



THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE NO. 107 OF 2020
(Arising from Labour Dispute Complaint No. KCCA/GEN/LC/588/2019)

KABAGAMBE ROGERS.....**CLAIMANT**

VERSUS

POST 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. Festo Tindeyebwa of M/S Festo & Co Advocates for the Claimant.
2. Mr. Isaac Bakayana and Mr. Juma Omolo of M/S Arcadia Advocates for the Respondent.

AWARD

Introduction

- [1] The Respondent employed the Claimant from 6th April 2014 until 26th August 2019, when he was summarily dismissed on the grounds of presenting forged accountabilities, negligence, and causing financial loss to the Respondent Bank. He lodged a complaint with the Kampala Capital City Authority Labour Officer. Following an unsuccessful mediation, the matter was referred to this Court.
- [2] By a memorandum of claim dated the 27th of July 2020, the Claimant sought a declaration that he was unfairly and unlawfully dismissed because he was not given a

fair hearing. He claims compensation for lack of a fair hearing, payment in lieu of notice, severance and repatriation allowance, general damages, interest, and costs of the claim.

- [3] The Respondent opposed the claim contending that the Claimant's action did not have merit. He appeared before a disciplinary committee and admitted the charges. It was claimed that the committee recommended his dismissal, and the claimant resigned.
- [4] The issues framed and agreed upon by Counsel in the joint scheduling memorandum filed in Court on 20th April 2021 were adopted. The issues are:
- (i) *Whether the Claimant was unfairly and unlawfully dismissed from his employment?*
- (ii) *What remedies are available to the parties?*

The Proceedings and evidence of the parties

- [5] The parties called one witness each.

The Claimant's Evidence

- [6] The Claimant testified that he joined the Respondent Bank in April 2014. On 5th December 2016, he was promoted to Acting Supervisor of the Mobile Banking Lira Branch. He was summoned before the Disciplinary Committee (from now DC) sitting at the Respondent's head office in Kampala. He appeared before the DC on the 11th of July 2019. He was accused of using falsified vouchers to obtain money irregularly and that the funds were not used for the intended purposes. He also testified that he was given short notice and not provided with the audit report or any report to assist him in preparing his defence. Before the DC, he responded based on his recollections. It was his testimony that as in charge of an extensive portfolio and having met his performance targets, and he could not have been responsible for a single loss and could not have acted negligently. He testified that persons with more serious offences were suspended while he was dismissed. Further, he was not informed of his right to have a representative of his choice at the hearing before the DC and was not allowed to explain his appeal. He believed his dismissal was unfair.
- [7] Under cross-examination, the Claimant confirmed that there had been several audits during his tenure. He also confirmed that the summons to attend a disciplinary hearing were given to him on 8th July 2019 for the hearing slated for 11th July 2017. He conceded that he did not contest the short notice but that the time needed to be more adequate to prepare for his defence. He confirmed that he did not get any audit report. He did not

recollect seeing a copy of the Respondent's Human Resource Manual (HRM). He was shown clause 1.3.4(viii)(a) and maintained that the notice period given was too short. He testified that his Line Manager and General Manager were surprised at his dismissal and advised him to appeal. He confirmed that he was unaware of his right to bring someone to represent him at the hearing and only learned of this after getting legal advice. He recalled receiving a warning letter regarding a unit broken into by a security guard. He maintained that his appeal was not considered because the Board of Directors considered a wrong letter and not his appeal. His appeal was dated 5th September 2019, while the Board quoted a letter dated 2nd September 2019.

- [8] In re-examination, he clarified that he was not given a copy of the audit findings or any report. He repeated his roles and explained that Fiona Aceng and George Ssonko were in charge of accountability for imprest allocations. That he only found the reasons for his dismissal in the warning letter. He confirmed that he did not sign the minutes, which did not reflect what happened at the disciplinary hearing. He clarified that he had been cleared of all the allegations in the earlier warning letter.

The Respondent's evidence

- [9] The Respondent called one witness. Geoffrey Kyakonye testified as Acting Chief Human Resources Officer, responsible for ensuring the functioning of the entire human resources function. He testified that several operational lapses were observed during the Claimant's tenure as Mobile Banking Supervisor, Lira Branch. A warning letter was issued. In 2019, the Respondent conducted an audit, and the claimant appeared before the audit team. It was found that the Claimant had falsified payment vouchers and used receipts from doubtful sources. The audit team recommended disciplinary action. The Claimant was summoned before the DC to answer the allegations. The DC concluded that the Claimant had committed the offences and recommended his dismissal from the Bank. On the 26th of August 2019, the Respondent dismissed the Claimant from its service.
- [10] Under cross-examination, Mr. Kakonye testified that he did not participate in the termination of the Claimant. Of all the persons who participated, it was only Justine Wabwire who was still in the employment of the Respondent. He testified that employees who attended meetings were not ordinarily required to sign minutes. He explained that there had been more than one operational lapse but could not provide a copy of the warning letter. He explained that he was not the author of the audit report and was unaware that the claimant was only given a copy of the report after termination and a brief of the allegations in the invitation letter. He conceded that a



mobile banking supervisor does not authorize payments of administrative expenses at a branch but is responsible for providing accountability.

- [11] In the re-examination, Mr. Kyakonye clarified that the audit team he had referred to, were members of the internal audit department. He explained that it differed from his department's practice of giving audit reports to employees. He also did not find any information that the Claimant had requested a copy of the audit report. He confirmed that the Claimant's supervisors were not involved in the disciplinary process.

Analysis and Decision of the Court.

Issue 1. *Whether the Claimant's dismissal was unlawful/wrongful and unfair?*

Submissions of the Claimant

- [12] Mr. Tindyebwa, appearing for the Claimant, submitted that the Claimant's dismissal was unfair and unlawful. It contravened **Section 66(1) of the Employment Act (from now EA)**, and the notice was brief and only highlighted the allegations. It did not explain or detail the allegations of the vouchers, the sum of money obtained irregularly, or the loss caused; it did not mention an investigation or the audit report. The notice did not indicate that the Respondent was considering dismissal, did not inform the Claimant of his right to have another person present at the hearing, and did not detail the alleged offence as classified in the HRM. It was submitted that the Claimant was not given reasonable time to prepare his defence. Counsel cited the case of **Tumusiime & 5 Ors v Mukwano Personal Care Products LDR 22 of 2014** in support of this proposition.
- [13] It was also submitted that the Respondent did not prove the reason for dismissal as provided in **Section 68(1) EA**. Counsel cited the case of **Uganda Ecumenical Loan Fund v Annet Nakwejwe H.C.C.S No 486 of 2012** in support of the proposition that there was no evidence to prove the forged accountabilities. The investigation report was incomplete, the alleged vouchers and suspect accountabilities were not produced, and the investigation report conceded to internal weaknesses and lack of control of senior staff. The Claimant was not in charge of field activities, and the report did not name the Claimant as responsible for the losses. It was submitted that the Claimant did not admit to forging accountability but pointed out the system's irregularity.

Submissions of the Respondent

- [14] Mr. Bakayana and Mr. Omolo, appearing for the Respondent, submitted that the Claimant was lawfully and fairly dismissed. It was submitted that there should be

reasons for dismissal that the employer believed to exist. Counsel cited **Section 69(3) EA** and the case of **Ebiju James v Umeme Ltd H.C.C.S No 0133 of 2020** for the proposition that a dismissal can be done if there is misconduct. Reference was also made to paragraph 13.3.2 of the HRM, which defined serious or gross misconduct. It was submitted that the Respondent investigated that the Claimant falsified payment vouchers in Ms. Abonyo and Mr. Oming's names to obtain money irregularly which was not used for the intended purpose. He was using receipts from doubtful sources for accountabilities. He was invited for a disciplinary hearing where he accepted forging accountabilities, and Ms. Abonyo and Mr. Oming denied having signed the vouchers. It was submitted that the Claimant confirmed the forgery of receipts. It was argued that there was overwhelming reasons to justify dismissal.

- [15] On fair hearing, Counsel drew the Court's attention to tenets in the Ebiju case. It was submitted that the Claimant was given notice in CEX6, the allegations were set in the notice, and the HRM stipulated the right to have a person of one's choice at a disciplinary hearing. It was also submitted that the Respondent's witness testified that the Claimant refused to pick a copy of the investigation report. It was submitted that the HRM stipulated three working days to enable an employee to prepare a defence. It was submitted that three days was reasonable or sufficient time. The Claimant did not request to refresh his memory, was aware of all the facts, and was accorded a right of appeal. It was submitted that the Respondent followed due process, so the dismissal was fair and lawful.

Submissions in rejoinder

- [16] In rejoinder, Mr. Tindyebwa submitted that evidence of forgeries and negligence was never supplied to the Claimant. The investigation report was only produced in Court. Citing the Ebiju case, Counsel submitted that the dismissal without concrete evidence of the allegations raised by the Respondent did not justify the dismissal. It was submitted that the Claimant did not admit to forging cheques at the disciplinary hearing or in court. It was also submitted that the Claimant acknowledged a difference in Ms. Abonyo's signature from the system and was not consistently drawn to a guilt-silence, as the Respondent contended.
- [17] Regarding fair hearing, it was submitted that the notice did not spell out the rights as required and emphasized by the Court in the Ebiju case. The reliance on the rights spelled out in the HRM was impractical because there was no communication to the effect of the notice. In terms of reasonable time, it was submitted that the Claimant effectively had 48 hours to prepare a defence without details of the investigation report. The time needed to be more sufficient and reasonable.



The Decision of the Court on Issue 1

- [18] It is trite that the employer has an unfettered right to terminate or dismiss an employee, provided that procedure is followed¹. Following the Supreme Court's most apt dicta, the threshold for the lawfulness of dismissal is procedural and substantive fairness. In **Nicholas Mugisha v Equity Bank Ltd**² this Court followed the Supreme Courts dicta that substantive and procedural fairness are twin tenets. We shall therefore examine these bases.

Procedural fairness

- [19] Procedural fairness relates to the process and procedure leading to termination. In **Ogwal Jasper v Kampala Pharmaceutical Ltd**,³ we observed that procedural fairness is provided under **Section 66EA**. Under this provision, before deciding 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. The provision encapsulates the constitutional, sacrosanct, and non-derogable cornerstone of the justice system, the right to be heard or a fair hearing. The oft-cited case of **Ebiju James v Umeme Ltd**,⁴ has provided veritable guidance on the point. In that case, Musoke J(as she then was) held:

"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 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 or call 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 issues of the defendant."*

¹ Per Mangutsya JSC(as he then was) in **Hilda Musinguzi Vs Stanbic Bank (U) Ltd SCCA 05/2016**. His Lordship held; "... 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..."

² LDR 281 of 2021

³ LDR 035 of 2021

⁴ H.C.C.S No. 0133 of 2012

[20] The threshold is clear and straightforward. There must be a notice in writing, which allows for sufficient time to prepare a defence, sets out the allegations leveled against the employee, his rights at the hearing, the right to respond, to be accompanied, to cross-examine, to produce witnesses, to appear and present their case before an impartial committee. This is the golden standard of procedural fairness. And it is against this standard that any invitation, notice, or letter to attend before disciplinary proceedings is to be judged. For this purpose, we must employ the full text of Mr. Kabagambe's invitation, which was common to both parties and admitted in evidence as CEX6. It reads:

" INTERNAL MEMORANDUM

FROM: HEAD HUMAN RESOURCES
TO: KABAGAMBE ROGERS
DATE: JULY 5TH 2019

RE: NOTIFICATION TO ATTEND DISCIPLINARY HEARING

It has been alleged that you falsified vouchers to obtain money irregularly, and it was not used for the intended purpose.

In view of the above you are requested to attend the disciplinary hearing on 11/07/2019 at 1:45pm in the Bank board room. Please prepare your defense in respect of the above. Looking forward to your usual co-operation

Judy Kikonyogo
HEAD HUMAN RESOURCE "

[21] What can be drawn from this notice is the following:

- (i) it notified the Claimant of a disciplinary hearing.
- (ii) it stated the allegations of falsification of vouchers to obtain money irregularly which money was not used for the intended purpose
- (iii) it stated the date and time of the hearing and
- (iv) asked the Claimant to prepare his defence.

From our very plain reading of the notice, that is all that notice did. For brevity and in keeping with the dicta in the Ebiju case cited above, it would be helpful to point out what the notice did not do. In our view, the notice did not do any of the following:

- (i) It did not state the right to cross-examine witnesses or bring any witnesses and
- (ii) it did not state any of the rights of the claimant to attend with a person of his choice

[22] Counsel for the Respondent submitted that the Claimant had notice by CEX6. Counsel for the Claimant, submitted that the notice did not set out particulars of the allegations of falsification of vouchers, there were no numbers and dates of vouchers, no sums or amounts of money irregularly obtained or misused.

[23] The Human Resource Manual (HRM) stipulated that the Claimant had a right to be accompanied by another person of his choice to a disciplinary hearing. The HRM was admitted as REX5. This right was spelled out in Clause 12.3.4(a). It reads that before an employer decides to dismiss an employee on the grounds of misconduct or poor performance, it shall explain to the employee, in a language that may reasonably be understood, the reason for which the employer is considering dismissal and the employee is entitled to have another person of their choice present during that explanation. We note that the wording in this provision mirrors the legislative enactment contained in **Section 66 (1) EA**, which is commendable of the Respondent's Human Resource Department. And indeed, there was an attempt by the Respondent to ensure compliance and due process. However, the Courts sit to interrogate compliance to ensure that procedure was observed. Mr. Tindyebwa submitted that this was impractical because the Claimant could not be assumed to have known that the rights at the hearing were in the HRM. We agree with Mr. Tindyebwa that the argument that employee rights were in the HRM is impractical, but not for the reasons he suggests. In our view, the holding by Musoke J. (*as she then was*) in the Ebiju case is clear. Her Lordship holds;

"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 or call witnesses of his own."

The emphasis is that the notice itself should state the rights to the hearing. It is insufficient to suggest that the rights reside in the HRM or elsewhere. The right to respond, be accompanied, cross-examine, and call witnesses must be contained in the notice itself. Applying this dictum to the notice of invitation, which was admitted as CEX6, we find that it did not state these rights directly or by reference to the HRM. This rendered the notice deficient, for which we would conclude that the hearing was unfair. In this conclusion, we are fortified by the Industrial Court dicta in the case of **Douglas**

Lukwago v Uganda Registration Services Bureau⁵. In this case, the Court faulted a disciplinary process for not permitting the employer to attend with a person of their choice.

[24] The second difficulty is that the investigation report was not attached to the notice nor produced at the hearing or before this Court. Mr. Bakayana submitted that the Respondent's witness testified that the investigation report was available to the Claimant, who did not pick it up. In the *Douglas Lukwago*,⁶ the Respondent's letter directing the claimant to show cause why his employment should not be terminated did not indicate that the IGG's report had been availed to him for his consideration before the hearing. The Industrial Court observed that it is well-settled that where the termination of an employee is based on an investigation, principles of natural justice dictate that the employee in issue must be given the report before the disciplinary hearing to enable them to respond to its findings. The Court held the omission to be a breach of the principles of natural justice and declared the hearing unfair.

[25] Applying this dicta to the matter now before us, the invitation letter (CEX 6) does not make mention of the existence of an audit report. It was the Respondent's case that the audit team complied with a report of its findings and recommended disciplinary action. On this basis, the Claimant was invited to attend a disciplinary hearing. However, the invitation notice did not include a copy of the audit report, nor did it invite the Claimant to collect a copy of the report for his consideration. In these circumstances, we would consider the Respondent's omission to attach a copy of the report to erode the Claimant's right to a fair hearing. It deprived the Claimant of an opportunity for self-exculpation. Thus, in keeping with our dicta in the *Nicholas Mugisha* case, these procedural irregularities render the dismissal unfair. This view is also fortified by the dictum of the Court of Appeal in the case of **Uganda Breweries Ltd v Robert Kigula and 4 Others**⁷ where a failure to comply with procedural fairness irrespective of substantive fairness makes the employer liable to pay four weeks' wages. In our view, the procedural requirements are strict.

Substantive Fairness

[26] Substantive fairness relates to the reason for dismissal and proof of the reason for termination. Under **Section 68 EA**, an employer is required to prove the reason for termination. **Section 68(2) EA** provides that the reason or reasons for dismissal shall be matters that the employer genuinely believed existed at the time of dismissal. We

⁵ Labour Dispute No. 057 of 2016

⁶ Ibid

⁷ C.A.C.A 183 of 2016

derive that the onus to justify a dismissal lies with the employer, and the threshold is that the employer genuinely believed the matters to exist.

- [27] Mr. Bakayana made a point of the existence of a reason for dismissal. In his words, the Respondent had overwhelming reasons to justify the dismissal. The Claimant was dismissed on these grounds. The provision of **Section 68(2) EA** has the expression matters that the employer **genuinely believed** to exist as the basis for dismissal. In **Uganda Breweries Ltd v Robert Kigula and 4 Others**⁸ the Court of Appeal holds that substantive fairness requires the employer to show that the employee had repudiated the contract or any of its essential conditions to warrant summary dismissal. Gross and fundamental misconduct must be verified for summary dismissal. Mere allegations do not suffice. The allegations must be provable to a reasonable standard. We derive from this a meaning that a hearing must be held to prove the existence of the grounds that the employer genuinely believes to exist. In other words, a hearing is mandatory.
- [28] In the case before us, the Respondent tendered into evidence minutes of the disciplinary hearing. These were admitted as REX3. We are satisfied that the Respondent held a disciplinary hearing on 11th day of July 2019 from the record of the said proceedings.
- [29] The other qualification on proof of the reason for termination is enhanced under **Section 69(3) EA**. In that section, it is provided that a dismissal shall be justified where the employee has, by his conduct, indicated that he or she has fundamentally broken his or her obligations under the service contract. The fundamental breach of a contract of service merits a short comment before returning to substantive fairness. The employment relationship is based on mutual trust and confidence. The relationship imposes rights, duties, and obligations on both parties. The Industrial Court has observed that it is the duty of the employee to personally perform the work given, to exercise a responsibility 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. A breach of these duties erodes the confidence and trust upon which the employment contract is anchored.
- [30] Returning to proof of the reason for termination, in the case of **Airtel Uganda Ltd v Peter Katongole**⁹, this Court extracted a passage by Lord Evershed in **Laws v London Chronicle Ltd CA 1959**¹⁰, cited in Labour Dispute Reference No. 6/2018 **Kanyonga Sarah v Lively Minds Uganda**. The passage reads thus:

⁸ C.A.C.A 183 of 2016

⁹ Labour Dispute Appeal No. 13 of 2022

¹⁰ [1959] 1 WLR 698

"... 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. Therefore, 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."

- [31] In the case before us, Counsel for the Respondent submitted that there were several operational lapses and commissioned an audit. The audit found that the Claimant had falsified payment vouchers to obtain money irregularly, which was not used for its intended purpose, and there was a forgery of receipts from doubtful sources for accountabilities. On this basis, the Respondent commenced a disciplinary hearing which confirmed these findings and recommended dismissal. The minutes of the disciplinary hearing were admitted as REX3. Under Min 6/HRM/11/07/19, it was recorded as follows:

MIN. 6/HRM/11/07/19: Kabagambe Rogers

Kabagambe joined the bank in 2014 as a Banking Officer; He was later promoted as Mobile Supervisor Lira branch.

In 2018 Kabagambe was given a warning letter for failing to carry out his supervisory role which led to operational lapses in the mobile unit of Lira branch.

Following issuance of the investigation report by the Auditors, it was established that 1,500,000/= was purportedly paid to Abonyo Jackie and 2,500,000/= was paid to Oming Ronald both temporary staff. However these temporary staff denied having received this money and also said that at the time they had not been contacted by the bank.

It was also established that the money paid to the security officers was tampered with since the acknowledgment receipts lacked serial numbers and they had different sizes.

Kabagambe acknowledged the inconsistencies in the receipts and the difference in the signatures of Abonyo Jackie when he compared it with what was in the

system.

He further stated that the irregularities in the receipts and accountabilities was because some of the money was given back to Wanyama Alex through mobile money and some was physically given to him.

Against this background he was invited to attend a disciplinary hearing.

Allegations against Kabagambe:

It was alleged that he used falsified documents to obtain money irregularly and the money was not used for the intended purposes.

Kabagambe's response to the allegations:

When he was asked if he knew why he was before the disciplinary committee, he told the committee that he was aware since he received a letter inviting him for the hearing.

When he was asked what his role was as a Mobile Supervisor he told the committee it involved growing customer base, improve staff productivity and ensure cash liquidity of the more mobile unit.

When he was asked who engages staff to do activities in the mobile unit, he told the committee that they are sent by Head office.

When he was asked if he knows Abonyo Jackie and Oming Ronald, he told the committee that he knows them and they came to the branch as interns and currently Oming was absorbed into the mainstream of the bank.

When he was asked about the 500,000/= that was signed for by Abonyo which she denies that she did not take, he told the committee that the money could have been put on their accounts.

When he was asked how he receives the money when he is in the field he told the committee that he comes back to the branch and picks the money.

When he was asked who received Abonyo and Oming's money he told the committee that they may not have received the money or signed for it since they are students but added that the documents could have gotten lost following the change of location of the branch.

He further told the committee that their colleagues could have received the money on their behalf since they left early due to begin school since they were still studying. However, Abonyo and Oming denied having received the money.

When he was asked if someone could be in the field and they are not paid he said that everyone in the field is paid.

When he was asked about the money that was transferred to them by mobile money, he told the committee that it was money meant to hire tables and chairs, however some camps did not need to hire the tables and hire chairs so that money was sent to Wanyama.

When he was asked how he accounts for that money that he gives to Wanyama he told the committee that he would forge accountability which he would present after the exercise.

Committee observations:

The committee observed that he accepted forging accountabilities in order to account for the money he gave allegedly to Wanyama.

The committee observed that he acknowledged that different people signed for the money and not necessarily those in the field.

Committee Recommendations:

- 1. The committee recommended that he should be dismissed from the service of the bank since he aided financial loss and forged accountability to account for the money that was given to Wanyama.*

[32] Mr. Tindeyebwa contested the accuracy of these minutes. He submitted that there was no concrete evidence adduced in relation to the allegations raised by the Respondent and hence there was no justification for the dismissal. Mr. Bakayana's position was that the Claimant accepted that the receipts had been forged. He held the view that there were overwhelming reasons to justify the dismissal.

[33] The standard of proof in a disciplinary hearing has been held to be different from a trial before a Court. It is not a criminal trial for proof beyond reasonable doubt, nor upon the standard of proof in civil cases. It is not that the balance is akin to a civil trial before a

court of law but on some reasonable grounds.¹¹ It is that the allegations must be proven to a reasonable standard. From the minutes, there were matters of admission by the Claimant. In the cases of **Kabojja International School v Godfrey Oyesigire** and **Bureau Veritas Uganda Ltd v Dalvin Kamugisha**,¹² in response to allegations of misconduct, the Respondents (employees) made written admissions of wrongdoing. In both cases, the Industrial Court considered the admissions to have vitiated the need for an oral hearing. The dismissals were held to be justified.

[34] The allegations were put before the Claimant in the matter before us, and he offered answers. While Mr. Tindeyebwa refuted the admissions in his submissions, the Respondent was, in our view, entitled to genuinely believe that the Claimant was culpable for false accountability and irregular payment. Mr. Bakayana made a point of the existence of a reason for dismissal. In his words, the Respondent had overwhelming reasons to justify the dismissal. In our view, the series of questions put to the Claimant were to elicit his responses, after which the disciplinary committee made its observations. The Committee was therefore entitled to reach its conclusions and advise management on its findings. The Respondent's management then decided to dismiss the Claimant. In our view, the Respondent was entitled to hold a genuine belief that the Claimant was responsible for falsifying accountabilities and subjected the Claimant to a hearing to determine the allegations. The substantive fairness test would have been met in the circumstances of this case. There were grounded and not whimsical. We would hold the Claimant's dismissal to be substantively justifiable.

[35] What would be the sum effect of a finding of procedural unfairness and substantive fairness? In the case of Nicholas Mugisha (*op cit*), this Court held these to be twin tenets. We held

"To ensure substantive fairness, the employer must maintain procedural fairness and vice versa. In other words, for a summary dismissal to be justified, there must be both procedural and substantive fairness. The absence of one or the other would render the dismissal unjustified and, therefore, unlawful."

[36] We believe the Respondent could only prove substantive fairness by being procedurally fair. As stated by Musoke J. (*as she then was*) in **Uganda Breweries Ltd v Robert Kigula and 4 Others**¹³ where a failure to comply with procedural fairness, irrespective of whether the summary dismissal was justified or not, makes the employer liable to pay four weeks wages. From this dictum, a dismissal, however substantively justified, is unfair and unlawful for procedural defects. Put otherwise, the Court will interfere with

¹¹ Uganda Breweries Ltd vs Robert Kigula (*supra*)

¹² LDA 25 of 2017

¹³ C.A.C.A 183 of 2016

the employer's unfettered right to termination of employment if it is found that the employer did not follow procedure.

- [37] For the preceding reasons and after reviewing the evidence, the applicable law, and the submissions advanced on behalf of the parties; we find that while the Respondent genuinely believed that it had overwhelming reasons to dismiss the Claimant and was substantively fair, it was not procedurally fair in the conduct of the disciplinary process. As we have ruled that procedural and substantive fairness are twin tenets, we would find that the Claimant was unfairly and unlawfully dismissed from the Respondent's service. Issue number one would be answered in the affirmative.

Issue II. What remedies are available to the parties?

- [38] Having found, as we have on issue 1 above, the Claimant would be entitled to remedies as below.

Declarations

- [39] We declare that the Claimant was unfairly and unlawfully dismissed from his employment with the Respondent.

Certificate of service

- [40] Under **Section 61 EA**, a certificate of service shall be issued if so requested by the employee. We direct that the Respondent to issue a certificate of service within 21 days from the date hereof.

Payment for lack of a fair hearing

- [41] Under **Section 66(4) EA**, it is provided that irrespective of whether any dismissal which is a summary dismissal is justified, or whether the dismissal of the employee is fair, an employer who fails to comply with the requirement for hearing is liable to pay the employee four weeks' pay. According to the appointment letter which was admitted in evidence as "CEXH1", the Claimant earned UGX 12,075,000 per annum. Both the confirmation letter CEXH 2 and the promotion letter CEX3 did not provide evidence of salary increment. Mr. Tindeyba was contending for UGX 5,000,000/=. We do not find foundation for this sum in the evidence before this Court. On the basis of "CEXH1, we award the Claimant four weeks net pay in the sum of **UGX 1,006,250/=**.

Severance Allowance

- [42] Under **Section 87(a) EA**, an unfairly dismissed employee is entitled to severance allowance. Having found that the claimant was unfairly dismissed, he would be entitled to severance pay. We also adopt this Court's reasoning in **Donna Kamuli v DFCU Bank Ltd**¹⁴ that the Claimant's calculation of severance shall be at the rate of his monthly pay for each year worked. The Claimant was employed on 6th of April 2014 and dismissed on 23rd of August 2019. This was a period of 5 years and 6 months. Based on his earnings, we award the sum of **UGX 5,534,380/=** as severance allowance.

Payment in lieu of notice of termination

- [43] Under **Section 58 EA**, payment in lieu of notice is provided for. Counsel for the Claimant sought payment of UGX 5,000,000/= arguing that the Claimant had worked for 5 years and was unfairly and wrongfully dismissed. We have found that the claimant was unfairly and unlawfully dismissed. He had worked for five years and 6 months. **Section 58(3)(b)EA** provides for notice of not less than one month where an employee has served for more than 12 months but less than 5 years. Accordingly, we award the sum of **UGX 1,006,250/=**.

General Damages

- [44] Mr. Tindeyebwa was contending for UGX 720,000,000/= in general damages. Counsel argued that the Claimant had lost his job and the ability to care for his family. He was on a permanent contract. Counsel for the Respondent had countered on the authority of **Stroms v Hutchinson (1905) A.C 515** that the Claimant had suffered no damage and was not entitled to any damages. Having found that the Claimant was unfairly and unlawfully dismissed, he would be entitled to damages. We note that Counsel for the Claimant did not lay fertile ground for his proposition for damages. He simply threw the figure of **UGX 720,000,000** at the Court in the hope that the headwinds might drift the Court in a general direction of an award of general damages in that sum. That is not to be the case. There have been juridical and jurisprudential guides.
- [45] 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 of¹⁵. In **Stanbic Bank (U) Ltd v Constant Okou**¹⁶ Madrama, JJA (*as he then was*) 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

¹⁴ See also DFCU Bank Ltd vs Donna Kamuli C.A.C.A No 121 of 2016.

¹⁵ Stroms v Hutchinson [1950] A.C 515

¹⁶ Civil Appeal No. 60 of 2020

employability, how the services were terminated, and the inconvenience and uncertainty of future employment prospects. On quantum of damages in **Donna Kamuli v DFCU Bank Ltd**¹⁷ the Industrial Court considered the earnings of the Claimant, the age, the position of responsibility, and the duration of the contract. In the case now before us, our assessment, the Claimant was earning **UGX 1,006,250/=** per month and had worked for the Respondent for 5 years and 6 months. He was on permanent terms and had been confirmed. He led evidence of good performance. We are minded also that the Respondent had justifiable reason for dismissing the Claimant. This has the effect of diminution of the quantum of general damages. Considering all circumstances and the Claimant's employability, we determine that based on his monthly salary, the sum of **UGX 6,037,000/=** as general damages will suffice.

Repatriation

[46] Under **Section 39 EA** an employee who is recruited at a place which is more than 100 kilometers from the workplace is entitled to repatriation on termination of the contract by order of Court. According to CEXH 1, the Claimant's address at the time of recruitment was C/O Gulu Unity School, P.O. Box 465 Gulu. In paragraph 3 of his witness statement, he testified that he was recruited from Crane Bank, Gulu Branch and posted to Lamwo Sub-Branch. In his staff declaration form which was admitted in evidence, he indicated his permanent home address as Mubende. In his submissions, he prayed for **UGX 5,000,000/=** as repatriation from Lira to Kampala. In the exercise of this Court's discretion, we direct the Respondent to pay the Claimant the sum of **UGX 3,000,000/=** as repatriation to his home district in Mubende.

Interest

[47] The Claimant sought interest on the sums above at Court rate from the date of Judgment until payment in full. This prayer is granted. The sums in paragraphs 41 to 46 above shall attract interest at Court rate of 6 % per annum from the date of judgment until payment in full.

Final orders

[48] In the final analysis, we make the following orders.

- (i) We declare that the Claimant was unfairly dismissed from the Respondent's service.
- (ii) The Respondent shall issue a certificate of service within 21 days from the date hereof.

¹⁷ LDC No. 002 of 2015

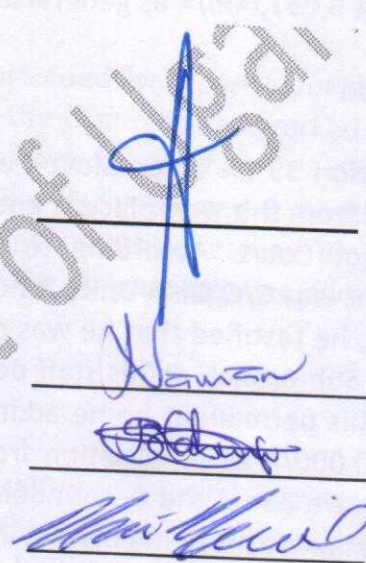
- (iii) The Respondent is ordered to pay the Claimant the following sums:
- UGX 1,006,250/= as basic compensation for lack of a fair hearing,
 - UGX 5,534,380/= as severance pay,
 - UGX 1,006,250/= as payment in lieu of notice,
 - UGX 6,037,000/= as general damages,
 - UGX 3,000,000/= as repatriation,
 - The sums above shall carry interest at 6% p.a. from the date of this award until payment in full.
- (iv) There shall be no order as to costs.

It is so ordered this 16th day of August 2023.

Anthony Wabwire Musana,
Judge, Industrial Court

THE PANELISTS AGREE:

- Hon. Adrine Namara,
- Hon. Susan Nabirye &
- Hon. Michael Matovu.



Award delivered in open Court on the 16th day of August 2023 at 10.22 a.m in the fore/noon in the presence of:

- For the Claimant, **Mr. Festo Tindyebwa**
- The Respondent is absent.

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

Anthony Wabwire Musana,
Judge, Industrial Court

