officer through Nakyobe’s executive Banker, a one Bob Musinguzi Mugisha confirmed the 1st application in the sum of Ugx. 46,000,000/-without questioning the fact that the applicant was neither the Account holder or the agent of Nakyobe and Ntalo Muhammed the Luwero Branch Manager authorised the 2nd transaction in the sum of ugx, 52,000,000/- after it was confirmed by Evas Bazirakaki another executive banker. All these officers were senior to the Claimant.

According to the investigation report issued by RW3, Andruma, and which was relied on to find the Claimant culpable, the Lucy Nakyobe, the Account holder’s phone contacts in the Banks system were found to be the same as the one’s on the IAT forms which were presented by the applicants. The report also established that the executive Bankers at the head office, confirmed the IATs by phone call. The report at page 88 of the Joint trial bundle indicates that a one Muyanja Simeon Kizito and Kaggwa frank were culpable of fraudulently amending customer’s telephone contacts and sharing passwords.

We therefore have no basis to fault the Claimant for processing and paying the IAT after his superviser, Clare Nafula to whom he referred the IATs after establishing that the applicant was not the account holder or her agents, went ahead to confirm with head office and authorised him to post it. It is our finding that by following his supervisors authorization he was not culpable of violating the IAT procedures. His duty among others, was to ensure that the persons applying for the IATs Account holders or agents of the Account holders. In the instant case he established that they were not, he referred the matter to his superviser, who had it confirmed and authorised that it is posted. We do not think that it was negligence on his part to consult the superviser as he did, because one of his key responsibilities at page 37 of the Joint trial bundle was to

*“… refer queries that cannot be resolved within the customer problem resolution time frame to appropriate department.”*

In the circumstances, we find no reason to fault him for notifying his superviser who was more experienced and knowledgeable about the IAT procedures than he was. For the same reason we also find no basis to fault him for following her instructions to post the IAT when she authorised him to do so especially after she confirmed the same with head office. In any case it was RW 1’s testimony

*“…if the branch from which the transaction is confirmed, you pay …if the information tallies you pay…the telephone numbers at page 21 “E” was customer telephone tallies with the telephone on page 31…”*

The Claimant however admitted that he was invited for a hearing and he also made a statement. He did not deny that he received the IATs in issue save that he referred them to his superviser for further processing. As submitted by Counsel for the Respondent he did not furnish Court with the questions asked at the hearing, which he purported were expunged from his record nor did he adduce any evidence to controvert the fact that he started working in Tororo. In any case whether he started working there or not was not prejudicial to him in any way.

The Minutes which were attached on the record as the Minutes of the hearing were not signed as alleged by the Claimant. Although the Respondent attached a signed copy to their submissions, we could not rely on it because the copy which was relied on during the hearing was not signed which rendered them unauthentic. We therefore, disregarded both the signed and unsigned copies. The signed copy should have been part of the evidence on the record before the hearing or they should have been formally admitted during the hearing, which was not the case. This Court’s holding in, **Kapio Simon vs Centenary Bank LDC No. 003/2015,** is to the effect that an organisation cannot base their decision to dismiss an employee on unapproved and unsigned minutes!

“…*In our view approval meant signing the minutes as a true record and formal adoption by Management. The Respondent did not adduce any other evidence to show that, there was any other mechanism that Management used to approve the Disciplinary findings, or to verify the allegations leveled against the* *Claimant…”*

The instant case however is distinguishable, because the claimant admitted that he attended a disciplinary hearing and he also made a statement. He also admitted that he received the impugned IATs but he referred them to his superviser who authorised their processing. He however contested the minutes on grounds that they excluded some questions which he asked at the hearing. However, as stated, by Counsel for the Respondent no evidence was adduced to show he particular questions he asked, during the hearing, which were purportedly expunged from the minutes. He also did not refute the submission that, the Respondents advised his lawyer that the hearing was an internal disciplinary mechanism which did not require him to do anything other than simply to listen to the proceedings.

We are satisfied that, the Claimant participated in the investigation against him, he was notified about the infractions leveled against him, he was invited for a hearing which he admitted that he attended. We associate ourselves with the submission of Counsel for the Respondent that, the standard of a disciplinary hearing needn’t be as strict as that of a court trial (see **Matovu Grace vs Umeme Ltd(supra)**. It is therefore our finding that he was given a fair hearing.

In conclusion having failed to prove that the Claimant breached his duty when he referred the IAT applications for his Superviser’s approval, instead of rejecting them, the Respondent violated section 68 of the employment Act which requires proof of the reason for termination before the termination occurs. The Claimant’s termination was therefore unlawful.

**2. Whether the Claimant is indebted to the Respondent in the sum of Ugx. 12,765,319/=?**

It was submitted for the Claimant that, the Respondent in the counter claim under paragraph 8, alleged that the Claimant was indebted to her in the sum of Ugx. 12,765,319/- which was a personal loan granted to him by the Respondent, but he failed to pay it. According to Counsel, on 13/04/2012, the Respondent wrote a letter to the Claimant and proposed a 3 year repayment schedule.

The Claimant in reply to the counter claim, asserted that the said loan was to be deducted from his salary and it was premised on the understanding that, he would remain employed with the Respondent and the deductions would from his account on a monthly basis, as indicated in annexture “l” on the Court record. Counsel also relied on **Charles Abigaba Lwanga vs Bank of Uganda** and **Okello Nimrod vs Rift valley Railways CS No 195/2009** cited with approval **in Donna Kamuli Vs DFCU Banks LDC 002/2015,** for the legal proposition that, where the a loan was granted on the understanding that the plaintiff(or claimant)would continue to be employed by the defendant/respondent and the payment for the loan was solely by means of such employment, once the said employment was by unlawfully terminated by or frustrated by the acts of the defendant /respondent, the defendant/respondent was liable to pay the loan. He also cited **Florence Mufumbo vs Uganda Development bank LDC No. 138/2014,** for the same legal proposition.

It was not disputed that the claimant was granted a loan by the Respondent. Indeed, the loan agreement at page 114 indicated that at his resignation or dismissal any loan outstanding would be payable immediately. In **Irene Rebecca Nassuna vs Equity Bank Ltd LDC No 06/2014,**

This Court emphasised that*,*

*“…where an employee has applied for and been granted an unsecured loan whose repayment is solely by salary and the employee is unlawfully dismissed, the liability of paying the loan shifts to the employer who unlawfully terminated the said employee. However, the employee has the onus to prove that the loan was approved/guaranteed by the employer, as a salary loan and that the loan is purely unsecured and solely premised on salary for its repayment.*

We should add that the employee has to prove that he or she was unlawfully terminated by the employer/Respondent.

We have already established that the Claimant’s his dismissal/termination was unlawful and that the loan was premised on monthly deductions from his salary for its repayment.

In the circumstances, the liability of paying the outstanding loan shifts to the Respondent. The Respondent having granted the Claimant the loan can therefore not recover the outstanding loan of Ugx. 12, 765, 319/- and interest accrued to date from the Claimant. It should therefore forfeit it.

**General damages**

Citing **Charles Abigaba Lwanga vs Bank of Uganda LDC No. 142/2012,**  in which this court held that,

*“… damages are a discretionary remedy intended to retore the Claimant to the original position before the wrong was committed . the claimant had a job he was looking up to defend his family and had been put in permanent and pensionable position. He had hgh hopes of career ahead of him. His employment was directly connected to his struggle to fend for his family.”*

Counsel argued that the unlawful termination of the claimant put a dent on his reputation and he has not been unable to get another to date. It was his submission that he was entitled to an award of general damages for unlawful for the anguish and humiliation, trauma and inconvenience caused to him. He prayed he is awarded Ugx. 65,000,000/- as general damages.

It has long been settled that the remedy for an employee who has been unlawfully terminated is damages and any other remedies pleaded under the Employment Act. (See **STANBIC BANK VS KAKOOZA MUTALE C.A No. 2 OF 2010).** Having established that the Claimant was unlawfully terminated he is entitled to an award of general damages. It is trite that determination of the quantum of damages to be awarded is at the discretion of Court and depends on the circumstances of each case. We think that the Claimant having worked for the Respondent from 15/12/2010and terminated on 11/04/2012 a period of 1 year and 4 months , an award of Ugx. 9,000,000/= is sufficient as general damages.

**Punitive/ exemplary damages**

Having awarded him general damages which are compensatory in nature, we found no basis for the award punitive damages. They are therefore, denied.

In conclusion this claim succeeds in the following terms:

1. **A declaration that the Claimant was unlawfully terminated.**
2. **The Respondent is liable for the outstanding loan of Ugx. 12, 765, 319/ with interest accrued to date.**
3. **General damages of Ugx. 9,000,000/-**
4. **Interest on 15 % per annum from date of this award 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. HARRIET MUGAMBWA NGANZI …………….**

**2. MR. EBYAU FIDEL …………….**

**3.MR. FX. MUBUUKE …………….**

**DATE: 21ST FEB 2021**