

**THE REPUBLIC OF UGANDA**

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

**LABOUR DISPUTE APPEAL NO.007 OF 2021**

*(Arising from Complaint No. KCCA/LC//CEN/80/2018)*

**UGANDA BUREAU OF STATISTICS :::::::::::::::::::::::::::::::APPELLANT**

**VERSUS**

**WAGIDOSO DAN & 18 OTHERS:::::::::::::::::::::::::::::::::::RESPONDENT**

**BEFORE:**

1. **THE HON. JUSTICE ANTHONY WABWIRE MUSANA**

**PANELISTS:**

1. **MS. ADRINE NAMARA,**
2. **MS. SUZAN NABIRYE &**
3. **MR. MICHAEL MATOVU.**

**AWARD**

**Introduction**

[1] This appeal is against a decision of the Ms. Irene Nabbumba, the Labour Officer at Kampala Capital City Authority in Labour Complaint No. KCCA/LC/CEN/80/2018. The Respondents had alleged that the Appellant withheld their gratuities, unlawfully. They sought payment of the gratuities and damages. The Labour Officer found in their favour. She determined that the Respondents were entitled to mandatory gratuity of 25% of the annual gross salary for each year of service.

[2] Dissatisfied with the decision of the Labour Officer, the Appellant filed this appeal on three grounds. The Appellant asked that the appeal be allowed, quashing the decision of the Labour Officer, with orders for a retrial before a different Labour Officer. The Appellant also prayed for costs of the appeal.

[3] The Respondents opposed the appeal submitting that the appeal was filed without leave of this Court and ought to be struck out. Alternatively, the grounds were without merit and the appeal ought to be dismissed.

[4] We will now set out the evidence, proceedings and judgment in the case below in some detail before proceeding to resolve the appeal.

**The Proceedings at the Court of First Instance:**

**The Respondents’ evidence:**

[5] In the proceedings before that Labour Officer, the Respondents filed a total of 19 witness statements. They also relied on documents under ten separate heads. Mr. Patrick Muhumuza (*from now R1*) testified that he had joined the Appellant in 2003 and his most recent posting was as a Statistical Assistant. In June 2017, he chose to resign due to domestic pressures and had not been paid his gratuity. In cross examination, he stated that he had never been given a letter to explain his academic records.

[6] Mr. Dan Wagidoso (*from now R2*) testified next. It was his evidence that he joined the Appellant in 2002 as a Data Collector and his most recent posting was as a Statistical Assistant. In June 2017, he chose to resign due to personal reasons. It was his evidence that his terminal benefits were being unreasonably withheld. In cross examination, he stated that he had never been given a letter from the Appellant to explain his academic records. He then admitted to having made a response to the allegations vide E (XIV) a letter dated 15th July 2016. He also admitted receipt of a hearing notice to appear before a disciplinary hearing and he did appear before a disciplinary committee. He testified that he did not admit to altered academic documents. He was shown EXV and testified that he did not know how the document came to be. He did not alter his Mathematics and English results and confirmed he had scored a Pass 9. He maintained that he had resigned and the false documents were planted. In reexamination, he stated that the signature at the bottom of EXV resembled his. He was never given a copy of the UNEB Verification report. He stated that he was not dismissed from the Appellant because of forged documents.

[7] Mr. David Waga *(from now R3)* testified that he was appointed as a Driver on 7th November 2001. The appointment was renewed annually until June 2017 when he decided to resign. His resignation was accepted and he requested for gratuity which he had not received in his sixteen years of service. In cross-examination, he testified that he was not aware that the Appellant had carried out verification of its employees academic qualifications. The Appellant had never written to him asking him to verify if his documents were forged or altered. He stated that he did not know that his index number was different from what he had presented to the Appellant and that he did not request to be pardoned on account of his mother’s illness. On being shown Annexure H (iii) he stated that that was not the reason for his dismissal. In re-examination, CW3 testified that he had never encountered any problem with the Appellant in his years of service. He admitted to attending a disciplinary hearing but that no evidence of forgery was presented to him. He was never formally dismissed from employment but resigned. That he was given the option to resign or be dismissed. On being shown I (xxi) he testified that he could have been coerced to resign.

[8] Akitwi Elizabeth (*from now R4*) testified that on 1st February 2009, she was appointed as a Security Assistant of the Appellant. On 26th June 2017, she resigned due to some pressing personal and domestic issues. On 30th June 2017 the Appellant accepted her resignation. She was given a certificate of service but did not receive her terminal benefits. She testified that she did not write to her in respect of falsified academic documents. She was not aware that the index number belonged to one Arikot Florence. She appeared before a disciplinary committee but did not tell the committee that she had stopped in Senior 4 following her father’s death. She testified that she had a pacemaker and had resigned due to health reasons.

[9] Dibire Wilber, (*from now R5*) testified that he was appointed as an Office Attendant on 1st May 2000. On 30th June 2017, he tendered his resignation and the Appellant accepted the same. He was issued a certificate of service. He requested for his gratuity and terminal benefits but the same were not paid to him. He testified that his education stopped in Senior 2 and he had not given the Appellant any other documents. He also testified that he left the Appellant because he did not have any qualifications.

[10] Luswata John, (*from now R6*) testified that he was joined the Appellant as a Driver on 7th October 2001. That he worked for sixteen years and on 28th June 2017, he tendered his resignation and the Appellant accepted the same. He was issued a certificate of service. He requested for his gratuity but it was not paid to him. He testified that he had not received gratuity in all the sixteen years of service. Further, in that period there had been no complaint about his work. He admitted to having received a letter asking him to explain the falsification of his UNEB records. He appeared before a disciplinary committee but denied allegations that he had used another person’s documents.

[11] Muluuta Sulaiman, (*from now R7*) testified that he was joined the Appellant as a Driver on a temporary basis on 15th May 2002. He worked for fifteen years until June 2017, when he reigned due to personal unavoidable reasons. The Appellant accepted his resignation. He requested for his gratuity but it was not paid to him. He testified that he had not received gratuity in all the fifteen years of service. Further, in that period there had been no complaint about his work. He admitted to having appeared before a disciplinary committee where he denied having used different names in primary school. He testified that he did not say much at the hearing and had asked to retire on medical grounds.

[12] Kwezi Pascal, (*from now R8*) testified that he was appointed as a Security Assistant by the Appellant on a one year renewable contract on 29th January 2010. His contract was renewed thrice. On 2nd June 2016, he opted to tender his resignation. His salary was stopped immediately. He requested for his terminal benefits and gratuity but it was not paid to him. He testified that he had not received gratuity in all the seven years of service. Further, in that period there had been no complaint about his work. In cross examination, he admitted to having been aware of the Appellant carrying out verification of staff academic records. He doubted the authenticity of a report from UNEB. He was aware of an allegation that his name was Mugisha and not Kwezi Pascal. He denied appearing before a disciplinary committee and maintained that he resigned. In re-examination, he stated that he was never called before a disciplinary hearing but was informed that his documents were forged. He stated that he resigned because he did not see a future. He testified that his right to a fair hearing had been delegated.

[13] Mayende Christopher, (*from now R9*) took oath and testified that he was joined the Appellant as a Driver on 4th December 2008.He worked for nine years and in June 2017, he chose to resign due to personal unavoidable circumstances. He received an acceptance of and requested for his gratuity which was not paid to him. He testified that he had not received gratuity in all the nine years of service. Further, in that period there had been no complaint about his work. In cross-examination, he denied receipt of any letter from the Appellant alleging falsification of documents. He denied appearing before a disciplinary committee. He was shown minutes G(no.3) and denied stating that he did not study until senior four due to the death of his father. He maintained that he resigned due to personal problems. In re-examination, he confirmed having resigned due to personal reasons and receiving an acceptance of resignation letter from the Appellant’s Executive Director.

[14] Smart Deogratous, (*from now R10*) testified that he was joined the Respondent as a Driver on 2nd December 2008. His contract was renewed annually until he decided to resign in June 2017. He received an acceptance of his resignation and requested for his gratuity which was not paid to him. He testified that he had not received gratuity in all the nine years of service. Further, in that period there had been no complaint about his work. He received a certificate of service. In cross-examination, he denied receipt of any letter from the Appellant requesting clarification of anomalies in his academic transcripts. He did not remember signing such a document on 1st July 2016. He also did not recall writing a letter apologizing for giving false documents to the Appellant. He denied appearing before a disciplinary committee. He maintained that he resigned due to personal problems. In re-examination, he confirmed having resigned early and giving notice for the Appellant to pay his benefits.

[15] Sserunkuma Fredson, (*from now R11*) testified that he joined the Respondent as a Driver on 15th October 2009. His worked for 8 years until he decided to resign on 15th May 2017 for personal reasons. He received an acceptance of his resignation and requested for his gratuity which was not paid to him. He testified that he had not received gratuity in all the nine years of service. Further, in that period there had been no complaint about his work. He received a certificate of service. In cross-examination, he did not recall receiving any documents from the Appellant about his academic transcripts. He was not aware of any document responding to allegations in regard to his academic documents. He could only recall resigning in May 2017. In re-examination, he confirmed having resigned because of personal problems. At the time he was hired, he was asked for Senior 4 certificate and driving permit. He confirmed receipt of his certificate of service.

[16] Teddy Oryokot, (*from now R12*) testified that she was joined the Appellant in the year 2000 as a Stenographer. In June 2017, she chose to retire under a voluntary scheme. She was issued with a certificate of service but her terminal benefits have not been paid to her. In cross-examination, she denied receipt of any letter from the Appellant requesting clarification of her academic transcripts. She also did not make any response to allegations of her academic documents. She confirmed appearing before a disciplinary committee regarding her academic issues. She denied informing the committee about an index number used belonging to one Getrude. She maintained having resigned due to ill health. In re-examination, she confirmed receipt of a letter seeking clarification of her academic documents and appearing before a disciplinary hearing.

[17] Namono Teddy, (*from now R13*) testified that she was employed as a Statistical Assistant with the Appellant for 17 years. She decided to resign in June 2017 due to unavoidable circumstances. Her resignation was accepted and she requested for terminal benefits and gratuity which was not paid to her. In cross-examination, the witness testified that she did not alter any documents. That when her documents got lost, she entrusted someone to get her original documents. She submitted this set. She maintained that she was not dismissed and she had resigned. In re-examination, she clarified that she was asked for her Ordinary level Qualifications which she submitted. She confirmed having resigned due to personal circumstances and the resignation was accepted by the Appellant’s Executive Director. She never appeared before any disciplinary committee and did not have any idea about investigations and did not receive and invitation to attend any such hearing.

[18] Onyinge Moses, (*from now R14*) testified that he was joined the Appellant as a Driver on 4th December 2008. His contract was renewed annually until he decided to resign on 11th May 2017 owing to pressing personal and domestic issues. On 30th June 2017, he received a letter from Appellant’s Executive Director accepting his resignation. He was issued with a certificate of service. He requested for his gratuity which was not paid to him. He testified that he had outstanding untaken leave. Under cross-examination, he said he was not aware that the Appellant had carried out verification of academic documents. He denied receipt of any letter asking him to respond to allegations of falsification of documents. When show document D(v), he denied receipt. He testified that at his age, he could not get another job.

[19] Ngobi Mustapha, (*from now R15*) testified that he was joined the Appellant as a Driver on 15th October 2009. His contract was renewed annually until he decided to resign in June 2017 owing to pressing personal and domestic issues. He received a letter from the Appellant’s Executive Director accepting his resignation. He requested for his gratuity which was not paid to him.

[20] Werukwagana Musa, (*from now R16*) testified that he was joined the Appellant as a Driver on 2nd December 2008. His contract was renewed annually until he decided to resign in June 2017 owing to pressing personal and domestic issues. He received a letter from the Appellant’s Executive Director accepting his resignation. He requested for his gratuity which was not paid to him.

[21] Otubeny Joseph, (*from now R17*) testified that he was joined the Appellant as a Driver on 15th October 2009. His contract was renewed annually until he decided to resign in 15th May 2017. On 30th June 2017, he received a letter from the Appellant’s Executive Director accepting his resignation. He was iiseud with a certificate of services and he requested for his gratuity which was not paid to him.

[22] Onapi Vicent, (*from now R18*) testified that he was joined the Appellant as a Driver on 15th October 2009. His contract was renewed annually until he decided to resign in June 2017 due to personal reasons. He received a letter from the Appellant’s Executive Director accepting his resignation. He requested for his gratuity which was not paid to him. He was issued a certificate of service for the eighteen years he had worked for the Appellant.

[23] Ngabirano Geoffrey, (*from now R19*) testified that he was joined the Appellant as a Driver on 2nd December 2008. His contract was renewed annually until he decided to resign in June 2017 owing to pressing personal and domestic issues. He received a letter from Appellant’s Executive Director accepting his resignation. He requested for his gratuity which was not paid to him.

 **The Appellant’s evidence**

[24] Mr. Edgar Mbahamiza, testified that he was at all material times head of the Appellant’s Administration and Human Resource Division. In 2015, the Appellants Board of Directors advised Management to verify all staff academic documents. The Appellant wrote to UNEB seeking verification of the Respondents’ academic documents. Upon receipt of the UNEB report, the Appellant asked each of the Respondents to give their accounts. Most of the Respondents confessed to the forgery or alteration of documents and opted to resign. They were invited to disciplinary hearings and the committee compiled a report. The Respondents were advised to either resign or consider themselves dismissed by 30th June 2017. The affected staff resigned and none of them were terminated. The Respondents demanded their gratuity. It was Mr. Mbahamiza’s evidence that none of the Respondents was unfairly dismissed nor coerced to resign. Upon the Solicitor General’s advice, the Respondents were not entitled to gratuity. In cross examination, he testified that the Appellant had consulted Makerere University, Kyambogo University and other Uiversities and picked index numbers to verify with UNEB. He further testified that the decision to ask the Respondents to resign or be dismissed came up after the disciplinary hearing. Most of the claimants resigned due to personal reasons and their resignations were accepted. He confirmed that the Appellant issued certificates of service to all its employees and that employees who resigned were entitled to gratuity and other benefits according to the 2009 manual. In re-examination, he clarified that the Respondents were not paid after it was discovered that their documents had been forged.

[25] In his additional witness statement, Mr. Mbahamiza testified that the Appellant had minimum qualifications for all its positions. The academic qualifications documents presented at their entry into service were verified and found to have been forged or altered.

**Judgment of the Court below**

[26] On the 21st of December 2020, the Labour Officer delivered an award finding that she did not have jurisdiction to hear and determine the matters relating to forgery and it was not part of the issues agreed upon for determination. It was the Labour Officer’s view that the matter of forgery could be determined by another Court. She found that Section 65(1)(d) EA was applicable where an employee has received notice of termination but opted to resign before the expiration of notice. She also found that the terms agreed upon at employment were applicable at termination. In her view the contracts of employment embedded clause 5.7.4 of the Human Resource Manual which provided for an annual gratuity of 25% of each of the claimants gross salary. It was a contractual obligation and a mandatory entitlement. The Labour Officer declined to consider the claim for general damages and declared that the Appellant was withholding the Respondents’ gratuity illegally.

[27]Aggrieved by the award, the Appellant listed the following grounds of appeal in the memorandum of appeal dated 25th February 2021;

1. The Labour Officer erred in Law in holding that the Claimants were

entitled to gratuity yet their contracts had been lawfully terminated and/or annulled by the Respondent.

1. The Labour Officer erred in law when she awarded the Claimants gratuity

of 25% of the Annual Gross Salary for each year of service contrary to not only the Respondent’s Terms and Conditions but also the Claimants’ respective contracts.

1. The Labour Officer erred in law when she failed to properly exercise

jurisdiction not vested in her.

**Preliminaries**

[28] When the appeal was called for hearing, Ms. Pearl Bekunda of M/S Muwema & Co Advocates, appearing for the Respondent, submitted that ground one of the appeal is a question of lawful termination or annulment of a contract which requires evidence of facts constituting the lawfulness or unlawfulness of the said termination. Learned Counsel also submitted that ground two relates to a matter of fact that the Labour Officer evaluated the evidence before reaching a conclusion on entitlement to gratuity. The grounds of appeal were on matters of fact for which leave was required.

[29] In reply, Mr. Twinomugisha Mugisha, State Attorney, appearing for the Appellant, submitted that grounds one and two of the appeal address the issue whether an illegal contract of employment can be enforced by Court. It was submitted that the entire appeal concerned the legal principle that once an illegality is brought to the attention of the Court, it overrides all questions of pleadings.

**Resolution of preliminary points**

[30] The distinction between a point of law and questions of fact and mixed law and fact was canvassed by this Court in the case of **Bollore Transport and Logistics Africa Ltd vs Musau Waitu**[[1]](#footnote-1). This Court posited that issues or points of law relate to the interpretation and application of the law while a question of fact relates to the findings as a result of the evaluation of evidence. In that case, this Court cited the case of **Attorney General of Burundi and the Secretary General EAC and Hon. Fred Mukasa Mbidde**[[2]](#footnote-2)wherethe appellate division of the East African Court of Justice posited thatan error on a point of law occurs when a trial Court (i) misapprehends or misapplies a pertinent law or principle of law, (ii) misapprehends the nature, quality, and substance of the evidence or (iii) draws wrong inferences from the proven facts.

[31] In the matter now before us, we think it prudent to examine, briefly, the rationale of each of the respective grounds of appeal;

(a) On ground one, the Labour Officer determined that the termination was unlawful. This was a finding premised on a review of the provisions of the Employment Act, 2006(*from now EA*) relating to termination, a consideration of several authorities and a conclusion applying the principles of the law of termination. The complaint of the Appellant is that there was a misapplication of the law or principles of law to the matter before the Labour Officer. In this regard, this would be a question or point of law. We would hold that ground one relates to a point of law.

(b) On ground two, the Labour Officer found that the entitlement to gratuity, once embedded in a human resource manual, was mandatory. This finding relates, in our view, to a consideration of the evidence as contained in the human resource manual and computation of a formula for gratuity as a contractual obligation. It is a finding of mixed law and fact for which leave would be required under Section 94(2) EA. Accordingly, and in conformity with the decision of the Industrial Court in the case of Netis Uganda vs Charles Walakira[[3]](#footnote-3), this ground of appeal was filed without leave of Court and is now struck out.

(c) Ground three relates to exercise of jurisdiction. Matters of exercise of jurisdiction are indisputably matters of pure law. Jurisdiction is granted by statute. The exercise of a jurisdiction not vested in a Court renders a decision of such a Court, a nullity.[[4]](#footnote-4) The Labour Officer is faulted for having proceeded with the matter after the Appellant had raised the question of jurisdiction. While we agree with this proposition, generally, we noted that the Labour Officer observed that she did not have jurisdiction to determine the question of forgery. In terms, she determined only the matters that she had jurisdiction over. However, it is the Appellant’s case that the matter of jurisdiction or lack thereof had a bearing on the outcome of the case. We are inclined to hold the same view. The point of law relates to jurisdiction and this ground of appeal is a point of law, for which no leave is required and we would so hold.

[32] In the result, we shall proceed to dispose of the appeal on the merits of grounds one and three of the Memorandum of Appeal. Ground two of the appeal is struck out.

**Resolution of the Appeal**

**The duties of a first appellate Court**

[33] Both parties, correctly restated, the law, on the duty of this Court. As a first appellate Court, this Court has a duty to re-evaluate or reappraise the evidence presented to the Court of first instance in full and arrive at its own conclusions[[5]](#footnote-5). In considering the appeal, this Court is concerned with the merits of the decision of the Labour Officer in the decision under appeal. We have considered the surviving grounds of the appeal in keeping with this duty having laid down in some considerable detail, the evidence of the parties.[[6]](#footnote-6)

**The submissions of Counsel for the Appellant**

[34] The Appellant faulted the Labour Officer for awarding persons who had committed an illegal act of falsification of academic documents with an award or benefit for committing the said illegality. It was the Appellant’s case that the Labour Officer deliberately ignored all the submissions of the Appellant in respect of this falsification. Mr. Mugisha argued that when it was found that the Respondents had falsified documents, they were accorded a fair hearing at which some of them admitted to forgery. The Appellant's Human Resource Manual of 2014 provided for automatic cancellation of candidature or appointment which was sanctioned by dismissal. In his view, the Respondents were lawfully terminated. He relied on **Sections 69(3) and 88(1) of the Employment Act, 2006** (*from now EA)* and the cases of **Makula International Ltd v Cardinal Nsubuga[[7]](#footnote-7) Muudu Henry v Civil Aviation Authority**[[8]](#footnote-8) and **MTN Uganda Ltd v Three ways Shipping Group Ltd**[[9]](#footnote-9) in support of the proposition that the Court should not condone an illegality as this would offend public policy.

[35] On ground three of the appeal, the Labour Officer was faulted for determining the matter where the Appellant had raised the issue of jurisdiction. It was submitted that the Labour Officer ought to have referred the matter to the Industrial Court in accordance with Section 3 of the Labour Disputes(Arbitration and Settlement)(Industrial Court) Rules, 2012(*from now LADASA Rules*).

**Submissions of the Respondent**

[36] In relation to ground one of the appeal, it was submitted for the Respondents that the Appellant’s case was not for unlawful termination but for unlawful withholding of gratuity. The Respondents were not summarily terminated but that they resigned. As such they were entitled to gratuity under the Appellant’s Human Resource Manual and Section 43 EA. The allegations of forgery were never proven in a Court of law, the Respondents were not subjected to any disciplinary proceedings and it is therefore inappropriate to raise the matter of forgery in the appeal.

 [37] In regard to ground three of the appeal, it was submitted that the Labour Officer had jurisdiction to hear and determine the complaint of unlawful withholding of gratuity under Section 12 EA. The Respondent prayed that the appeal be dismissed and the orders of the Labour Officer be upheld.

 **Submissions in Rejoinder**

[38] In rejoinder, the Appellant invited this Court to find that lawful termination or annulment of a contract is a question of law because gratuity and terminal benefits are derived from a legally binding contract of employment. In respect of ground 3 of the appeal, the Appellant reiterated its written submissions in the main.

**Analysis and decision of the Court**

[39] After carefully studying the Lower Court Record, considering the parties' submissions, the law and authorities cited therein, and all relevant materials to the determination of this appeal, we determine this appeal as follows:

**Ground One; The Labour Officer erred in Law in holding that the Claimants were entitled to gratuity yet their contracts had been lawfully terminated and/or annulled by the Respondent.**

[40] There are some common threads from the evidence presented before the Court of first instance. We are mindful that we did not have opportunity to hear the evidence and observe the demeanor of the witnesses. We set out the factual evidence in as comprehensive a manner in paragraphs 5 to 20 above, with a view to arriving at our own conclusions. In our view, quite simply, the thread of evidence points to the following;

(i) The Respondents were employed by the Appellant in various positions and at various times. The Respondents appear to have served the Appellant for a considerable number of years ranging from 5 -25 years.

(ii) The Respondents, denied having been invited to disciplinary hearings at which allegations of falsification of academic documents were tabled. In other instances, some of the Respondents denied ever having seen the letters of invitation to the disciplinary hearings. Some of the Respondents recanted these positions during cross-examination. The letters were contained in Group Annexure F was admitted in evidence.

(iii) The Respondents also denied having authored any letters admitting to forgery or falsification of academic documents. These letters were attached to the witness statement of Mr. Edgar Mbahamiza.

(iv) The Respondents also denied receipt of letters advising them to either resign or consider themselves terminated by the 30th day of June 2017. Group annexure H was admitted in evidence.

(v) It was common to the parties that the Appellant declined to pay any of the Respondents gratuity.

(vi) It is also common that the Respondents resigned from the employment of the Appellant. Each of the Respondents suggested that they had resigned due to personal circumstances, domestic difficulties or medical grounds. With the exception of four Respondents, fourteen Respondents resigned in the month of June 2017 and;

(vii) The Appellant commenced an investigation into the verification of academic documents of its staff and commenced disciplinary proceedings resulting into an Amnesty/Dismissal Notice dated 23rd June 2017.

[41] The Labour Officer was faulted for declining to consider the Appellants contention that the Respondents were culpable for altering their academic documents. From our summary in paragraph 40 above, the consideration of the question and ground of appeal requires a measure of re-evaluation of the evidence. What we discern from the simple facts of the dispute before us can be distilled to the effect that the Appellant conducted a post-employment verification. Following findings obtained from the Uganda Examinations Board, the Appellant put some allegations to the Respondents regarding alteration and falsification of academic documents. Some disciplinary hearings were held. The Respondents deny the existence of these hearings. Subsequently, the Appellant issued an ultimatum advising the Respondents to resign or consider themselves dismissed. The Respondents resigned and maintain that they did so of their own accord and volition.

[42] This distillation of facts is contained in a series of documents that were presented to the Labour Officer. Group Annexure I consists of resignation letters. Smart Deogratious resigned on 3rd May 2017, Wilber Debire resigned on 5th May 2017, Sserunkuma Fredson and Joseph Otubeny resigned on 15th May 2017, Tiwaali Harriet Adonyo and Akitwi Elizabeth resigned on 26th June 2017, John Luswata, Mukembo Hakim, Ngabirano Geoffrey, Namono Teddy, Teddy Oryokot, Mayende Christopher, and Suleiman Muluta resigned on 28th June 2017, Patrick Muhumuza, Ngobi Mustapha and Werukwagana Musa resigned on 29th June 2017, Wagidoso Dan Wasolo, Waga David and Onapi Vincent resigned on 30th June 2017.

[43] For purposes of a fuller appreciation of the distillation of these facts, it is useful to examine the Appellant’s group Annexure H and particularly H (i), which was a letter titled ‘**Amnesty/Dismissal Notice’**. By this letter, the Appellant advised Mr. Patrick Muhumuza, one of the Respondents in this appeal, that it had conducted an academic verification exercise for all staff with the Uganda National Examinations Board and had found his documents to be forged/altered. By the same letter, it was stated that he was invited for a disciplinary hearing and the findings of the committee were that the documents were altered. The Appellant then advised Mr. Muhumuza of the implications of forgery on Section 3.5.5(c) of the Respondents Human Resource Manual which provides for automatic cancellation of employment upon discovery of falsification of documents. The penalty under Section 10.4 of the manual was dismissal. In the final part of this letter, Mr. Ben Paul Mungyereza wrote;

*‘I have considered your mitigation statement to the Disciplinary Committee and would like to extend to you one more chance to resign from the service of the Bureau before you can be dismissed and prosecuted for the offence committed. This should be done by Friday 30th June 2017 and if not done, consider yourself dismissed as at that date.*’

[44] Similarly worded letters were issued to Ms Akitwi Elizabeth and Mr. Dan Wagidoso. In our view, the Respondents were given no option but to resign or be dismissed. This letter is inextricably linked to the resignation of the rest of the Respondents in fairly or very short succession. Fourteen of the Respondents resigned before the deadline of 30th June 2017 as contained in the “Amnesty/Dismissal Notice’ dated 23rd June 2017. It is inescapable that Respondents all opted to resign after the Appellant’s clear communication to the Respondents, resign or be dismissed. This evidence was not considered by the Labour Officer.

[45] The legal effect of a resignation has been considered in a plethora of decsions by the Industrial Court. For starters, in the case of **Etuket Simon v Kampala Pharmaceutical Industries (1996) Ltd**[[10]](#footnote-10) the Industrial Court observed that resignation is a method through which an employment relationship can be terminated at the instance of the employee. It is assumed that an employee can exercise his or her inherent freedom of contract to terminate the contract of employment by resignation. In that case, the Claimant suggested that he was forced to resign after being falsely accused for misrepresenting the Respondent. The Court also observed that while under Section 66 EA it is mandatory for an employer to give a reason for considering termination of an employee for justifiable reason and provide an opportunity for the employee to defend himself or herself, it does not bar an employee from terminating his or her employment by resignation.

[46] In the case of **Robert Taylor v Toyota Uganda Ltd**[[11]](#footnote-11)the English case of **Shefiled v Oxford Controls Ltd[[12]](#footnote-12)** was cited for the dictum that a forced resignation does not occur where the threat of dismissal is absent. The Court reasoned that;

‘…*where an employee resigns and that resignation is determined upon him because he prefers to resign rather than be dismissed (the alternative having been expressed to him by the employer in the terms of the threat, that if he does not resign, he will be dismissed), the mechanics of the resignation does not cause that to be other than a dismissal….We find the principle to be that of causation…..the causation is the threat it is the existence of the threat which causes the employee to be willing to sign a resignation letter or be willing to give the oral resignation. But where the willingness is brought about by other considerations and actual causation of the resignation is no longer the threat which has been made but the state of mind of the resigning employee, that he is willing and content to resign as a result of being offered terms which he has negotiated and which are satisfactory terms to him…..in such a case, he resigns because he is willing to resign as a result of the offered terms on which to resign…..*’

[47] What emerges from the cases cited above is that a threat of dismissal has the effect of rendering a resignation forced. In other words, a contract of employment is terminable by the employee by freely exercising the right to withdraw his or her labour, by resigning. A threat of dismissal has the effect of rendering a resignation forced. Such a resignation would amount to a dismissal.

[48] In the case before us, the Appellant contends that the Respondent had been found culpable for altering academic documents. The penalty for falsification was dismissal. As group annexure H suggests, the Appellant granted the Respondents the amnesty and advised them to resign or be dismissed. The Respondents were required to resign or face a dismissal. Following the principles enunciated in the Taylor case (supra) we would be of the persuasion that this question ought to have been tried. It was not established whether the Respondent’s had exercised a freedom to withdraw their labour. In other words, whether the resignations were voluntary.

[49] Therefore, if the Respondents had been dismissed, it was important to consider the lawfulness of the dismissal. The Appellant submits that the Respondent’s were lawfully terminated. The Appellant’s version of events leading to the termination was laid out in the witness statements of Mr. Mbahamiza. It was his evidence that in 2015, the Appellant sought to verify all staff academic documents and wrote to UNEB seeking verification of the Respondents academic documents. By a letter dated 15th April 2016, UNEB issued a report. By a series of letter, thereafter, the Appellant required R1,R2, R3,R4, R5 R6, R7, R9, R10, R11, R13 and R14 to answer queries of suspected falsification of academic documents. The letters are at pages 61-93 of the Record of Appeal (*from now ROA*). At pages 98-119 ROA, the Respondents apologized for the various anomalies in the documents. In their witness statements, the Respondents disowned both the letters requiring them to explain the inconsistencies and the apologies. However, in cross examination some of the Respondents owned up to the apologies. Thereafter, at pages 120-132 ROA, the Appellant issued invitations to appear at a disciplinary hearing. On 21st June 2017, an Adhoc Disciplinary Committee Report indicated that some of the Respondents that were required to appear before the Committee had resigned. The Committee advised the Appellant’s management that falsification of documents attracted cancellation of appointment under Section 3.5.5(c) of the Appellant’s Human Resource Manual. The report is contained at pages 133 to 148 ROA.

[50] What followed thereafter was group annexure H which was the Amnesty/Dismissal Notice referred to in paragraph 38 above. The Respondents resigned. If the Respondents were dismissed from employment by virtue of the forced resignations or resignations by threat, the law relating to dismissal would be immediately applicable. Section 66 EA, provides;

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

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

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

 In the case of **Abudalla Kimbugwe vs Kiboko Enterprises Ltd[[13]](#footnote-13)** this Court, citing the case of **Ebiju James Vs Umeme Ltd[[14]](#footnote-14)** provides guidelines of what constitutes a fair hearing to include (i) notice of allegations served on the employee in sufficient time to prepare a defense, (ii) the notice should set out clearly what the allegations against the employee and his or her rights at the oral hearing were and (iii) the employee should be given chance to appear and present his or her case before an impartial committee in charge of disciplinary issues of the defendant. In the matter before us this evidence was not considered while the notifications were issued as contained in pages 120 to 132 ROA. The question of procedural fairness ought to have been considered. And we are fortified in this view by the decision of the Industrial Court in the case of **Eva Nazziwa Nalubowa v National Social Security Fund**[[15]](#footnote-15)where the Court further observed that it is settled law, an employer’s right to terminate an employee cannot be fettered by the Courts of law, as long as the employer follows the correct procedure before exercising the right to terminate or dismiss. Citing the case of **Hilda Musinguzi Vs Stanbic bank (U) Ltd[[16]](#footnote-16)** where the Court heldthat*;*

*“… 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…”*

We agree with this dictum, entirely.

[51] The next applicable section would be Section 68EA which requires the employer to prove the reasons for dismissal and where the employer fails to do so, the dismissal shall be deemed to be unfair. It is also provided that the reason or reasons for dismissal shall be matters, which the employer, at the time of dismissal, genuinely believed to exist and which caused him or her to dismiss the employee. The Industrial Court observed that these principles of the law are based on Article 4 of ILO Convention 158, which provides in part as follows:

 “… *no employee should be terminated unless there is a valid reason connected to the employee’s conduct or work based on operation standards required of him under the contract…”*

[52] The Respondents were advised to either resign or consider themselves dismissed by 30th June 2017 on account of falsification of academic documents. This was the reason advanced for the disciplinary proceedings. It is also the chief complaint of the Appellant. The Appellant asserts that the Labour Officer erred in holding that the Respondents were entitled to gratuity on an annulled contract or after being lawfully terminated. We have already found that it was pertinent that the question of lawfulness of the Respondents termination was pertinent. A reason for their dismissal was advanced. There are legal implications on the contract of employment. The Industrial Court in the Nalubowa case (supra) opined that an employment relationship is based on an employment contract which may be vitiated by factors such as misrepresentation, mistake duress, undue influence and illegality. The Court observed that it is the duty of the employee to exercise a duty of fidelity /good faith, that is to be loyal and faithful, to use reasonable care, skill and diligence in the performance of the work , to be obedient, and to protect the interests and to keep confidentiality and honesty among others. The Court cited the case of **Walden Vs Barrance [1997]**[[17]](#footnote-17). The dictum on honesty expressed in the Nalubowa case was also the subject of the case in **Muddu Henry v Civil Aviation Authority**.[[18]](#footnote-18)In that case, the Claimant who emerged as the best candidate in an interview, was found to have forged his Uganda Advanced Certificate of Education and terminated. The Industrial Court found that the Respondent was justified in terminating the Claimant on the ground of gross misconduct of falsification of academic papers. Similarly,in the Canadian case of **Clark v. Coopers & Lybrand Consulting**[[19]](#footnote-19) the Plaintiff was an Information Technology Consultant who entered into a consulting agreement with the Defendant. The Defendant terminated the agreement without notice and the Plaintiff sued for damages for breach of contract. The Defendant counterclaimed for damages for fraudulent misrepresentation and alleged that the Plaintiff misrepresented his educational qualifications. He had listed in his resumé a number of university degrees. The Ontario Superior Court dismissed the Plaintiff's claim and allowed the counterclaim for damages. The Court held that the plaintiff fraudulently misrepresented his academic qualifications which provided a defence to his action.

[53] In the matter before us, the Labour Officer at page 415 of the Record of Appeal observed that she did not have jurisdiction to hear and determine the question of forgery of academic documents. The evidence that the Respondents had not been forthright about their qualifications at the time of entry into the Appellant’s service was not considered alongside that of the Appellant conducting a post-employment due diligence with the UNEB. The effect of such a misrepresentation would invite an interrogation as to whether the employees had fundamentally breached the employment contract. We agree with the dictum expressed in the **MTN vs Three ways Shipping Group Ltd** case (supra) that a Court cannot sanction an illegal contract. It was incumbent, in our view, that the question of forgery of academic documents be sufficiently interrogated before any finding that the Respondents had entitlements under the impugned contract of employment. Accordingly and in all circumstances, we would hold that the Labour Officer erred in holding that the Respondents were entitled to gratuity having been lawfully terminated.

[54] It was suggested to us that the no criminal charges were preferred against the Respondents for forgery. In the case of **Julius Rugumayo vs Uganda Revenue Authority**[[20]](#footnote-20) this Court citing the case of **Assimwe Moses Vs Uganda Revenue Authority**[[21]](#footnote-21)held that an employer was not obliged to await the completion of criminal proceedings before any other disciplinary action could be taken against the offending employee. From this dictum, it follows that if the Appellant genuinely believed the Respondents to be culpable of falsification of academic documents and was therefore entitled to take disciplinary proceedings against them. Indeed at page 415ROA, the Labour Officer conceded that the claim for forgery could be preferred elsewhere. A finding on forgery would have implications on the contract of employment. It is therefore our view that shelving the question occasioned a miscarriage of justice.

[55] In the result, ground one of the appeal succeeds

**Ground three: The Labour Officer erred in law when she failed to properly exercise jurisdiction not vested in her.**

[56] On this ground, the Appellant’s chief complaint is that having found that she had no jurisdiction to hear and determine the question of forgery, the Labour Officer ought to have referred the matter to the appropriate Court and not proceeded to resolve the employment dispute. Counsel for the Respondent suggested forgery was not part of the cause of action before the Labour Officer nor was it an issue framed for determination. It would have been useful to consider the pleadings to establish if the matter was raised. For some inconceivable reason, the record of appeal does not contain any of the memoranda in the claim. However, in the joint scheduling memorandum[[22]](#footnote-22) the Appellants facts include the findings of the verification exercise of the Respondents academic documents. The Appellant attached copies of a letter requesting UNEB to verify its staff’s academic documents and a copy of the UNEB report. In our view, the issue of forgery was sufficiently raised at the hearing before the Labour Officer. Of specific juridical concern would be the Labour Officer’s approach to the question of forgery. To this Court’s mind, the fundamentals of contract of employment required an interrogation of the validity of the contract as we have found in the resolution of ground one of the appeal. Counsel for the Respondents suggested to us that no criminal case had been commenced against the Respondents to warrant a dismissal on the ground of forgery. The authorities on the point suggest that the absence of criminal charges and a prosecution do not of themselves lend legitimacy to the impugned contract.[[23]](#footnote-23) In our view, once the Labour Officer pointed out, and quite correctly, that she had no jurisdiction to consider the point, we think that under Section 4(e) LADASA, the Labour Officer would have informed the parties to a labour dispute that the report comprises matters which cannot be dealt with under the LADASA. This would be a reasonable basis for referring the matter to the Industrial Court with a view to avoiding occasioning a miscarriage of justice. Accordingly, ground three of the appeal succeeds.

**Decision and orders of the Court**

[57]In the final analysis, the appeal substantially succeeds. Pursuant to the decision of the Court of Appeal in the case of **Eng. John Eric Mugyenzi vs Uganda Electricity Generation Co. Ltd**[[24]](#footnote-24) and in light of Rule 24(3) of the Labour Disputes (Arbitration and Settlement) Industrial Court Procedure) Rules, 2012 it is our ineluctable conclusion that the decision of Ms. Irene Nabbumba-the Senior Labour Officer at Kampala Capital City Authority Labour Office in Labour Complaint No. KCCA/ No. 80 of 2020 dated 21st December 2020 should and is hereby set aside.

## [58] The Appellant sought an order of retrial before a different Labour Officer. The principles governing an order of retrial were very well laid out in the case of Okot and Ors v Lamoo[[25]](#footnote-25) In that case, Mubiru J. observed that an order for retrial is an exceptional measure to which resort must necessarily be limited. A trial de novo is usually ordered by an appellate Court when the original trial fails to make a determination in a manner dictated by law. A retrial should not be ordered unless the following conditions are met; (i) that the original trial was null or defective; (ii) that the interests of justice require it; (iii) that the witnesses who had testified were readily available to do so again should a retrial be ordered; and (iv) no injustice will be occasioned to the other party if an order for retrial is made. These conditions are conjunctive and not disjunctive. An order of retrial can only be made, where the trial Court has omitted from the record evidence of facts essential to right decision of the suit. An appellate Court may order a new trial if doing so could fix an injustice associated with the first trial.

[59] In our resolution of the grounds of appeal, we found procedural irregularities in respect of reference on the question of forgery of academic documents and that the trial on the employment contract and benefits therefrom was considered without an interrogation of falsification of documents. These errors would have the effect of occasioning a miscarriage of justice. In our view, a retrial is necessary to attend to the injustice occasioned by the trial at the Labour Officer. It is therefore ordered that this matter be retried before a different Labour Officer.

[60] The Appellant sought costs of the appeal. Under Section 27 of the Civil Procedure Act Cap. 71, costs follow the event. However, this Court has ruled that an award of costs in employment disputes is the exception rather than the rule.[[26]](#footnote-26) The Respondents are former employees of the Appellant and we believe it is fair and appropriate that there should be no order as to costs.

**Delivered at Kampala this \_\_\_\_day of March 2023**

**ANTHONY WABWIRE MUSANA, JUDGE Anthony Wabwire J**

**THE PANELISTS AGREE:**

1. **Ms. ADRINE NAMARA Adrine Namara**
2. **Ms. SUZAN NABIRYE Suzan Nabirye**
3. **Mr. MICHAEL MATOVU Michael Matovu**

Delivered in open Court in the presence of:

1. For the Appellant: **Mr. Albert Turahabwe**, Senior Legal Officer.
2. For the Respondent: **Ms. Pearl Maria Bekunda** for the Respondents.
3. The 1st, 3rd, 4th, 5th, 9th, 10th and 17th Respondents are in Court.

Court Clerk: **Mr. Samuel Mukiza**.

1. Labour Dispute Miscellaneous Application 146/2022(Unreported) [↑](#footnote-ref-1)
2. Appeal No. 02 of 2019.See also Simon Peter Ochieng & Anor v Attorney General of Uganda Appeal No. 4 of

 2015{2015-2017] EACJR 509 [↑](#footnote-ref-2)
3. Labour Dispute Appeal No. 22 of 2016 [↑](#footnote-ref-3)
4. ##  Per Mubiru J in Ozuu Brothers Enterprises v Ayikoru (Civil Revision 2 of 2016) [2016] UGHCCD 73

 [↑](#footnote-ref-4)
5. See the cases of Kifamunte Henry V Uganda S.C.Crim. Appeal No. 10 of 1997 and Father Nanensio Begumisa and three

 Others v. Eric Tiberaga [2004] KALR 236. [↑](#footnote-ref-5)
6. See paras 5 to 25 above. [↑](#footnote-ref-6)
7. 1982(HCB) 11 [↑](#footnote-ref-7)
8. LDC 153 of 2014 [↑](#footnote-ref-8)
9. HCCS No. 503 of 2012 [↑](#footnote-ref-9)
10. Labour Dispute Claim No. 272/2014 [↑](#footnote-ref-10)
11. Labour Dispute No. 033/2015 [↑](#footnote-ref-11)
12. [1979]I.C.R 397 [↑](#footnote-ref-12)
13. Labour Dispute Appeal No. 13/2021 [↑](#footnote-ref-13)
14. H.C.C.S 0133/2012 [↑](#footnote-ref-14)
15. Labour Dispute Reference 001 of 2019 Per L.L. Tumusiime Mugisha H.J, Panelists Hon. Rwomushana Reuben Jack, Hon.

 Beatrice Aciro Okeny and Hon. Rose Gidongo. [↑](#footnote-ref-15)
16. Supreme Court Civil Appeal No. 05/2016. [↑](#footnote-ref-16)
17. 5NZELC(Digest) 98 433 as cited in the Nalubowa case(Op cit) [↑](#footnote-ref-17)
18. Labour Dispute Claim No. 153/2014. The case was cited by the Appellant. [↑](#footnote-ref-18)
19. [1999] O.T.C. 32 (SupCt) [↑](#footnote-ref-19)
20. Labour Dispute No. 27 of 2014 [↑](#footnote-ref-20)
21. High Court Misc Cause No. 140/2011 [↑](#footnote-ref-21)
22. At pages 19-22 of the record of Appeal [↑](#footnote-ref-22)
23. MTN v Threeways Shipping Group Ltd(Supra) [↑](#footnote-ref-23)
24. C.A.C.A No167 of 2018 [↑](#footnote-ref-24)
25. ##  High Court Civil Appeal 26 of 2018 [2020] UGHC 174

 [↑](#footnote-ref-25)
26. Labour Dispute Reference No. 109/2020Joseph Kalule v GIZ (Unreported) [↑](#footnote-ref-26)