



THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE NO. 207 OF 2017
(Arising from Labour Dispute Complaint No. 496/2017)

KASENGE GEOFFREY OSCAR.....**CLAIMANT**

VERSUS

ST. AUGUSTINE MONTESSORI SCHOOL LTD.....**RESPONDENT**

BEFORE:

The Hon. Mr. Justice Anthony Wabwire Musana,

PANELISTS:

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

REPRESENTATION:

1. Mr. Jonathan Elotu of M/S Lugoloobi Associated Advocates for the Claimant
2. Mr. Moses Masiko of M/S Ortus Advocates for the Respondent.

AWARD

Introduction

- [1] On 1st January 2012, Mr. Oscar Geoffrey Kasenge was employed as a mathematics and science teacher at the Respondent School. In April 2017, the Respondent re-interviewed all its employees. On the 20th day of April 2017, the Claimant was terminated. He was paid one month's pay in lieu of notice. In his claim before this Court, he sought a declaration that he was wrongfully and unlawfully summarily dismissed from employment. The Respondent opposed the claim contending that the Claimant failed an interview, did not have the required qualifications, was not

registered with the Ministry of Education, and had used forged academic documents to secure the job with the Respondent. The Respondent contended that it invited the Claimant to a disciplinary meeting, but he failed to attend. The meeting resolved to dismiss the Claimant summarily.

- [2] At the scheduling conference held on the 7th of October 2022, two issues were framed for determination, namely:
- (i) Whether the Claimant was wrongfully terminated from his employment?
 - (ii) What remedies are available to the parties?

The Proceedings and evidence of the parties

- [3] The parties called one witness each, and Counsel were invited to address Court through written submissions.

The Claimant's Evidence

- [4] The Claimant testified that he was employed as a teacher with the Respondent in 2012 at a gross salary of UGX 650,000/= . He served on an annual basis. In 2014, the school management changed. He was re-interviewed and passed. He testified that he was never given a copy of his employment contracts. In 2017, fresh interviews were conducted on the pretext of a salary enhancement exercise following pressure from staff for improved remuneration. He testified that he participated in the peaceful agitation for better salaries and that this greatly angered the Respondent's management. On 21st April 2017, he was asked to pick the interview results. On 24th April 2017, he received a letter of termination dated the 20th of April 2017. The letter did not give any reasons for termination, and he was not given a hearing before termination. He also testified that he was shocked to learn that the Respondent had not remitted his Social Security Contributions for some months of 2012, 2013 and 2014 and from 2015 to 2017. His requests for payment of his terminal dues were ignored. He testified that he had suffered loss, was destitute, in anguish, and had difficulty finding alternative employment.
- [5] In cross-examination, he confirmed that he signed the employment contract as KASENGE GEOFFREY OSCAR. He also confirmed that he was employed based on his qualifications as a primary school teacher. He was shown CEXH 6, CEXH13, CEXH 14, and CEXH 15, which were academic certificates bearing the name NANKYAMA BAZIRIO. He confirmed that he had not signed a document changing his name. He

confirmed that there was no evidence of his asking for a salary increment. He was shown CEXH4, an NSSF Contribution Statement, which bore the name Geoffrey Oscar Kasenge.

- [6] In re-examination, he clarified that his full name is KASENGE GEOFFREY OSCAR. He had attended five separate interviews at the Respondent School. He changed his name by statutory declaration before a magistrate. He clarified that he showed the statutory declaration to the Respondent's officers, and they did not question it.

The Respondent's evidence

- [7] Mr. Ssekandi Gonzaga Kironde testified on behalf of the Respondent as Acting Human Resources Manager. His evidence was that the Claimant was employed because he had genuine qualifications. That the Respondent received complaints from students, teachers, and parents about the Claimant's incompetence. During a reinterview, it was found that the Claimant did not have the required qualifications and was not registered with the Ministry of Education and Sports. It was discovered that he had academic documents in the name of NANKYAMA BAZIRIO and did not have a deed poll for a name change. On 17th April 2017, he was invited to a disciplinary hearing but did not attend. The meeting was held on 20th April 2017, and it resolved to terminate the Claimant. When the Claimant returned to school on the 24th of April 2017, he was informed of the meeting resolutions and given a termination letter.
- [8] Under cross-examination, he testified that he did not attend the disciplinary hearing. He looked at the report of the Committee. He was shown REX 1, the unsigned draft report of interviews held on 12th April 2017. He confirmed that he did not see the invitation letter to the disciplinary hearing. He also did not see a police report about the Claimant's forgery of academic documents or any information from the Ministry of Education and Sports indicating that the Claimant was not a registered teacher. His evidence was that the educational documents on the Claimant's file spoke for themselves. He did not find complaints from teachers or pupils about the Claimant's abilities. He also testified that he did not know anyone named Nankyama Bazirio. He confirmed that the Director signed the dismissal letters. He also clarified that he would be surprised if the Claimant were terminated after the interview without a hearing. When shown CEXH5, he noted that the reason for termination was that the Claimant's services would no longer be needed. He did not see anything in the letter about academic documents and did not consider this process a sham.



- [9] In re-examination, he testified that CEX5 gave a notice of termination. It was his evidence that an employer could give one month's pay in lieu of notice. He did not know Nankyama Bazirio because the Respondent did not employ anybody by that name. The respondent had employed Kasenge Geoffrey Oscar. According to the notes on the file, a disciplinary hearing took place.

Analysis and Decision of the Court.

In our view, wrongful termination or dismissal remains a common law action. The Employment Act supplants the common law action with action for unlawful/unfair termination and unlawful dismissal¹. In that regard, issue No. 1 would be rephrased to:

Issue 1. Whether the Claimant was unfairly terminated from his employment?

Submissions of the Claimant

- [10] Mr. Jonathan Elotu, appearing for the Claimant, submitted that the Claimant was unfairly and unlawfully terminated. Citing **Florence Mufumba vs Uganda Development Bank LDC 138 of 2014** and **Section 68 of the Employment Act 2006**(from now EA), there was no reason or justification for the Claimant's termination. Counsel also cited **Hilda Musinguzi v Stanbic Bank U Ltd SCCA 05 of 2016** in support of the proposition that an employer is permitted to terminate an employee so long as the procedure is followed. If not, the employee would be entitled to compensation. Counsel submitted that the Claimant was not given an opportunity to be heard. He had worked for six years before termination. Counsel contended that in April 2017, the Claimant agitated against low pay, which is why he was dismissed. Counsel suggested that the minutes (REX7) were not dated nor signed. It was submitted that there was no report from the Ministry of Education and Sports regarding the Claimant's qualification or a report from the Uganda Police on the forgery of documents. Counsel invited Court to consider CEX 19 and CEX 3, which bear the photographs of the Claimant as Nankyama Bazirio and Kasenge Geoffrey Oscar. Further, CEX10 was a statutory declaration that explains the disparity in the Claimant's name. Counsel concluded that the termination letter was signed by the same persons who constituted the interview panel and terminated the Claimant without a fair hearing.

Submissions of the Respondent

- [11] Mr. Amos Masiko, appearing for the Respondent, submitted that the Claimant sought academic qualifications through the Court. He was employed under the

¹ See section 65, 66, 68, 71 and 73 of the Employment Act.

belief that he was qualified. Upon a verification process, it was found that he did not have the requisite academic qualifications. He was paid terminal benefits of one month's salary and terminated. It was submitted that the termination was lawful. Counsel cited the Hilda Musinguzi case in support of an employer's unfettered right to terminate the employee. It was also the Respondent's case that the termination was procedurally lawful. Counsel cited **Section 65(1)(a)EA** for termination with notice and **Section 58(3) (b)** for the grant of one month's pay in lieu of notice. Citing **Bank of Uganda v Betty Tinkamanyire SCCA No. 12 of 2007**, Counsel submitted that payment in lieu of notice was sufficient at law.

- [12] It was also submitted that the Claimant had fundamentally breached his employment contract under **Section 69(3) EA** entitling the Respondent not to continue to be bound by the employment contract. Counsel cited the **Kabojja International School v Oyesigye Godfrey LDA 3 of 2015**, where the Industrial Court found late reporting by a school teacher to amount to a fundamental breach of the employment contract. It was submitted that the Claimant was found not to have the necessary academic qualifications. Regarding the disparity of names, the Respondent submitted the statutory declaration, which was admitted as CEX10 was of no effect because it was not registered with the Registrar of Documents, attempted to change names, and was signed on the 1st of January 2013 while the contract of employment was executed on 16th August 2012 in the name of Kasenge Geoffrey Oscar. Counsel cited the case of **Achola Catherine Asupelem v Electoral Commission, Election Petition No. 2 of 2018**, for the proposition that a statutory declaration does not effect a change of names. That this reason was explained to the Claimant at his termination. Counsel cited the case of **Bank of Uganda v Joseph Kibuuka & 4 others C.A.C.A No. 281 of 2016** for the proposition that an employer is entitled to terminate an employment relationship without notice a reason by either giving notice or paying in lieu of notice.

Submissions in rejoinder

- [13] In rejoinder, Mr. Elotu distinguished the Kabojja case. Counsel submitted that there was no evidence of the Claimant's alleged growing incompetence. The evidence of RW1 was essentially hearsay. The inadvertence in following the procedure on change of name can be rectified and did not change the Claimant's identity. The Claimant showed the interview panel his statutory declaration, and they were satisfied. It was submitted that when the statutory declaration was made in 2012, no law required the Claimant to make a deed poll. The Stamp Duty Act, 2014, was assented to in 2014, two years after the Claimant made his statutory declaration. The Statutory Declarations Act Cap. 22 only requires the registration

of documents sworn outside Uganda. Counsel submitted that the Claimant did not change his name but was only taking on names that he previously had. At the same time, the Respondent concluded that the Claimant did not have requisite qualifications but did not go through the proper procedure in dismissing the Claimant. He was not given a fair hearing, and there was no evidence of the allegations against him. Counsel concluded that the Respondent was unlawfully terminated.

Resolution of Issue No. 1

- [14] The Claimant's case is that he was unfairly terminated. He was not given a fair hearing, and the reason for his termination, lack of requisite qualifications, and forgery of documents were not substantiated. The Respondent counters that it was entitled to terminate by payment of notice and that the Claimant had fundamentally broken his employment contract.
- [15] The termination letter was exhibited as CEXH 5. For a fuller appreciation of the circumstances of termination, we have employed the complete text, and it reads as follows:

*April 20, 2017
Mr/Ms. Oscar Kasenge*

Dear Sir/Madam

RE: TERMINATION OF YOUR SERVICES

Greetings.

*I am writing to inform you that with effect from the 1st May 2017 your services with Saint Augustine Montessori School will no longer be needed. Please arrange to hand over all the all school property in your possession to your immediate supervisor, to enable us process your terminal benefits that is equivalent to **one month's pay in lieu of this notice.***

Let me take this opportunity to thank you for your contribution to the development of our school and wish you the best of luck in your new endeavours.

Yours sincerely,

Chairman, Interview Panel.



From this letter, it is discernible that the Respondent brought the Claimant's employment to an end by termination with notice. The Respondent justified this by paying the Claimant one month in lieu of notice.

- [16] 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**. Specifically, the law applicable in the circumstances of termination with notice is spelt out in **Section 65EA**. Under **Section 65(1)EA**, termination shall be deemed to take place when the employer ends a contract of service with notice. In the present case, the Claimant was terminated without notice, albeit the Respondent elected to pay one month's notice, taking into account the period of service of the Claimant. Mr. Elotu submitted that an employer has the unfettered right to terminate but must follow procedure. Mr. Masiko countered that the employer's unfettered right to terminate might be without reason by giving notice or paying in lieu of notice. Counsel, therefore, agree that an employer has an unfettered right to terminate a contract, and this is an accurate statement of the law as per the Hilda Musinguzi case and other authorities on the point. In the case of **Nicholas Mugisha v Equity Bank Uganda Ltd²**, this Court surmised that a lawful termination consists of procedural and substantive fairness. We cited the case **Ogwal Jasper v Kampala Pharmaceutical Ltd** where we laid a threshold for lawful termination as follows:

- (i) A test of procedural fairness which relates to the process and procedure leading to termination and;
- (ii) A test of substantive fairness which relates to the reason for termination.

The above decision is consistent with jurisprudence on termination of employment contracts. In the Hilda Musinguzi (supra) case, the Supreme Court of Uganda held that an employer's unfettered right to terminate a contract of employment was subject to procedural fairness. This dictum, is repeated in the case of **Bank of Uganda v Joseph Kibuuka & 4 Ors C.A.C.A No 281 of 2016**, where the Appellant Bank was found to have flouted its procedural requirements for early retirement. The settled position of the law, therefore is that adherence to procedural requirements is mandatory.

- [17] Regarding termination with notice, there is, however, some variance in the decisions of the Court of Appeal on this point. In the **Bank of Uganda v Kibuuka** case, the Court of Appeal held that the law on termination by the employer by notice to an employee is sufficient when payment in lieu of notice is made. In a

² LDR 281 of 2021

more recent Court of Appeal decision in **Stanbic Bank v Constant Okou**,³ the Court held that where an employer opts to terminate with notice, an employee must consent to payment in lieu of notice. The principle is that we would apply the latter case. In the matter before us, the termination letter states that the Respondent was exercising its unfettered right to terminate the employment contract by paying one month's salary in lieu of notice. Applying the dictum from the *Stanbic v Okou*, the Respondent did not seek the Claimant's consent to terminate him. These facts would be consistent with a finding of unfair termination for want of consent. In terms and to the extent of the termination letter, we would find the Respondent to be procedurally wrong and unfair. The termination would be unlawful, therefore.

- [18] The next aspect for consideration on procedural fairness would be whether the Claimant was accorded a fair hearing. The determination of this question is closely linked to the question of substantive fairness in that it relates to the reason for termination. It is for this reason that in the *Nicholas Mugisha v Equity Bank Case (Supra)*, we reasoned that substantive and procedural fairness are twin tenets. We stated that to ensure substantive fairness, the employer must maintain procedural fairness and vice versa. In the case before us, it was common to both parties that the Claimant was invited for interviews. The purpose of these interviews was ostensibly to consider salary enhancements. During the interviews, the Respondent's witness testified that the panel discovered discrepancies in the Claimant's documents. Mr. Gonzaga Sekandi also testified that there had been complaints from parents and teachers alike of the Claimant's incompetence. The panel, it was said, found that the Claimant could not answer basic mathematics and science questions. What is clear from this evidence is that the Claimant had been invited for salary enhancement interviews. The Respondent attempted to explain away the decision of the Respondent to terminate the contract on the grounds of incompetence or misconduct.
- [19] Under Section 66EA, 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 defence⁴. It was the Respondent's evidence that they received complaints from students, teachers, and parents about the Claimant's incompetence. They conducted a verification exercise to ensure that all teachers were qualified and met the Ministry of Education and Sports standards. The

³ Civil Appeal No. 60 of 2020

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

Respondent then scheduled interviews for all its teachers, notified them of the same, and invited them to come with their academic documents. Under cross-examination, Mr. Ssekandi Gonzaga conceded that there was no letter of invitation to attend a disciplinary hearing. What was scheduled was a verification process. Mr. Gonzaga conceded that he saw no complaints on the Claimant's file. In the Ebiju case (ibid), for the right to be heard, the Court required the following to be done:

- 1) Notice of allegations must be served sufficiently for the employee to prepare a defence.
- 2) 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.
- 3) The employee should be allowed to appear and present their case before an impartial committee in charge of disciplinary issues.

[20] To this Court's mind, the Claimant was invited to attend a verification meeting for all staff. It was not brought to the Claimant's attention that his competence had been questioned before the verification meeting. On finding discrepancies in his documentation, the panel did not comply with the tests in the Ebiju case. There was no evidence that the Claimant was informed of his misconduct and was granted time to prepare his defence. To this extent, we would find that the Respondent did not afford the Claimant a fair hearing. We must agree with Mr. Elotu's submission that the Claimant was unfairly terminated.

[21] Mr. Masiko's final argument was that the dismissal was justified because the Respondent discovered that the Claimant had fundamentally broken the contract of employment. The effect of this submission is to recharacterize the termination with notice into a summary dismissal. Admittedly, section 69EA makes use of the terms 'termination' and 'dismissal' interchangeably. In our view, the Respondent's justification of the termination on the grounds of fraud renders the severance of the Claimant's employment a dismissal and not a termination. In its memorandum in response, in paragraphs 6.9 to 6.20, the Respondent detailed the allegations of fraud and forgery on the part of the Claimant. In paragraph 6.20, the Respondent pleaded that the members resolved to terminate the Claimant for the illegal actions. Mr. Masiko submitted that summary dismissal is justified under Section 69 (3) EA. In the decision of this Court in **Nicholas Mugisha v Equity Bank (U) Ltd** (op

cit), we held that the Court must test whether the employer has proven that the employee has fundamentally broken the employment contract by interrogating the reason for dismissal. In the case of **Airtel Uganda Ltd v Peter Katongole**⁵, we extracted a passage by Lord Evershed in **Laws v London Chronicle Ltd CA 1959**⁶, cited in Labour Dispute Reference No. 6/2018 **Kanyonga Sarah v Lively Minds Uganda**. The extracted passage read as follows:

“... 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.”

- [22] The Respondent contends that the Claimant was fraudulent and forged academic documents. In the case of *Lubowa v Nssf (Supra)*, the Industrial Court held that a contract of employment might be vitiated by factors such as misrepresentation, mistake duress, undue influence, and illegality. Citing the case of **Walden v Barrance [1997]**,⁷ the employee in an employment contract is under an implied duty to exhibit honesty in his or her dealings with the employer. The employee is under the obligation to make full and frank disclosure of all material facts to the employer before the conclusion of the contract, which, if not done, could lead to the rescinding of the contract,
- [23] Under Section 68(1) EA, the employer must prove the reason or reasons for dismissal. The Respondent contended that the verification panel found the Claimant had disparities in his name. The academic certificates bore Nankmya Bazirio, while the Claimant was Kasenge Geoffrey Oscar. The Claimant testified that he was employed annually and interviewed frequently over the four years of his employment with the Respondent. The academic certificates, testimonials, and registration certificates which were exhibited as CEX 6, CEX 11, CEX 13, CEX 14, CEX 15, CEX 16, CEX 17, CEX 18, and CEX 19 bore the names Nankyama Bazirio. The employment contract dated the 1st of January 2013 executed between the Respondent and Claimant took the name Kasenge Geoffrey Oscar. It was submitted that the Claimant presented a statutory declaration in support of his

⁵ Labour Dispute Appeal No. 13 of 2022

⁶ [1959] 1 WLR 698

⁷ 5 NZELC(Digest) 98 433

change of name from BAZIRIO NANKYAMA to KASENGE GEOFFREY OSCAR. The statutory declaration was admitted as CEX 10. It was dated 16th August 2012. The Claimant was first employed by the Respondent in the year 2013. There needed to be an explanation of whether the Respondent had seen the academic testimonials when the Claimant joined its employment or during the subsequent years when the Claimant was subjected to annual interviews. It was submitted for the Respondent that the Claimant had failed to produce a deed poll, and CEX 10 needed to be registered with the Registrar of Documents. Mr. Elotu submitted that the law in force when the statutory declaration was made did not require the same to be registered as an instrument. That is quite correct. Under Section 6 of the Statutory Declarations Act, 2000, only declarations deponing to matters outside Uganda were required to be registered if intended to be used as evidence. The requirement for registration raised the evidentiary status of the document.

- [24] Mr. Masiko cited the case of Achola Catherine Osupelem v Electoral Commission⁸ in support of the proposition that a statutory declaration could not explain a change or addition of a name but would only be applicable in cases of a misspelling of names. Indeed, the statutory declaration itself raises several questions. It suggests that the Claimant intended to use his full name of NANKYAMA BAZIRIO KASENGE GEOFFREY OSCAR. However, it is signed off by KASENGE GEOFFREY OSCAR. It does not occur to the Claimant to make specific reference to each of his academic certificates and testimonials bearing the name NANKYAMA BAZIRIO. His paternal aunt, who named him NANKYAMA BAZIRIO, was not named, nor were his birth parents. The source of information about the discovery of the name KASENGE GEOFFREY OSCAR is not named. The statutory declaration does not sufficiently explain the discrepancies in the Claimant's name and academic credentials. This would enable the Respondent to justify the dismissal within the parameters of the provisions of S68 (2) EA if the Respondent genuinely believed a level of dishonesty on the part of the Claimant. The genuine belief could only be expressed and justified through a fair hearing.
- [25] As a result, we cannot conclude that the dismissal was justified because of and in addition to our finding in paragraph 22 above regarding the failure to conduct a fair hearing. In the case of **Uganda Breweries Ltd v Robert Kigula** (Supra), the Court of Appeal held that gross and fundamental misconduct must be verified for summary dismissal. Mere allegations do not suffice. Fraud is a conclusion of law whose standard of proof is above the balance of probabilities.⁹ To suggest that the Claimant was fraudulent or culpable for forgery demanded more industry of the Respondent. Under S68EA, a hearing to prove the reasons for dismissal is

⁸ Election Petition No. 002 of 2018

⁹ JWR Kazoora v MLS Rukuba (Civil Appeal No 13 of 1992) 1993 UGSC 2

mandatory. The sole annexure to the Respondent's witness statement were the unsigned minutes of a meeting held on 12th April 2017. The evidence of Mr. Ssekandi Gonzaga is that the meeting or disciplinary hearing was held on the 20th of April 2017. We do not find this to be a believable account. In this Court's decision in the Ogwal Jasper case (op cit), it was observed that the employer must demonstrate that the employee was guilty of misconduct.¹⁰ The failure to prove that there was a fair hearing at which the allegations of fraud and forgery were put to the Claimant and that he had ample opportunity to present his case fall below the standard in the Ebiju case (supra). In the result, we find that the Respondent was not substantively fair. The dismissal would not be justified.

- [26] In all, the Claimant's termination was not by established procedure. It was also substantially unfair. Issue 1 will be answered in the affirmative. We declare that the Claimant was unlawfully terminated from employment.

Issue II. What remedies are available to the parties?

- [27] Mr. Elotu was contending for punitive damages of UGX 70,000,000/= owing to the termination with impunity. He cited the case of **El Termerwy v Awdi & Others H.C.C.S No. 95 of 2012**. In that case, the Plaintiff was brought into Uganda to work for the Defendants but was subjected to inhuman working conditions. He sought to be declared a trafficked person within the Prevention of Trafficking in Persons Act 2009. The Court found that punitive damages were awardable for tort and not a breach of contract and with restraint as punishment ought to be restricted to criminal and not civil cases. In the case of **DFCU Bank Ltd v Donna Kamuli**¹¹ the Court of Appeal held that punitive damages can be awarded in employment disputes but with restraint and in exceptional cases because punishment, ought, as much as possible to be confined to criminal cases and not the civil law or tort and contract. In keeping with the dicta of the Court of Appeal and on the facts before us, we are not persuaded that the Claimant has made a case for an award of punitive damages, and we decline to award the same.

General Damages

- [28] Mr. Elotu was contending for UGX 46,800,000/= in general damages. Counsel premised this prayer inconvenience, mental torture, and emotional distress suffered by the Claimant when he lost his job. The Respondent countered that damages are only awardable to rectify wrongdoing. That is partially correct. The law is that general damages are those damages such as the law will presume to be

¹⁰ Uganda Breweries Ltd vs Robert Kigula (supra) The hearing is akin to a civil trial before a court of law but on some reasonable grounds.

¹¹ C.A.C.A No. 121 of 2016

the direct natural consequence of the action complained of¹². 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.¹³ In the case of **Donna Kamuli v DFCU**¹⁴ 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 **Olweny v Equity Bank (U) Limited**,¹⁵ the Claimant was earning UGX 850,000/= as a credit officer and had worked for about 1.5 years. The Court awarded him UGX 15,000,000/= in general damages. In **Matovu and 4 others v Stanbic Bank Uganda**,¹⁶ the Claimant earned UGX 930,000/=, worked for one year, and was awarded UGX 10,000,000 in damages. We consider that the Claimant is entitled to general damages. He had worked for the Respondent for about four years, and his appointment was annual. He is about 34 years old. Considering all circumstances and the Claimant's employability, we determine that based on his monthly salary of UGX 650,000/=, the sum of **UGX 5,200,000/=** as general damages will suffice.

Severance Pay

- [29] 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 dismissed, he would be entitled to severance pay. We also adopt this Court's reasoning in **Donna Kamuli v DFCU Bank Ltd**¹⁷ 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 1st January 2013 and dismissed on 20th April 2017. This period was four years, three months, and nineteen days. He was earning UGX 650,000 per month. We hereby award **UGX 2,796,804/=** as a severance allowance.

Costs of the Claim

- [30] Mr. Elotu 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

¹² *Stroms v Hutchinson* [1950]A.C 515

¹³ *Stanbic Bank (U) Ltd v Constant Okou* Civil Appeal No. 60 of 2020

¹⁴ LDC No. 002 of 2015

¹⁵ LDC 225 of 2019

¹⁶ LDC No.159 of 2015

¹⁷ The Court of Appeal maintained this position in *DFCU Bank Ltd v Donna Kamuli* C.A.C.A No 121 of 2016.

culpable of some form of misconduct.¹⁸ We do not think the Respondent's defence was frivolous, and we decline to award the Claimant's costs.

- [31] The Claimant prayed for the following remedies but, for some reason, did not make any submissions in support thereof;
- (a) Wages from 24th April 2017 until the date of judgment. It is a settled position of the law that an employee is only entitled to wages for work done. We decline to make this award.
 - (b) An order that the Respondent pays the Claimant twice his accrued severance allowance. This remedy is set out under Section 92(2)EA. The section provides for a fine where an employer who is liable to pay a severance allowance wilfully and without good cause fails to pay the allowance in the manner and time within which the EA requires it to be paid. The Respondent in the present case becomes liable to pay severance allowance upon a declaration of unfair dismissal by this Court. The imposition of a fine would not be within the confines of the Act. We decline to make this award.
 - (c) Payment of the remaining residue of one month's wage as the remainder of compensation in lieu of notice. Under Section 58(3)(b)EA, an employee who has served for over twelve months but less than five years is entitled to one month's salary in lieu of notice. By the termination letter CEX5, the Respondent agreed to pay one month's salary in lieu of notice. This is what the Claimant would be entitled to. No residue is provided in the law, and we decline to make any award for residue.
 - (d) The Claimant sought one month's salary as compensation for failure to hold a hearing. This remedy is set under Section 78 EA. The Industrial Court has held that compensation of this nature is covered under general damages. We, therefore, decline to award the same.
 - (e) The Claimant prayed for the issuance of a certificate of service. Under Section 61EA, it is provided that on termination of service, if an employee requests for a certificate of service, it shall be provided. The Respondent is ordered to provide a certificate of service within 21 days from the date of this order.
- [32] Given the preceding findings and conclusions, we make the following orders:
- (i) We declare that the Claimant was unfairly dismissed from the Respondent's service.
 - (ii) The Respondent is ordered to pay the Claimant the following sums:

¹⁸ JOSEPH KALULE VS GIZ LDR 109/2020(Unreported)



- (a) UGX 5,200,000/= as general damages,
- (b) UGX 2,796,804/= / as severance pay,
- (c) The sums above shall carry interest at 15% p.a. from the date of this award until payment in full.
- (iii) The Respondent shall issue a certificate of service within 21 days from the date hereof.
- (iv) There shall be no order as to costs.

It is so ordered this 12th day of June 2023.

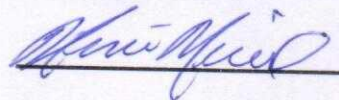
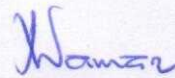
DELIVERED & SIGNED BY:

Anthony Wabwire Musana,
Judge, Industrial Court



THE PANELISTS AGREE:

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



Delivered in open Court in the presence of:

For the Claimant: Absent.

For the Respondent: Mr. Amos Masiko and Abraham Mumbere.
No representative of respondent in court.

Court Clerk: Mr. Samuel Mukiza.