



**THE REPUBLIC OF UGANDA**  
**IN THE INDUSTRIAL COURT OF UGANDA AT JINJA**  
**LABOUR DISPUTE REFERENCE No. 052 OF 2020**  
*(ARISING FROM NJERU LD 01/NMC/2020)*

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**MUYOMBA GEORGE :::::::::::::::::::::::::::::::::::::: CLAIMANT**

**VERSUS**

**1. SOUTHERN RANGE NYANZA LTD**

10 **2. PAN AFRICAN CARRIERS (U) LTD :::::::::::::::::::::::::::::: RESPONDENTS**

**Before:**

The Hon. Justice Linda Lillian Tumusiime Mugisha

15 **Panelists:**

1. Hon. Charles Wacha Angulo

2. Hon. Beatrice Aciro Okeny

3. Hon. Rose Gidongo

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**AWARD**

**Background**

The Claimant brought this claim against the Respondents for a declaration that his contract of employment was unlawfully/wrongfully terminated, payment for the salary for the month of May 2020, payment for two months in lieu of notice, general

25 damages for unlawful termination, 9 months payment for untaken leave, severance pay, punitive exemplary damages, and costs.

### **Brief Facts**

The claimant was employed with the Respondent Company as a security guard from July 2011. He was initially earning a gross pay of Ugx. 110,000/= which was later  
30 increased to Ugx. 772,306/= per month as per his pay slip in April 2020.

In April 2020, at the height of the COVID-19 pandemic, the Respondent directed him not to allow anyone to access the Company premises if he or she was not wearing a mask. On 6/05/2020, while at his duty station at the gate, he duly enforced the directive not to allow anyone to access the premises without wearing a face mask,  
35 including the General Manager a one Viney Kumar, for which he was subjected to disciplinary action and later terminated.

The Respondent purported to accord him two (2) disciplinary hearings scheduled for 16<sup>th</sup> and 19<sup>th</sup> May 2020 and issued him a termination on 19/05/2020 before the scheduled disciplinary hearings were communicated to him. His termination was  
40 based on allegations that he was selectively enforcing the directive by allowing non-Asians to enter the Company premises without masks while targeting Asians and sending them away for not wearing face masks, which the Respondent stated amounted to discrimination and insubordination.

The Respondents on the other hand contended that the Claimant was terminated for  
45 enforcing directives that were not provided to him by Management, when he blocked non-Ugandan staff (Indian managers) from accessing the Respondent's premises without masks, which amounted to racial discrimination and was contrary to the Companies norms, objectives and core principles. Following the intervention of the workers Union, the Claimant was offered reinstatement which he rejected. He also  
50 rejected his terminal benefits. Therefore he was not unlawfully terminated.

### **Issues**

- i. Whether the termination of the Claimant's employment was unlawful?
- ii. What remedies are available?

### **Representation**

- 55 1. Mr. Chris Munyamasoko of M/s. Liiga & Co. Advocates for the Claimant.
2. Ms. Charity Itungo Matsiko of M/s. Enoth Mugabi Advocates and Solicitors for the Respondent.

### **Resolution of Issues**

#### **1. Whether the termination of the Claimant's employment was unlawful?**

60 It was submitted for the Claimant that it was an agreed fact that, following the outbreak of the COVID-19 Pandemic, Management directed the Claimant not to allow anyone to enter the premises of the Respondent who was not wearing a mask as one of the SOPs on COVID-19. The Claimant's problems stemmed from his refusal to allow one Viney Kumar, the Managing Director access to the Company

65 premises because the Managing Director refused to wear a face mask per the Respondent's directives. According to Counsel the directive was put in place by the Respondent, and it applied universally to all staff. He contended that the Claimant was only enforcing the directives of the Company when he refused the Managing Director to access the premises without a face mask, because Kumar, the Managing

70 Director, was an employee of the Respondent and the directives equally applied to him. Counsel stated that this was confirmed by the Respondent's witness one Nabaweesi Joanitah when she testified that everyone was expected to wear a mask to work, and she did wear one herself.

It was further his submission that it was not mandatory for the Claimant to Appeal

75 against the termination of his employment because paragraph 6.4.5 (i) of the Human Resource manual was not couched in mandatory terms. Therefore one was not required to mandatorily apply against a dismissal.



He further submitted that the Claimant testified that he was not insubordinate because he refused to let Kumar Viney in, for not wearing a face mask. After all, it was an order issued to him by the Respondent. The Claimant also stated that the Respondent's offer of reinstatement was not done in good faith, because the letter of reinstatement was authored on 22/05/2020, the same day he was expected to return to work and yet it was served on him on 26/05/2020 after his time for reporting to work had expired. Therefore he declined the offer because the letter had ceased to serve its purpose.

Counsel insisted that the Claimant was enforcing the presidential directives and SOPs on the COVID-19 Pandemic and he was applying them generally on whichever employee, including Kumar Viney, the Managing Director, therefore he could not be accused of insubordination. In the circumstances, his employment was terminated without justifiable reasons and he was not accorded a fair hearing as provided under the law. According to Counsel by the time the Claimant was called to the disciplinary hearing on 16/5/2020 and 18/5/2020, judgment had already been passed against him by his boss, the same Managing Director, Viney Kumar. Therefore the purported hearings did not amount to disciplinary hearings as provided in the Employment Act.

The Respondent on the other hand, citing **Kyadok Hardware Ltd v Kwik Build Contractors Ltd (Civil Suit No. 40 of 2014) [2018] UGCommC 83**, argued that the burden of proof lay on the Claimant and in this case, he failed to discharge the burden of proof. According to Counsel for the Respondent, the Claimant's employment was governed by an appointment letter, the staff operational manual and the staff disciplinary code clause 6.4.1 sets out the disciplinary procedures that had to be undertaken in all cases where disciplinary action is required, and these were carried out. These he said should be read together with clause 6.1 which lists

all forms of indiscipline. She specifically cited clause 6.1.9 which dealt with willful  
105 insubordination or disobedience that the Claimant committed.

According to Counsel, it was an unrebutted argument that the Claimant admitted to  
attending the disciplinary hearings on 16<sup>th</sup> and 18<sup>th</sup> May 2020, therefore he was  
granted a right to be heard concerning his act of locking out General Manager, Mr.  
Viney Kumar who was the business head and his superior. The disciplinary  
110 committee rendered a decision and communicated it to the Claimants services were  
terminated, but despite the right to appeal being available to him, he did not appeal.  
Counsel further submitted that the Claimant's computed end-of-employment  
emoluments have always been ready for his collection, but he deliberately chose to  
disregard them. The workers' union pleaded for lenience on his behalf, and the  
115 Respondent agreed to do so, however, the Claimant declined to be reinstated.

She further argued that the Respondent complied with the procedure for termination  
because the claimant admitted that he had enforced directives not provided by the  
Respondent by which he blocked non-Ugandan staff from accessing the  
Respondent's premises without masks hence court should find that this conduct was  
120 racial and discriminative and it went against the company norms and objectives and  
core principles. Therefore, the Respondent lawfully terminated him after following  
due process.

### **Decision of Court**

It is a settled position of the law that an employer's right to terminate an employee  
125 he or she no longer wants cannot be fettered by the Courts so long as the employer  
follows the correct procedure of the law.(see **Hilda Musinguzi vs Stanbic Bank  
(U) Ltd SCCA No.5 /2016**). This Court in several decisions, and **Iga Bonny An  
Anor vs Southern Range** in particular stated; thus, "...the employer was expected to  
comply with sections 58, 65,66,68 and 70(6) of the Employment Act (read together), which  
130 provide for both substantive and procedural fairness, before the employer can exercise

*the right to dismiss an employee. In Akeny Robert vs Uganda Communications Commission LDC No. 023/2015 this court stated that, "the interpretation of provisions of a Statute concerned with the same subject should be construed as a whole..." Therefore, Sections 58,65,66,68 69 and 70(6) are concerned with the same subject of*

135 *termination or dismissal therefore they should be construed as a whole. Whereas Section 58 provides for notice before dismissal or termination, Section 65 defines termination, Section 66 provides that the procedures to follow before terminating or dismissing an employee irrespective of any other provision in that part, Section 68 requires proof of the reason, Section 69 circumstances under which summary termination is justified and*

140 *Section 70(6) places the burden of justifying the dismissal on the employer.*

It is not in dispute that, following the COVID-19 Pandemic, the Respondent issued a directive not to allow anyone who was not wearing a mask access to its premises. It is also not in dispute that on 6/05/2020 the claimant enforced this directive against the Respondent's Managing Director one Kumar Viney, for which he was terminated

145 from employment. A reading of the handwritten statement marked R4 on the Respondent's trial bundle on page 6 indicates that indeed one Okello of the Respondent directed the Respondent's guards including the Claimant not to allow the person who was not wearing a mask to access its premises through the main gate. During the hearing, the Claimant admitted that he locked the General Manager out

150 for not wearing a mask and that was the reason he was terminated. He stated that he did so in accordance with the Respondent's directive not to allow anyone to enter the premises without wearing a face mask. The Claimant also testified that he was subjected to 2 disciplinary hearings and he also submitted a statement on the same issue. To this extent the Respondent complied with the requirement under section 66

155 of the Employment Act, to provide him with a hearing which he admitted, he attended.

RW1 Nakaweesi Joanitah, the Human Resource Officer, testified that the Claimant's employment was terminated during the prevalence of the COVID-19 pandemic. She stated that, like any other organization at the time, the Respondent had to put in place mechanisms to adhere to the presidential directives and SOPS on COVID-19 and the directives applied to all staff.

It was also her testimony that on that fateful date of 6/05/2020, Kumar Viney, the Managing Director was not wearing a face mask when he reported for duty. She stated thus: "... Yes he had a face mask though he had not put it on...yes he said he did not put it on because he was not sharing a car with anyone...yes I began wearing a mask after the directive ...top management was supposed to issue guidelines to staff..."

Although Counsel for the Respondent argued that the Claimant selectively applied the directive to non-Ugandan, after carefully analyzing the written statements in Volume 1 of the Respondent's trial bundle and RW1's testimony, we established that after the directive was issued to the Claimant by one Okello, the Asian Managers continued to come to work without wearing masks and the claimant refused them to enter until they complied. RW1 testified that; "... there was some staff who were allowed to enter ...some Indian Managers who were sent back home because they did not have masks ...yes they eventually returned when they got masks and they entered...yes he allowed them in when they came with masks..."

It was clear from the evidence on the record that the Respondent's Managers took their directive for granted because they were the ones who reported to work without wearing masks contrary to their directive and the Claimant refused them to access the premises as he was directed. Although he may seem to have been overzealous when he refused to allow the General manager to enter the premises because he was not wearing a mask, we found no reason to fault him because he was simply obeying the respondent's lawful order and Kumar Viney the General Manager was no exception and if he was, no evidence was adduced to that effect. In any case, he was

the General Manager, who was expected to lead by example. It is our considered  
185 view that the claimant should have been commended for being firm and insisting the  
General Manager leads by example and wears a mask which was not only for his  
safety but his fellow staff as well, in light of the viciousness of the COVID-19  
Pandemic. It was therefore unfair for him to have been terminated for refusing  
entrance to the persons who were not complying with the Respondent's directive  
190 regarding wearing masks before entering the premises as directed. In the  
circumstances, the allegation that his action of refusing to allow Kumar Viney into  
the premises for violating the Respondent's directives did not amount to  
insubordination and the reason for terminating him on grounds that he had enforced  
the Respondent's directives amounted to an unjustifiable reason for his termination.  
195 Be that as it may, it is not in dispute that after the intervention of the workers' union,  
the Respondent agreed to reinstate him, and indeed on 22/05/2020, the Respondent  
wrote to him as follows:

*"22<sup>nd</sup> May 2020*

*PAN/32985/2020*

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*Mr. Muyomba George*

*PAN-SECURITY, Pan African Carriers (U) Ltd*

*Jinja*

*Dear George,*

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***RE: REINSTATEMENT AS AN EMPLOYEE OF PAN AFRICAN CARRIERS  
UGANDA LIMITED.***

*Reference is made to the termination of your employment as communicated in the  
letter dated 19<sup>th</sup>/05/2020 that resulted from your unbecoming  
behavior/insubordination.*

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*Following the termination, management has received pleas for lenience from  
workers union officials. Discussions have since progressed well resulting into the*



*decision to reinstate you as an employee with immediate effect. The terms and conditions of service remain the same as the ones you enjoyed before.*

*By this letter, therefore, you are requested to report back to duty on 25<sup>th</sup>/05/2020.*

*Yours faithfully,*

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*Nakaweesi Joanitah*

**HUMAN RESOURCES MANAGER**

*Cc. General Manager, Finance, File, Secretary-General (Workers Union)*

*Acknowledgment of Receipt and acceptance of this Letter*

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*Name: .....*

*Signature and date: .....*

The Claimant acknowledged receipt of this letter on 26/05/2020 with a note stating that: *“Received but offer not taken”*

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It was his testimony that the offer was not made in good faith because the letter was received after the date he was supposed to report had expired!

As already discussed, it is the prerogative of an employer to dismiss or terminate an employee he or she no longer wants, so long as the employer follows the correct procedure to do so and Courts rarely issue orders for reinstatement.

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Although we found it peculiar that the Claimant in the instant case rejected an offer for reinstatement on flimsy grounds that the date on which he was supposed to report had expired because he received the letter of reinstatement 1 day after the date he was supposed to report back to work, the fact remains that he was unlawfully terminated.

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We are of the considered opinion that, even if an employer reserves the right to exercise managerial prerogatives at the workplace, after terminating or dismissing an employee, he or she cannot force such an employee to return to work even by a grant or an offer of reinstatement. This is because an employment relationship is

based on trust and confidence between the employer and the employee, and this trust and confidence cease to exist when the relationship is unlawfully terminated.

240 In the circumstances, it is not sufficient that when the workers' union intervened, the Respondent offered to reinstate the Claimant. What is material is that by the time he was offered this reinstatement, he had been unlawfully terminated, and he cannot be faulted for refusing to be reinstated.

In the circumstances, this is to our findings that the Claimant was unlawfully  
245 dismissed for effectively executing an order and directive that was issued to him by management; and his refusal for reinstatement was not material in this case. Therefore this issue is determined in the affirmative.

## **2. What remedies are available?**

Having established that the Claimant was unlawfully terminated, he is entitled to  
250 some remedies. He claimed the following:

### **1. Payment in lieu**

It was submitted that the Claimant was entitled to two months' salary in lieu of notice being UGX 1,554,612/= subject to deductions. According to his contract of employment, the Claimant's employment commenced on 4/3/2011, until his unfair  
255 termination on 19/05/2020. He was terminated without any notice because his termination took immediate effect. According to section 58(3) (c) of the Employment Act, having served the Respondent for 9 years he is entitled to 2 months' notice or payment in lieu thereof. By the time of his termination, he was earning Ugx.772, 306/= per month. The Respondent is therefore ordered to pay him  
260 in lieu of a 2-month notice amounting to **Ugx.1, 554, 612/=**

### **2. Payment for the month of May 2020**

According to Counsel, the Claimant worked for the month of May 2020 because he was terminated on 19/05/2020; therefore he was entitled to a full month's salary of Ugx.772, 306/= less statutory deductions having received his last salary payment in

265 April 2020. That RW1 acknowledged this claim. We respectfully do not agree with this assertion. According to CEx2, his pay slip for the month of April 2020, he received the salary for April 2020. This meant that he only worked for 19 days in the month of May. He is therefore entitled to 19 days' pay amounting to **Ugx. 489,127/=**.

270 **3. General damages**

Citing **Ibrahim Bholm vs. Car and General Ltd SCCA Civil Appeal No. 12 of 2002**, Counsel for the Claimant submitted that the claimant was not given a fair hearing, and suffered loss, inconvenience, and trauma therefore he should be awarded Ugx. 10,000,000/= as general damages.

275 We have already established that the Claimant was unlawfully terminated; therefore he is entitled to an award of general damages.

The Supreme Court in Stanbic Bank Ltd Vs Kiyimba Mutale (supra), cited *Vires Vs National Dock Labour Board* [1956] 1QB 658 in which it was stated thus:

280 *"It has long been settled that if a man employed under a contract of personal service is wrongfully dismissed, he has no claim for remuneration due under the contract after repudiation. His only money claim is for damages for having been prevented from earning his remuneration. His sole money claim is for damages and he must do everything he reasonably can to mitigate them."*

285 Damages are awarded at the discretion of Court and are intended to return an aggrieved party to the position he or she was in before the injury caused by the Respondent. Having established that the Claimants worked for the Respondent from 2011 until his unlawful termination on 19/05/2020, he is entitled to an award of damages for the loss of employment. We have therefore no reason to deny his claim for **Ugx. 10,000,000/-** as general damages, it is hereby granted.

290 **4. Leave**

The claimant is also seeking untaken leave for a period of 9 years; counsel prays that he is awarded UGX 6,960,754 for the nine months' salary of every year.

Although Section 54 of the Employment Act entitles an employee to rest days; these rest days cannot not be taken at the whims of the employee. Section 54(1) (a) provides that the period when leave shall be taken must be agreed between the parties. Therefore, for an employee to succeed in a claim for untaken leave he or she must prove that he or she applied to take leave during a particular period and it was it was denied. The claimant in the instant case did not adduce any evidence to indicate that he applied for leave during the course of his employment and it was denied. Therefore his claim has no basis, it is therefore denied.

#### **5. Severance Pay**

Section 87(a) provides that where a person works for an employer for a period of 6 months or more and he or she is unlawfully terminated, he or she will be entitled to severance pay. Section 89 provides however that the formula for calculating severance pay shall be negotiated between the employer and employee and although the section is silent about circumstances where there is no agreed formula, this Court in **Donna Kamuli Vs DFCU Bank LDC No. 02/2015**, held that where there was no formula for calculating severance pay, the employee in issue would be entitled to the payment of 1 month's salary for every year served as severance pay. This position was upheld by the Court of Appeal in **African Field Epidemiology Net Work v Wasswa Kityaba (Civil Appeal No. 124 of 2017) [2019] UGCA 2098**.

Having already established that the Claimant in the instant case was unlawfully terminated he is entitled to severance Pay for the 9 years he worked at 1 month's salary per year worked amounting to and therefore is entitled to **Ugx.6,950,754/-**

#### **6. Exemplary/punitive damages**

We found no aggravating circumstances to warrant the grant of this claim. It is therefore denied.

**7. Costs of the Suit.**

It is the position of this court that costs are awarded as an exception and not as a rule.

320 In the circumstances, no order as to costs is made.

**8. Interest**

All pecuniary awards shall accrue interest of 12% per annum from the date of award until payment in full.

This Claim succeeds in the above terms. It is so ordered.

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Delivered and signed by:

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

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**The Panelists Agree**

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

335 **11<sup>th</sup> December, 2023**

INDUSTRIAL COURT OF UGANDA