THE REPUBLIC OF UGANDA

IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA

LABOUR DISPUTE APPEAL NO.013 OF 2022

[Arising from Labour Dispute No. 212 of 2020]

AIRTEL UGANDA LTD::APPELLANT

VERSUS

PETER KATONGOLE:::RESPONDENT

BEFORE:

THE HON. JUSTICE ANTHONY WABWIRE MUSANA,

PANELISTS:

1. **Mr. JIMMY MUSIMBI,**
2. **Ms. ROBINAH KAGOYE &**
3. **Mr. CAN AMOS LAPENGA.**

AWARD

Introduction

[1] This appeal concerns the decision of the Labour Officer at Kampala Capital City Authority in Labour Complaint No. KCCA/CENT/LC/212/2020. The Respondent registered a complaint against the Appellant on the 29th of April 2019. He sought a determination that his summary dismissal was unlawful. He also sought other remedies.

The Respondent's evidence at the labour office

[2] It was the Respondent's evidence that he was employed by the Respondent in March 2007 and started in the position of the Customer Service Administrator. When he was summarily dismissed, he was the Revenue Assurances Manager. He led evidence that he was condemned based on an investigation report, a copy of which was not provided to him. He complained that his accusers formed part of the disciplinary committee that recommended his dismissal from the Respondent. Further, he led evidence that he was not granted adequate notice. He prayed for payment in lieu of notice, repatriation, and compensatory orders. Concerning the prayers for general damages, costs an,d interest, the Respondent's plea was that these be referred to the Industrial Court.

The Appellant's evidence at the labour office

[3] The Appellant maintained that the Respondent was lawfully summarily dismissed and was not entitled to any of the reliefs claimed. He was found guilty of gross misconduct by a duly constituted disciplinary committee which found evidence of failure to detect cash-in-commission fraud. This flouted the Respondent's claw-back policy and caused it a significant financial loss.

The ruling of the Labour Officer

[4] The Labour Officer found in favour of the Respondent and determined that the Respondent had not proven that it had justifiable reasons for dismissing the Claimant. She also made the following findings of fact;

a) that the Claimant had not been served with the invitation to the disciplinary hearing,

b) that the Claimant was not informed of the full extent of the charges against him,

c) the Claimant was not given sufficient time to respond to the charges,

d) the Claimant was not informed of all his rights under both the law and the Human Rights Policy and,

e) that the disciplinary committee was not impartial.

[5] The Labour Officer concluded that the dismissal was unlawful for the above reasons. In terms of remedies, she granted the Respondent **UGX 31,020,000/=** as payment in lieu of notice, **UGX 134,420,000/=** as severance allowance, **UGX 10,340,000/=** as basic compensation, **UGX 31,020,000**/= as additional compensation, **UGX 1,000,000**/= as repatriation, **UGX 10,340,000/=** as compensation under **Section 66[4] of the Employment Act** and **UGX 31,364,667**/= as payment in lieu of leave. The claim for general damages, interest, and costs were referred to this Court.

The grounds of appeal

[6] Dissatisfied with the decision of the Labour Officer, the Appellant filed this appeal on seven grounds contained in the notice of appeal and amended memorandum of appeal. Those grounds are:

(i) **The Labour Officer erred in law in finding that the termination of the Claimant was unlawful.**

(ii) **The Labour Officer erred in law when she awarded the complainant payment in lieu for violating Section 58[1] of the Employment Act.**

(iii) **The Labour Officer erred in law when she awarded the complainant payment of severance allowance.**

(iv) **The Labour Officer erred in law when she awarded the complainant basic compensation under Section 78[1] and additional compensation under Section 78[2] and [3] of the Employment Act.**

(v) **The Labour Officer erred in law when she awarded the complainant repatriation pay under Section 39[3] of the Employment Act.**

(vi) **The Labour Officer erred in law when she awarded the complainant payment compensation under Section 66[4] of the Employment Act.**

(vii) **The Labour Officer erred in law when she awarded the complainant payment of 91 days for violating Section 58 of the Employment Act.**

[7] It was proposed that the appeal be allowed and the decision of the Labour Officer be quashed.

The submissions of Counsel for the Appellant

Ground One.

[8] At the hearing, the Appellant was represented by Messrs. K & K Advocates. On ground one of the appeal, it was submitted that the Appellant failed to evaluate the evidence leading to the Respondent's termination. In the Appellant's view, the critical elements of this evidence were that the Respondent admitted in cross-examination that one of his key result areas was to identify and prevent fraud exposure and that there were several red flags he ignored. There was a fundamental breach that led to the payment of an undeserved commission of **UGX 1,249,527,754/=.** It was further submitted that the Labour Officer erred in finding that the Respondent could not be culpable for following the Appellant's polices. The Labour Officer was also faulted for finding that the investigation report had not been shared with the Respondent. It was submitted that the contents of the investigation report had been shared earlier by email and telephone, and the evidence of one Tony Manina(RW2) on the point was not controverted. The Appellant submitted that the Labour Officer applied a wrong standard of proof, being that of a criminal court.

[9] In respect of the notice of disciplinary hearing, the Appellant submitted that the Respondent was given sufficient time to prepare his defence to the allegations, and his rights were read to him at the disciplinary hearing and he signed the minutes. Regarding the claw-back policy, the Appellant submitted that this was not the basis of the disciplinary proceedings. It was submitted

that the tribunal was impartial as only two of the six members led evidence against the Respondent. Finally, the Appellant submitted that it complied with all requirements of a fair hearing. Counsel cited H.C.C.S No. 0133/2012 Ebiju James vs. Umeme Ltd in support of this proposition.

Grounds 2 -6

[10] Counsel submitted on grounds 2 through 6, jointly. The sum of arguments in this regard is that the Appellant adhered to the tenets of a fair hearing, and the awards were, therefore erroneous. He cited the case of Uganda Development Bank v Florence Mufumba C.A.C.A No. 241 of 2015 to buttress this point.

Ground 7

[11] Concerning ground 7 of the appeal, Counsel cited the case of **Mbiika Dennis v Centenary Bank Ltd LDC 023/2014** in support of the view that the Respondent did not adduce evidence to prove that he applied for leave, and it was denied.

[12] The Appellant asked this Court to exhaustively analyse the evidence and find that the Respondent was lawfully dismissed.

The submissions of counsel for the Respondent

[13] In reply, Messrs Kirunda & Wasige Advocates, appearing for the Respondent, submitted on the grounds of appeal in the same manner as the Appellant. On ground one of the appeal, it was submitted that the Labour Officer correctly evaluated the evidence before her and concluded that the Respondent was unfairly dismissed. Counsel submitted that no evidence of specific red flags was contained in the invitation to the disciplinary hearing. The Respondent learnt of the loss of **UGX 1,249,527,754** for the first time at the hearing, and the investigation report had not been shared before the hearing. The commissions paid out, and the exemption of the claw-back policy was approved by his supervisors. The claw-back policy was not stated in the invitation letter, and the appellant had discovered and shared proof of fraud with his supervisors. It was the Respondent's view that this evidence

was not controverted during cross-examination. Counsel suggested that the Appellant's witnesses confirmed that the Respondent was an excellent performer, no red flags had been contained in the email sent to the Respondent, neither the investigation report, showing financial loss was shared with the Respondent nor proof of payment of terminal benefits was led at the hearing.

[14] Counsel advanced the view that the matter of conflict of interest of the supervisors was not disclosed to the Respondent. It was the evidence of RW2 that the investigation report was not shared with the Respondent and that the Respondent had raised the first alleged red flag. This witness testified that he was unaware of management's approval of the January 2020 commission. Counsel, citing the cases of Namyalo v Stanbic Bank LDC 166 of 2014, Nantayi Lois v Marie Stopes Uganda LDC No. 193 of 2014 and Francis Oyet Pjara v Uganda Telecom Ltd H.C.C.S No 161 of 2010, asked this Court to uphold the findings of the Labour Officer.

Grounds 2-6

[15] On grounds 2 through 6, the Respondent submitted that the Labour Officer correctly applied the provisions of Statute and exercised her jurisdiction in making those awards.

Ground 7

[16] In relation to ground 7 of the appeal, Counsel countered that the Respondent had submitted evidence of an email applying for leave which had not been taken at the time of his dismissal. Counsel asked this Court to uphold the decisions of the Labour Officer.

Submissions in Rejoinder

[17] In rejoinder, Counsel submitted that the Respondent did not deny the fraud in the disciplinary hearing. It was argued that had the Respondent considered and shared the RACE reports during the computation for January 2020, the loss would have been avoided. In this regard, the Respondent neglected his duty and fundamentally breached his contract of employment.

It was submitted that the Respondent was always aware of claw-back considerations for January 2020 as per the email from the RACE India Team. In respect of the notification, the Appellant suggested that the Respondent had 26 days' notice having been notified by email and telephone.

[18] In respect of impartiality of the disciplinary committee, the Appellant submitted that the 2 members of the team, the Respondent's supervisors, only provided clarity on the allegations contained in RW2's investigation report. No objection was raised to the composition of the committee.

[19] In relation to the appeal against the findings of the disciplinary committee, it was submitted that the Respondent's appeal was heard and considered by the Appellant's Managing Director. In respect of a sanction beyond the statutory 15 days, Counsel submitted that an investigation was not a sanction within the meaning of **Section 62[1] of the Employment Act.**

[20] Citing the case of **Joseph Matovu v Stanbic Bank Uganda Labour Dispute Claim No. 159 of 2015,** Counsel for the Appellant maintained that a disciplinary committee was only required to afford an employee an opportunity to defend himself or herself without the requirements of the standards of a court of law. Counsel closed the rejoinder by suggesting that the Appellant complied with the minimum standards of natural justice as envisaged in Article 28 of the Constitution of the Republic of Uganda.

The duties of a first appellate court

[20] The statutory duty and mandate of this Court, as a first appellate court, is to re-evaluate or reappraise the evidence presented to the court of first instance in full and arrive at our own conclusions.[1] In considering the grounds of appeal, we would also be concerned with the merits of the decision of the

[1] Father Nanensio Begumisa and three Others v. Eric Tiberaga [2004] KALR 236 and Kifamunte Henry V Uganda, S.C Criminal Appeal No. 10 of 1997

Labour Officer in the decision under appeal. In other words, we are required to examine the correctness of the Labour Officer's decision.

Analysis of the grounds of appeal

[21] We have carefully studied the Lower Court Record, considered the parties' submissions, the law and authorities cited therein, and all relevant materials to the determination of this appeal.

[22] We have some observations in respect of the manner in which the grounds of appeal were drafted. Grounds 2-6 relate to the different awards of the labour officer. The awards flow from provisions of the Employment Act, 2006. They are statutory remedies. We noted in Labour Dispute Miscellaneous Application No. 038 of 2022 TASO v Dr. Kenneth Mugisha [unreported] that specificity is an imperative of trial. We noted that the rules of procedure require a much more prolific approach to drafting grounds of appeal. We cited the case of **Nyero Jema Vs. Olweny Jacob & 4 Others**[2] where Mubiru J found the two grounds of appeal in that case, to be too general and offending the provisions of Order 43 r [1] and [2] of The Civil Procedure Rules, which require a Memorandum of Appeal to set forth concisely the grounds of the objection to the decision appealed against. His Lordship observed that every memorandum of appeal is required to set forth, concisely and under distinct heads, the grounds of objection to the decree appealed from without any argument or narrative, and the grounds should be numbered consecutively. Properly framed grounds of appeal should specifically point out errors observed in the course of the trial, including the decision which the appellant believes occasioned a miscarriage of justice.

[23] In the matter before us grounds 2-6 related to the statutory remedies and could have been framed as a single ground. That would have been helpful to both Counsel in pointing out the miscarriage. Perhaps, it is the reason both Counsel opted to argue grounds 2-6 together and ground 7 alone. That

[2] High Court Civil Appeal No. 0050 of 2018

notwithstanding, we have considered the grounds in the manner they were argued.

Ground One: The Labour Officer erred in finding that the termination of the Claimant was lawful.

[24] The Respondent led evidence before the Labour Officer demonstrating that he had been a stellar employee of the Appellant for 13 years starting in the position of Customer Service Back officer Administrator and growing in rank to Revenue Assurance Manager at the time of his termination in 2020. He testified that his role as Revenue Assurance Manager was to ensure full compliance with risk framework controls, identify and address exposure and improve revenue assurance. In this role, the Respondent was charged with the duty of helping to prevent and reduce revenue loss. He reported to the Appellant's Finance Director. He was provided with a clearly defined policy relating to the Airtel Money Franchise Partner and Agent Commission Payment, GSM and Airtel Money Commission payout exclusion list business rules for identifying fraudulent transactions [Claw back Policy] and was expected to strictly apply these policies.

[25] The Respondent also testified that he was required to work with the Revenue Assurance Center of Excellence [RACE] based in India to validate commissions to be paid out. In the month of February 2020, he reviewed the agent performance for January 2020. There was a policy deviation or exemption which he adhered to and a sum of UGX 270,334,252/= was approved for payment by the Appellant's Finance Director. He told the court of first instance that the zero charge policy in March 2020 had the potential for fraud and he had duly informed the Appellant. This warning was ignored. That he discovered fraudulent behavior amongst agents and duly informed his supervisors who requested the RACE team to verify the observations. He was asked to carry out some investigations and found a fraud not previously provided for. He asked the Internal Assurance Manager to carry out some investigations.

[26] The Respondent further testified that on 25th September 2020, he was informed by one Assumpta Nagawa via a telephone call that he was required to attend a disciplinary hearing on 28th September 2020 on cash-in-commission fraud committed in January 2020 and that there was an investigation report that implicated him. He gave evidence before the committee indicating that the commission payments were authorized by the RACE team. The investigation report was not presented despite requesting it. Key parts of his defence were excluded from the minutes of the meeting and rather than provide a copy of the minutes, the Respondent was summarily dismissed from employment. He appealed against the decision and the Appellant's Managing Director upheld the decision. His name was published alongside other employees dismissed for fraud. He was not paid any terminal benefits including untaken leave, repatriation, 3 months' notice pay, severance pay and compensation.

[27] For its part, the Appellant called 2 witnesses, Flavia Ntambi [RW1] and Tonny Manina [RW2]. RW1 filed a witness statement by which she attested to the Respondent's employment history with the Appellant Company. She testified that the Respondent was required to detect, report and remedy fraud. That he failed to detect fraud even when the RACE team in India categorically brought the same to his attention. She also testified that the Respondent was informed via telephone on 2nd September 2020 of the fraud that had occurred in February 2020. RW1 testified that RW2 sent an email requesting him to explain his failure to detect that fraud and he refused to do so. It was also her evidence that the invitation letter dated 23rd September 2020 related to disciplinary proceedings against the Respondent for failure to identify and flag cash-in-fraud where agents had been paid undeserved commission of UGX 1,249,527,754. She also testified that following the hearing the Respondent was summarily dismissed and paid all his terminal benefits. The evidence of one Tony Manina [RW2] was not controverted.

[28] In establishing whether a dismissal is lawful or not, this Court would be concerned with firstly, whether the employer has proven that the employee has fundamentally broken the contract of employment and whether the

process and procedure leading up to the termination was in compliance with the provisions of the Employment Act, 2006.

[29] In its consideration of the principles regarding summary dismissal, this Court, in **Labour Dispute Reference No. 6/2018 Kanyonga Sarah v Lively Minds Uganda**, cited a passage from the case of **Laws Vs London Chronicle Ltd CA 1959**[3]**.** Lord Evershed in discussing the justification of summary dismissal stated that;

> *"... it follows that the question must be – if summary dismissal; is claimed to be justified – whether the conduct complained of is such as to show the servant to have disregarded the essential conditions of the contract of service. One act of disobedience or conduct can justify dismissal only if it is of the nature which goes to show that the servant has repudiated the contract or one of the essential conditions and for the reason therefore, I think what one finds in the passages which I have read that the disobedience must at least have a quality that is willful. In other words it connotes the flouting of the essential contractual terms."*

The considered opinion of the Court in the Kanyonga case, was that an employer had to show that the employee had repudiated the contract or any of its essential conditions to warrant summary dismissal. This test is the substantive test on whether summary dismissal is justified. The Court of Appeal of Uganda has in the case of **Uganda Breweries Ltd v Robert Kigula**[4] ruled that for summary dismissal, the gross and fundamental misconduct must be verified. Mere allegations do not suffice. An employer is legally mandated to ensure that the disciplinary process is both procedurally and substantively fair.

[30] In this regard, the second test relates to the procedural fairness in reaching the decision to summarily dismiss an employee. **Under Section 66 of the**

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[3] [1959] 1 WLR 698
[4] Civil Appeal No. 36 of 2016

Employment Act 2006, it is provided that before reaching a decision to dismiss an employee on grounds of misconduct, the employer shall explain to the employee 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. The employer is required to give the employee an opportunity to present his or her defence and to give the employee a reasonable time to prepare a defence. In the case of **Ebiju James vs Umeme Ltd**[5] the Court held as follows:

> *" On the right to be heard, it is now trite that the defendant would have complied if the following was done.*
>
> ***1)*** *Notice of Allegations against the plaintiff was served on him and a sufficient time allowed for the plaintiff to prepare a defence.*
>
> ***2)*** *The notice should set out clearly what the allegations against the plaintiff and his rights at the hearing where such rights would include the right to respond to the allegations against him orally and or in writing, the right to be accompanied to the hearing and the right to cross examine the defendant's witness. Says or calls witnesses of his own.*
>
> ***3)*** *The plaintiff should be given a chance to appear and present his case before an impartial committee in charge of disciplinary plenary issues of the defendant."*

[31] The Appellant's evidence in respect of the reason for dismissal of the Respondent was the investigation report. In the invitation to a disciplinary hearing, the Appellant's Reward and Performance Manager made reference to an investigation report about the cash-in–commission fraud. A copy of the

[5] H.C.C.S No. 0133 of 2012

report detailing this investigation does not appear to have been placed on the record before the Labour Officer or produced before this Court. It was only referred to. To appreciate the facts leading to the disciplinary hearing, it is useful to employ the full text of the letter;

" *003/HR/AN/09/2020*

23rd September 2020

Mr. Peter Katongole,

Finance Department.

Invitation to a disciplinary hearing

Reference is made to the investigation report about cash-in commission fraud. The report revealed that you failed to identify and flag the fraudulent cash-in frauds, yet they were sufficient fraud red flags. These ghost agent numbers should have been identified and blocked/suspended since they were only involved in fraudulent activities. The laxity created opportunities for fraud syndicate and subsequently the ghost agent lines were paid undeserved commission.

The report further revealed that you refused to support in the investigations, contrary to the code of conduct and despite repeated reminders.

In light of the above, this is to inform you that a hearing has been scheduled for Monday 28th, September 2020, at 11:00 am through a zoom meeting to establish the facts about the findings. The login details will be shared with you in due course.

If you so choose, you may be accompanied to the hearing by an employee of your choice

Please be there and do keep time.

Yours faithfully

Airtel Uganda Limited.

Assumputa Nagawa N

REWARDS AND PERFORMANCE MGT MANAGER.

The invitation letter makes the following clear points:

(i) The disciplinary proceedings related to a cash-in fraud commission.

(ii) The letter makes reference to a report that implicated the Respondent in cash- in commission fraud.

(iii) The Respondent is alleged to have failed to identify and flag fraudulent cash-in fraud

(iv) The Respondent was alleged to have refused to support the investigation.

[32] The Respondent has protested variously that he was not provided with a copy of the report. Further, there is no record of the report in the evidence submitted at the lower court record and before this Court. If the report was the foundation of the allegations of gross misconduct then the same ought to have been provided to the Respondent to enable him adequately prepare his defence.

[33] For the Appellant, it was submitted that the Respondent was given due notice of the allegations against him in a series of emails prior to the letter of invitation. An email dated 4th February 2020 from Mahender Singh to Henry Kalissa and the Respondent and copied to Vivek Chaudhary and Tanya Kaushik reads;

"Hi Henry/Peter.

We have done a calculation of commission payout and commission deductions for the transactions done in the month

of Jan 19, in line with the commission deduction policy [CICO only excluding loop-merchpay].

Please use these calculations for commission payout. If there are any gaps. Please highlight and share your calculations.

Regards, Mahender Singh.

[34] Another email dated 5th February 2020, from Henry Kalisa to one Amit, indicates that certain commissions needed to be paid. In his reply, Amit Kapur asked Henry Kalisa and the Respondent to share the calculations of the loop transactions. These emails indicated quite some substantial figures over UGX 700,000,000. There is a further email on the same date showing a figure of 122,000,000. And then a further UGX 29,000,000 and yet another figure of UGX 787,000,000. The thread emails demonstrate to us that there appears to have been a constant communication in respect of commission to be paid out. The Respondent and Henry Kalisa sought confirmation of payments from Mahendar Amit. These emails do not, in our view constitute prior warnings. The entire record of proceedings before the Labour Officer does not contain an email thread discussion focusing on any loss of UGX 1,249,527,754/= caused by the Respondent.

[35] While we note that the Appellant duly notified the Respondent of the disciplinary hearing scheduled for the 28th of September 2020, what is clear from the evidence is that the Appellant did not give the Respondent sufficient details and full particulars of the charges against him. Of paramount significance is that the Respondent only learnt of the particulars relating to the loss of the sum of UGX 1,249,527,754/= at the disciplinary meeting. These particulars were said to be contained in the investigation report a copy of which the Respondent was not provided with.

[36] To fit within the parameters set in the Ebiju case[6] and to pass both the substantive and procedural fairness test, the Appellant ought to have provided critical details of the allegations. By leaving out the investigation report, the Appellant cannot be said to have set out clearly the allegations of gross misconduct to enable the Respondent adequately prepare a defence to a claim of causing such a substantial loss. The explanation by the Appellant that there were emails detailing the said allegations falls dismally short. We have reviewed the emails and find them to be unrelated to the allegations alluded to in the Appellant's evidence submissions. This investigation report was not attached to any of the Respondents' witness statements. It has only been alluded to. RW1 testified during cross-examination that she was not aware if a copy of the report was given to the Respondent. RW2 also admitted under cross-examination that the forensic report was not given to the Respondent. RW2 also testified that the RACE team did calculations prior to payment of commissions. We are of the considered view that the allegations were not properly laid out to the Respondent and occasioned an injustice to the Respondent. In this regard, we would find that the Appellant's disciplinary hearing was not substantially fair.

[37] We are minded that a disciplinary process is substantively fair when the allegations of gross misconduct have been verified during the hearing and the allegations must be proved to a reasonable standard. Counsel for the Appellant submitted that the labour officer applied a wrong standard of proof, that of a criminal court. We note that a disciplinary hearing is akin to a judicial hearing where liability would have to be established against the employee by taking evidence against him or her and further allowing them to present their own evidence. The hearing and standard are not as would a court of law but must adhere to the basic minimum tenets of a fair hearing, fairness and justice. [7]The labour officer examined the disciplinary hearing

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[6] This test has been applied in various cases including Caroline Kalisa Gumisiriza Vs Hima Cement Limited HCCS 84/2015, Grace Matovu vs Umeme LDC 004/2014 and Okao v Kampala Pharmaceuticals Ltd[supra]

[7] See the case of Grace T. Makako v Standard Chartered Bank Ltd LDR 315 of 2015

along these basic minimum tenets before arriving at her conclusion. We are unable to fault her.

[38] As to sufficiency of the notice, there was a contest as to when the notice was dispatched to the Respondent and when he received it. RW1 suggested that the email was sent on the 25th of September 2020. The letter itself, was dated the 23rd of October 2020. The meeting was set for the 28th of September 2020. The Respondent testified that he received a telephone call from RW1 on the 25th of October 2020 inviting him for the disciplinary proceedings. This would have given the Respondent a 3 days' notice. Given the gravity of the allegations and the substantial sums involved, we do not consider the notice to have been sufficient both in time and particulars. We find that the notice was not given to the Respondent in a reasonable time and this contravened **Section 66[3] of the Employment Act.**

[39] We are fortified in these conclusions by the basic tenets of a fair hearing in our jurisprudence are spelt out in Article 28 of the Constitution of the Republic of Uganda. These tenets include the determination of civil rights which shall be before an independent and impartial tribunal, clear information of the offence, provision of adequate time to prepare a defence, the right to legal representation, the right to an interpreter, the right to cross-examine any witnesses. These tenets are cascaded into **Section 66 of the Employment Act** which provides for the following:

(i) An explanation of the reasons for which the employer is considering dismissal in a language that the employee understands.

(ii) An explanation of the right to have a representative of the employees choice at the hearing.

(iii) Granting the employee an opportunity to defend himself and

(iv) Giving the employee time within which to prepare a defence.[8]

[8] Per Ruhinda Ntengye. J , Mugisha. J et al in Sserwanga v Uganda Breweries Limited (Labour Dispute Reference 253 of 2015) [2021] UGIC 23

From the evidence on record and on the basis of our analysis, we do not think that these tenets were observed and adhered to in the instant case. The Appellant may have issued a notice but it was not sufficient and the critical evidence contained in the investigation report was not provided to the Respondent.

[40] Accordingly, we do not consider that the Appellant's case on the failure of the Labour Officer to evaluate the evidence has been made out. We have reappraised the evidence and it is our finding that the process leading to the dismissal of the Respondent contravened the tenets of a fair hearing. As a first Appellate Court, we would only depart from the findings of fact of the lower court if these findings of fact seem to be inconsistent with the evidence led. [9] We are satisfied that the court of first instance exhaustively appraised the evidence leading to the conclusion that the Respondent was unlawfully dismissed. We are unable to fault the Labour Officer's conclusion. In the result, ground one of the appeal fails.

Grounds 2-6: Remedies

[41] As a result of our finding in respect of ground one of the appeal, we have not been persuaded and find no reason to interfere with the following awards as they are consistent with the respect statutory provisions;

[i] The award of UGX 31,020,000 as three months' salary in lieu of notice which is in conformity with **Section 58[1] of the Employment Act 2006;**

[ii] The award of UGX 134,420,000 as severance pay which is consistent with **Section 87 of the Employment Act. Section 89 of the Act** provides that severance allowance should be negotiable between the employer and employee. There was no agreement in the present case. In the case of **Donna Kamuli Vs DFCU Bank Ltd Labour Dispute Claim No. 002 of 2015,** this Court held that where there was no agreed method of calculating severance pay

[9] Sanyu Lwanga Musoke v Sam Galiwango S.C.C.A No. 48 of 1995; *See also* Selle and Anor v. Associates Motor Boat Company Limited and Others [1968] EA 123

by an employer and employee, the reasonable method shall be payment of 1 month's salary for every year served. We agree with this decision;

[iii] The award for additional compensation in the sum of UGX 31,020,000 under **Section 78 [2 and 3] of the Act;**

[iv] Repatriation in the sum of UGX 10,340,000 under **Section 39 of the Employment Act** and;

[v] The award of the sum of UGX 10,340,000 as compensation under Section 66[4] of the **Employment Act**.

Ground 7. The Labour Officer erred in law when she awarded the complainant 91 days for violating Section 58 of the Employment Act.

[42] In respect of leave untaken, the Respondent relied on annexure Y to his witness statement which speaks to 102 days of accumulated leave. The Labour Officer awarded 91 days in the sum of UGX 31,364,667 under **Section 54 of the Employment Act**. It was submitted by the Appellant that untaken leave would only be granted where it is shown that the employee applied for leave and it was refused. The Appellant cited the case of **Mbiika Dennis v Centenary Bank LDC 023/2014** in support of this proposition. In reply, the Respondent submitted that the requirement to show that the Respondent had applied for leave and the same was denied would only arise where the time within which to take leave had lapsed.

[43] The position of the law is in **Section 54[1] [a] of the Employment Act** which provides for seven days of leave for every four calendar months. This means that the statutory minimum number of annual leave days is twenty eight days. Under **section 54[3] of the Act**, any agreement to relinquish the right to the minimum annual holiday or to forgo such a holiday, for compensation or otherwise, shall be null and void. In effect, annual leave must be taken and in the event that it is not, an agreement for compensation in lieu of leave is illegal. By necessary implication, any untaken annual leave is forfeited.

[44] In the instant case, the award of 91 days would represent leave untaken for a minimum of 3.25 years. The Respondent was first employed by the Appellant in March 2007. He was terminated on the 7th of October 2020. Considering the provisions of **Section 54[3],** it would follow that untaken leave would only be for the year 2020. Computed from January 2020 to October 2020, the Respondent would be entitled to 15.75 leave days for the year 2020. And this would be the sum of UGX 5,428,500/=. We would therefore substitute the award of UGX 31,364,667 for untaken leave with an award of UGX 5,428,500/=.

Decision and orders of the court

[45] In the result, the appeal substantially fails and only succeeds to the extent of a modification of one award. Under **Section 24 of the Labour Disputes [Arbitration and Settlement] Act, 2006,** this court may confirm, modify or reverse any decision from which an appeal is made. In the exercise of these powers, the ruling, orders and decree of Ms. Irene Nabbumba- the Labour Officer at Kampala Capital City Authority Central in Labour Dispute Claim No. 212 of 2020 dated 27th June 2022 is confirmed with a single modification on order [h] by substituting the award of UGX 31,364,667 for untaken leave with an award of UGX 5,428,500/=.

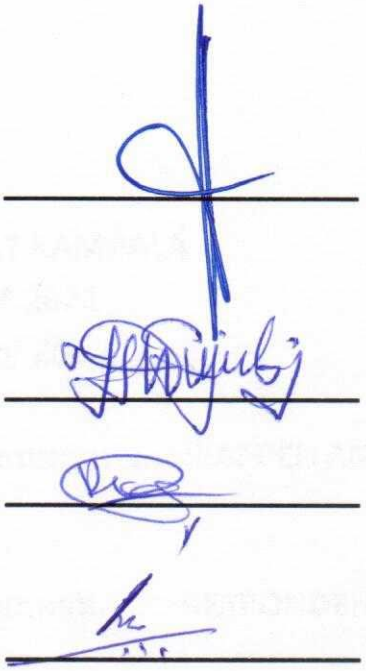
[46] On 30th September 2022, this Court was of the mind to consolidate this appeal together with Labour Dispute Reference No 188 of 2022 in which the present Respondent had filed a claim for damages against the Appellant. Under **Section 14[5] of the Labour Disputes [Arbitration and Settlement] Act** as amended, this Court may review its decisions or awards. As this appeal fails, this Court vacates the order of consolidation and now directs that LDR 188 of 2022 be heard and determined on its merits.

[47] Each party shall bear its costs here and at the court of first instance.

Dated, delivered and signed at Kampala this 6th day of February 2023.

BY:

ANTHONY WABWIRE MUSANA, Judge



THE PANELISTS AGREE:

1. **Mr. JIMMY MUSIMBI,**

2. **Ms. ROBINAH KAGOYE &**

3. **Mr. CAN AMOS LAPENGA.**

Delivered in open Court in the presence of:

Ms. Viola Musimire, appearing for the Appellant and;

Ms. Diana Kasabiti, appearing for the Respondent.

Court Clerk: Mr. Samuel Mukiza.