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THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE No. 218 OF 2018
ARISING FROM KCCA/CEN/LC/052/2018

10 1. ALVIN MUTEBI

2. DANIEL OJOO :::::::::::::::::::::::::::::::::::::: CLAIMANTS

VERSUS

UGANDA REVENUE AUTHORITY :::::::::::::::::::::::::::::::::::::: RESPONDENT

15 **BEFORE:**

HON. AG HEAD JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA
PANELISTS

1. MR. CHARLES WACHA ANGULO

2. MS. BEATRICE ACIRO OKENY

20 3. MS. ROSE GIDONGO

AWARD

BACKGROUND

The claimants claim against the Respondent is for orders that they were unfairly
25 terminated, terminal benefits and other remedies arising from their unlawful
termination.

CLAIMANTS' FACTS

On 22/06/1998, the 1st Claimant was employed by the Respondent as Junior Revenue Assistant Grade 1 in the VAT department, he was promoted to the rank of Officer 1
30 on 1/03/2011. On 21/02/2011, he was deployed in the domestic taxes department. On 30/06/2011, the 2nd Claimant was employed as officer in the domestic taxes department. Both Claimants were deployed at the Medium Taxpayers office which is responsible for auditing and ensuring tax compliance of taxpayers.

On 8th October 2015, Mr. Sherif Maher, the CEO of Netis Uganda Ltd filed a
35 complaint with the Commissioner, Internal Audit and Compliance, Uganda Revenue Authority, against them for soliciting for a bribe of UGX 70,000,000/=, so as to reduce the Company's tax liability from UGX 850,000,000/= to UGX 110,000,000 /=-or else face the risk of closing down their offices.

On 1/12/2015 and 14/01/2016, the Claimants recorded Statements pertaining to the
40 complaint and denied all allegations. They however conceded that, they knew the complainant, although they had only contacted him for purposes of tax compliance. On 29/09/2016, they were invited to appear before the Management Disciplinary Committee scheduled for 10/10/2016 on grounds of alleged corruption and bribery.

They contend that, they were not given the evidence/ complaint against them prior
45 to the disciplinary hearing and the hearing took place in the absence of the complainants and their witnesses. They also contended that, whereas they were cross examined by the committee, they were not given opportunity to cross examine the Respondent's 2 witnesses, who included the station manager and investigating officer . The CEO of Netis was also cross examined by the Committee but only the
50 1st Claimant was given an opportunity to cross examine him.

On the 18/10/2016, both Claimants were terminated on allegations of bribery/corruption. They lodged an appeal against the decision of the disciplinary committee, on 10/11/2016. On 25/10/2016, they requested for information to enable them prepare for the Appeal but the same was not granted and they did not participate
55 in the Appeal hearing. On 23/01/2017, the Commissioner General wrote to them and informed them that the Appeal was dismissed because it lacked merit. They contend that they were unfairly terminated because the disciplinary and Appeal hearings were conducted in total disregard of the rules of natural justice.

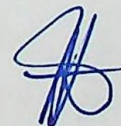
The Respondent did not deny that the Claimants were their employees. The 1st
60 Claimant Alvin Mutebi was employed on 1st July 1998 as a junior Revenue Assistant, while Ojoo Daniel the 2nd Claimant was engaged on 1st August 2011, as an officer 1 in the Domestic taxes department. The Claimants were subjected to internal investigations and on 13th October 2016, they appeared before the Respondents Management Disciplinary committee which heard and evaluated
65 evidence presented before it and found them culpable offence No.57 under the New offence Schedule of 2014 which took effect from 10th October 2017 and Section 11.32(h) of the Human Resource Management Manual 2012.

On 10th and 11th November the Claimants appealed against their termination before the staff Appeals Committee. The Committee found no merit in the grounds
70 advanced in support of their appeal, and accordingly upheld the decision to terminate them.

ISSUES

1. Whether the Claimants were unfairly/wrongfully terminated by the Respondent?

75 **2. What remedies are available to the claimants?**



REPRESENTATION

Mr. Jason Njeru Kiggundu of Jason&Co. Advocates, Kampala represented the Claimants, while Mr. Donald Bakashaba of Legal Services and board Affairs Department, Uganda Revenue Authority represented the Respondent.

80 EVIDENCE

It was the 1st Claimant's evidence that he met Sherif Maher, the CEO of Netis, 3 times, at his premises, in respect of a tax assessment of Ugx. 463,000,000/= . He was notified about a pending investigations against him and the subsequently subjected to a disciplinary hearing. He responded to the investigation, in writing and made a statement before internal Audit. He also made a response to the Assistant Commissioner Domestic taxes, but he did not receive any reply. It was his testimony that he attended the disciplinary hearing 1 year later and thereafter he was terminated. He appealed against his termination, but the Appeals Committee upheld the decision to terminate him. However, his benefits were paid to him. During re-examination he stated that after determining one's tax liability the computation was referred to the Manager who approved it and directed the responsible officer to raise an assessment, which is what he did. He insisted that prior to the hearing, he was not furnished with the investigation report or the statements on which his dismissal was based.

95 The 2nd Claimant Ojoo Daniel, testified that Alvin Mutebi, the 1st Claimant was his immediate supervisor. He said that he participated in the meeting which Alvin had with Sheriff Maher and he visited the Maher, the taxpayer's premises 3 times. Once ; with a one Oluka Julius and twice with Alvin Mutebi. He said that, a taxpayer was always issued with the first computation and in this case he could not remember
100 what was initially assessed but the final assessment was Ugx.463,000,000/=. It was

further his testimony that, he was invited for a meeting and later terminated. He wrote to the commissioner General seeking for the evidence on which the Respondent relied to terminate him and he also appealed against the termination. The decision to terminate him was however upheld by the appeals Committee, but
105 he was paid his benefits.

The Respondent adduced evidence through a one Shaban Kakooza, who testified that, the Respondent allowed staff to call taxpayers to remind them to pay their taxes and in this case, the 1st Claimant called the taxpayer and reminded him to pay. It was his evidence that, the Claimants did not attend the Appeals hearing because to was
110 not a requirement for them to do so, however the Human Resources (HR) had to attend as a member of the disciplinary committee and although he did not attend the disciplinary hearing, as HR, he was the custodian of the minutes. He confirmed that, the investigation reports were not sent to the Claimants prior to the hearing, but they were able to defend themselves because the facts of the case were summarized to
115 them before the hearing. It was also his evidence that, the Human resources Manual provided that the decision should have been taken within 3 months. During reexamination, he stated that the role of the Appeals committee was to review evidence adduced by the appealing staff before making a decision while that of the Human Resources(HR) was to attend the hearing, as a member of the disciplinary
120 hearing and the custodian of all disciplinary matters. The HRs role on appeal was also to read the grounds of Appeal and to support the SAC to interpret the HR Manual. It was further his evidence that staff were at liberty to cross examine witnesses and or their accusers, and they could also call their next of kin to attend. He provided the sequence of the proceedings and procedures that were followed
125 during the hearing and as laid down in the HR Manual.



RW2, Owor John Joshua, the investigating officer, testified that, a one Begumisa Protazio, the Commissioner Internal Audit and Compliance directed him to arrest the Claimants at the commencement of the investigations. The investigations involved trapping the Claimants with money which Sherif was asked to provide. He stated that, he could no longer remember the telephone conversation between them, but to the best of his knowledge nothing was discussed about a bribe of 70m. He also said that, the recording of the conversation between Sherif and Alvin, did not include anything to do with a request for a bribe. According to him, the voice he heard was that of Alvin. The recording was however made by a one Pagunda but it was transcribed by the Tax investigation department at the Respondent. He said that he availed the recording to the It was also his evidence that, he was not conversant with tax assessments, and it was the overall who signed the investigation report and in this case it was Mr. Protazio Begumisa. Netis was directed to pay the tax assessed at Ugx.463,527, 546/- During re-examination he stated that he was told that another team which was asked to assess the taxpayers tax arrived at the same assessment the Claimants had made.

RESOLUTION OF ISSUES

1. Whether the Claimants were unfairly/wrongfully terminated by the Respondent?

Counsel for the Claimant cited Section 65 of the Employment Act 2006 and **Kasingye Tuhiriwe Genevive vs. Housing Finance Bank Limited Labour Dispute Reference No. 115/2016** where court laid emphasis on the requirement to adhere the principles of natural justice as stated under Article 4 and 7 of the ILO convention, before terminating an employee. In this case court held that termination without according the employee his or her right to natural justice is unlawful. He also cited Article 28 and 44 (c) which guaranteed the right to a fair hearing and

argued that the Respondent did not comply with Sections 66, 68 of the Employment Act and the holding in **Florence Mufumba versus Uganda Development Bank LDC No. 138 of 2014**, which is of the legal proposition that the principles of natural justice must be adhered to before terminating an employee. This is because the Claimants were invited for a disciplinary hearing on the 28th of September 2016, but they were not provided with the complaint or the evidence that was relied on as the basis for their termination. Counsel further contested the manner in which the hearing was conducted because the minutes of the disciplinary hearing showed that they were brought before the Complainant, but his witnesses testified after they left, moreover they were not allowed to cross examine these witnesses or to scrutinize any documents or evidence that was adduced against them during the hearing.

He further submitted that, the Respondent's actions amounted to depriving the Claimants of their right to a fair hearing contrary to the provisions of the law and this rendered their termination a breach of their employment contracts, which was unlawful.

In reply, Counsel for the Respondent referred to Article 28 (1) of the Constitution, Section 66 of the Employment Act and **Augustine Kamegero vs Rwenzori Bottling Company Civil Suit No. 27 of 2012**, submitted that the Claimants were issued with offence notification forms which were duly received on 3rd October 2016 and they were given 12 days' notice, the email notification was received 10 days before the hearing and the manual forms were received 7 days before, which was indication that the Claimants were duly made aware of the allegations against them and they were given sufficient time within which to respond. It was his submission that, the Claimants made statements in response to the allegations on 4th and 6th October 2016, respectively and they attended the disciplinary hearing during which they narrated their version of events. According to Counsel the Respondent adhered to

the tenets of a fair hearing as provided for under section 66 of the Employment Act and this courts holding in **R. Constant vs Stanbic Bank LDC171 of 2014**, where
180 Court emphasized that in order to reach a fair decision as to the legality of dismissal or termination of an employee section, 2, 65,66, and 68 of the Employment Act must be read together with the employers human Resource Manual because the exit clauses in a contract was not sufficient.

It was further his submission that, the Respondent's policies did not make it
185 mandatory for staff to attend the staff Appeals Committee hearings because the only role the Staff Appeals Committee(SAC) played, was to reevaluate the evidence and consider whether to uphold the decision or not. According to him, the Respondent carried out the appeal process in accordance with the Human Resource Management Manual and they were just and equitable in handling the same in
190 accordance with Section 73 (2)(b) of the Employment Act.

According to Counsel, the Respondent had genuine belief that the reasons for the termination of the Claimants existed as is provided under section 68 of the Employment Act and they were all subjected to a fair hearing as laid down in **Ebiju james vs. Umeme CS No. 0133 oof 2012**. He insisted that the procedures as laid
195 down under section 66 of the employment Act were followed, the entire termination process was fair and based on the principles of substantive justice therefore the C n accordance with section 68 of the Employment Act,laimants were fairly terminated.

DECISION OF COURT

**1. Whether the Claimants were unfairly/wrongfully terminated by the
200 Respondent?**

Article 4 of ILO Convention No. 158 on Termination, provides in part as that:

“... no employee should be terminated unless there is a valid reason connected to
“the contract...”

205 The Employment Act 2006, which is drafted in line with convention No. 158(supra) defines “Termination” under Section 2 ,to mean “... the discharge of an employee from employment at the initiative of the employer for justifiable reasons (emphasis ours) other than misconduct, such as expiry of contract attainment of retirement age etc and termination shall have the meaning given by Section 65 of the same Act.

210 Dismissal is defined to mean “the discharge of an employee from employment at the initiative of the employer when the said employee has committed a verifiable misconduct.(emphasis ours)

215 Section 66 (1) and (2) of the same Act makes it mandatory for an employer to explain to the employee in issue, the reasons for dismissal or termination and to give him or her an opportunity to respond to the reasons for dismissal or termination. The Section provides as follows:

“66. Notification and hearing before termination

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

225 (2) Notwithstanding any other provision of this part, an employer shall before reaching a decision to dismiss an employee, hear and consider any representations which the employee on the grounds of misconduct or poor

performance, and the person, if any chosen by the employee under subsection (1) may make.

Section 68 of the same Act, requires the employer to prove the reasons for dismissal and where the employer fails to do so, the dismissal shall be deemed to be unfair.

230 This section further provides that; “...*the reason or reasons for dismissal shall be matters, which the employer, at the time of dismissal, genuinely believed to exist and which caused him or her to dismiss the employee.*”

Therefore, before terminating or dismissing an employee, the employer must notify the employee of the reasons for dismissal or termination, the employee must be
235 given opportunity to make representations before the decision to terminate or dismiss his or her services/employment is made, and the reasons must be verifiable and justifiable.

After carefully analyzing the evidence on the record, in the instant case, we established that; The Claimants were accused of soliciting a bribe of
240 Ugx.70,000,000/- from a one Mr. Sherif Maher the CEO of Netis Uganda Ltd, on 08/10/2015, in order to reduce the tax assessment of Netis Uganda’s tax liability from Ugx.850,000,000 to Ugx. 110,000,000/-. The final assessment was rendered at Ugx.463,527, 546/-. It is not in dispute that both Claimants made written statements denying the allegations against them on 1/12/2015 and 14/01/2015 respectively.
245 They however ,acknowledged that they did contact Mr. Sherif Maher for purposes of ensuring tax compliance. The Respondent carried out investigations and the investigation report dated 31/08/2016, marked exhibit RE4, was the basis of their invitation to appear before the Management Disciplinary Committee (MDC), to answer for alleged corruption/bribery which was considered as Offence No.57 under
250 the URA offences schedule 2014.

It is also not in dispute that, on 3/10/2016, the Claimants were notified through “RE3” an offence Notification form, about a complaint against them for alleged corruption/bribery and therefore the commission of offence No.57 of the New offence schedule of 2014. On 13/10/2016, they appeared before the Respondent’s Management Disciplinary Committee(MDC) which heard and decided that, their employment is terminated. Both claimants testified that they received official communication about a pending investigation against them they were invited for a disciplinary hearing which was followed by a phone call. To this extent we concluded that, the Respondent complied with the requirements /procedure laid down under section 66(1) of the Employment Act(supra).

The Claimants however contended that prior to the hearing, they were not provided with the evidence which the Respondent relied on during the disciplinary hearing, to enable them prepared their defence and during the hearing, they were denied the opportunity to cross examine the complainant and his witnesses. This is because the Complainant was cross examined towards the end of the hearing and the Respondents witnesses came in after the Claimants had testified. Only the 1st Claimant was given opportunity to cross examine them.

RW1 however testified that the Claimants were able to defend themselves without the investigation report because the facts of the case were summarized to them, and they were at liberty to ask for the report. He also stated that the offence notification form “RE3” also stated the facts of the case. However, the actual documents were not given to them.

RW2 Owor John the investigative officer, testified that, the recording which was relied on during the disciplinary hearing was extracted from a one Jasper Phagunda and when he listened to the recording he heard a voice in the recording that he

believed to be of the 1st Claimant. He however did not here anything regarding a bribe of ugx.70,000,000/- being solicited by anyone.

We had an opportunity to peruse the investigations report and established a number of contradictions in it. At page 11 of the report, it was stated that, Maher alleged that, Ojoo called him and threatened that, they would disclose Netis's outstanding tax liability of up to Ugx.850,000,000/- in undeclared and unpaid invoices, if he did not pay a bribe of 60,000,000/-. The investigation, however, found nothing in the exit minutes regarding any discussions pertaining to a bribe. The report also indicated that, the Claimants visited the premises of Netis and met with the Accountant Odongo Francis but there was no evidence to prove that the Claimants solicited the alleged bribe of Ugx. 70,000,000/-. The report defined solicitation as *a request or petition intended to obtain something, criminally urging , advising or ordering someone to commit a crime and Bribery as defined by Black's law dictionary as offering giving, receiving or soliciting any item of value to influence the actions of an official or other person in charge of a public or legal entity.*

It was also reported that a phone call between the 1st claimant and Mr. Maher regarding the 70million bribe but at page 12 of the investigation report, it was stated that, the call between the 2 lasted 44 seconds, and the 1st Claimant was willing to receive 50m from the taxpayer and the balance of 20 m the following day. The Investigators concluded that it was a bribe, because it was much less than the assessed liability of Ugx.850m. At page 13, however it was reported by same investigator that, the call lasted 53 seconds. He also made a tabulated analysis of the phone calls between Mutebi and Sherif which showed that, he spoke to sheriff on 29/09/2015 at 11.34a.m for 140 seconds, 30/09/2015 at 2.09pm for 52 seconds and 30/09/2015, at 3.23 pm for 53 seconds yet the analysis at page 11 indicated the phone calls as follows: On 30/09/2015 call between Alvin and Maher lasted 44

seconds. Paragraph (i) at page 13 the report recorded the phone calls between Alvin and Maher as; 30/09/2015 at 2.30 pm, an SMS sent to Mr. Mutbei at 7.15 and another phone call at 9.17 pm lasting 310 seconds and these recordings did not state what
305 transpired during the calls. They were also totally inconsistent with the tabulated analysis on the same page. Although the report also indicated that, when he was interviewed, Sheriff stated that Denis Ojoo called him and threatened to close the Company if the bribe was not paid, the analysis of the said phone call at page 22 stated nothing about any discussion about any bribe. RW2 Owor, testified in court
310 that, he did not hear anything mentioned about a bribe. Further even if the 1st Claimant is said to have agreed to meet Maher in his office to receive 50,000,000/-, there was nothing conclusive to indicate that, this was a bribe or that the 2 Claimants solicited for a bribe because the report at page 21 which was a record of the minutes between URA and Netis Uganda *did not indicate any discussion about the alleged*
315 *bribe but rather reconciliations of tax liability.*

Even if it was unlikely that the discussion of the alleged bribe may not have been recorded in the minutes, there ought to have been some semblance of evidence from which an inference of guilt could be drawn. The report further stated that "...
320 *however the corroboration of the phone recorded discussion between Mr. Sheriff Maher and Mr. Alvin Mutebi on 30.09.2015, which lasted 44 seconds investigations confirmed that the discussion gave indicators of solicitation of Ugx. 70,000,000/- and fulfils the legal definition of Solicitation. Which is a request or petition intended to obtain something , criminally urging advising or ordering someone to commit a crime .There is thus circumstantial evidence against Mr. Alvin Mutebi and Mr.*
325 *Daniel Ojoo who were accomplices in soliciting for a bribe from Mr. Sheriff Maher.*



We found no evidence to corroborate the above findings as stated in the report, even the SMS which was referred to in the report was not attached as evidence to corroborate the circumstantial evidence.

330 An investigation is an administrative mechanism for verifying the occurrence of the misconduct, together with facts, sort out details clearly before any decision can be made. The investigation is the basis for any decision being made by the employer because it establishes the existence, validity and fairness of the reasons or grounds for dismissing or terminating an employee's employment or for imposing disciplinary penalties. The investigation report must therefore substantiate the findings with
335 credible evidence. The investigator must demonstrate on a preponderance of evidence that the findings are credible. Merely stating that something happened without substantiation is not sufficient. We are not satisfied that the investigation in the instant case, established the existence, validity of the reasons for terminating the Claimants. Solicitation of a bribe is a serious offence which had to be substantiated.
340 Section 68 clearly provides that the employer has a legal and evidential burden of proving the reasons for termination or dismissal. Although the employer is not expected to prove beyond reasonable doubt, he or she is expected to establish the validity or correctness of the reasons by demonstrating with credible evidence the truth of the existence of the reasons given. Lord Denning in **British Leyland UK Ltd vs Swift (1981) I.R.L.R 91**, stated thus:
345

*'The correct test is: was it reasonable for the employers to dismiss him? If no reasonable employer would have dismissed him, then the dismissal was unfair, but if a reasonable employer might reasonably have dismissed him, the dismissal is fair. It must be remembered in all these cases that there is a band of reasonableness, within which an employer might reasonably take one
350 view another quite reasonably take a different view. One would quite*

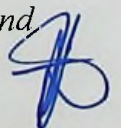
355 *reasonably dismiss the man. The other quite reasonably keep him on. Both views may be quite reasonable. If it was quite reasonable to dismiss him, then the dismissal must be upheld as fair though some other employers may not have dismissed him”*

Therefore, even if circumstantial evidence may be relied on to make an inference of guilt and an administrative investigation need not be formal in nature, the Respondent still has the responsibility establishing the validity and correctness of the reasons before making a decision to dismiss an employee, which we are not
360 satisfied was done in this case.

It is our considered opinion that, given the nature of the offence of solicitation, against the Claimants, the Respondent was expected to rely on more conclusive evidence before terminating them. An analysis of the memorandum which communicated the decisions of the MDC dated 13/10/2016, fell short of stating the
365 evidence on which the MDC, based itself to make their recommendations, and in our considered opinion this rendered the findings inconclusive. We also established that the Audit and assessment of tax liability of Ugx. 463,000,000/- was confirmed by another team the Respondent’s assigned to re assess the taxpayer and according to RW2’s testimony the taxpayer was directed to pay it.

370 In the circumstances, we are not satisfied that the Respondent met the threshold of proving the reasons as provided under section 68 of the Employment Act (supra), moreover almost 1 year after the allegations were made. In **Polky vs AE Dayton Services(1987) UK HL8**, the House of Lords had this to say:

375 *“...in the case of misconduct, the employer will normally not act reasonably unless he investigates the complaint of the misconduct fully and fairly, and*



then hears whatever the employee wishes to say in his defense or in explanation or mitigation ...”

We have already established that the Respondent notified the Claimant’s about the infractions leveled against them, in accordance with Section 66(1). It is not in dispute
380 however, that they were not given a copy of the investigation report prior to the hearing to enable them prepare for their defense. Section 66(2) is emphatic on the requirement for the employer to avail the employee sufficient opportunity to prepare for the hearing. An employee is entitled to the documentation which the employer intends to rely on at against him or her during the hearing. Where an employee is
385 charged on the basis of an investigation report, it is prudent that the employee is availed with a copy of the said report to enable him or her fully prepare. It is immaterial that the employee has made a written response to the allegations, he or she still has a right to an oral hearing. This right in our considered opinion is limited to appearances before the disciplinary committee and not necessarily at the Appeals
390 committee and unless the employment contract provides for an oral hearing on appeal.

We respectfully don’t agree with the assertion of the Claimants that it was a requirement for them to adduce fresh evidence before the Appeals committee. The Appeals committee as rightly stated by Counsel for the Respondent, was expected
395 to reevaluate the evidence adduced at the disciplinary committee and arrive at its own findings to either uphold the MDC’s decision or find otherwise. The Minutes of the Appeal hearing stated that they considered facts presented by the HR and the findings of the MDC which established circumstantially and on a balance of probabilities that the grounds of appeal had no merit and they upheld the decision
400 to terminate the Claimants. We do not think that the reason that they were not heard

by the SAC is sufficient to fault the SAC. The SAC undertook their role as prescribed in the HR Manual.

In conclusion, it is our finding that, although the Claimants were notified about the reasons for their dismissal the Respondent fell short of providing them with the findings of the investigations against them, prior to the hearing, to enable them adequately to prepare their defense, thus violating section 66 (2) of the Employment Act(supra). It further did not establish the existence, validity and correctness of the reasons with credible evidence, therefore it did not meet the minimum statutory threshold provided for under section 68 of the Employment Act(supra), in the circumstances, the Claimants termination was procedurally and substantively unlawful. This issue is resolved in the affirmative.

Issue 2

Having established that the Claimants were unlawfully terminated, they are entitled to some remedies.

415 a)Severance Pay

It was submitted for them they were entitled to an award of severance allowance equivalent to UGX 90,024,000 for the 1st claimant and a fine equivalent to double severance allowance equivalent to UGX 180,048,000 and for the 2nd claimant to a sum of UGX 32,736,000 and a fine equivalent to double severance UGX 65,472,000.

420 Section 87(a) of the Employment Act entitles an employee who has been in an employer's continuous service for a period of 6 months to severance pay, if he or she is found to have been unfairly dismissed/terminated. Section 89 of the same Act provides that severance allowance should be negotiable between the employer and employee. However where there is no agreed formula, this Court in **Donna Kamuli**
425 **vs. DFCU Bank LDC 002 OF 2015**, held that, where the employer and employee

have not agreed on a method of calculating severance pay, the reasonable method shall be payment of 1 month's salary for every year the employee has served. The 1st Claimant was employed in 1998 and terminated on 18/10/2016 therefore he served for 8 years and the 2nd Claimant was employed in 2011 and terminated on 18/10/2016 therefore he served 5 years. By the time of his termination the 1st Claimant was earning a gross salary of Ugx.4,309, 971/ per month therefore the 1st Respondent would be entitled to Ugx.4,309, 971/- x 8 years amounting to Ugx. 34,479,768/ as severance pay and the 2nd Claimant who was earning Ugx. 3,264,818/- per month x 5 years to Ugx.16,324,090/-as severance pay.

The submission that the Respondent committed an offence when it did not pay severance allowance therefore requiring the respondent to pay them a fine calculated at 2 times the amount of severance allowance payable cannot hold. This is because, the Court must first make a finding that the Claimants were unlawfully terminated before they can benefit from the entitlement to severance allowance as provided under section 91 (1), which entitles an employee to payment of severance pay on the cessation of employment. This section only applies after Court makes a determination that an employee was unlawfully dismissed and not before.

In **Aguti and Another vs Crown Beverages LDR No. 215 of 2020**, this court opined that, "... *this is the reason why the legislators provided for specific circumstances where severance could be paid under Section 87 of the Employment Act. Therefore, an employee had to qualify to claim severance pay under either of them. For emphasis, in order for a claim under Section 87 to succeed, the Claimant must prove that any of the circumstances stated there under had occurred and not before...*" The claim for a fine therefore fails.

b)Recovery of loans

Counsel cited several Authorities including **Stanbic Bank Vs Kiyimba Mutaale SCCA No. 2/2010** on the award of damages and submitted that, the Claimants were servicing SACCO loans with the Respondent and salary was the source of income, the Respondent would deduct their respective salaries at the base to pay off the loan.

455 Although they attached loan statements in support of this claim, it was not clear from the statements whether the loans were unsecured, to warrant their recovery from the Respondent as has been settled by the courts, that where a loan is premised solely on the payment of salary for its recovery, the burden its repayment will shift to the respondent if it is established that the employee was unlawfully dismissed. In the
460 absence of the actual loan agreement, we had no basis to make a finding in the affirmative (see **Stanbic Bank vs Constant R Okou CA No.60/2020**). This claim fails.

c)Payment of service award.

According to Counsel they the Claimants were entitled to long service award and
465 retirement benefit scheme contribution, the 1st Claimant claimed Ugx. 20,623,680/= and a long service award equivalent to one year's salary of Ugx.176,774,400, and the 2nd claimant Ugx.70,7009,760/= and Ugx.213,602,400/=. There was no evidence to show the basis of this claim. We therefore had no basis to award it. In any case each of the Claimants testified that they were duly paid their terminal benefits.

470 Therefore, this claim is unfounded, it is denied.

d)Payments for salary and leave days and retirement benefits and NSSF for remainder of the contract.

Payment for outstanding salary for the remainder of the contract, outstanding leave days, retirement benefits scheme for the remainder of the contract, NSSF, for the
475 remainder of the contract, are all future earnings. It is an established principle of

this Court that, a claim for future earnings is speculative because there is no guarantee that the employee will serve the entire duration of the Contract or that the Business will survive for its duration, for reasons such lawful termination, resignation by the employee, closure of business, death and or incapacitation of the employee because of illness or accident among many others. In the circumstances, the claim for the payment of salary, outstanding leave, NSSF and terminal benefits for the remainder of their contracts following their termination cannot hold. This court has held that there is no specific performance in contracts of employment. Therefore, this claim fails.

485 **e) General damages.**

These are awarded at the discretion of court and are compensatory in nature, in **Akeny Robert vs Uganda Communications Commission LDC 023 of 2015**, and several other cases this Court has held that in addition to the remedies prescribed under the Employment Act, an employee who is unlawfully terminated is entitled to an award of General damages. General damages are intended to return the aggrieved party to as near as possible in monetary terms to the position if he wrong complained of had not been occasioned. The Claimants served the Respondent for 8 years and 5 years respectively. Having already established that the Claimants were unlawfully terminated, they are entitled to an award of General damages. By the time of his termination the 1st Claimant was earning Ugx.4,309,971/ per month, therefore **Ugx.70,000,000/-** is sufficient as general damages. The 2nd Claimant was earning Ugx.3,264, 818/- and he served for 5 years, we think that an award of **Ugx.32,000,000/-** is sufficient as general damages.

f)Interest

500 An interest rate of 12 % per annum shall accrue on all pecuniary awards made from the date of filing this matter in the Industrial Court until payment in full.

g)Costs

No order as to costs is made.

In conclusion this claim succeeds in the above terms.

505 Delivered and signed by:

THE HON. AG HEAD JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA

PANELISTS

1. MR. CHARLES WACHA ANGULO

510 2. MS. BEATRICE ACIRO OKENY

3. MS. ROSE GIDONGO

DATE: 10/10/2023

The block contains three handwritten signatures in blue ink. The top signature is for Linda Lillian Tumusiime Mugisha. Below it are two signatures for the panelists, each preceded by a small rectangular box. The bottom signature is for Rose Gidongo.