



THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE No. 077 OF 2020
(Arising from Msmc/150/1/1)

FRANCIS OMARA THULE CLAIMANT

VERSUS

ROOFINGS COMPANY LTD RESPONDENT

Before:

The Hon. Ag Head Judge, Linda Lillian Tumusiime Mugisha

Panelists:

1. Hon. Charles Wacha Angulo,
2. Hon. Beatrice Aciro Okeny &
3. Hon. Rose Gidongo.

Representations

1. Mr. Vidonyi Lumara Brian of M/s. MOM Advocates for the Claimant.
2. Mr. Alex Tusiime of M/s. Lukwago & Co. Advocates for the Respondent.

AWARD

Background

- [1] The Claimant's claim is for a declaration that the Respondent was unfairly terminated from employment, within the meaning of Section 73(1), 73(1)(b), 73(2)(b), (c), (d) and 75 (h) of the Employment Act, for an order that the Respondent pays him salary being his due entitlement in lieu of notice under Section 58(3) (d) of the Employment Act, and Article 42 of the Constitution, an order that the Respondent pays him 56

days accumulated unpaid leave days, an order that the Respondent reimburses him all the monies that were unfairly deducted from his account during the course of his employment, amounting to Ugx.3,073,869/-; an order that the Respondent reimburses his money amounting to Ugx.193,548.40/- deducted from his account in April in respect of alleged 4 days absence, yet he was in the field; an order that the Respondent pays him a basic compensatory sum of four weeks wages amounting to Ugx.2,000,000/-, severance allowance of Ugx. 2,700,000/-, an order that the Respondent pays him all his monthly wages from the date of unfair and unlawful termination until the date of this award; general and aggravated damages, for loss of employment, loss of career, grave financial hardships, a strained livelihood and psychological anguish suffered, interest on all pecuniary claims at 26% per annum from the date of accrual of the cause of action and costs of the suit.

BRIEF FACTS

[2] On 30th January 2017, Mr. Francis Omara Thule, the Claimant was employed as an exports officer with Roofing's Limited, the Respondent. He worked for the Respondent until 20th October 2019, when he was terminated. He contends that his termination was unlawful because the Respondent did not give him any valid reasons for the termination. According to him, he was terminated because of his efforts to fight for his rights and because of unfair internal influence, sabotage by Management, and unfair deductions from his account, claiming untaken leave of 56 days, and because he threatened to sue the Respondent. The Respondent, on the other hand, contended that the Claimant was terminated as a result of the restructuring and reorganizing of the Company.

[3] The parties filed a joint scheduling memorandum which was adopted with the following issues:

1. Whether the Claimant was unfairly and unlawfully terminated?
2. What is the quantum of damages and reliefs that the Claimant is entitled to?

The Claimant's evidence.

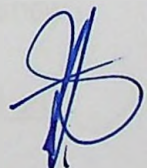
[4] The Claimant testified that he was employed by the Respondent on 30/1/2017, with the responsibility of carrying out export activities in the region, covering South

Sudan, DRC, Rwanda, Tanzania, Kenya, and Burundi. He was based at Lubowa the head office, but he periodically (once every 2 months) traveled to the different countries for 5 days at a time. He was terminated on 1/10/2019, without any reason and although his termination letter stated that he was terminated due to restructuring, he was not aware of any restructuring. It was also his testimony that he cleared with all the departments at the Respondent and his clearance form was signed off by the Audit department as evidenced in CEX "M" in his Trial bundle and he settled all amounts owing to the Respondent and made all the accountabilities before he left, as evidenced in REX5.

- [5] But he was not paid 56 days of accrued and untaken leave days because whenever he applied for leave it was denied on account of his work schedule. However, his applications for leave were made verbally. He noticed that the Respondent made unexplained monthly deductions from his account and when he sought an explanation, for it, he got none and he was terminated instead.

The Respondent's evidence

- [6] The Respondent testified through one Matovu Lawrence, the Human Resources Manager. He joined the Respondent on 1/03/2021, therefore he was not the Respondent's employee in 2019. By 2021 the Respondent had been operating in Uganda for 27 years and outside Uganda for 10 years. Although he was not an employee by 2019, he was the custodian of the Claimant's HR file, therefore, he was aware that the Company deducted money from the Claimant's account, and by the time he was terminated, it was still being deducted. He refuted the allegation that one Batwere replaced the Claimant as an export officer. It was also his testimony that the impending restructuring was communicated to staff by email because most of the staff had email accounts. He, however, did not adduce the list of the affected staff. According to him, the Respondent experienced loss for 3 consecutive months which amounted to persistent economic hardship. It was further his testimony that all the 12 employees who were stationed in southern South Sudan, were affected by the civil war at the time, which resulted in the suspension of the Respondent's operations there. He stated that the Claimant was based in Gulu where the operations of Southern Sudan were coordinated, and a total of 100 people were affected by the restructuring. It was his testimony that the Human Resources



Manager at the time personally engaged the Claimant about the internal restructuring and informed him that he would be paid, in lieu of notice, accumulated leave and salary of Ugx. 1,800,000/- upon handing over the Respondent's property in his possession and the Claimant agreed to deduct what he owed the Respondent.

Resolution of Issues

Issue1. Whether the Claimant was unfairly and unlawfully terminated?

- [7] It was submitted for the Claimant that, he was not notified about the impending restructuring process, and the termination letter which was signed off by the Assistant Manager and his supervisors, required him to hand over office on the same date. He contested the assertion that the Respondent notified the Labour officer and the Labour Union about the restructuring, on 30th August 2019 and September 2019, respectively. This is because the notifications did not bear the list of employees who were going to be affected and the Claimant was not aware of the existence of the Uganda Building Workers Union because he was not a member.
- [8] Mr. Vidonyi for the Claimant relied on **Ben Kimuli v Sanyu Fm 2000, Ltd LDR No.126 of 2015** for the legal proposition that where an organization was restructuring, employees who would be affected had to be notified prior to the actual restructuring. He also cited **Florence Mufumba v UDB Labour Dispute No.138/2014**, for the legal proposition that, when employing a person, the employer had a reason for doing so, therefore when dismissing or terminating the employee, the employer had to give reasons for the termination/dismissal. He contended that the Respondent in the instant case did not give prior notice to the Claimant, nor did it follow the procedure for collective termination as laid down under section 81 of the Employment Act. He further contended that the Respondent did not adduce any evidence to prove that it was undergoing persistent economic hardship to warrant an abrupt restructuring which the Respondent's witness admitted was long coming. He insisted that the Claimant had always accounted for all the Respondent's monies and there was nothing on the record to indicate that he had any propriety issues to warrant his termination.

The Respondents Submissions

- [9] Counsel for the Respondent cited Section 2 and 65(1)(a) on the definition of termination, 68(1) (2) & (3) which provides for reasons to be given before dismissal for matters which the employer genuinely believed to exist and which caused him or her to dismiss the employee, submitted that the reason for Claimant's termination is clearly stated in the termination letter, that it was due to restructuring and reorganization of the Company as a result of persistent economic hardships that were caused by political unrest in South Sudan. He further submitted that the Respondent offered to pay the Claimant 45 days in lieu of notice Ugx.1,800,000/- together with all his terminal benefits because it was not possible for him to serve the notice period given the volatile environment in South Sudan. The Claimant was also asked to hand over all Company property in his possession and settle his final account with the audit department as provided under the HR policy which he had not done to date.
- [10] He also cited Section 81 of the Employment Act and submitted that the Respondent took reasonable steps to mitigate the losses attributable to the termination by informing and preparing the Claimant, the Commissioner of Labour, Industrial Relations and Productivity of the Ministry of Labour Gender and Social Development and the Uganda Building Workers Union about it. He further stated that the Claimant was fully aware of the political unrest in South Sudan and the Respondent discussed the internal restructuring with him before deciding to terminate him, therefore the termination was lawful.

Decision of Court

Issue1. Whether the Claimant was unfairly and unlawfully terminated?

- [11] It is not disputed that the Claimant was employed by the Respondent from 31/01/2017 until his termination on 1/10/2019. The termination letter attributed his termination to an internal reorganization and restructuring of the Respondent. Termination because of restructuring and or reorganization is lawful, if the correct procedure as laid down under section 81 is followed.
- The Superior Courts in Uganda have resolved that an employer is entitled to terminate an employee for a reason or none at all as long as he or she gives the



employee notice and follows the correct procedure of the law. (see *Hilda Musinguzi v Stanbic Bank (U) Ltd*, SCCA No.5/2016, *Stanbic Bank v Kiyimba Mutale*, SCCA No. 2/2010, *Kasingye Tumuhirwe Genevieve v Housing Finance Bank*, LDR No. 115/2016). However, where the reason for the termination or dismissal is related to the employee's misconduct or poor performance, Section 66 of the Employment Act provides that the employer must notify the employee of the reason and give him or her an opportunity to respond/defend him or herself.

[12] Section 68, of the same Act, also makes it mandatory for the Employer to justify the reason/s for dismissal or termination of an employee as follows:

'68. Proof of reason for termination

(1) In any claim arising out of termination the employer shall prove the reason or reasons for the dismissal, and where the employer fails to do so the dismissal shall be deemed to have been unfair within the meaning of section 71.

(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...."

In the instant case, the Claimant's termination letter stated that he was terminated because of internal re-structuring and re-organization of the Respondent and the termination took effect on 1/10/2019. He was offered 45 days payment in lieu of notice and all his terminal benefits and he was expected to hand over on the same date. As already discussed the employer has the prerogative to render an employee redundant as a result of restructuring or reorganization.

[13] The Employment Act, however, only provides for the procedure to be followed where there is a collective termination resulting from restructuring under section 81 and is silent on redundancy involving 1 employee. Section 81 provides that the reasons for collective termination as technological, economic, or structural reasons or for business failure. It provides as follows:

"Collective Terminations

(1) Where an employer contemplates termination of not less than 10 employees over a period of not more than 3 months for reasons of an economic, technological, structural, or similar nature, he or she shall;

(a) Provide the representatives of the labour union, if any, that represent the employees in the undertaking with relevant information and in good time

which shall be a period of at least 4 weeks before the first terminations shall take effect, except where the employer can show that it was not reasonably practicable to comply with such a time limit having regard to reasons for the terminations contemplated,(emphasis ours) the number and categories of workers likely to be affected and the period over which the terminations shall be carried out, and the information in paragraph (a) shall include the names of the representatives of the labour unions if any that represent the employees in the undertaking;

a. Notify the commissioner in writing of the reasons for the terminations, the number and categories of workers likely to be affected, and the period over which the terminations are intended to be carried out

(2) An employer who acts in breach of this Section commits an offence."

[14] In our understanding this section is intended to ensure transparency and fairness by requiring that the affected employees are given information and their various representatives are consulted about the termination resulting from restructuring. Courts have taken cognizance that termination through redundancy or restructuring is lawful because it is considered involuntary through no fault of the employee or the employer. This is because it is due to extraneous circumstances such as economic, technological, and other reasons that are beyond the control of the employer. However, the reorganization, restructuring, or redundancy, must be procedurally fair and substantively justifiable, therefore it must be done in accordance with the law.

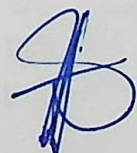
[15] This Courts holding in ***Programme for Accessible Health Communication and Education (PACE) vs Graham Nagasha, LD Appeal No.035/2018***, is to the effect that for a collective termination to be fair it had to be due to economic, technological structural or reasons of a similar nature, it must involve not less than 10 employees and the employees in issue or their representatives had to be notified about the impending termination 1 month before it took effect. Secondly, the Commissioner of Labour had to be notified in writing, about the reasons for the terminations, the number, and categories likely to be affected, and the period over which the terminations would take place. Therefore, before a collective termination can occur the employees had to be given notice and a justifiable reason within the meaning of Section 81(supra).

- [16] Although Courts are aware of the fact that an Employer is at liberty to restructure his or her business or organization, for it to be more efficient and or profitable, the Courts cannot fetter his or her discretion to increase or decrease the number and or quality of staff required for the business, in doing so, the employer is expected to ensure procedural and substantive propriety to avoid unfair termination of employees. (see *Dr. Elizabeth Kiwalabye v Mutesa 1 Royal University*, LDC No. **0005/2017**). As provided under section 81 of the Employment Act, this involves; informing the employees about the reason for the restructuring or redundancy, involving them through consultation and where possible on the mode and criteria for selecting those to be terminated, on account of the restructuring or redundancy, how they will be compensated and where it is possible, giving them time to seek alternative employment. The law provides for not less than 1 month's notice.
- [17] However, the Employment Act does not define redundancy which is generally understood as the loss of employment, occupation, job, or career by involuntary means through no fault of the employee. Redundancy involves termination of employment at the initiative of the employer where the services of the employee are no longer needed, it may be due to restructuring which could result in the termination of less than 10 employees or even 1 employee.
In the circumstances, in determining the legality of a termination resulting from restructuring or redundancy, the Court must examine the entire process to ensure that it was done under principles established under the law and in this case in accordance with Section 81 of the Employment Act(*ibid*).
- [18] The Respondent argued that it was forced to temporarily suspend its business operations in South Sudan in 2019 and the Gulu outlet and this affected the staff who were based in Gulu including the Claimant. It was however the Claimant's testimony that his work was based at the Head office in Lubowa Kampala, where he was in charge of exporting to neighboring countries such as South Sudan, DRC, Rwanda Burundi, and Kenya. According to him he periodically traveled to either of these Countries once every 2 months for at least 5 days. Counsel relied on forms showing his claim for travel allowances and the various payment receipts for accommodation marked on REX5 on the Respondent's trial bundle, as evidence, that he traveled to South Sudan. The Claimant further denied any knowledge of the alleged restructuring and why it took place. He also contested the alleged notification

of the collective termination letters addressed to the Commissioner Labour, Industrial Relations and Productivity of the Ministry of Gender Labour, and Social Development, on the grounds that, whereas the Commissioner Labour was notified on dated 29/08/2019, the intended termination would take place between September and November 2019 and would affect 100 staff, the list of the affected staff was not provided nor was it adduced by RW1 who testified that close to 100 people were affected.

[19] It is therefore important to determine what the Claimant's workstation was to determine whether his termination was as a result of restructuring or redundancy. When we analyzed the REX5 travel allowance claim forms, we established that the Claimant was issued travel allowances to travel to Juba South Sudan, which was confirmed by the receipts in respect of accommodation attached from pages 14-17 of the RTB and payment in respect of Visa and car rent at pages 18 and 19 respectively. This evidence did not demonstrate that he was based in Gulu as testified by RW1. We are fortified in this, by the travel allowance claim form, which indicated that he was under the Sales and Marketing department and the purpose of travel was sales and marketing to Juba. The Visa and Hotel receipts as already discussed show that he stayed in Juba. An analysis of the receipts on which he was paid salary pages 11 to 17 of his trial bundle indicated that the location of his deployment was Department of Administration, pay area; rolling ltd for local, which led us to conclude that, he was abased at the head office under the Administration office and not at Gulu which coordinated South Sudan. The Respondent did not adduce any evidence to confirm to this court that the Claimant was deployed at its Gulu office. The only evidence on the record showed that he was an export officer under the Administration department. In the absence of concrete evidence about his deployment in Gulu, we are convinced that he was always deployed at the head office in Lubowa and he only traveled to the countries under his charge to undertake his roles as export officer.

[20] Having established that his deployment was at the head office at Lubowa, we now resolve the question of whether his termination was a result of restructuring or redundancy. It was the Respondent's evidence that there were 12 employees deployed in South Sudan including the Claimant and they were attached to Gulu. However, due to the civil war in South Sudan, the operations of the Gulu office were



suspended between September and November 2019 and the Claimant who was purportedly based in Gulu was also affected. We have already established that the Claimant was based at the headquarters at Lubowa Kampala and not in Gulu. It is not stated in the Respondent's letter to the Commissioner Labour.

[21] The letter to the Commissioner Labour stated in part as follows:

RE: COLLECTIVE TERMINATION NOTICE

The above matters refers.

"We write to inform you that our intention to terminate services of some of our employees at Roofings Limited between September 2019 and November 2019 due to persistent internal and external hardships requiring immediate internal restructuring and re-organisation of our business operations to remain competitive and operational.

We accordingly wish to inform you that our downsizing will affect approximately 100(One hundred) employees across all departments and sections.

Additionally, a purposeful review of skills set, knowledge & competencies is ongoing in an attempt to harness them in other departments and sections(as per the requirements as well as capacity) and likely possibility to retain some will be embraced but also shared with your office. (emphasis ours)

Lastly, we profoundly recognize and appreciate your commitment and enormous support made to Roofings Limited towards securing and promotion of the hand-in-hand strategy for Labour relations management.

*Yours truly,
SHIKH ARIF
TECHNICAL DIRECTOR....."*

[22] Our reading paragraph 4 of this letter which was dated 28th August 2019, indicates that although the reason for terminating approximately 100 staff, was stated at the time the letter was written, the Respondent had not yet identified the categories of

the workers likely to be affected, because it stated that, "a purposeful review of skills set, knowledge & competencies is ongoing in an attempt to harness them in other departments and sections(as per the requirements as well as capacity) and likely possibility to retain some will be embraced but also shared with your office. (emphasis ours)." It was therefore unclear under which category the Claimant was placed and yet, Section 81(1) (a)(b) which we shall quote again for emphasis, makes it mandatory to state the categories that will be affected.

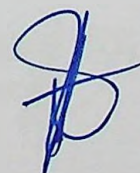
[23] The Section provides as follows:

"(1)Where an employer contemplates termination of not less than 10 employees over a period of not more than 3 months for reasons of an economic, technological, structural or similar nature, he or she shall;

(a) Provide the representatives of the Labour union, if any , that represent the employees in the undertaking with relevant information and in good time which shall be a period of at least 4 weeks before the first terminations shall take effect, except where the employer can show that it was not reasonably practicable to comply with such a time limit having regard to reasons for the terminations contemplated, the number and categories of workers likely to be affected and the period over which the terminations shall be carried out,...."

[24] The same letter was also addressed to the Labour Union, but it was the Claimant's evidence that he was not a member of the Union, and no evidence was adduced by the Respondent to the contrary. In addition, even if RW1 testified that the Respondent's Human Resource Manager personally engaged the Claimant and told him about the internal restructuring and reorganization and his impending termination resulting therefrom, he did not adduce any evidence to prove that the Human Resources Manager engaged the Claimant about any internal restructuring or reorganization and his impending termination.

[25] Section 81 makes it mandatory for the employer to inform the employee likely to be affected by a restructuring or their representatives about the restructuring, within a period of not less than 4 weeks and to notify the Commissioner of Labour as well. Even if the employer retains the prerogative to restructure his or her business and to make positions redundant it is mandatory that the reasons for the restructuring are justifiable and the positions to be rendered redundant are declared. Therefore, even



if Courts are enjoined not to interfere in an employer's entitlement to reorganize or restructure his or her business as stated by the **New Zealand Court of Appeal in GN. Hale v Wellington (1991) 1 N.Z.L.R at 151**, that

".. this court must now make it clear that an employer is entitled to make his business more efficient, as automation, abandonment of unprofitable activities, re-organization or other costs- saving steps, no matter whether or not the business would otherwise go to the wall...the personal grievance provisions should not be treated as derogating from the rights of employers to make management decisions genuinely on such grounds. Nor could it be right for the Labour court to substitute its own opinion as to the wisdom or expediency of the employer's decision..."

- [26] The reason and the process of the reorganization must be genuine and justifiable. It was the RW1's evidence that the restructuring was orchestrated by the Civil War in South Sudan which affected its operations in in Gulu office which was most affected by the economic hardships resulting from the civil war in South Sudan, where the Claimant was purported to be deployed. We have however established that he was never based in Gulu nor was he listed anywhere among the staff that were affected by the restructuring. There is no evidence on the record to show that the Claimant was informed about any restructuring or any contemplated termination because of the restructuring of the Respondent. There was no evidence to show that the Claimant was a member of the Labour Union which was notified about an impending termination of employees resulting from an impending restructuring. This court in **Programme for Accessible Health Communication and Education (PACE) v Graham Nagasha, LD Appeal no. 035/2018(supra)**, emphasized the employer's obligation to directly and individually notify even employees who are not represented by Labour Unions as in the instant claim. No evidence was adduced to prove that the Claimant was directly or individually notified about the restructuring process, or that he was one of the employees contemplated for termination. We are further fortified by the fact that he was summarily terminated on 1st October 2019 and asked to hand over on the same day. Having established that he was not a staff at the Gulu office, we are not convinced that, he couldn't serve the 45 days' notice.
- [27] Given this analysis, we respectfully do not agree with the assertion that the Claimant was terminated as a result of restructuring and are inclined to agree with the

Claimant that, he was terminated for another reason. It was his testimony that he was always demanding an explanation for the deductions that were being made from his Account by the Respondent, even after he was terminated, which was confirmed by RW1.

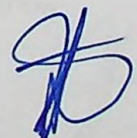
[28] An analysis of the requisition forms marked REX4, indicated that, whereas he took an advance of Ugx.700,000 and a loan of Ugx.6,660,550/- the ledger on page 10 of the Respondent's trial bundle indicated that monthly deductions of less than 1,000,000/- were made towards their repayment from 19/03/2018 to 10/04/2019 and by 10/-4/2019, a total of Ugx.5,386, 631/- had been recovered from him. The Ledger also indicated that he was to receive a refund of Ugx.1,293,824/- which he paid in excess. We, therefore, found no basis for the deductions that were made on his account in respect of Vouchers No. 100068014, of Ugx.980,933 on page 6, V,10066156 of Ugx.1036,302/-at page 7, V-10065516 of Ugx.1.135, 468/- at page 8v- 10013848 of Ugx.1,293,800/- on page 9 which were not covered in the ledger on page 10 which reported particulars: BP1533, JN00810, JN001054, JN001398, JN003294, JN003369 and JN3735. Totaling to Ugx. 5,386,631/ which was captured under voucher No. 10013183 on page 11 of the RTB. We found no legitimate reason why the Respondent continued to make deductions from the Claimant's account. It would therefore not be farfetched to believe that his demands for an explanation for these deductions could be the reason why he was terminated, and the restructuring was a cover-up.

[29] In conclusion, it is our finding that the Claimant's termination based on grounds of restructuring and reorganization was both procedurally and substantively baseless, therefore it was unlawful.

ISSUE 2: What is the quantum of damages and reliefs that the Claimant is entitled to?

[30] Having found that his termination was both procedurally and substantively unlawful, the Claimant is entitled to an award of some remedies. He prayed for the following remedies:

- (1) **A declaration that he was unlawfully terminated. It is so declared.**
- (2) **Payment in lieu of notice under Section 58(3)**



According to the termination letter, the Respondent undertook to pay the Claimant 45 days in lieu of notice, during cross-examination, the Claimant stated that he was paid his for 1 month. The Respondent having undertaken to pay him 45 days' notice and only paid him 1 month's salary in lieu of notice, still owes him 15 days which we it is ordered to pay to him.

(3) Accumulated leave days

There is no evidence to prove that the Claimant applied for leave, and it was denied by the Respondent. It was his evidence that he verbally asked for leave and at one point he was given one day off. Although leave is a right of an employee, it is not absolute, Section 54 of the Employment Act is to the effect that it should be taken at a time agreeable to both parties, therefore the right as stated by this court *Kangaho Silver v Attorney General LDC 276/2014*, can only be exercised by application for leave and only when it is refused will the employee be entitled to payment in lieu of untaken leave. The Claimant has not adduced any evidence to indicate that he applied for leave and it was denied, we have no basis to grant this claim. It is therefore denied.

(4) Miscellaneous deductions

Although the Respondent submitted that the Claimant should have pleaded the money deducted as special damages and strictly proved them. Our analysis of the evidence on the record indicated that the Respondent did make several deductions from the Claimant's Account without any basis. Based on the Respondent's ledger which they furnished as evidence, it was clear that the Claimant had paid money in respect of the Ugx.700,000/= advanced to him and partly paid the salary loan of Ugx. 6,660,500/- on page 10 of the Respondents Trial Bundle. It was also clear that the travel claim /requisition form with attendant receipts for accommodation, car rent, and visa fees for South Sudan was evidence that he traveled to Juba with respect to his work. RW1 did not justify the deductions either.

In the circumstances, we are satisfied that the Claimant proved that the deductions were erroneously made.

- [31] The Respondent is, therefore, ordered to refund the monies erroneously deducted in respect of Vouchers No. 100068014, of Ugx. 980,933 on page 6, V,10066156 of Ugx.1036,302/-on page 7, V-10065516 of Ugx.1.135, 468/- on page 8v- 10013848 of Ugx. 1,293,800/- on page 9 of the Respondent's trial bundle together with the Ugx. 193,000 which was deducted for being absent from duty yet according to the travel claim on page 10 of the RTB he was on duty in Juba.

(5) General and Aggravated Damages

- [32] It is trite law that General Damages are intended to bring an aggrieved party to as near as possible in monetary terms to a position as he or she was in before the injury occasioned to him or her by the Respondent occurred. (*see British Transport Commission v Gourley[1956J]AC 155*). General Damages are therefore compensatory in nature. General damages are awarded at the discretion of the court.

Aggravated damages on the other hand are extra compensation to a plaintiff for the injury to his feelings and dignity caused by the way the Respondent acted.

Basic compensatory pay

Having established that the Claimant was unlawfully terminated, we believe he is entitled to an award of general damages for unlawful termination. There was no evidence to indicate that he was not a good performer or that he had ever been subjected to any disciplinary action for either poor performance or misconduct. Even if he was accused of failing to account for money, no evidence was adduced to prove it. Having served for only 2 years and 8 months earning a gross salary of Ugx. 1,200,000/- an award of **Ugx.5,000,000/-** is sufficient as general damages. The Claim for aggravated damages is declined because we found no basis to award it.

(6) Severance pay

- [33] 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 negotiated between the employer and employee. However, where no formula for calculating severance pay exists, this court maintains the calculation established in *Donna*

Kamuli vs DFCU Bank Ltd LDR ... held that the reasonable method for calculating severance pay shall be payment of 1 month's salary for every year the employee has served.

The claimant having served from 30th January 2017 to 1st October 2019 served for 2 years and eight months, therefore he would be entitled to severance pay for 2 and a half years, at a rate Ugx. 1,200,000/- per month amounting to **Ugx.3,000,000/-**.

(7) Wages from termination until award

- [34] Section 40 of the Employment Act entitles an employee to be given work for which payment of wages will be made per section 41. The payment of wages is therefore for work done or undertaken. Subsection (2)(d) of section 40 however provides that where the contract has been frustrated or its performance suspended the employer would not be compelled to provide work and in turn will be under no obligation to pay any wages. This court is of the considered opinion that a claim for prospective earnings is speculative because there is no guarantee that the employee can serve the contract to completion due to intervening circumstances such as death of either party, lawful termination of the contract, lawful reduction or shortage of work as a result of restructuring beyond both parties control among many others. There is no guarantee that the Claimant would have served the contract to the end. In the circumstances, this claim cannot stand it is declined.

(8) Interest at 26% per annum

- [35] An interest rate of 10% per annum shall accrue on 1, 2, 4, and 6, from the date of filing this matter in this court until payment in full and on 5 from the date of this award until payment in full.

(9) Costs of the Claim

- [36] This Court has held that the award of costs to a successful party in a Labour Dispute is an exception given the inequality between the parties, the employer being the holder of capital and having power over the employee, who is in a position of servant. However, where it is established that the employer deliberately abused the Labour rights of an employee or the employee is guilty of some form of misconduct,

costs may be awarded. Having already awarded the Claimant general damages, and severance pay and he was paid in lieu of notice, we found no basis to further award him costs. They are therefore declined.

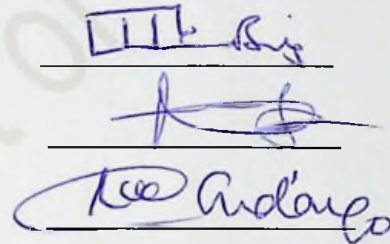
[37] In conclusion, this claim succeeds in the above terms. It is so ordered.

Signed in Chambers at Kampala this 12th day of April 2024.

Hon. Justice Linda Lillian Tumusiime Mugisha,
Ag. Head Judge

The Panelists Agree:

1. Mr. Charles Wacha Angulo,
2. Ms. Beatrice Aciro Okeny &
3. Ms. Rose Gidongo.



12th April 2024
9:30 am

Appearances

1. For the Claimant: Mr. Bidonyi Lomora Brian.
2. For the Respondent: Represented by Ms. Irene Nabunya.

Parties absent

Court Clerk: Mr. Christopher Lwebuga.

12th April 2024

May it please you My Lord and Honourable members of the panel. My name is Bidonyi Lomora Brian appearing for the Claimant. The Respondent is represented by Ms.



Irene Nabunya. The parties are not in Court. The matter is coming up for delivery of the Award. We are ready to receive it.

Court: Award delivered in open Court.

Delivered and signed by:



Hon. Justice Linda Lillian Tumusiime Mugisha,
Ag. Head Judge, Industrial Court

Industrial Court of Uganda