



THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT FORT PORTAL
LABOUR DISPUTE REFERENCE NO. 008 OF 2022
(Arising from Labour Complaint No. KDLG.009/03/02/2022 KYEGEGWA)

KHADIRI M. RWAMBALE :::CLAIMANT

VERSUS

GARFIELD INSTITUTE OF TECHNOLOGY ::RESPONDENT

Before:

The Hon. Mr. Justice Anthony Wabwire Musana

Panelists:

Hon. Jimmy Musimbi, Hon. Emmanuel Bigirimana and Hon. Michael Matovu

Representation:

- 1. Claimant appeared pro se.
- 2. Respondent absent.

AWARD

Introduction

[1] On the 25th day of February 2021, the Claimant entered a five-year employment contract with the Respondent, a tertiary institution, to serve as principal at a gross monthly salary of UGX 1,000,000/=. On the 31st of January 2022, the Claimant's contract was terminated on allegations of unsatisfactory performance. He complained to the Senior Labour Officer(**the SLO**) at Kyegegwa District Local Government, and after an unsuccessful mediation session, the matter was referred to this Court.

The Claim

[2] In his memorandum of claim, the Claimant seeks a declaration that his dismissal was wrongful, unlawful and unfair, a declaration that there was a breach of contract, good faith, trust and confidence and unfair dealing by the Respondent, a declaration of the Respondent's Directors callous and malicious treatment of the Claimant amounted to the tort of infliction of emotional distress, general damages, interest at commercial rate, costs and any other relief the Court deems fit.

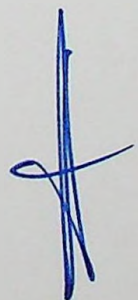
The proceedings and evidence.

- [3] When the matter was called before this Court on the 23rd of May 2024, the Claimant, appearing *prose*, asked to add parties. We set the matter for mention on 4th June 2024. He did not appear in court that day or at the subsequent fixture on the 11th of June, 2024. On the 18th of June 2024, he appeared in Court, and we directed him to file his pretrial documents. The Claimant's case was set for the 19th of June 2024. We also noted that the Respondent had been served through the Local Council 1 Chairperson at Haisaza LC1, Kyegegwa Town Council, by Ms. Caroline Kabasinguzi, Court Clerk at Kyegegwa Magistrates Court, where the Respondent has its offices. Ms. Kabasinguzi filed an affidavit of service on the 23rd of November, 2022. The Respondent had not filed a memorandum in reply. Accordingly, this matter proceeded *ex parte* under Rule 17(3) of the Labour Disputes(Arbitration and Settlement)(Industrial Court Procedure) Rules, 2012.
- [4] At the hearing, the Claimant's witness statement, made on the 18th day of June 2024 and filed in Court on the 19th day of June 2024, was admitted as his evidence in chief. The Claimant told us that everything he wanted to say was contained in his witness statement.
- [5] Upon perusing the Claimant's memorandum of claim, we considered this matter a case of summary dismissal. In our view, the claim for breach of the employment contract was interspersed with the claim for wrongful, unfair and unlawful dismissal. This is so because of the oft-cited dicta of the Supreme Court of Uganda in *Hilda Musinguzi v Stanbic Bank U Ltd*¹ Court cannot fetter an employer's right to terminate if the employer follows the procedure. Under Order 15 Rule 5 of the Civil Procedure Rules S.I 71-1(**the CPR**), we framed the following issues;
- (i) *Whether the Claimant's dismissal was wrongful, unfair and unlawful? and*
 - (ii) *Whether there are any other remedies available to the Parties?*
- [6] In his witness statement, the Claimant told us that the Respondent's directors head-hunted him, and he sat for an interview on the 25th day of October 2020. On the 25th day of February 2021, he received an appointment letter for a five-year contract, which he duly accepted. He began work on the 1st of March 2021. On the 31st of January 2022, he received a termination letter stating that his services were unacceptable, unprofessional, and barbaric. He protested this dismissal to the Respondent's Board of Directors. They did not respond. He complained to the SLO, and the mediation was unsuccessful. He felt his dismissal was unlawful and that he had suffered job loss, loss of income, livelihood, and general inconvenience for which he felt the Respondent was liable.

Determination

Issue 1: Whether the Claimant's dismissal was wrongful, unfair and unlawful?

¹ SCCA 5 of 2016



- [7] The law on dismissal is now settled. For a dismissal to be fair and lawful, an employer must be procedurally and substantively fair².

Procedural fairness

- [8] Procedural fairness means that an employer adheres to the rules of dismissal. It means the rules governing dismissal must be followed. The cardinal rules are set under Section 66 of the Employment Act, 2006 (**the EA**), where an employer considering dismissal for misconduct or poor performance must explain to the employee the reason or reasons why the employer is considering dismissal. This means two things: First, there must be notification of the allegations for which the employer is considering dismissal. Secondly, the employer is expected to afford the employee a hearing. In *Ebiju v Umeme Ltd*³ The principles of a fair hearing or the right to be heard consist of a notice of allegations against the plaintiff are served on him in sufficient time to prepare a defence, clearly stating what the accusations against the plaintiff are and his rights at the hearing, including the right to respond to the allegations against him orally and or in writing, the right to be accompanied to the hearing and the right to cross-examine the Respondent's witness or call witnesses of his own. Further, the plaintiff should be given a chance to appear and present his case before an impartial committee in charge of disciplinary issues of the Respondent.
- [9] The Claimant's evidence was unchallenged. In *Geoffrey Brown v Ojijo Pascal* where evidence is unchallenged, the Court must evaluate it to give it quality and value.⁴ As a starting point, the termination letter, Annexure C to the Claimant's witness statement, contained various charges relating to the Claimant's performance and conduct. The letter stated that in its supervisory role, the Respondent's Board of Directors had noted several findings in the Claimant's work. The Chairperson of the Board wrote that the Claimant was disrespectful, hoarded the Respondent's vital documents, personalised the Respondent institute and informally and illegally recruited staff. It was written that the Board found this performance and conduct unacceptable and unsatisfactory and observed the Claimant's poor communication, continuous absenteeism, lack of transparency, telling lies, failure to register the institute and constant incompetence. The Respondent terminated the Claimant for these reasons. Indubitably, these reasons relate to the Claimant's performance and conduct and are invariably governed under Section 66EA.
- [10] Therefore, we must ask whether the Respondent complied with Section 66 EA. There was no evidence that the Respondent notified the Claimant that it intended to dismiss him because of his underperformance and misconduct. Section 66EA requires the employer to notify the employee. We do not find evidence that there was any prior notification. The dismissal would be unlawful on this ground alone.

² *Mugisa v Equity Bank (U) Ltd*[2023] UGIC 62

³ [2015] UGHCCD 15

⁴ [2023] UGHCCD 173 Per Ssekaana J.

- [11] This is compounded by the failure to hold a disciplinary hearing. A disciplinary hearing epitomises the right to a fair hearing as articulated under Article 28 of the 1995 Constitution. There is a wealth of authorities⁵ that hold that there is no fair hearing, and in the present case, there was no evidence of a hearing, so the dismissal is unfair and unlawful. The letter of termination says it all. The Respondent's Board reviewed the Claimant's performance, found it wanting and terminated him. That is all there is to it. Therefore, on procedural fairness, we find that the Respondent did not follow the procedure in Section 66EA, and the Claimant would be entitled to a declaration that his dismissal was procedurally unfair and unlawful.

Substantive fairness

- [12] In *Mugisa*, we held that substantive fairness relates to the reason for termination. Under Section 68EA, an employer must prove the reason or reasons for termination to be justified under Section 69(3) EA. The employer must genuinely believe the reason exists at the time of dismissal. This threshold in Section 69 EA is that the dismissal is justified when the employer can demonstrate that the employee has fundamentally broken his or her obligation arising under the contract. In *Uganda Breweries Ltd v Robert Kigula*⁶ the Court of Appeal held that gross and fundamental misconduct must be verified for summary dismissal. Mere allegations do not suffice.
- [13] To prove the allegations, the employer must hold a hearing to put the allegations and evidence to the employee. This is the essence of Section 66EA. It is entitled "**Notification and hearing before termination.**" The section provides for notification, which is covered well in *Ebiju*. It also stresses the requirement of a hearing. In definitive terms, a hearing is a judicial session usually open to the public and held to decide issues of fact or law with witnesses testifying.⁷ In our view and drawing from the definition of a hearing, it must be oral or at least a physical interaction between the employer and employee. At this interaction, the reasons are explained to the employee in the presence of a person of his or her choice. In our view, the framers of the EA intended that a physical hearing be conducted under Section 66(2) EA, where the employer hears and considers any representations the employee wishes to make. With the developments in technology, audio-visual links, and Internet Voice Over Protocols such as Zoom and Microsoft Teams, it is envisaged that such a hearing over the Internet may be permissible once duly recorded. However, a hearing must take place. There must be evidence of the allegations put to the employee for an opportunity to answer the allegations. That is a cornerstone of the labour justice system and the legal system. The Industrial Court has held that allegations of gross misconduct must be provable to a reasonable standard.⁸
- [14] The termination letter does not reference a hearing in the matter before us. From the evidence before us, we are not satisfied that the Respondent made any effort to put and prove the reasons for the dismissal of the Claimant. The absence of evidence of the reasons for dismissal tilts the scales in favour of the Claimant, and it cannot be said that the dismissal was substantively fair. We find the dismissal substantively unfair.

⁵ See *Sempira v Masaka Municipal Council & Anor* [2016] UGIC 26

⁶ [2020] UGCA 88

⁷ Black's Law Dictionary 11th Edn Bryan Garner Thomson Reuters 865

⁸ *Kamegero v Marie Stopes Uganda Limited* [2023] UGIC 52

Conclusion

- [15] Having found no procedural or substantive fairness in the matter before us, we must conclude that the Claimant was unlawfully dismissed and is entitled to a declaration to the effect. Issue one is answered in the affirmative.

Issue II: Whether there are any other remedies available to the Parties?

- [16] It is trite that an unlawfully dismissed employee is entitled to remedies. The Claimant asked for all the remedies in his memorandum of claim.

Unpaid salary for six months

- [17] Under paragraph 7(i) of his memorandum of claim, the Claimant asked for salary arrears from August 2021 to January 2022. In his witness statement, he did not place any evidence of payment or non-payment of salary before this Court. We were not told how the salary was paid and when it was not. It has been held that a claim for salary arrears is provable as special damages. That is, it is specifically pleaded and strictly proven⁹. In this case, the claim for salary arrears has not been established with us and is denied.

Unpaid NSSF arrears from March 2021 to January 2022

- [18] The Claimant sought UGX 1,760,000/= as Social Security Fund Contributions. He did not attach an account statement from the National Social Security Fund to his witness statement. In *Otim v Tirupati*, the Industrial Court observed that where the claimant does not adduce any proof, a claim for NSSF benefits would be speculative and be denied.¹⁰ In the circumstances that there is no evidence to support the claim, it is denied.

Period in Lieu of Contract February 2022 to February 2026

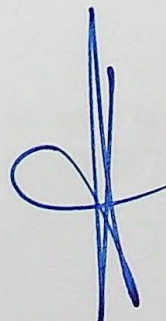
- [19] In paragraph 7(iii) of his memorandum of claim, the Claimant sought UGX 48,000,000/= as the salary for the unexpired portion of the contract. The position of the law is now settled. The Supreme Court of Uganda guided in *Uganda Post Limited v Mukadisi*¹¹ An employee terminated before the expiry of the fixed-term contract would not be entitled to compensation for the unexpired term of the Contract. The Industrial Court has been consistent in holding earnings for the unexpired portion of a fixed-term contract are regarded as speculative¹² and are not recoverable. In effect, salary can only be paid for work done. In the circumstances, the Claimant will not be entitled to any such compensation for the remaining term of the contract. The claim is denied.

⁹ *Kamukama v Summit Project Limited* [2023] UGIC 54

¹⁰ *Lubega v Holycross Orthodox Hospital*[2019] UGIC 211

¹¹ [2023] UGSC 58

¹² *Nazziwa v National Social Security Fund* [2022] UGIC 36



General Damages

- [20] In *Mukadisi*, the Supreme Court reiterated that general damages are those damages such as the law will presume to be the direct natural consequence of the action complained of and are non-economic harm or distress caused by the wrongful dismissal. These damages include compensation for emotional distress, mental anguish, damage to reputation and any other non-monetary harm suffered¹³. In the case before us, we have found that the claimant was unfairly and unlawfully dismissed. General damages would put the Claimant where he would have been had the Respondent not dismissed him. In **Stanbic Bank (U) Ltd v Constant Okou**¹⁴ Madrama, JA (*as he then was*) suggests a guide for assessing general damages in employment cases. The considerations, as His Lordship observes, include the manner of termination, employability or prospects of the employee getting alternative employment or employability, and the inconvenience and uncertainty of future employment prospects and age of the employee. The Claimant is 55 years old. He was unlawfully dismissed. Given that he was earning UGX 1,000,000/= per month and had worked for approximately one year, we would grant the Claimant the sum of UGX 5,000,000/= in general damages.

Aggravated damages

- [21] The Claimant asked for aggravated damages. In *Mukadisi*, the Supreme Court cited *Bank of Uganda vs Betty Tinkamanyire*¹⁵; for the proposition that aggravated damages are awardable for unlawful dismissal where the illegalities and wrongs of the employer were compounded further by its lack of compassion, callousness and indifference to the good and devoted services of the employee. While the Claimant did not provide any evidence from his peers, the termination letter made remarks about his incompetence and referred to his conduct as barbaric. While the Respondent was entitled to hold any opinion of the Claimant, its references to his character in this manner without a hearing at which he might defend himself were callous. Therefore, the Claimant is entitled to additional compensation in the form of aggravated damages. We award the sum of UGX 10,000,000/= in aggravated damages.

Interest

- [22] The Claimant sought interest at a commercial rate from the payout date until payment in full. The rate of interest is discretionary. The Claimant was in employment, and this was not a commercial or for-profit enterprise. In *Nazziwa*, the Industrial Court awarded 15% interest from the award date until payment is made in full. In the present case, interest at 17% per annum from the award date until payment in full should suffice. It is so awarded.

Costs

- [23] Under Section 8(2a)(d) of the Labour Disputes(Arbitration and Settlement) Amendment Act 2021, this Court may make orders as to costs as it deems fit. We have held that in employment

¹³ See *Stroms v Hutchinson* [1950]A.C 515

¹⁴ Civil Appeal No. 60 of 2020


¹⁵ [2008] UGSC 21

disputes, the grant of costs to the successful party is an exception on account of the nature of the employment relationship except where it is established that the unsuccessful party has filed a frivolous action or is guilty of some form of misconduct.¹⁶ In the present case, the Respondents have misconducted themselves, and we award costs against them.

[24] In the final analysis, the Respondent was procedurally and substantively unfair. We conclude that the Claimant was unfairly and unlawfully dismissed and is entitled to remedies. We make the following orders:

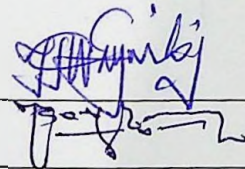
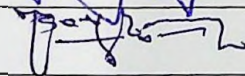
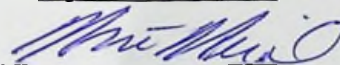
- (i) We direct the Respondent to pay the Claimant the following sums:
 - (a) UGX 5,000,000/= as general damage.
 - (b) UGX 10,000,000/= aggravated damages,
- (ii) The sums above shall carry interest at 17% p.a. from the date of this award until payment in full.
- (iii) The Claimant shall have costs of the claim against the Respondent.

Dated and delivered at Fort Portal this 26th day of June 2024.


Anthony Wabwira Musana,
Judge, Industrial Court

The Panelists Agree:

1. Hon. Jimmy Musimbi,
2. Hon. Emmanuel Bigirimana &
3. Hon. Michael Matovu.

¹⁶ Kalule v Deutsche Gesellschaft Fuer Internationale Zusammenarbeit (GIZ) GMBH [2023] UGIC 89

26.06.2024

10.32 a.m.

Appearances:

1. **Claimant in Court.**

2. **For the Respondent:** None

Court Clerk: Mr. Samuel Mukiza

Claimant: Matter for award, and I am ready to receive it.

Court: Award delivered in open Court.


Anthony Watwire Musana,
Judge, Industrial Court.

10:52 a.m.