



**THE REPUBLIC OF UGANDA**  
**IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA**  
**LABOUR DISPUTE REFERENCE NO. 072 OF 2020**  
*(Arising from KCCA/CEN/LC/ 252 OF 2017)*

**JOHN OKUMU :::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::CLAIMANT**

**VERSUS**

**EQUITY BANK UGANDA LTD:::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::RESPONDENT**

**Before:**

The Hon. Mr. Justice Anthony Wabwire Musana,

**Panelists:**

1. Hon. Adrine Namara,
2. Hon. Suzan Nabirye &
3. Hon. Michael Matovu.

**Representation:**

1. Mr. Robert Ojambo of M/S Ojambo & Ojambo Advocates for the Claimant.
2. Mr. Patrick Mugalula of M/S Katende, Ssempebwa & Company Advocates for the Respondent.

**AWARD**

**Introduction**

- [1] On 25<sup>th</sup> November 2011, Mr. John Okumu was employed as General Manager of Credit at the Respondent Bank. On the 13<sup>th</sup> of February 2013, he was issued a notice of termination by which the Respondent undertook to pay one month's salary in lieu of notice in addition to other benefits. The Claimant filed Labour Dispute Claim No. 252 of 2018, which was heard by Mr. Mukiza Emmanuel Rubasha, Labour Officer, who took evidence and fixed a date for ruling. A verdict was not rendered, and the matter was referred to this Court on 29<sup>th</sup> February 2020. In his claim before this Court, the Claimant sought a declaration that he was unlawfully, unfairly and wrongfully dismissed from employment. He sought statutory compensation, terminal benefits, unlawfully deducted salary loan balances, severance allowances, general damages, punitive and exemplary damages, accrued leave, repatriation allowance, and a certificate of service.



- [2] The Respondent opposed the claim contending that the Claimant's action was frivolous and vexatious, did not disclose a cause of action, was time-barred, and the Claimant was estopped from bringing the claim. The Respondent contended that the claim was barred by the doctrine of election, approbation, and reprobation and that the termination clause was illegal. Alternatively, the Claimant was lawfully terminated with notice.
- [3] On the 3<sup>rd</sup> November 2022, the joint scheduling memorandum was adopted with two issues framed for determination, namely:

(i) Whether the Claimant was unlawfully terminated?

(ii) What remedies are available to the parties?

#### **The Proceedings and evidence of the parties**

- [4] The parties called one witness each.

#### **The Claimant's Evidence**

- [5] The Claimant testified that he had been a banker for 25 years, having worked in several banks before he joined the Respondent on 25<sup>th</sup> October 2011. He was a member of EXCOM and a Secretary of the Respondent's Board Credit Committee. In January 2013, he heard of a meeting convened to discuss his exit. On 13<sup>th</sup> February 2013, he received a letter of termination dated 11<sup>th</sup> February 2013, terminating his services to the Respondent. No concerns of a fundamental breach of contract were brought to his attention. He testified that the Managing Director of the Respondent was not mandated to terminate his services. This mandate vested with the Board, which wrote to the Claimant on 13<sup>th</sup> March 2013 CEXH 6. He testified that the procedure was not followed in his termination. He was not given an opportunity to be heard, and he sought the Respondent's explanation by CEXH 7. In its response CEXH8, the Respondent maintained the termination under Clause 12.0 of the employment contract. He testified that he assisted the Respondent Bank in making a profit in 2011. The Respondent's Executive Director wrote to him in August 2012, claiming he was underperforming and extending his probation by three months. He protested this extension because his probation had expired. His line of reporting was immediately changed to the Managing Director. He testified that in January 2012, the Respondent did not perform well, and the Managing Director attempted to coerce him into tampering with the loan provisions. He rejected the overtures and wrote to the Chairman of the Board of Directors CEXH 11, and for this reason, the Managing Director solely terminated his employment without reason. He also testified that the Head of Legal attempted to coerce him into resigning so as to withdraw the termination letter. That he was not paid in lieu of notice and instead maintained on payroll until 24<sup>th</sup>



February 2013. He testified that despite requesting for a certificate of service (CEXH 12), what was denied, he therefore, unable to gain employment elsewhere. He testified that he had been embarrassed, and there was a loss of trust within the banking sector, and that members of the public believed that he had defrauded the Bank. He testified that the former Executive Director apologized to him in June 2018 after receiving new evidence.

[6] In cross-examination, he confirmed that he signed the employment contract, was happy with the terms, did not write to disagree with any terms, and worked for 15 months before termination. He testified that he left the Respondent in 2013 and did not know that the Industrial Court had been set up in 2014. He confirmed his reporting lines to the Executive Director between November 2011 and August 2012 and the Managing Director between August 2012 and his termination. He confirmed that appraisal of August 2012, which indicated poor performance, and also that he turned around the fortunes of the Bank. He also said he did not have evidence of his actions leading to profits in 2011. He confirmed that he did not report the tampering of books of accounts to the Bank of Uganda or the Financial Intelligence Authority. He did not have the evidence in Court. When shown his letter to the Board (CEX11), he confirmed that the Bank's profits at the end of 2012 resulted from hard work and manipulation. He testified that he did not write to the Managing Director about unethical behaviour, incorrect reporting, and manipulation of end-of-month profitability but that he wrote to the Board, after which his employment was terminated. He also confirmed that the Managing Director had a right to change the reporting lines and that the Board of Directors did not get involved in the bank's day-to-day running but supervised management. The Board did not rescind his termination. When he was shown CEX2, he confirmed that under Clause 12.0, the employer had a right to terminate his employment with notice. He was entitled to a hearing before dismissal because employment cannot be terminated without reason. Regarding the alleged meeting between the Managing Director and Sim Katende, the Claimant testified that he did not have any evidence of this and was relying on the evidence of Edward Ocen. He confirmed that he obtained a loan from the Respondent when he joined in December 2011. He tried to service the loans for two years and was rendered unemployable. He did not have a certificate of service. He was a vetted employee by the Bank of Uganda. He testified that he turned 55 in 2017, and the Banks retirement age was 55. At the time he defaulted on the loan, he was past 55 years of age.

[7] In re-examination, the Claimant testified that no appraisal was carried out after the change of reporting lines. When he was shown CEX9, he clarified that it did not qualify as an appraisal report and that he had responded to it, and no further queries were raised. He explained that the profit from his work did not include the monies out of tampering. He confirmed that the Board wrote to



him on 13<sup>th</sup> March 2013 and advised that they would get back to him, and had yet to do so by the time of his giving the evidence. He explained that he did not report to the Bank of Uganda as this would amount to leaking information to outsiders. He confirmed that he raised the issues of manipulation on 9.02.2013 while still in service to the Respondent and was terminated on 13.02.2013. He also clarified that clause 12.0 was not the only term of the contract—the Human Resource policies provided for a hearing and reason for termination. There was no justifiable cause for termination. He clarified that he used his NSSF to pay the loan and school fees. He also explained that the Respondent gave him the certificate of service seven years after termination, which is why he was unemployed.0

### The Respondent's evidence

- [8] Mr. Ronald Katuramu, the Respondent's Human Resource Officer, testified on behalf of the Respondent. His evidence was that the Claimant was employed on 25<sup>th</sup> October 2011, and it was an express term that he could be terminated upon notice. On 11<sup>th</sup> February 2013, the Respondent exercised the right to terminate upon issuing notice and that the Managing Director had the authority to terminate the Claimant. The Claimant was not dismissed. He did not have any loan facilities with the Respondent Bank. He defaulted on his loans with Housing Finance Bank Ltd in March 2016. There was no evidence of tampering or manipulating the Respondent's loan loss provision.
- [9] Under cross-examination, he testified that he joined the Respondent in December 2019. He testified that the Respondent's Human Resource Department had 16 officers and that the Head of the Department was on maternity leave at the time of making the witness statement. He confirmed that the terms of appointment were based on the letter of appointment and the handbook. He confirmed that the basis of termination was that the contract provided for termination by notice. He could not ensure if the Claimant had been terminated without being heard and did not know the full circumstances of the Claimant's termination. He was unaware if the Claimant was a disobedient, insubordinate, and vengeful employee and if he had been issued a certificate of service (*from now* COS). When shown CEX13, he confirmed that the COS was issued on 5.10.2020. He also confirmed that having been a senior employee of the Bank, the Claimant could not be employed without a COS. When shown CEX19, he confirmed that the Claimant had a loan with the Respondent. He concluded that his evidence was based on the information given to him.
- [10] In re-examination, he confirmed that the basis of his statement was the Human Resource Manual (*from now* HRM) and the Claimant's file. He also confirmed that the Respondent had a grievance procedure.



- [11] At the close of the Respondent's case, Counsel were invited to address Court on the issues through written submissions. The Court is grateful for the succinct submissions.

**Analysis and Decision of the Court.**

**Issue 1. Whether the Claimant was unfairly terminated?**

**Submissions of the Claimant**

- [12] Mr. Ojambo, appearing for the Claimant, submitted that the Claimant's termination was contrary to the employment contract and HRM, which had to be read together. He relied on the case of **Stanbic Bank Ltd v Kiyemba Mutale SCCA No. 2 of 2010** for the proposition that an employer is entitled to terminate for a reason or no reason, provided he does so according to the contract terms. He contended that the termination by notice merely camouflaged the real reason for termination, which was alleged underperformance, incompetence, disobedience, insubordination, and vengefulness. For this proposition, Counsel cited the case of **Bank of Uganda v Joseph Kibuuka and Ors C.A.C.A No. 281 of 2016**. It was submitted that there was no disciplinary hearing.

**Submissions of the Respondent**

- [13] Mr. Mugalula, appearing for the Respondent, submitted that the Claimant was lawfully terminated by **Sections 2 and 65(1) (a) of the Employment Act, 2006 (from now EA)**. That the Respondent exercised its contractual and statutory right to terminate the Claimant's employment upon issuing the Claimant notice. In response to his termination letter, the Claimant wrote to the Respondent asking to be paid his one-month notice indicating his acceptance of payment in lieu of notice. Counsel relied on the case of **Stanbic Bank Ltd v Constant Okou C.A.C.A No. 60 of 2020** for the proposition that the Claimant consented to termination with notice by asking for payment in lieu of notice.
- [14] In response to the Claimant's submissions, it was submitted that the Claimant was terminated and not dismissed. Counsel relied on *Bank of Uganda v Joseph Kibuuka (supra)* for the proposition that it was unnecessary to give reasons for termination. Counsel submitted that misconduct or poor performance was not the reason for the Claimant's termination, and in bringing the claim five years after termination, this was an afterthought.

**Submissions in rejoinder**

- [15] In rejoinder, Counsel for the Claimant argued that the Respondent's HRM provided that it should establish justifiable cause for termination or dismissal for which a report must be made before termination by notice. Counsel distinguished the **Stanbic Bank Ltd v Okou** and **Bank of Uganda v Joseph**



**Kibuuka** cases, arguing that in both those cases, the contracts only provided for termination by notice with no express provisions requiring justifiable reasons or reasons for termination. The parties in those cases relied on Section 66EA. In the Claimant's case, the HRM required reasons for termination. Counsel for the Claimant submitted that the Kiyemba Mutale case was more applicable because the employer was required to follow procedure whether a termination was with reason or not. In Mr. Ojambo's view, the Stanbic v Okou case establishes that a provision of a contract of employment should not be detrimental to the employee. As such, by providing the justifiable reason for termination, the HRM was improving the minimum terms of the employment contract under the EA. Learned Counsel contended that the Okou case firmly establishes that consent to terminate an employee by payment in lieu of notice must be sought before the termination. The letter CEXH 8 was after the termination. It was submitted that the Claimant challenged the termination in CEX 8. Counsel submitted that the real reasons for termination were the alleged underperformance, incompetence, disobedience, insubordination, and vengefulness.

#### **Resolution of Issue 1**

- [16] It is trite that for a termination to be lawful, it must be procedurally and substantively fair<sup>1</sup>. From the evidence and submissions in this matter, our first imperative is to deduce the facts of Mr. Okumu's termination. For a meaningful deduction, it is essential to employ the full text of the letter. Its anatomy is as follows:

*"MANAGING DIRECTOR/EQBUL/13/02/11/01*

*Date: 11<sup>th</sup> February 2013*

*Dear Mr. John Okumu*

*RE: TERMINATION OF EMPLOYMENT CONTRACT*

*We write in respect of your employment contract with Equity Bank Uganda Limited.*

*We regret to notify you that the Bank has taken the decision to terminate your contract of employment in accordance with the terms of the said contract. As stipulated in the contract, the Bank will pay you one month's salary in lieu of notice in addition to all other benefits due to you.*

*We urge you to clear your financial obligation to the bank and hand over to the HR office any Bank property in your possession including the Bank's identity card and*

<sup>1</sup> See Nicholas Mugisha v Equity Bank Uganda Ltd LDR 281 of 2021



medical cards. We can confirm that upon successful completion of the handover process, you will be issued with the certificate of service.

We take this opportunity to thank you for your service to Equity Bank Uganda and wish you the very best for the future.

Yours faithfully,

Francis C.G Mills-Robertson  
Managing Director

CC: Chairman of the Board  
CC: Ag Head HR"

From this letter, it emerges that:

- (i) The Claimant was terminated in accordance with the terms of the contract.
- (ii) He was to be paid one month's salary in lieu of notice.
- (iii) He was to be paid all other benefits due to him.
- (iv) He was to hand over Bank property in his possession.
- (v) He was to be given a certificate of service after the handover.

The termination letter was exhibited as CEXH3. It did not contain a reason or reasons for termination. It did not provide for a period of notice. From this letter, the Respondent elected to terminate the Claimant instantly on the 11<sup>th</sup> of February 2013 by payment of one month's salary in lieu of notice. Counsel for the Respondent submitted that the termination was by the employment contract. Clause 12.0 of CEX3 reads as follows:

*"After the probationary period and confirmation of employment, Equity Bank Limited shall be entitled to terminate this agreement by giving you one month's notice, in writing, or pay you one month's salary in lieu of such notice."*

In our view, the Respondent invoked Clause 12.0 and exercised its contractual right to terminate the Claimant by payment of salary in lieu of notice. There can be no other reasonable conclusion. The explanation in the pleadings, evidence, and submissions relating to the actual and perceived real reason for termination is *post facto* the termination letter, and we shall return to this aspect later in the course of this award. From these very plain facts, we find that the Respondent relied on Clause 12.0 of the employment contract. The Respondent terminated the Claimant by issuing notice and paying one month's salary in lieu of notice.



- [17] The next question would be whether the employer exercised this right to terminate lawfully. This Court has held that the general and established principle relating to termination of the employment relationship is that the employer must follow the correct procedure for termination or dismissal as laid down under **Sections 65, 66, 68, 69, and 70(6) of the Employment Act, 2006**.<sup>2</sup> It is trite that an employer has an unfettered right to terminate a contract of employment, but exercising this right must follow procedure.
- [18] The jurisprudence regarding termination by election to pay salary in lieu of notice has been subject to judicial consideration. The position of the law is now very well articulated in **Stanbic Bank v Constant Okou**,<sup>3</sup> where the Court of Appeal of Uganda held that where an employer opts to terminate a contract of employment by payment in lieu of notice, an employee must first consent to payment in lieu of notice. In that case, a clause of the Human Resource Manual provided that the employer was entitled to terminate by giving three months' notice or making a payment in lieu thereof. The Appellant, therein, exercised the option by paying three months' salary in lieu of notice. On appeal, Madrama JJA. (*as he then was*) confirming the decision of the Industrial Court, held that there was no lawful basis for payment in lieu of notice contained in the termination letter as it was without the Respondent's consent and based on the unilateral action of the Appellant. His Lordship admonished that for payment in lieu of notice to have validity, the appellant ought to have first sought the Respondent's consent before issuing the termination letter. For this reason, the termination was found to be wrongful or unlawful.
- [19] In the matter before us, Mr. Mugalula submitted that the election to pay one month's salary in lieu of notice was lawful, and CEX7 gave the Claimant's consent. Mr. Ojambo submitted that consent was sought after the fact. Therefore, consent to payment in lieu of notice is at the centre of the procedural fairness of the Claimant's termination. CEX3 was the termination letter. It was dated the 11<sup>th</sup> day of February 2013. CEX 7 was a letter authored by M/S Pearl Advocates and Solicitors acting on behalf of the Claimant. It was dated the 18<sup>th</sup> of March 2013, protesting the Claimant's termination. It was captioned "*Unfair Termination of Mr. John Okumu's Employment Contract.*" The letter spoke to no reason for termination, no fair hearing, a violation of the rules of natural justice, and a demand for various payments. The words used in the letter do not denote acquiescence or consent. In their plain and ordinary meaning, these were words of discontent and not consent.
- [20] Applying the dicta of the Okou case to this case, we think the Respondent's very industrious argument in paragraph 4.2.3.7 of its submissions on acceptance of the one-month payment in lieu of notice does not gain much purchase. It is not conceivable that this protest letter could be capable of a construction other

<sup>2</sup> See LDR 207 of 2017 Kasenge Geoffrey Oscar v St Augustine Montessori School, where we cited LDR 001 of 2019 Eva Nazziwa Lubowa v NSSF

<sup>3</sup> Civil Appeal No. 60 of 2020



than expressing the Claimant's disagreement at his unfair termination. In terms and to the extent of the termination letter, the Respondent would be found to be procedurally wrong. The inescapable conclusion is that the Respondent did not seek Mr. Okumu's consent before electing to pay him one month's salary in lieu of notice. Therefore, the Claimant's termination was unlawful, and we would answer issue 1 in the affirmative.

- [21] Mr. Ojambo submitted that the real reason for termination was the Claimant's alleged underperformance, incompetence, disobedience, insubordination, and vengefulness. Mr. Mugalula objected to this view. He submitted that the Claimant was discharged through a termination, not dismissal. We have already found that the termination was unlawful, and it would not be necessary to consider this aspect of the Claimant's case. However, for completeness, we would test procedural and substantive fairness. Mr. Mugalula submitted correctly that an employee dismissed for misconduct or poor performance is entitled to a hearing under Section 66EA. Under that provision, before reaching a decision to dismiss an employee on the grounds of misconduct, the employer must explain to the employee why the employer is considering dismissal, and the employee is entitled to have another person of their choice present during this explanation. The employer must allow the employee to present their defence and give the employee a reasonable time to prepare a defence<sup>4</sup>. In the Ebiju case (ibid), for the right to be heard, the Court required that (i) a notice of allegations must be served sufficiently for the employee to prepare a defence, (ii) The notice should set out clearly what the allegations are and the employee's rights at the hearing, including 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 employer's witness or call witnesses of his own and (iii) The employee should be allowed to appear and present their case before an impartial committee in charge of disciplinary issues. In the case before us, there was no disciplinary hearing. If the real reason were to hold, we would, for want of a disciplinary hearing, find that the Claimant was unfairly terminated.

#### **Issue II. What remedies are available to the parties?**

- [22] Mr. Mugalula suggested that the Claimant was not entitled to any remedies as his termination was lawful. Having found the termination unlawful, the Respondent's contention would have no legal premise. We will proceed to consider the individual remedies.

#### **Statutory Compensation**

- [23] Mr. Ojambo was contending for statutory compensation pay under Sections 66(4), 78(1),(2), and(3) EA. This Court has ruled that awards under statutory

<sup>4</sup> Per Musoke J.( as she then was) in Ebiju James v Umeme Ltd H.C.C.S No. 0133 of 2012



compensation, especially in Section 78EA, are a composite of general damages. They would only be awardable by the Labour Officer. Therefore, we are not persuaded to depart and decline to award the same.

#### **Salary in lieu of notice**

- [24] The Claimant sought payment of one month's salary in lieu of notice. This is consistent with Section 58(1)(b) EA and both the employment contract and HRM. Accordingly, we award the sum of **UGX 14,000,000/=**.

#### **Severance allowance**

- [25] Under Section 87(a) of the Employment Act, an unfairly dismissed employee is entitled to a severance allowance. Having found that the Claimant was unfairly terminated, we hold that he is entitled to severance pay. We also adopt this Court's reasoning in **Donna Kamuli v DFCU Bank Ltd**<sup>5</sup> that the Claimant's calculation of severance shall be at the rate of his monthly pay for each year worked. The Claimant was employed from 25th November 2011 to 13th February 2013 for one year, two months, and 19 days. He was earning UGX 14,000,000 per month. We hereby award **UGX 22,866,666/=** as a severance allowance. We disallow the claim for a fine under Sections 92(1) and 92(2) EA because the accrual of severance pay results from this Court's declaration of unlawful termination. The imposition of such a fine would follow a failure and or refusal to abide by the order of the Court.

#### **General damages**

- [26] Mr. Ojambo was contending for UGX 840,000,000/= in general damages. Counsel premised this prayer on the case of **Bank of Uganda v Betty Tinkamanyire S.C.C.A No. 12 of 2007**, where the Supreme Court of Uganda considered the Respondent's position as a Senior Manager at the Appellant Bank. In that case, the Court upheld an award of UGX 30,000,000 in general damages. Counsel premised this on the position of Senior Manager and a vetted employee. He demanded for his certificate of service for over seven years. His property at Bweyogerere was sold off because he was unemployable. He suffered inconvenience and anguish. Mr. Ojambo suggested that Betty Tinkamanyire was decided 15 years ago, and in the Kibuuka case, the Court of Appeal upheld the award of UGX 100,000,000 per Claimant. As such, he believed that the sum of UGX 840,000,000 was justified. The Respondent contended that the Claimant was not entitled to general damages. There was no high-handed treatment, and the Respondent had worked for 15 months. In his view, UGX 840,000,000 was excessive. He suggested that the Court of Appeal set aside an award of UGX 275,000,000 in the UBL v Robert Kigula case as excessive.

<sup>5</sup> The Court of Appeal maintained this position in *DFCU Bank Ltd vs Donna Kamuli C.A.C.A No 121 of 2016*.



[27] The law is that general damages are those damages such as the law will presume to be the direct natural consequence of the action complained of<sup>6</sup>. The Court of Appeal has held that general damages are based on the common law principle of *restituto in integrum*. Appropriate general damages should be assessed on the prospects of the employee getting alternative employment or employability, how the services were terminated, and the inconvenience and uncertainty of future employment prospects.<sup>7</sup> In the case of **Donna Kamuli v DFCU**<sup>8</sup> the Industrial Court considered the earnings of the Claimant, age, position of responsibility, and contract duration to determine the damages awardable. In the case of **Nicholas Mugisha v Equity Bank Ltd**<sup>9</sup> we considered that the Claimant had worked for the Respondent for about 2 years, and we awarded general damages of UGX 52,000,000/=. We consider that the Claimant is entitled to general damages. He had worked for the Respondent for one year, two months, and 19 days. He was about 51 years old and a vetted employee at the time of his termination. The Respondent's retirement age was 55 years as provided for in its Human Resource Manual. Mr. Mugalula suggested a reasonable award would be in the region of UGX 32,000,000/=. We also note that the Tinkamnyire award was US\$ 16,997 in 2007, which would be about UGX 62,497,969 at the exchange rate of US\$1 to UGX 3677.<sup>10</sup> Considering all circumstances and the Claimant's employability, we determine that based on his monthly salary, the sum of **UGX 42,000,000/=** as general damages will suffice.

#### **Punitive and exemplary damages**

[28] In respect of punitive and exemplary damages, in *DFCU Bank v Donna Kamuli*(supra), the Court of Appeal held that punitive damages can be awarded in employment disputes but with restraint and in exceptional cases because they were awardable for tort and not a breach of contract and with restraint as punishment ought to be restricted to criminal law and not civil law and contract. In keeping with the dicta of the Court of Appeal and on the facts before us, we are persuaded that the Claimant has made a case for an award of punitive damages. The certificate of service was held for seven years despite the demand for the same. In our view, this affected the employability of a vetted officer. Under the 3<sup>rd</sup> Schedule of the Financial Institutions Act, 2004(*As amended*), the moral and professional suitability of a person who seeks to control or manage a financial institution affects employability. A banker is held to a high standard and whose conduct and sound judgment are of utmost importance. The fitness tests carried out by the Central Bank determine a Senior Manager's suitability. It was unnecessary to hold the certificate of service for such a long period. It was uncalled for and did not consider the

<sup>6</sup> *Stroms v Hutchinson* [1950]A.C 515

<sup>7</sup> *Stanbic Bank (U) Ltd v Constant Okou* Civil Appeal No. 60 of 2020

<sup>8</sup> LDC No. 002 of 2015

<sup>9</sup> LDR No. 281 of 2021

<sup>10</sup> <https://www.bou.or.ug/bou/bouwebsite/BOU-HOME> last accessed 24.06.2023 3.09pm



Claimant's future endeavours. We think this callous conduct is the foundation for an award of punitive damages. Mr. Mugalula proposed a sum of UGX 15,000,000 as reasonable. In our view, the sum of **UGX 30,000,000** would be more appropriate, and we award the same.

#### **Aggravated damages**

- [29] Regarding aggravated damages, the Claimant sought the sum of UGX 500,000,000/= Mr. Mugalula submitted that the same had not been pleaded. Our perusal of the memorandum of claim does not show a claim for aggravated damages. Mr. Ojambo conceded to the absence of the claim in the memorandum but argued that in the Tinkamanyire case, the Court proceeded to grant the same even when they had not been pleaded. In that case, the Learned Justice of the Supreme Court<sup>11</sup> found the appellant to have acted in a callous and degrading manner. We do not think any evidence has been led to that effect in the matter before us. Further, the dictum in *DFCU Bank Ltd v Donna Kamuli (opcit)* where the case of **M/S Fang Min v Belex Tours and Travel Limited SCCA No. 6 of 2013 consolidated with Civil Appeal No. 1 of 2014 Crane Bank v Belex Tours and Travel Limited**, the Court held that it is settled law that a party cannot be granted relief which it has not claimed in the plaint or claim. In keeping with this dictum, we are unable to grant the prayer for aggravated damages.

#### **Costs of the Claim**

- [30] Mr. Ojambo contended for costs under Section 27(2) of the Civil Procedure Act Cap. 71. Under Section 8(2a)(d) of the Labour Disputes(Arbitration and Settlement) Amendment Act 2021, this Court may make orders as to costs as it deems fit. We have held that in employment disputes, the grant of costs to the successful party is an exception on account of the nature of the employment relationship except where it is established that the unsuccessful party has filed a frivolous action or is culpable of some form of misconduct.<sup>12</sup> In our view, we do not think the Respondent's defence was frivolous. We have not been persuaded to award the Claimant's costs.
- [31] The Claimant abandoned the rest of the remedies. It would also be unnecessary to make any offset against this award following the abandonment of the other awards.
- [32] Before taking leave of this matter, we note that the Labour Officer did not render a verdict after hearing the matter. The notion of making a reference after closing of adjudicatory proceedings before a Labour Officer but before the rendering of a decision is not an efficient use of scarce judicial resources.

<sup>11</sup> G.W Kanyeihamba J.S.C

<sup>12</sup> Joseph Kalule Vs Giz Ldr 109/2020(Unreported)



Evidence was taken before the Labour Officer. A decision ought to have been rendered.


[33] In the final analysis, we make the following orders:

- (i) We declare that the Claimant was unfairly terminated from the Respondent's service.
- (ii) The Respondent is ordered to pay the Claimant the following sums:
  - (a) **UGX 14,000,000/=** as salary in lieu of notice
  - (b) **UGX 22,866,666/=** as severance pay.
  - (c) **UGX 42, 000,000/=** as general damages,
  - (d) **UGX 30,000,000/=** as punitive damages and
  - (e) The sums above shall carry interest at 18% p.a. from the date of this award until payment in full.

(i) There shall be no order as to costs.

It is so ordered this 26<sup>th</sup> day of June 2023

Anthony Wabwire Musana,  
Judge, Industrial Court



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**THE PANELISTS AGREE:**

- 1. Hon. Adrine Namara,
- 2. Hon. Susan Nabirye &
- 3. Hon. Michael Matovu.



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Ruling delivered in open Court on **29<sup>th</sup>** June 2023 at **10:10 a.m** in the presence of:

1. For the Claimant, **Mr. Robert Ojambo Mugeni**

2. The Respondent and its Counsel are absent

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

Anthony Wabwire Musana,  
Judge, Industrial Court

