THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE NO. 138 OF 2021
(ARISING FROM KCCA/RUB/L.C/001/2021)

1. **OKUMU GODFREY**
2. **MACHO EDIRISA MUKISA** ::**CLAIMANTS**
3. **KAIDHIWA GODFREY**

VERSUS

SHREEJI STATIONERS 2009 UGANDA 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. Darius Natukunda of M/s. Lufunya Associated Advocates for the Claimant
2. Ms. Stella Okumu of M/s. OSH Advocates for the Respondent.

AWARD

Introduction

[1] The 1st, 2nd and 3rd Claimants had been employed as Machine Operator, Store Attendant, and Supervisor/Administrative Assistants until they were collectively terminated on 14th August 2020. This followed an agreement reached at a meeting held on the 7th of August 2020 between the management of the Respondent and representatives of the Uganda Printers Paper Polyfibre and Allied Workers Union (*from now UPPPAWU or the Union*), acting for employees of the Respondent, in the presence of the Principal Labour Officer, Kampala Capital City Authority. The 1st and 2nd Claimants allege that the Respondent verbally promised to pay accrued overtime and reneged on this promise. The Respondent entered an agreement with one Hajji Twaha Sempebwa, Secretary of UPPPAWU, on the 18th of August 2020, waiving overtime payment. The 3rd Claimant alleged that he did not receive terminal

benefits. A complaint was lodged with the Kampala Capital City Authority Labour Office and referred to this Court.

[2] In their memorandum of claim, the Claimants contended a breach of employment laws and fraud by the Respondent. They asked this Court for declarations of entitlement to overtime, compensation, terminal benefits, declarations of breach of employment laws and fraud, punitive, general and aggravated damages, and costs of the claim.

[3] The Respondent opposed the claim, contending that the after-effects of the COVID-19 lockdowns had hit it. The Respondent conceded that in August 2020, it held a meeting with members of UPPPAWU. At this meeting, it was agreed to lay off employees with terminal benefits. The 1st and 2nd Claimants were paid in full, and the layoffs conformed to the law. It was contended that the 3rd Claimant was never permanently employed by the Respondent. He was a casual worker who had absconded from work in June 2020 that he had been fully paid and had no outstanding claims.

[4] A scheduling conference was held on the 15th of March 2023, and three issues were framed for determination, viz:

(i) *Whether the Claimants were lawfully terminated?*
(ii) *What was the 3rd Claimant's employment status? and;*
(iii) *What remedies are available to the parties?*

The Proceedings and Evidence of the Parties

[5] Each of the Claimants testified, and the Respondent called one witness.

The Claimants' Evidence

[6] The 1st Claimant testified that following a series of meetings with the Respondent, Union Representatives and Labour Officers, it was decided to terminate the employees' services collectively. It was agreed that terminal benefits and overtime would be paid. On 14th August 2020, termination letters were issued without overtime provision. The employees were assured that overtime would be paid, and the 1st Claimant signed a payment slip. He did not receive payment in lieu of notice of UGX 1,400,000/=. He testified that he later learned that the Union's Secretary General had signed a waiver of overtime. He suggested that the Respondent misrepresented to the Ministry of Gender Labour and Social Development (*from now MGLSD)* that it had fully paid the terminal benefits. He also testified that the collective termination was a guise to phase out permanent workers. He asked for UGX. 150,000,000 in damages.

[7] In cross-examination, he testified that he did not attend the meeting on the 7th of August 2020. He confirmed that the workers had three representatives: Nalwanga Grace, Wandera Martin, and Mike Olima Pio. He confirmed that under Minute 10 of REX1, the Representatives had asked management to lay off the workers and that Mr. Baleka Moses from the Parliament of Uganda and Ms. Atuko Grace had attended the meeting. He also confirmed that Hajji Twaha Sempebwa was the Union General Secretary. He acknowledged signing REX 3, a form confirming the date he joined the Respondent; REX 4, the agreement to transmit 3% of his benefits to the Union; and REX 5, which listed his terminal benefits as payment in lieu of notice, severance allowance, C.O.S, days worked in August 2020 and annual leave. He acknowledged receipt of the sum of UGX 1,191,950/=. He testified that the Union Representatives had told them they would be paid overtime. It was his evidence that he worked for 8 hours between 7:30 am and 7:30 pm, and he also testified that all records were in the possession of the Respondent.

[8] In re-examination, he clarified that his employers agreed to pay overtime. He said he was not a member of the Union and that he saw the Union Representatives at the end of the termination process. He also clarified that the working hours kept reducing from 2014 and that the Respondent promised to pay overtime until after termination.

[9] The 2nd Claimant confirmed the collective termination following a series of meetings with the Respondent in the presence of representatives of UPPPAWU and Labour Officers. He signed the payment slip that excluded his payment in lieu of notice. He testified that the Union Representatives had conspired with the Union Secretary to waive overtime payment.

[10] Under cross-examination, he suggested that his signature had been forged, and he did not attend any meeting on 7th August 2020. On REX 7, he confirmed that his name was listed as No. 12. The three representatives were Nalwanga Grace, Wandera Martin, and Mike Olima Pio. He also confirmed that Mr. Wandera had asked management to lay off the workers and that Mr. Baleka Moses, Ms. Atuko Grace, Hajji Twaha Sempebwa, and Mr. Alex Atuhairwe, the UPPAWU Treasurer, had attended the meeting. It was his evidence that when he was paid, he did not check the money because he was paid late at night. He informed Human Resources that he had some issues at home and had not absconded from work on the 12th of August 2020. He suggested that all proof of overtime was with the Respondent. He said he did not have a computation of what was due to him in overtime, and it was irrelevant to write an exact figure.

[11] In re-examination, the 2nd Claimant testified that he wrote to the management of the Respondent informing them that he had a land issue at home after his father's demise, and he had given the letter to the Human Resources Officer. He claimed he was away for seven days. He did not attend the meeting on the 13th of August 2020. He did not know why payment in lieu of notice was excluded. He testified that he was reporting to work at 7:00 a.m. and leaving at 7:00 p.m. for two years. After 2016, work hours were changed from 8:00 a.m. to 6:30 p.m., and in 2020, from 8:00 a.m. to 6:00 p.m. He confirmed receipt of UGX 1,191, 950 on 14th August 2020.

[12] The 3rd Claimant testified that he joined the Respondent in 2017 and worked as a Supervisor in the binding department. He did not get an appointment letter. In 2019, he was given another role as an Administrative Assistant. He testified that he worked Monday to Saturday, 7:30 a.m. to 6:00 p.m. and sometimes up to 9:00 p.m. or on Sundays. He also testified that casual workers were given weekly cards and paid at the end of the week. It was his evidence that he worked continuously from 2017 to mid-March 2020, when all casual workers were sent away for two weeks. He returned to work until June or July 2020, when all casual labourers were paid weekly salaries and not given new cards. He was advised that any workers required would be called via phone by the Chief Executive Officer of a Company called Golden Skills. He testified that he heard of casual workers who were called back, and he was not. As an outspoken and experienced worker, he was intentionally eliminated. He asked the Court to regard him as a permanent worker and that he be paid his terminal benefits.

[13] In cross-examination, he testified that the Respondent would be busy during the back-to-school season. He estimated the number of casual workers as 90. He confirmed receipt of all his wages and stated that he would not go back if he asked to return to work.

[14] In re-examination, he named about five people who were called back to work. He clarified that the Respondent wanted to eliminate all persons who had worked for a long time or raised issues regarding length of service. After this re-examination, the Claimants closed their case.

The Respondent's evidence.

[15] Mr. Vinay Sharma, the Respondent's Finance Manager, testified on its behalf. In his witness statement, he stated that following the closure of schools during the coronavirus pandemic, the Respondent suffered significant losses as a stationery manufacturer. It met with its employees, union representatives, and labour officers from the Kampala Capital City Authority. At this meeting, Mr.

Martin Wandera proposed a layoff of workers. An agreement was reached on the 11th of August 2020 by which employees would be laid off and paid their terminal benefits. Workers filled out forms confirming their dates of commencement of work. It was agreed that 3% of terminal benefits would be paid to the Union. On 14th August 2020, all permanent workers, including the 1st and 2nd Claimants, were given termination letters and paid in full. All procedure for collective termination was followed that the 3rd Claimant was never a full-time employee of the Respondent and had absconded from work in June 2020.

[16] In cross-examination, he confirmed that all affected employees were unionized. He relied on CEX8. He denied any agreement to pay the worker's overtime. In REX8, it was agreed that overtime be waived, and the workers representative signed the agreement. He could not confirm whether Hajji Twaha Sempebwa was representing the workers when the waiver agreement was made on 18th August 2020. He also did not know why the 3rd Claimant absconded from work. He testified that the 1st and 2nd Claimants had never made a claim for overtime and that there were very rare scenarios where anyone worked overtime. He also testified that the decision to lay off workers was because of the effects of COVID-19. The Respondent was closed for some time. He confirmed that the Respondent's employees were outsourced to Goldenskills Ltd.

[17] In re-examination, he clarified that the policy of paying overtime started in 2021. He confirmed that all workers were permitted to join the Labour Union. The negotiations leading to termination were made in the presence of the workers, but final decisions were made with the Union Representatives. He confirmed that the effects of COVID-19 prompted the layoffs.

[18] At the close of the Respondent's case, the parties were directed to file written submissions, for which the Court is grateful. There was however one preliminary matter relating to workers logs.

Analysis and Decision of the Court

Issue 1. *Whether the Claimants were lawfully terminated?*

The Claimants' Submissions

[19] It was conceded that there was a collective termination of more than 50 employees but that the 1st Claimant's termination was irregular because his payment slip indicated one month's notice, yet nothing was paid. Counsel submitted that he was entitled to two months' notice under **Section 58(3)(c) of the Employment Act 2006** (from now EA). It was also submitted that the

termination was irregular because the agreement waiving payment of overtime was entered four days after payment of terminal benefits and signed by the Secretary of a Labour Union to which the Claimants did not belong. That the Secretary to the Union could not bind the affected workers. It was also submitted that the Respondent's failure to provide work records deliberately obstructed justice. Counsel for the Claimants attached a computation of overtime for each of the Claimants to the submissions. We have struck them out off the record.

Submissions of the Respondent

[20] In reply, it was submitted for the Respondent that the attempt to introduce new evidence at submissions to support the claim for overtime was a departure from pleadings and offended Order 6 rule 7 of the Civil Procedure Rules S.I 71-1(from now CPR). Counsel cited the case of **Painento Semalulu v Nakitto Eva Kasule H.C Civ Appeal No 04 of 2008** in support of this proposition. It was also submitted that the attempt offended the right to a fair hearing under Article 28 of the Constitution.

[21] It was also submitted that the Collective termination conformed to **Section 81(b) EA.** Counsel cited the case of **Francis Adora & 49 others v Brookside Ltd LDR no. 241 of 2018** to support the proposition that the Respondent followed the procedure. It was submitted that all the employees were paid in full. The Respondent informed the Commissioner of Labour, Industrial Relations and Productivity at MGLSD of the termination and received the Commissioner's approval.

[22] The 1st Claimant's payment in lieu of notice was withheld as he had absconded from work for over one month. Counsel contended that termination could occur without notice, where an employee is summarily dismissed. It was submitted that the 1st Claimant's absconding from work without official leave would amount to gross misconduct. Counsel cited the case of **Francis Okodel v Bukedea District Administration Labour Dispute Claim No. 005 of 2016** for the proposition that abscondment is grounds for dismissal.

[23] Regarding overtime, it was submitted that the 1st and 2nd Claimants could not prove the same in their pleadings and evidence. That these claimants joined the UPPPAWU to secure better terms and benefits. As such, the waiver was binding. The attempt by the 1st and 2nd Claimants to distance themselves from the waiver amounted to approbation and reprobation, which is barred in law. Counsel cited the case of **Golf View Inn(U)Ltd v Barclays Bank (U)Ltd H.C.C.S No. 358 of 2009** in support of this proposition. The Claimants had taken

terminal benefits as negotiated by the Union, paid the 3% union dues, and could not now deny the agreement.

Submissions in Rejoinder

[24] In rejoinder, Counsel for the Claimants submitted that the Respondent had also introduced new facts in their summary of the facts and submissions, which did not form part of the scheduling memorandum or pleadings. Regarding the attachments to their recommendations, Counsel submitted that this was meant to show that the Respondent's letter to the Court dated 20th March 2023 was tainted with falsehoods and intended to deny the Claimants justice.

[25] It was submitted that the meeting of the 7th of August 2020 resulted from an attempt to introduce GoldenSkills Ltd and change the pay structure to weekly. Counsel submitted that the excuse of COVID-19 was an excuse to lay off employees and fraudulently used to pay them their benefits.

[26] Regarding the 1st Claimant's abscondment, Counsel submitted that this was an afterthought. The 1st Claimant was absent from work for seven days from 1st to 7th August 2020 and was present for the meeting on the 14th of August 2020. He was paid two months' salary as severance allowance, salary for July 2020, and leave days that he had also been issued a letter of appointment on the 24th of July 2020.

[27] Regarding the waiver, it was submitted that this was fraudulently executed. Counsel relied on **Frederick Zabwe v Orient Bank and Another S.C.C.A No. 4 of 2006** in support of this proposition. It was submitted that the arguments on approbation and reprobation were intended to justify the fraud. It was suggested that different persons signed CEX5 and CEX8. The waiver agreement was an attempt to defraud the already terminated employees.

Resolution of Issue 1

Late submission of evidence

[28] At the close of the trial and pursuant to Section 18(c) of the Labour Disputes (Arbitration and Settlement) Amendment Act, 2021, the Court required the Respondent to produce workers logs for the period 2014 to 2019. By letter dated 20th March 2023, the Respondent's Counsel indicated that the Respondent could not provide the records as the Respondent had been closed for over two years. Counsel for the Claimant countered by attaching annexes BB, CC, DD, and EE. These were said to relate to the Claimants' computation of overtime.

[29] The trial procedure in this matter was preceded by a joint scheduling memorandum filed in Court on the 1st of November 2022. It listed the agreed documents as well as the disagreed documents. Annexes BB, CC, DD, and EE to the Claimants' submissions were not listed. The parties filed their respective witness statement and trial bundles. The impugned documents were not attached. The evidence of either party was tested in cross-examination and re-examination. These documents appear for the first time at the submission stage. The rules of trial practice have long outlawed trial by ambush. This is inimical to the minimum level of collegiality expected of trial advocacy, fair game, and a right to a fair hearing, as rightly submitted by Mr. Ssebumpenje. Annexes BB, CC, DD, and EE to the Claimants' submissions are not part of the record and are accordingly struck off.

Lawfulness of termination

[30] It is a common cause and an agreed fact that there was a collective termination by the Respondent of its employees in August 2020. In every matter and manner of termination, it is trite that the Employer has an unfettered right to terminate the services of an employee, provided procedure is followed. The question that this Court must determine is the lawfulness of that collective termination. Fairness is inextricably linked to substantive and procedural fairness of a termination.

[31] **Section 81(1) EA** makes provision for collective termination. It provides as follows:

> *" Where an employer contemplates terminations of not less than ten employees over a period of not more than three 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 represents the employees in the undertaking with relevant information, and in good time which shall be a period of at least four weeks before the first of the terminations shall take effect, except where the employer can show that is was not reasonably practicable to comply with such a time-limit having regard to the 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, and the information in paragraph(a)shall include the names of the representatives of the Labour Union if any that represent the employees in the undertaking;*

(b) notify the Commissioner in writing 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"

The procedure for collective termination is, therefore, straightforward. The statue sets out the steps that an employer is required to take and of primacy is the notification to the Labour Union and Commissioner for Labour. If these conditions are fulfilled, it would be taken that procedural fairness has been achieved and the termination is lawful.

[32] The other qualifying conditions are the reasons for collective termination which are stated in **Section 81(1) EA.** The reasons for the contemplated termination under the act are economic, technological, structural, or similar nature. The Employment Act does not define these reasons, and we think it necessary to expound somewhat on these conditions. For this purpose, we have considered it helpful to visit other jurisdictions.

[33] Under Rule 23 (2) of the Tanzanian Code of Good Practice Rules, 2007(*from now the Code*), economic reasons have an affinity to the financial health of the employer as a business. The economic reasons relate to the enterprises' financial management. The Code describes technological needs to include the introduction of new technology which affects work relationships either by making existing jobs redundant or by requiring employees to adapt to the new technology or a consequential restructuring of the workplace. The Code also describes structural needs as those that arise from the restructuring of the business as a result of several business-related causes, such as the merger of business, a change in the nature of the business, more effective ways of working, a transfer of the business or part of the business.

[34] In the matter before this Court, the Respondent contends that being in the stationery manufacturing business, it suffered losses following the impact of COVID-19 on schools. At the meeting of the 7th of August 2020, in minute 2 /08/SSUL/2020, it was reported that Mr. Moses Baleka, the Legislative Assistant of the Workers Parliamentary Office, informed the meeting of the challenges the Respondent faced. In Minute 4/08/SSUL/2020, the Respondent's General Manager reaffirmed this position. The minutes of this meeting were admitted as REX1. Mr. Vinay Sharma testified to this end. This Court takes judicial notice of the school lockdowns following the COVID-19 Lockdown. According to the Ministry

of Finance and Economic Development briefing paper in May 2020,[1] the lockdown affected the economy, significantly disrupting the market and production supply chain. There were credit constraints with predictions of both temporary and permanent job losses. In **Jackson Kabakire Mubangizi v Housing Finance Bank**[2], the Honourable Mr. Justice Richard Wejuli Wabwire took judicial notice of the adverse effects of the COVID-19 pandemic and the lockdown on business. In the case before us, we are satisfied that the Respondent was facing the adverse impacts of the COVID-19 Lockdown, particularly for a stationery manufacturer following the schools' closure for a period of close to 2 years. The Respondent had, in our view, valid and reasonable economic reasons for the collective termination.

[35] The second question would be whether the Respondent followed procedural requirements. Under **Section 81(1) EA,** the procedural requirements are twofold:

(i) First, the Employer is required to notify the Trade Union of the impending terminations, and;

(ii) Secondly, the Employer is required to notify the Commissioner for Labour, in writing of the reasons for the contemplated terminations. Under Regulation 44(a) of the Employment Regulations, 2011 S.I 61 of 2011, the notification to the Commissioner is required to comply with the prescribed form in the Sixteenth Schedule and give reasons for termination, list the number of workers, their age, sex, occupation, wages, duration of employment and exact date of termination. Additionally, the Employer is required to provide a report detailing the terminal benefits and plan of payment of those benefits to the affected employees.

[36] According to REX 1, the workers were represented by UPPPAWU together with Mr Wandera Martin, Olima Mike Pio, and Nakigudde Prossy. On the 7th of August 2020, Mr. Alex Atuhairwe, the Union Treasurer, attended the meeting with Mr. Baleka Moses and Ms. Atuko Grace Lander, a Principal Labour Officer with the Kampala Capital City Authority. Mr. Wandera mooted the option of laying off workers. According to REX 2, the meeting on the 11th of August 2020 was attended by Hajji Twaha Sempebwa, Union General Secretary, Mr. Baleka Moses, Mr Alex Atuairwe. In minute 2/11/SSUL/2020, the Respondent's General Manager informed the meeting that the Respondent had decided to lay off the workers following the COVID-19 effects. In minute 3/11/SSUL/2020,

[1] https://www.finance.go.ug/sites/default/files/Publications/BMAU/Uganda.pdf last accessed 7/25/2023 at 10:03 pm
[2] H.C.M.A No. 961 of 2020

Mr. Moses Baleka noted that the Respondent must follow the law and procedure. Hajji Twaha Ssempebwa, speaking on behalf of the Union, confirmed the agreement that the workers be laid off. These minutes were not contested documents. In the circumstances of the case before us, we are satisfied that the meetings held between the Respondent and its former employees were transparent and that the employees had full representation of the Union. The decision to lay off the workers was mutual and, therefore, properly communicated. It complied with the requirements of **Section 81(1) EA** in that the Union and workers were present at the meetings. We are satisfied that the 1st and 2nd Claimants attended the meetings at which it was agreed that the Respondent's workers be laid off. To this extent, therefore the Respondent complied with the procedure.

[37] The final aspect of procedural fairness regards notification to the Commissioner. By letter dated 18th September 2020, the Respondent advised the Commissioner, Labour, Industrial Relations, and Productivity of MGLSD of the collective terminations. A detailed list of the employees affected by the collective termination was attached, listing the name, occupation, age, sex, date of termination, terminal package, and name of the Union Representative. The letter and attachment were admitted as REX9. In our view, the letter and report complied substantially with Parts A and B of the Sixteenth Schedule of the Employment Regulations. The Respondent met the requirements of **Section 81(1)(b) EA.**

[38] It was suggested that the Respondent had forged the agreement on overtime waiver. Counsel for the Claimant submitted that the Respondent fraudulently executed the said agreement. He cited the case of **Frederick Zaabwe v Orient Bank S.C.C.A No. 4 of 2006** for the definition of fraud being the perversion of truth with an intent to deprive another of something of value. This is a correct restatement of the law. In reply, Counsel for the Respondent contended approbation and reprobation on the part of the Claimants. On the matter of fraud, the document stated to be the subject of fraud is an agreement that was executed between the Respondent and the Union General Secretary, Hajji Twaha Ssempebwa. It is witnessed by the worker's representative. It was signed on the 18th day of August 2020. The threshold for proof of fraud is high. In the case of **Kampala Bottlers Ltd v Damanico**

[39] **(U) Ltd**[3] the Supreme Court of Uganda held that fraud must be strictly proved, the burden being heavier than one on balance of probabilities generally applied in civil matters. The Claimant's pleaded particulars of fraud including:

[3] S.C.C.A No 22 of 1992

(i) Forging signatures of employees and signing employment letters on their behalf without their knowledge. These particulars were not followed or proven by any evidence. The purportedly forged letters were not produced in Court to prove this allegation.

(ii) Forging document, with mean spirit to deprive the 1st and 2nd Claimant and other affected workers of their overtime benefits. Evidence was not led to prove that this document was false, that it was not signed by the persons who signed it, or that Hajji Sempebwa did not have authority to sign the document or indeed bind the Union and, by extension, the workers who it represented. There was no proof that the union's authority had been revoked to render its representation of the workers unauthorized. The Workers' Representative, who is said to have witnessed the document, did not attend Court to disown his signature, or indeed, no handwriting expert was called to render an opinion on the document's authenticity. In arriving at this conclusion, we are mindful that the strict rules of evidence do not apply to this Court under Section 18 of the Labour Disputes (Arbitration and Settlement) Act 2006. However, there is a pre-existing standard on proof of fraud. According to the Learned Author Cornelius Henry Mukiibi *Esq* in his treatise **'The Law of Evidence in Uganda'**, the more serious the allegation, the higher the degree of probability required. In effect, the Claimants would be required to prove their allegations of fraud strictly. In the circumstances of the case before us, we are not satisfied that the Claimants have established that the agreement dated 18th August 2020 made between the Respondent and the Union General Secretary was false. This finding has a bearing on the next point.

[40] Mr. Sebumpenje argued that the Claimants were culpable for approbation and reprobation. The principle precludes a person or entity from taking inconsistent positions in legal proceedings or actions. In other words, a party cannot approve of or benefit from an action in one instance and then disapprove of it in another example.[4] The Claimants would not be allowed to blow hot and cold regarding their collective termination represented by the Union and benefits taken and turning around to say they do not accept the same termination process. We agree with Counsel for the Respondent that the Claimant's conduct would amount to approbation and reprobation, which the law frowns upon and would not countenance.

[4] See H.C.C.S No 036 of 2019 Haruna Sentongo v Orient Bank Ltd

[41] Therefore, we cannot accept the Claimant's submission that the collective termination was unlawful. We note the matter of the 1st Claimants payment in lieu of notice to which we shall return in our consideration on remedies. Still, on the whole, and objectively considering the facts, the evidence, and the law, it is impossible to say that the Claimants were unlawfully terminated. The Respondent complied with both the substantive and procedural requirements of collective termination. We would, therefore, answer the first issue in the negative. The 1st and 2nd Claimants were lawfully collectively terminated.

Issue 2. What was the 3rd Claimant's employment status?

[42] It was submitted for the 3rd Claimant that he worked for the Respondent from February 2017 to June 2020 at a weekly salary of UGX. 87,600/=. He was not confirmed as a permanent employee and was dismissed unfairly around June 2020. It was submitted that under Regulation 39 of the Employment Regulations 2011, a casual employee engaged continuously for more than four months, is entitled to a written contract, ceases to be a casual employee, and is entitled to all other rights and benefits due to an employee. This Court was asked to consider him a permanent worker.

[43] In reply, the Respondent submitted that the 3rd Claimant fell under **Section 86 EA** as a seasonal worker and was paid all his benefits. He had no pending salary and had absconded from work in June 2020.

[44] There appears to be a common position that the 3rd Claimant was paid a weekly wage between February 2017 and June 2020. Despite this Court's order, no records were produced to demonstrate that the 3rd Claimant was a seasonal worker. It is quite correct that he conceded under cross-examination to working during busy seasons. Therefore, his status with the Respondent rests on a reading of the law.

[45] Under **Section 86(1)EA**, it is provided as follows:

> *"Where an employee is engaged in an occupation in which it is customary to employ some workers only at a certain season or time of the years, and that employee is employed in successive seasons, the employee shall be deemed to have been continuously employed for the aggregate of all the time he or she has actually performed work for the same employer in successive seasons.*

The law aggregates seasonal time periods into a term of continuous employment. The Respondent did not provide evidence of the seasons during which the 3rd Claimant worked between 3rd February 2017 and June 2020, when

he is said to have absconded. And we think this argument places the Respondent in two difficulties. The first difficulty is that it is imperceptible for a seasonal employee to abscond. In the case of **Moi Juma v Ishaka Quality Commodities Limited,**[5] citing '**Black's Law Dictionary**'[6], we noted abscondment means secretly leaving one's usual place of abode or business to avoid arrest, prosecution, or service of process. In our view, the argument that a seasonal worker would secretly leave work during the COVID-19 lockdown is not plausible. He was after all, seasonal, as the Respondent's Counsel contended. The second and perhaps more irreconcilable difficulty that the Respondent finds itself in is that according to CEXH 11, Ms. Clare Amoding, the Chief Executive Officer of Golden Skills Ltd which was admitted as the outsourced Human Resource Contractor for the Respondent, wrote a recommendation letter for the 3rd Claimant. For purposes of context, we think it necessary to employ the relevant text of the letter;

> *" Dear Sir/Madam*
>
> *RECOMMENDATION FOR MR KAIDHIWA GODFREY*
>
> *This serves to introduce Mr. Kaidhiwa, who was working with us as an Administrative Assistant from 3rd February 2017 to 17th April 2020, when the management of Golden Skills Uganda Ltd was left with no option but to lay off many workers him inclusive because COVID-19 had grossly affected business operations and could no longer afford services of many employees.*
>
> .....
>
> *Yours faithfully,*
>
> *Clare Amoding*
> ***Chief Executive Officer "***

[46] This letter suggests a polar opposite to abscondment as submitted by Counsel for the Respondent. The letter speaks of a layoff in terms of collective termination. This reinforces the 3rd Claimant's argument that he was a casual worker from February 2017 until July 2020. In this regard, the provisions of Regulation 39 of the Employment Regulations would be of full effect. In that regulation, it is provided as follows:

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[5] LDR 119 of 2021

[6] Black's Law Dictionary, 11th Edition by Bryan Garner at Page 8

"(1) A person shall not be employed as a casual employee for a period exceeding four months.

(2) A casual employee engaged continuously for four months shall be entitled to a written contract and cease to be a casual employee. All rights and benefits enjoyed by other employees shall apply to him or her."

The evidence was that the Respondent employed the 3rd Claimant between 2017 and 2020. The other uncontested evidence was that the 3rd Claimant was a supervisor and Administrative Assistant. While supervisory work in the binding section could be seasonal, it is hardly possible that the administrative assistant was seasonal. On the balance of probabilities and on the reading of the law, we agree with the Claimant's Counsel and are of the firm persuasion that the 3rd Claimant was a casual employee. It is our determination that having worked continuously for more than four months, he ceased to be a casual employee and was entitled to a written contract. He was also entitled to all rights and benefits enjoyed by other employees of the Respondent.

Issue 3. What remedies are available to the parties?

[47] The Respondent submitted that the Claimants had not substantiated their claims by evidence or in law. Given our findings above, this argument is not entirely accurate. We think the 1st and 3rd Claimants are entitled to some remedies.

Payment in lieu of notice.

[48] The 1st Claimant was denied his payment in lieu of notice because he had absconded from work. The evidence adduced does not support any finding of abscondment. Secondly and even more importantly, if the Respondent intended to impose a disciplinary sanction for abscondment, the Respondent was duty-bound to adhere to the provisions of **Section 66EA**. Abscondment is a form of misconduct. It is trite that an employer must accord an employee a fair hearing. The Respondent did not grant any hearing and, therefore, in our view, has unlawfully withheld the 1st Claimant's notice pay. According to CEXH 7, the 1st Claimant worked for the Respondent from 1st June 2015 to 15th August 2020. This is five years and two months. Under **Section 58(3)(c)**, where an employee has been employed for a period of five years but less than ten years, the employee is entitled to two months' pay. We therefore award the 1st Claimant the sum of UGX 1,400,000 as his payment in lieu of notice.

3rd Claimant's remedies

[49] Following the provisions of Regulation 39 (2) of the Employment Regulations, and having declared that the 3rd Claimant is entitled to all the rights and benefits enjoyed by other employees, the 3rd Claimant shall be entitled to all benefits at the layoff of the other employees. These benefits are computed against a weekly salary of UGX 87,600, translating into a monthly salary of UGX 350,400. These benefits are as follows:

Duration of service February 2017 to July 2020 3 years and five months.

Payment in lieu of notice	**UGX 350,400**
Severance pay (3 months at rate of 1 month per year)	**UGX 1,051,200**
Total	**UGX 1, 401,600**

We decline to grant the 3rd Claimant any unpaid leave. The position of the law is that a claimant for leave must prove that he applied for it, and it was rejected.

General damages

[50] Mr. Natukunda prayed for general damages. He submitted that the manner of the 3rd Claimant termination was wanting. The 3rd Claimant's manner of termination was not explained except for the collective termination. He was inconvenienced and not considered for benefits in the collective termination. Counsel submitted that the other Claimants have failed to get decent employment. No evidence of job applications or rejections was laid before this Court. Counsel also submitted that the 1st claimant had been denied payment in lieu of notice. That is correct, and we have so found. The Court of Appeal has, in the case, **Stanbic Bank(U) Ltd v Constant Okou**[7] held that general damages are based on the common law principle of *restituto in integrum*. We think the 1st and 3rd Claimants are entitled to general damages and we award them the sum of UGX 6,500,000/= each.

Interest

[51] The total sums awarded in this award shall attract interest at the rate of 20% per annum from the award date till payment in full.

Punitive Damages

[52] It was submitted that the 3rd Claimant had been employed for three years without a written contract, and the Respondents had evaded the overtime

[7] Stanbic Bank (U) Ltd v Constant Okou Civil Appeal No. 60 of 2020

payment, hence the need for punitive damages as punishment. In the case of **DFCU Bank Ltd v Donna Kamuli**[8] the Court of Appeal held that punitive damages can be awarded in employment disputes but with restraint and in exceptional circumstances because punishment ought, as much as possible, to be confined to criminal cases and not the civil law or tort and contract. In keeping with the dicta of the Court of Appeal and on the facts before us, we are not persuaded that the Claimant has made a case for an award of punitive damages, and we decline to award the same.

Aggravated Damages

[53] Mr Natukunda submitted that aggravated damages are a form of extra punishment for injury or feeling in how the Respondent acted. These were failure to pay in lieu of notice, forgery of overtime documents, failure to give the 3rd Claimant a contract, and trickery and malice in failing to produce the employment logs. Counsel cited the case of **Siilku Muzami v Fred Bamwesigye H.C.M.A No. 0387 of 2020** for the proposition that failure to comply with a court order warrants a grant of aggravated damages. In **Blanche B. Kaira v Africa Epidemiology Network**[9] it was held that aggravated damages are awardable where terminations are with malice. In the case of **Africa Epidemiology Network v Peter Wasswa**[10] it was held for the proposition that aggravating circumstances should be pleaded. We are not satisfied that the Claimants have laid down any aggravating circumstances to warrant an award aggravated damages, which we decline to award.

Costs of the Claim

[54] We have held that 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.[11] The Respondent unlawfully withheld the 1st Claimant's payment in lieu of notice and disregarded the 3rd Claimants rights. For this reason, we think the Respondent is guilty of misconduct and award the 1st and 3rd Claimants costs of the claim. We do not find any misconduct regarding the 2nd Claimant's claim and decline to award him costs of the claim.

[55] The final orders of the court are as follows:

(i) The Claimants were lawfully collectively terminated.

[8] C.A.C.A No. 121 of 2016
[9] LDR 131 Of 2010
[10] C.A.C.A 124 of 2017
[11] Joseph Kalule Vs Giz LDR 109/2020(Unreported)

(ii) It is declared that the Respondent unlawfully withheld the 1st Claimant's payment in lieu of notice and is ordered to pay the 1st Claimant the sum of **UGX 1,400,000** as payment in lieu of notice.

(iii) It is declared that the 3rd Claimant ceased to be a casual worker and is entitled to rights and benefits due to other workers. We award **UGX 1,401,600** as terminal benefits.

(iv) The 1st of 3rd Claimants are awarded **UGX 6,500,000** each as general damages.

(v) The sums above shall carry interest at 20% p.a. from the date of this award until payment in full.

(vi) The Respondent shall also issue certificates of service to the Claimants within 21 days of this award.

(vii) The 1st and 3rd Claimants shall have costs of the Claim.

It is so ordered this 5th **day of** Sept **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 5th of September 2023 at 9.39 a.m. in the presence of:

1. For the Claimant: None
2. For the Respondent: **Mr.** Ssebumpenje T.

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

Anthony Wabwire Musana,
Judge, Industrial Court