THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE NO. 089 OF 2022
(Arising from Labour Dispute No. KCCA/MAK/LC/001/2022)

WABWIRE YUSUF ::CLAIMANT

VERSUS

EXPERTA GENERAL SUPPLIES LTD:::RESPONDENT

Before:

The Hon. Mr. Justice Anthony Wabwire Musana,

Panelists:

1. Hon. Adrine Namara,
2. Hon. Suzan Nabirye &
3. Hon. Michael Matovu.

Representation:

1. Mr. Umar Kabanda Ssebaduka of M/S Kibirige & Kibirige Advocates for the Claimant.
2. Mr. Hussein Hilal of M/S Hilal & Co Advocates for the Respondent.

AWARD

Introduction

[1] On the 3rd of August 2020, the Claimant was employed as a Technician with the Respondent. He was confirmed in the position on the 1st of October 2020 at a compensation of UGX 600,000/= per month. On the 27th of August 2021, he was suspended on allegations of grounds of theft. He was terminated on the 4th of October 2021. He lodged a complaint with the Makindye Urban Division Council Labour Office. Mediation failed, and the matter was referred to this Court. In his claim before this Court, the Claimant sought a declaration that he was unlawfully terminated without a hearing. He also sought orders of compensation, payment in lieu of notice, salary arrears, social security remittances, repatriation allowance, a certificate of service, and costs of the claim.

[2] The Respondent opposed the claim, contending that the Claimant was lawfully terminated. It was argued that the Respondent held two informal meetings where the Claimant admitted wrongdoing and was in fundamental breach of his contract of service. He was offered his terminal benefits less advances but refused to sign the terminal settlement sheet.

The Proceedings and evidence of the parties

[3] On the 10th of July 2023, the Joint Scheduling Memorandum *(from now JSM)* was adopted with two issues for determination, namely:

(i) Whether the Claimant was unlawfully terminated?

(ii) What remedies are available to the parties?

[4] The Respondent did not attend the trial. Upon perusal of the Court process Server's[1], Mr. Brian Mutebi's affidavit of service dated 10th May 2023, we were satisfied that service had been effected on Counsel for the Respondent and granted the Claimant leave to proceed *ex-parte* under Order 9R 21 of the Civil Procedure Rules S.I 71-1. *(from now CPR)*

The Claimant's Evidence

[5] The Claimant's witness statement, made on the 21st day of October 2022, was adopted as his evidence in chief. He testified that he had been appointed on 3rd August 2020 and confirmed on 1st October 2020. He was given a written contract on the 30th of October 2020. The letter of appointment, confirmation, and agreement were admitted in evidence and marked as CEX2, CEX3, and CEX4, respectively. He further testified that on the 27th of August 2021, he was suspended, without pay, for one month. The allegations of having gone to a client (Tipsy Takeaway) serviced a machine, taken the money, and not remitted it to the Respondent were contained in the suspension letter CEX5. After suspension, he was terminated without a fair hearing. He was not paid a salary for August and September 2021, he was not given notice pay, his social security fund remittances were not made, and the Respondent refused to pay for his repatriation to Kasese District. He testified that the Respondent had caused him to suffer economically, financially, socially, and mentally.

[6] His evidence was not subjected to cross-examination, and Mr. Kabanda closed the Claimant's case. We invited Counsel for the Claimant to address the Court through written submissions.

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[1] Mr. Brian Mutebi, the Court Process Server made an affidavit of service demonstrating service of the hearing notice on M/S Hilal & Co Advocates (for the Respondent) who acknowledge receipt by signing and stamping the hearing notice.

Analysis and Decision of the Court

Issue 1. Whether the Claimant was unfairly terminated?

Submissions of the Claimant

[7] Mr. Kabanda, appearing for the Claimant, submitted that the Claimant's evidence was unchallenged. He was only given a termination letter without a hearing. The termination was unlawful because there was no verifiable misconduct established against him, and he was not accorded a hearing in accordance with **Section 66 of the Employment Act 2006** (*from now EA*). Counsel relied on the case of **Donna Kamuli v DFCU Bank Ltd LDC No. 02 of 2015** and **Queenvelle Atieno v Centre for Corporate Governance ICK Cause No 81 of 2012**. It was also submitted for the Claimant that the termination violated **Section 73(1)(b), (2)(b)** and **(c) EA.** We were also referred to the cases of **Grace T. Makoko v Standard Chartered Bank Ltd. LDR No. 315 of 2015** and **Bakaluba Peter Mukasa v Nambooze Betty Bakireke Election Petition No. 04 of 2009** for the definition of a fair hearing. It was suggested that the Respondent had acted contrary to the principles of natural justice.

Resolution of Issue 1

[8] The position of the law relating to termination of an employment contract is that the employer must follow the correct procedure for termination or dismissal as laid down under **Sections 65, 66, 68, 69, and 70(6) of the EA, 2006.**[2] It is beyond dispute that the Claimant was dismissed from employment **"CEX6"** was worded termination from employment. It was preceded by a suspension to pave way for investigations. The circumstances are not of termination but a dismissal as provided in Section 69 EA which prohibits termination without notice.

> *"Summary Termination*
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> 1. *Summary termination shall take place when an employer terminates the service of an employee without notice or with less notice than that to which the employee is entitled by any statutory provision or contractual term.*
> 2. *Subject to this section, no employer has the right to terminate a contract of service without notice or with less notice than that to which the employee is entitled by any statutory provision or contractual term.*
> 3. *An employer is entitle to dismiss summarily, and the dismissal shall be termed justified, where the employee has, by his or her conduct indicated that he or she has fundamentally broken his or her obligations arising under the contract of service."*

[2] See **Kasenge Geoffrey Oscar v St Augustine Montessori School LDR 207 of 2017,** and **Eva Nazziwa Lubowa v NSSF LDR 001 of 2019**

It is also now established that a dismissal must be procedurally and substantively fair for it to be lawful[3]. We will consider the facts, evidence and submissions in the matter before us against a procedural and substantive fairness threshold.

Procedural Fairness

[9] Procedural fairness relates to the process and procedure leading to termination. In **Ogwal Jaspher *v* Kampala Pharmaceutical Ltd**,[4] we observed that procedural fairness is provided under **Section 66EA**. It is trite that an employer has an unfettered right to terminate a contract of employment, but an employer exercising this right must follow procedure.[5]

[10] Under **Section 66(1) and (2) EA**, it is provided that before reaching a decision to dismiss an employee on the grounds of misconduct, the employer must explain to the employee why the employer is considering dismissal, and the employee is entitled to have another person of their choice present during this explanation. The oft-cited case of **Ebiju James v Umeme Ltd**[6] sets a clear standard of procedural fairness in completing the right to be heard. In that case, the Court required that (i) a notice of allegations must be served sufficiently for the employee to prepare a defence, (ii) The notice should set out clearly what the allegations are and the employee's 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 employer's witness or call witnesses of his own and (iii) The employee should be allowed to appear and present their case before an impartial committee in charge of disciplinary issues.

[11] The undisputed facts of this matter are that on the 27th of August 2021, the Respondent suspended the Claimant to investigate allegations of obtaining money from Tipsy Take Away and not remitting the same to the Respondent. He was accused of having maligned and spoilt the name of the Respondent. The suspension was for one month and without pay. By a letter dated the 4th of October 2021, he was terminated for causing loss of funds and conflict of interest. The termination letter, which was admitted as CEX6, asked him to refund UGX 850,000/= taken as advances.

[12] The termination letter referred to the suspension letter and stated the reasons for termination. It did not provide for a notice period and was with immediate effect. There was no reference to a hearing or any disciplinary proceedings. It is quite evident that the Claimant was not invited to any hearing. It was suggested

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[3] See **Nicholas Mugisha v Equity Bank Uganda Ltd** LDR 281 of 2021
[4] LDR 035 of 2021
[5] Per Mangutsya JSC (as he then was) in **Hilda Musinguzi Vs Stanbic Bank (U) Ltd SCCA 05/2016.**
[6] Per Musoke J. (as she then was) in **Ebiju James v Umeme Ltd H.C.C.S No. 0133 of 2012**

in paragraph 4(c) of the Memorandum in Reply that the Respondent convened two (02) informal meetings at which the Claimant admitted wrongdoing. This assertion places the Respondent in some difficulty.

[13] The first difficulty is that **Section 66(1) EA** requires some element of structure and formality. An employee accused of misconduct must be invited for a hearing in writing. The letter of invitation has specific minimum requirements. It must set out the employee rights. In our view, the informal hearings that Counsel for the Respondent referred to would not qualify to be hearings in the nature envisaged under **Section 66EA.**

[14] The second difficulty that the Respondent finds itself in is that there is no record of the admissions of wrongdoing by the Claimant. In the case of **Kabojja International School v Godfrey Oyesigire**[7] where the Respondent (employee) had admitted to wrongdoing in writing, the Industrial Court considered the admission to have vitiated the need for an oral hearing. The Industrial Court held the same position in **Bureau Veritas Uganda Ltd v Dalvin Kamugisha**[8] where the Respondent had made a written statement of admission of liability.

[15] Under Section 16 of the Evidence Act Cap.6, an admission is a statement, oral or documentary, which suggests an inference as to any fact in issue or relevant fact and which is made by any person. The law on admissions is they dispense with the need for proof of a fact and means that a party has conceded to the truth of an alleged fact. (See the case **Matovu Luke & ORS vs. Attorney General, HC Misc. Appl. No. 143 of 2003)**. The admission must be unambiguous[9]. In the case before us, there is no record of the alleged admission the Claimant has made. Therefore, we cannot accept Counsel for the Respondent's assertion that the Claimant had admitted to wrongdoing at any time.

[16] Because of the preceding, we determine that the Claimant's dismissal was procedurally unfair.

Substantive Fairness

[17] Substantive fairness relates to the reason and proof of the reason for termination. Under **Section 68 EA**, an employer is required to prove the reason for termination. **Section 68(2) EA** provides that the reason or reasons for dismissal shall be matters that the employer genuinely believed existed at the time of dismissal.

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[7] **Labour Dispute Appeal No. 3 of 2015 [2016] UGIC 10 (22 June 2016)**
[8] **Labour Dispute Miscellaneous Application 54 of 2017 [2017] UGIC 19 (25 July 2017)**
[9] Cited in Mwebeiha Amatos vs A.G [2015] UGHCLD 49

[18] The Respondent must justify the Claimant's dismissal and show that it genuinely believed wrongdoing exists. For starters, by not attending the trial, the Respondent deprived itself of an opportunity to attend to this duty robustly. That notwithstanding, we will subject the facts and evidence to the substantive fairness test.

[19] The provision of **Section 68(2) EA** has the expression matters that the employer **genuinely believed** to exist as the basis for dismissal. In **Uganda Breweries Ltd v Robert Kigula and 4 Others**[10] the Court of Appeal held that substantive fairness requires the employer to show that the employee had repudiated the contract or any of its essential conditions to warrant summary dismissal. Gross and fundamental misconduct must be verified for summary dismissal. Mere allegations do not suffice. The allegations must be provable to a reasonable standard. In the case of **Kabagambe Rogers v Post Bank Ltd** [11] we observed that a hearing is mandatory to prove a fundamental breach of an employee's contract. Lord Evershed in **Laws v London Chronicle Ltd CA 1959**[12], cited in **Kanyonga Sarah v Lively Minds Uganda**[13] observes thus:

> *"... it follows that the question must be – if summary dismissal; is claimed to be justified – whether the conduct complained of is such as to show the servant to have disregarded the essential conditions of the contract of service. Therefore, one act of disobedience or conduct can justify dismissal only if it is of the nature which goes to show that the servant has repudiated the contract or one of the essential conditions and for the reason therefore, I think what one finds in the passages which I have read that the disobedience must at least have a quality that is willful. In other words, it connotes the flouting of the essential contractual terms."*

[20] Proof of such flouting requires a hearing to verify the misconduct. The reasons for the Claimant's termination in both the termination and suspension letter were grave misconduct, theft, maligning, and spoiling the Company name. According to the employment contract, which was admitted as CEX4, the offenses would fall under clause 3 for unacceptable behaviours. Therefore, the Respondent clearly dismissed the Claimant on grounds of misconduct. No hearing was conducted to verify these allegations. We have also found that the admission of wrongdoing was not established. For these reasons, we are inclined to the view that the dismissal was substantively unfair.

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[10] C.A.C.A 183 of 2016
[11] Labour Dispute Reference 107 of 2020
[12] [1959] 1 WLR 698
[13] Labour Dispute Reference No. 6/2018

Summation

[21] In sum, there was no disciplinary hearing to substantiate the allegations of misconduct on the part of the Claimant. The Respondent's reference to informal meetings where the Claimant admitted to wrongdoing falls short of the standard of admission. The Respondent chose not to participate in the trial despite service of a hearing notice. By so doing, the Respondent deprived itself of an opportunity to test the veracity of the Claimant's evidence and mount a robust defence to the Claimant's case or prove the reason for dismissal. In the circumstances and after objectively considering all the facts, evidence, pleadings, and submission and in the absence of a hearing and, for good measure, a fair hearing, we must conclude that the termination was procedurally unfair. Failing to hold a hearing makes it impossible to say that the Respondent has proven the reason for termination. As the result, the Claimant's termination was procedurally and substantively unfair and, therefore, unlawful. Issue 1 would be answered in the affirmative.

Issue II. What remedies are available to the parties?

[22] Having found the termination unlawful, we would answer the second issue in the affirmative and consider the appropriate individual remedies.

Declaratory relief

[23] We declare that the Claimant's dismissal was unlawful.

Statutory Compensation

[24] We award the Claimant statutory compensation under **Section 66(4) EA** of four weeks' pay in the sum of **UGX 600,000/=.**

Salary in lieu of notice

[25] The Claimant sought payment of one month's salary in lieu of notice. He joined the Respondent on the 30th of July 2020 and was terminated on the 4th day of October 2021 after a period of one year, two months, and four days. His claim would be consistent with **Section 58(1)(b) EA.** Accordingly, we award the sum of **UGX 600,000/=.**

Leave

[26] The position of this Court has been that for a grant of unpaid leave, an employee must show that leave was applied for and denied[14]. In the circumstances of the

[14] See Edace Michael v Watoto Childcare Ministries L.D. A 21 of 2015

case before us, no such evidence was led, and the claim for unpaid leave is denied.

Salary Arrears

[27] It was the Claimant's case that his salary for August and September 2021 was withheld. According to the termination letter (CEX6), there is no indication of payment of any terminal benefits. Instead, the Respondent required the Claimant to pay UGX 850,000/=. The Claimant was suspended without pay in the suspension letter (CEX5). In the case of **Olweny Moses v Equity Bank U Ltd,**[15] the Industrial Court realigned the position following the decisions in **Florence Mufumba v Uganda Development Bank LDC No. 138 of 2014** and **Peter Waswa Kityaba Vs African Field Epidemiology Network (AFNET) LDC No. 86 of 2016**. In both cases, the Court had granted salary arrears for the reversionary period of the employment contract until the date of judgment. The question of salary arrears was the subject of appeal before the Court of Appeal in **African Field Epidemiology Network v Peter Waswa Kityaba**. The Court of Appeal established that a former employee should not get more than he or she would have earned. The dicta of these cases are that a claim for salary arrears would be speculative and that an employee would be entitled to general damages instead. In the circumstances, the claim for salary arrears is denied.

NSSF Claims

[28] The Claimant did not lead any evidence to demonstrate that he is registered with the National Social Security Fund or that the Respondent had deducted and not remitted his contributions to the fund. We therefore decline to grant the same.

Repatriation

[29] Under **Section 39(1) EA,** an employee recruited at a place more than 100 kilometers from the workplace is entitled to repatriation on termination of the contract by order of the Court. Further, under **Section 39(3) EA**, an employee would be entitled to repatriation if he has served for ten years or more, irrespective of the place of recruitment. The Claimant does not meet either of these conditions and we, therefore, decline to make any award in that respect.

General Damages

[30] While there was no claim made under this head, general damages are such as the law will presume to be the direct natural or probable consequence of the

[15] LDR 225 of 2019

act complained of.[16] In the case of **MTN (U) Ltd v Richard Ndemirweki**[17] Gashirabake, JA held that the basis for the award of general damages is the doctrine of *restituito in integrum* which is supported by Article 126(2)(c) of the Constitution which provides that in adjudicating cases, an adequate compensation shall be awarded to the victims of wrong. His Lordship observed that damages are awarded to compensate the aggrieved, fairly for the inconveniences accrued as a result of the actions of the defendant.

[31] In our assessment, the Claimant was unfairly dismissed. He led evidence of inconvenience as a result of loss of his job. He is, in our view, entitled to general damages for the wrongful act of the Respondent.

[32] On the quantum of general damages Madrama JA. *(as he then was)* held, in **Stanbic Bank (U) Ltd v Constant Okou**[18] that appropriate general damages should be assessed on the prospects of the employee getting alternative employment or employability, how the services were terminated, and the inconvenience and uncertainty of future employment prospects. In **Donna Kamuli v DFCU Bank Ltd** [19] the Industrial Court considered the earnings of the Claimant, the age, the position of responsibility, and the duration of the contract. In the circumstances of the present case, the Claimant had worked for the Respondent for a period of one year, two months, and four days. He was approximately 38 years old at the time of his termination. It was evidence that he had suffered socially and mentally since he had been terminated from his job. Considering his earnings, length of service, and manner of termination, we think that the sum of **UGX 3,800,000/=** shall suffice in general damages.

Costs of the Claim

[33] In keeping with the dicta of this Court in Joseph Kalule v GIZ.[20] We have not been persuaded to award the Claimant costs.

Finally, we make the following orders:

(i) We declare that the Claimant was unfairly dismissed from the Respondent's service.

(ii) The Respondent is ordered to pay the Claimant the following sums:

(a) **UGX 600,000/=** as payment in lieu of notice

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[16] Per Lord Macnaghten in Stroms v Hutchinson [1905] A.C 515
[17] C.A.C.A No 291 of 2016
[18] Civil Appeal No. 60 of 2020
[19] LDC No. 002 of 2015
[20] Joseph Kalule Vs Giz LDR 109/2020(Unreported)

(b) **UGX 600,000/=** as basic compensation.

(c) **UGX 3,800,000/=** as general damages,

(d) The sums above shall carry interest at 16% p.a. from the date of this award until payment in full.

(iii) Under **Section 61EA**, the Respondent is ordered to issue a certificate of service within 21 days from the date hereof.

(iv) There shall be no order as to costs.

It is so ordered this 23rd **day of** Oct **2023**

Anthony Wabwire Musana,
Judge, Industrial Court

THE PANELISTS AGREE:

1. Hon. Adrine Namara, _____
2. Hon. Susan Nabirye & _____
3. Hon. Michael Matovu. _____

Ruling delivered in open Court on **23rd** day of **October 2023** at **9.30a.m.** in the presence of:

1. For the Claimant, **Ms. Swabrah Mugala holding for Mr. Umar Kabanda.**
2. For the Respondent, **None.**

Court Clerk: **Mr. Samuel Mukiza.**

Anthony Wabwire Musana,
Judge, Industrial Court