**THE REPUBLIC OF UGANDA**

**LABOUR DISPUTE APPEAL NO. 018 OF 2021**

**(ARISING FROM LABOUR DISPUTE NO. MGLSD/CENT/LC/570/2020)**

**CITIBANK UGANDA LIMITED..... APPELLANT/CROSS RESPONDENT**

**VERSUS**

**SAMSON AYEBARE ..... RESPONDENT/ CROSS APPELLANT**

**BEFORE:**

**THE HON. AG HEAD JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA**

**PANELISTS**

**1. MR. BWIRE JOHN ABRAHAM**

**2. MR. KATENDE PATRICK**

**3. MS. JULIAN NYACHWO**

## AWARD

### BACKGROUND

The Respondent was appointed by the Appellant to the position of Internal Auditor-Manager Grade one on 11th April 2006. On 29th November 2013, he was appointed

to the position of East Africa Head of Enterprise risk Management and Head of Risk-Uganda, Senior Vice President Grade C14.

On 15th September 2020, he was summarily dismissed from employment on allegations that he fundamentally breached the terms of his contract when he committed acts of gross misconduct to wit; abusing the Respondent's health club benefit out of fees paid by the Appellant for the Respondent's use at the said club and for non-declaration of his business interest in AGL Investment Club.

The Respondent challenged the decision of summary dismissal starting that it was unlawful and unfair. The Appellant defended the dismissal stating that the Respondent was accorded substantive and procedural fairness prior to the dismissal and that the dismissal was justifiable because, he acted in contravention of the Bank's Code of Conduct, the fraud risk management policy and terms of employment.

The Respondent lodged a complaint before the Labour officer who determined the dispute in his favour, and held that, the dismissal was unlawful and unfair because the Appellant failed to prove the reasons for dismissal and it did not accord him a fair hearing.

The Appellant was aggrieved by the award and filed this appeal. The Respondent filed a cross Appeal on the issue of interest on the award given.

**GROUNDS OF APPEAL**

1. **That the Labour Officer/Assistant Commissioner erred in law when he raised the standard of proof in disciplinary proceedings above genuine and or reasonable belief**

2. **The Labour Officer/Assistant Commissioner erred in law when he found that because of section 61(2) (e) of the Financial Institutions Act 2004, the investigative arm of the (CSIS) did not have power to investigate disciplinary infractions**

3. **The Labour Officer/Assistant Commissioner erred in law and fact when he failed to properly evaluate the evidence and arrived at a wrong finding that the complainant was unfairly terminated.**

4. **That the Labour Officer/ Assistant Commissioner erred in law and in fact when he failed to properly evaluate the evidence and arrived at the wrong finding that the complainant was not afforded a fair hearing.**

5. **The Labour Officer/Assistant Commissioner erred in law and fact when having wrongly found the Complainant was not accorded both substantive & procedural fairness, he awarded him all the statutory reliefs prayed for, thereby arriving at a wrong finding.**

6. **That the Labour Officer/ Assistant Commissioner erred in law and in fact when he awarded a repatriation fee that was not pleaded and proved thereby arriving at a wrong finding.**

**REPRESENTATION**

The Appellant was represented by Mr. James Zeere of M/S S & L Advocates and the Respondent by Mr. Nuwandinda Johnan Rwambuka of M/S Rwambuka and Co. Advocates.

**PRELIMINARY OBJECTION**

Counsel for the Respondent in reply to the Appeal filed on 23rd February 2022, raised preliminary objections regarding the competence of the Appeal and particularly that:

1. **Grounds 3, 4, 5 & 6 contained in the Appeal filed on 25th October 2021 and memorandum of Appeal filed by the Appellant on 11th February 2022 were filed illegally without leave of Court as required under Section 94(2) of the Employment Act 6/2006 and as such should be struck out with costs.**

2. **That the appeal filed on 25th October 2021 by the Appellant be dismissed for failure to serve the same on the Respondent.**

3. **That the memorandum of Appeal filed by the Appellant on 11th February 2022 and served on the Respondent on 17th February 2022 be struck out since it was filed after expiry of the mandatory statutory 30 days when the award was made.**

The Respondent abandoned the 1st objection and submitted on the objection that, the Notice of appeal filed on 25th October 2021 should be struck out for the Appellant's failure to serve the same on the Respondent and for filing it outside the 30 days stipulated under Regulation 45 of the Employment Regulations 2012.Therefore, we did not address our minds to it.

We established however, that the Appellant filed M/A No. 163 of 2021 seeking leave to appeal on matters of fact, which was consented to by both parties. Section 94(2) of the Employment Act is to the effect that the discretion of court must be invoked, therefore it is not the correct position for parties on their own volition to enter a settlement on such a matters. In the interest of expediting justice of this case however, this court admitted the consent and went ahead to resolve the appeal on grounds of mixed law and fact.

**RESOLUTION OF THE APPEAL**

Section 94 of the Employment Act, 2006, gives a party who is dissatisfied with the decision of a Labour Officer a right to appeal to the Industrial Court, on points of law and with leave of court on points of fact.

It is the duty of the Appellate Court to reappraise the entire evidence on the record in order to determine whether the conclusion arrived at by the lower court based on that evidence should stand. The Court must however bear in mind that it did not see or hear the witnesses testify in the matter, (**Fr. Narensio Begumisa& 3 Others vs Eric Tibebaga, CA No.17 of 2002**), and it is only guided by the impressions made by the trial Judge, who saw the witnesses and other circumstances other than the demeanor that arose during the hearing. It is therefore the duty of the first Appellate Court to rehear the case on appeal, by reconsidering all the materials which were before the trial and make up its own mind/conclusion. (**Kifamunte Henry v Uganda SCCA No. 10 of 1997**).

Section 94(3) of the Employment Act 2006 provides that:

*The Industrial Court shall have power to confirm, modify or over turn any decision from which an appeal is taken and the decision of the Industrial court shall be final.*

**Ground 1: That the Labour Officer/Assistant Commissioner erred in law when he raised the standard of proof in disciplinary proceedings above genuine and or reasonable belief**

The Appellant submitted that the labour officer erred when held that fraud being a very serious offence, the Respondent was obligated to bring strong evidence to prove that the claimant was part of the unofficial membership at Machame club and that both RW1 and RW2 failed to adduce the evidence. He relied on the legal proposition stated by this court in **Bwengye Herbert vs EcoBank (U) Limited LD No. 132 of 2015,** to the effect that, disciplinary committees are not courts of law and the

standard of proof required of courts law should not be required of disciplinary committees. He contended that the labour officer erred to make a finding that the Appellant was not entitled to rely inferences and assumptions arising from circumstantial evidence in order to dismiss the Respondent. He argued that it is well established that in the absence of direct evidence, courts can make inferences and assumptions from circumstantial evidence in order to establish on a balance of probabilities whether the fact alleged to exist does exist or not. Therefore, a disciplinary committee which observes a standard below that of a court, is entitled to make inferences from circumstantial evidence.

In reply, the Respondent submitted that, the Appellant relied on hearsay evidence, assumptions, and inferences of the investigator RW1 which no tribunal can ever accept. He relied on **Uganda Breweries Ltd v Kigula (Civil Appeal-2016/183) [2020] UGCA 88** where it was held that there is an additional duty on the employer to observe substantive fairness before summarily dismissing an employee. According to him RW1 Mclnis Kelly failed to find any proof that the Respondent committed fraud because in her testimony, she relied on many assumptions and she admitted that she had no documentary evidence that the Respondent took a difference from Machame Health Club, neither di RW2 provide any in support of the allegation that the Respondent was receiving money from Machame. He insisted that the Employment Act 2006 makes it mandatory that gross misconduct of an employee for which summary dismissal is being considered by the employer is verifiable and it must be proved to a reasonable standard. He argued that, there were several falsehoods in the evidence of the Appellant as observed by the labour officer which the Appellant could not rebut.

**RESOLUTION**

Indeed, a disciplinary process is not a judicial process, and it is not expected to operate with the same standards as those of a court of law. Nevertheless, the Disciplinary process must conform to the principles of natural justice as provided for under section 66(1) and (2) of the employment Act and Section 68 of the Employment Act. The employer in this case is required to notify the accused employee of the allegations/infractions for which he or she is considering the termination or dismissal, the employer must carry out an investigation to verify the allegations/infractions, and in so doing he or she not need not prove the them beyond reasonable doubt, but on a balance of probabilities. It is a settled principle of the law that it is enough if the employer based on the facts reasonably believes that the employee did wrong (also see section 68 (supra).

The Respondent in the instant Appeal, was accused of abusing the Respondent's health club benefit out of fees paid by the Appellant for his use Machame Health club. He was also accused of not declaring his business interest in AGL Investment Club.

We carefully evaluated the evidence on the record of proceedings before the labour officer, and established that he found that, the *"The allegation that the claimant solicited and received money is highly improbable to have occurred and appears to have been based on assumptions.* In his opinion this was because the Respondent did not see the Respondent actually soliciting money from anyone. It is a well-established principle of law, that in the absence of direct evidence, courts can make inferences and assumptions from circumstantial evidence in order to establish on a balance of probabilities whether the fact alleged does exist, however, the circumstantial evidence must be narrowly examined because such evidence may be fabricated to cast suspicion on another( see **Teper vs R (1952) AC 480,)**

When we carefully examined the evidence of the investigation officer a one Kelly McClains (RW1), particularly at page 33, together with the email trail in the investigation report at pages 104-105, of Volume II of the record of Appeal and the testimony of CW1 Annette, we established that, on 8/10/2019, the Respondent received an email confirmation from a one Petronella about the payment of his gym membership of Ugx. 4,156,680, into Barclays Bank Parliament Avenue, on Account No. 5800568783. On 10/10/2019 the Respondent notified a one Paul Namanya by email, that he had sent him confirmation about the payment to Machame. On 10/10/2019, the subject of the email was *"Machame payment"*, in response, Paul promised to engage the Machame Manager to confirm that she had received the payment. According to the evidence he said: "*..Ok let me engage the Macham Manager..i will advise once she has confirmed receipt of pmt...*" On 11/10/2019, the Respondent further inquired from Paul about confirmation of money onto the Account, to which Paul responded that, she has the "dimes", but she asked to meet him at 6.30 pm the conversation was as follows:

"***Instant message 2019-10-11***

*Samson Ayebare(07.47.01) Hi Paul*

*Samson Ayebare(07.47.14) Your friends must have received the money yesterday.*

*Samson Ayebare(07.47.45) Otherwise how are you doing*

*Paul Namanya (07.47.48) I chatted with her yesterday and she is going to pick the dimes from the bank today.*

*Paul Namanya: (07.48.21) yesterday she said the bank had not yet credited the account.*

*Samson Ayebare (07.48.43) Ok cool being EFT it reached yesterday.*

*Paul Namanya: (07.48.52) yes*

*Paul Namanya: (07.49.13) but Barclays is slow to credit*

On the same day, the Respondent contacted Paul at 14.54.01 as follows:

*Samson Ayebare (14.54.01) Hi Paul, hope your friend got the credit on the Account*

*Paul Namanya (14.54.18): Just a Sec*

*Paul Namanya (15.01.26) Sorry was on phone.*

*Paul Namanya (15.02.29) She has the dimes but she asked me to meet her at (06.30 pm*

*Samson Ayebare(15.08.27) great*

*Samson Ayebare(15.08.40) Cool then, iam still here up to like 9pm"*

This thread of communication created suspicion which in our considered opinion was sufficient for the Respondent to make an inference about the Respondents guilt regarding breach of the Citi Health club policy, especially following a discovery of a scam in which some staff had confessed that they were benefitting from unofficial membership processes with the same club Machame. We are further fortified by the subsequent conversation he had with Namanya who according to the Respondent's testimony at page 134 of Volume II of the record, was Machamé's relationship Manager. The email of 10/10/2019 was clearly titled "MACHAME PAYMENT." Although the Respondent testified that the emails were in regard to money owed to him by a one Annette Muhwezi, a mutual friend of his and Paul, Annette Muhwezi's testimony at page 7 of volume 1 of the record was that, she only paid the Respondent

the money she owed him, at the end of October 2019 and she did not hold any Account with Barclays Bank. Even if she was expecting some money from a client who banked with Barclays, we do not think that she would personally draw the money from the client's account, unless she had to cash a cheque on the Account in Barclays Bank which was not the case, because no evidence to that effect was on the record. It follows therefore that; the person being referred to in the email trail could not have been Annette. We are convinced that the person referred to was the Club Manager of Machame Health Club, because, after the Respondent notified Paul about the payment of his gym membership on 10/10/2019, Paul in reply stated that, he "*Ok let me engage the machame manager... I will advise once she has confirmed receipt of the pmt...* ". We also believe that, had it been Annette, who was being referred to, in this email trail, the Respondent would not have referred to her as "your friends" because she was supposed to be his friend as well and there was no reason why he should not have referred to her by her name. We were further fortified by the fact that, Petronella who was staff of Citibank was unequivocal when she communicated to the Respondent that, the payment made into the Barclays Bank account was for his gym membership! It therefore did not make any sense, that the Respondent's purported private loan transaction with Annette and her client's payment into his Barclays Account was connected to the Appellant's payment for the Respondent's gym membership to Machame Club. We believe that the 2 were not a coincidence, because Annette testified that, she had no account in Barclays Bank and she paid the Respondent the money she owed to him at the end of October, yet the email trail commenced on 8/10/2019 and the subject of discussion in the email trial was the payment of the Respondent's gym membership to Machame Health club! It was also peculiar that, the Respondent tracked the payment until it was credited onto and withdrawn for the Barclays Bank Account. When Namanya told him that "she", ( the Manager of Machame, whom he had stated he was going

to contact) would get the money from the bank and meet him at 6.30pm, the Respondent informed him that, he would be in office until 9.00pm, which meant that he would wait for him. In any case, the email conversation between Paul Namanya and the Respondent only commenced on 08/10/2019, after Petronella notified the Respondent about the payment of his gym membership into Barclays Bank, and not on the 5/10/2019 when Annette was supposed to be paid by a client so that, she could pay her debt with the Respondent and it was her testimony that the money did not come through on 05/10/2019. She also stated that, she paid at the end of October. Having negotiated his gym membership himself (see page 405 of vol II of the record) and Paul having been the Club's relationship manager, it is highly likely that the Respondent only contacted him to enable him process his unofficial membership which was in essence a kickback, given the confessions which some staff made about processing unofficial membership with the Club (*It was established that Citi employees were able to gain membership at a lower rate and take the difference between the lower rate charged and the total overstated amount invoiced to Citi by Machame in cash)* and most probably this is the reason the Management of the club denied any involvement with the respondent in this regard because an admission on their part could implicate them as well.

Given the trajectory of events, it was not farfetched for the investigators to conclude as we did, that the Respondent's conduct, created sufficient suspicion to cause the questioning of his trustworthiness and integrity and for it to conclude that, his conduct was not only contrary to what was expected of him as a high ranking employee at the level of East Africa Head of Enterprise risk Management and Head of Risk-Uganda, Senior Vice President Grade C14, but it was in breach of the its Code of conduct and the Health club policy yet he was expected to exhibit the highest standard of integrity, propriety and exemplary conduct in this regard. In

**BARCLAYS BANK OF UGANDA VS GODFREY MUBIRU, SCCA No.1 OF 1998,** Justice Kanyeihamba JSC as he then was held that:

> ***"Managers in the banking business have to be particularly careful and exercise a duty of care more diligently than managers of most businesses. This is because banks manage and control money belonging to other people and institutions, perhaps in their thousands and therefore are in a special fiduciary relationship... Moreover, it is my opinion that in the banking business any careless act or omission, if not quickly remedied, is likely to cause great losses to the bank and its customers ...."***

We are convinced that, the Respondent and Paul Namanya were colluding with the Manager of Machame, in an attempt to solicit for some of the money that had been paid for the Respondent's gym membership, and this was in breach of the Respondent's Health Club policy and Code of conduct.

The Labour officer in our considered opinion misdirected himself when he made a finding that the code of conduct did not apply to the Respondent merely because he did not sign it, yet it was in place since he assumed office at the Appellant and it is the position of this court that an employee's contract comprises of all the policies and regulations governing employment in the organization at, during by the end of one's employment. Therefore, the Respondent cannot claim that he was not governed by all the Appellant's policies relating to employment including the code of conduct and the health club policy. (See **Martin Imakit vs VIVO Energy LDC No. 034 of 2017**)

We reiterate that, given the email trail between Paul and Namanya regarding the payment of the Respondent's Gym membership to Machame Club, it is highly probable that, the Respondent with the support of Paul Namanya who was

Machame's relationship Manager was engaged in processing payment from the Manager, out of what was paid for the Respondent's gym membership at Machame health club and this is the reason he tracked the payment and Paul engaged the Manager who was expected to withdrew it and give it to Paul on 11.10/2019 at 6.30pm, for him to deliver to the Respondent.

We strongly believe that, the labour officer misdirected himself when he failed to consider the evidence of the email trail, together with Annette's testimony and instead relied on the evidence of RW1, RW2 and the unsigned minutes of the disciplinary hearing, as a basis to discredit it. We are further persuaded by the holding in **Laws Vs London Chronicles (1959) WLR 698,** in which it was observed that one isolated misconduct was sufficient to justify summary dismissal. The test is: "***Whether the conduct complained of is such as to show the servant to have disregarded the essential conditions of the contract of service.***" It is not in dispute that the Respondent was a senior member of staff who was expected to abide by the Appellants policies, which in our considered view were a fundamental part of his contract.

It is therefore our finding that, on a preponderance of evidence in the email trail and Annette's testimony, the Appellant was entitled to make an inference of the Respondent's breach of the Citi Health club policy and it complied with Section 68(2) which provides for proof of the reason provides that: *(2) 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....".* Even if no evidence was adduced to show that he actually received the money, the email trail was sufficient to indicate that he was in the process of doing so, because on 11/10/2019, Paul Namanya who was the go between indicated that "she" the Manager had the "dimes" but she asked him to meet her at 6.30 pm and the

Respondent assured him that he would still be in office until about 9.00 pm. This particular conversation left no doubt in our minds that the Appellant had reason to believe that the Respondent was in the process of soliciting and receiving money from the Machame health club. We do not subscribe to the argument that, given that the terms of the contract that were broken were not stated because as earlier discussed all policies pertaining to the contract were a fundamental part of the Responden"s contract, a breach of which would justify a dismissal. In **miller vs Minister of Pensions 1947 2 AllER 372,374,** Lord Denning expressed the civil standard of proof as follows: *"It must carry a reasonable degree of probability , but not so high as is required in a criminal case. If the evidence is such that the tribunal can say "we think more probable than not" the burden is discharged, but if the probabilities are equal it is not."*

On a balance of probabilities, given the email trail and Annette's testimony, we think that it is more probable than not that the Respondent with the help of Paul Namanya was in the process of breaching the Appellant's Code of Conduct and Citi's health club benefit policy, which are fundamental terms of his contract and therefore, his dismissal was justified. And as already stated in **Bwengye Herbert VS ECO Bank LD No. 135 of 2015,** this Court held inter alia that;

> *" ... the employer need not prove the case against the employee beyond reasonable doubt. It is enough for the employer based on the facts of the case to show that he or she was convinced that the employee committed wrong."(also s*ee **Laws vs Vs London Chronicles (1959) WLR 698,(supra).**

In the circumstances, the labour officer raised the standard of proof too high to require proof of actual solicitation, yet what is expected of a disciplinary hearing is to apply a standard of proof on a balance of probabilities . In so doing, he erroneously

found that the Appellant did not prove that, the Respondent was benefitting from unofficial process for gaining unofficial membership at Machame, Health club.

Regarding his declaration of his business interest in AGL,we established that it was a requirement under the personal trading and Investment policy, that staff of the Appellant were required to declare their business interest. The Respondent was therefore required to declare his interest in AGL investment club. At page 132 of volume II of the record the Respondent is recorded as stating that he made a manual declaration in 2014, but the club expired in 2015, and the digital system was only introduced in 2017. It was his evidence that he complied and the Respondent had the onus to prove otherwise. This court i**n Okonye vs Libya Oil ....**held that, it is the responsibility of the employer to keep all the employment records of his or her employees. In the circumstances, the Respondent had the duty to prove that the Respondent did not declare his interest in this regard. The assertion that by 2014, the declaration was manual was not rebutted by the Appellant therefore, she had the onus to prove that the Respondent did not declare his interest as required. The Appellant did not adduce any evidence to indicate that it had a mechanism in place that could prove non- declaration by staff, nor was there any evidence on the record to pin the Respondent.In the circumstances, the labour officer was correct to shift the burden onto the Appellant who were the custodians of the particulars of the Respondent's employment even if the Respondent had a duty to declare.

However as already discussed, on a balance of probabilities, it is more probable than not that the Respondent with the help of Paul Namanya was in the process of breaching the Appellant's Code of Conduct and Citi's health club benefit policy, which are fundamental terms of his contract, therefore, his dismissal was justified. **Therefore, this ground partially succeeds.**

**und 2: The Labour Officer/Assistant Commissioner erred in law when he found that because of section 61(2) (e) of the Financial Institutions Act 2004, the investigative arm of the (CSIS) did not have power to investigate disciplinary infractions.**

The Appellant submitted that, its Fraud Risk Management Policy, provided that, the CSIS is an independent and the investigative body responsible for internal fraud and wrongdoing investigations. He contested the labour officer's finding that the Citi Investigative and Security Services is not a department of the appellant in the Audit department therefore, it could not lawfully investigate the allegations against the Respondent and that it was only the internal auditor who could carry out investigations lawfully. He further contented that such an interpretation was an absurdity and was misleading.

The Respondent on the other hand submitted that it is only the Internal Auditor that was independent and that the CSIS served interests of the group, therefore it could not be independent. According to Counsel, the Fraud Risk Management Policy Exhibit-R12 which the Appellant claims gives mandate to CSIS to conduct investigative services was breached by the Appellant. The Appellant breached paragraph 1.7 on page 439 of the record of appeal Vol: II that requires that, where there is conflict with local law, an exception should be put in place to address the conflict & the Appellant did not observe this policy requirement as the fraud risk Management policy conflicts with the Financial Institutions Act 2004 (FIA 2004) on whose is the responsibility it was to conduct an investigation. He argued that the Fraud risk policy Exhibit-R12 at page 448 of the record of appeal Vol: II paragraph 2.9 of the policy states that CSIS is the primary Investigator while the Financial Institutions Act 2004 section 61 (2) (b) & (e) mandates the Internal Auditor who was independent to provide investigative services to management. Counsel argued

that, the Respondent having been a Head of Risk for the Appellant, he is aware that the Fraud Risk policy has never been localized as Board of the Appellant has never approved exhibit-R12 because of this unresolved conflict with the FIA 2004.

**RESOLUTION**

As already discussed, a disciplinary process in not a judicial process. We therefore strongly disagree with the assertion by Counsel for the Respondent that an employer can be directed on the manner in which he or she should conduct an investigation into the infractions he or she has leveled against an employee. The purpose of an investigation is to verify the existence , validity and fairness of the infractions leveled against the accused employee, as a basis for taking disciplinary action or dismissal or termination of the employee. The investigation is therefore expected to enable the employer comply with section 68 of the employment Act, therefore, it must be objective and relevant. The findings of the investigation will inform the next step an employer will take to address the findings of the investigation. In the circumstances, an employee cannot claim that an investigation however it is done is illegal merely on the basis of the manner in which it was conducted. All that is required if that it establishes the basis of the reasons for taking disciplinary action or dismissal or termination of an employment contract.

Be that as it may, when we considered the Financial Institutions Act 2004, we established that Section 61 provides for the appointment of internal auditors and 61(2) (e), in particular provides for one the internal auditors duties as "to evaluate the effectiveness and efficiency and economy of operations.:" In our considered opinion the literal meaning of this provision is that it deals with investigations of operations and systems of the Citi Bank as an Institution's Management, as rightly submitted by Counsel for the Respondent and as stated **In Sekikubo &4 others vs Attorney Genneral&4 others ( Constitutional Appeal No. 1 of 2015).**

On the other hand CSIS is an independent body primary investigative body within for internal fraud and wrong doing investigations provided for under the Fraud and Risk management Policy, as stated at page 447-448 of the record. Clearly the 2 have distinct roles and as earlier discussed, the Employer has discretion to decide what methodology to apply in carrying out investigations. Employees cannot direct their employers on how to conduct investigations against them. According to the record of proceedings before the labour officer, it seems to us that, in his analysis the labour officer discussed section 61(2)(e ) of The Financial Institutions Act 2004 and the role of CSIS in providing investigation services and even considered the evidence of the CSIS investigator Kelly Mclnnis .Nothing on the record indicates that he disregarded the report of the CSIS in preference for any other evidence. With respect, it is our finding that this ground lacks any basis it is therefore, **disallowed.**

**Ground 3: The Labour Officer/Assistant Commissioner erred in law and fact when he failed to properly evaluate the evidence and arrived at a wrong finding that the complainant was unfairly terminated.**

Having established under ground 1, that on a balance of probabilities the Appellant was correct to make an inference of the Respondent's guilt, this ground was resolved by the resolution of ground 1.

**Ground 4: That the Labour Officer/ Assistant Commissioner erred in law and in fact when he failed to properly evaluate the evidence and arrived at the wrong finding that the complainant was not afforded a fair hearing.**

From the record of appeal, the following evidence is relevant on the issue of whether there was a fair hearing or not.

According to Counsel, for the Appellant, the Respondent attended the meeting for the disciplinary hearing, save that he contended that he was not given a chance to

present his case, or ask questions and he believed that the minutes therefrom were doctored because the information he gave at the meeting was not reflected in the minutes and they were not signed.

**RESOLUTION**

It is not in dispute that the minutes of the said meeting were rejected and he demanded that, he is availed the audio recording instead. He however rejected the directive for him to hear it from the Appellant's chambers. Indeed the Appellant's Disciplinary Policy and Procedure as at July 2020 at page 382 of the record of appeal provided that, the proceedings and the decision must be recorded in the disciplinary report and a copy, signed by all parties and it must be made available to the employee and his or her representative. It was not in dispute that the minutes of the hearing at pages 489 to 501 of the record of appeal vol 1, bear no signatures and yet at page 501, 5 members of the committee sat in the meeting but none of them signed the minutes. The Respondent was supposed to acknowledge the minutes as well but he refused to do so on the grounds that, they did not reflect the correct record of what transpired at the meeting and they were not signed by the committee members as well. The Labour officer when dealing with this issue in paragraphs 2,3, &6 of his award at page 63 of the record of appeal Vol 1, cited section 66 which makes it mandatory for the employer to accord an employee a fair hearing before dismissal. He noted that the fact that the meeting was held was not disputed by the parties and what is in contention was the content of the minutes which the Respondent alleged were doctored. The Respondent testified that, he "... *received a telephone call from Allan Akoko, the Citibank Kenya Human Resources Head that I should report to office on the next day September 15th 2020 to receive the outcome of the disciplinary hearing. On September 15th, 2020, I received a summary dismissal letter & was asked to immediately handover & my access to all bank information, systems &*

*premises was immediately revoked...".* As already discussed, the minutes at page 140 of volume I of the record were not signed by any of the committee members or the Respondent. In light of this, the labour officer made a finding that, the minutes were doctored and that's why they were not signed by the members. It was also his finding that , having not availed the Respondent with the recording of the same minutes, because they were at the Appellant's lawyer's office , given the email exchange between Victoria Nakaddu at pages 346 to 349 of the record of appeal Vol 1, he reasoned that it was an absurdity for employees who appear before disciplinary committees to be denied access to the minutes, therefore the Appellant had a duty to comply with its own disciplinary policies which provided that the disciplinary report should be issued to the employee. In **Milly K. Juuko vs. Opportunity Bank Uganda Limited HCCS No. 327/2012, in which Elizabeth Musoke J** (as she then was) observed that:

*"... I find that this was also irregular; if the minutes were prepared later on after the meeting, then all the members should have endorsed their signatures on the minutes first, so that the plaintiff would be the last person to sign, thereby agreeing to contents, including the presence of all the committee members who had signed the minutes...".*

This Court's holding in, Kapio **Simon vs Centenary Bank LDC No. 003/2015,** is to the effect that an organization cannot base their decision to dismiss an employee on unapproved and unsigned minutes!

> *"...In our view approval meant signing the minutes as a true record and formal adoption by Management.*

However the instant case is distinguishable because the investigation report sufficiently showed that, that the Respondent committed an infraction for which the

Appellant could dismiss him even if it he disputed the contents of the minutes of the disciplinary hearing which were not signed by any of the members. In any case it was not disputed that a disciplinary hearing did take place, save that the Respondent disagreed with the content of the minutes. To that extent the hearing was unfair.

In the circumstances, the Labour officer was correct when he held that, the Respondent was not accorded a fair hearing, given the unsigned minutes. **This ground therefore fails.**

**Ground 5: The Labour Officer/Assistant Commissioner erred in law and fact when having wrongly found the Complainant was not accorded both substantive & procedural fairness, he awarded him all the statutory reliefs prayed for, thereby arriving at a wrong finding.**

Following the findings from our re-evaluation of the evidence which established that, the Respondent's dismissal was substantively justified, in accordance with Section 94(3) of the Employment Act 2006 which provides that:

*"(3)The Industrial Court shall have power to confirm, modify or overturn any decision from which an appeal is taken and the decision of the Industrial court shall be final."*

**The labour officer's decision that, the Respondent was unlawfully dismissed is hereby overturned.**

In the circumstances the cross appeal on interest also fails. The only remedy available to the Respondent is 4 weeks' pay for the Appellants failure to accord him a fair hearing in accordance with section 66(4) of the Employment Act.

**Ground 6: That the Labour Officer/ Assistant Commissioner erred in law and in fact when he awarded a repatriation fee that was not pleaded and proved thereby arriving at a wrong finding.**

Having found that the Respondent was lawfully dismissed, he was not entitled to be paid repatriation allowance. This ground is resolved in the affirmative.

In conclusion, the Labour officer's award is overturned in its entirety. The cross Appeal fails. **This Appeal succeeds. The Labour officer's award is set aside in its entirety.** No order as to costs is made.

Delivered and signed by:

**THE HON. AG HEAD JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA**

.....

**PANELISTS**

**1. MR. BWIRE JOHN ABRAHAM** .....

**2. MR. KATENDE PATRICK** .....

**3. MS. JULIAN NYACHWO** .....

**DATE: 9/05/2023**