THE REPUBLIC OF UGANDA

IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA

LABOUR DISPUTE REFERENCE NO. 272 OF 2018

(ARISING FROM LABOUR COMPLAINT MGLSD/LC/161/2018)

SOLOMON AKANKWASA::CLAIMANT

VERSUS

MUHAVURA EXTRACTIONS LTD::RESPONDENT

Before:

The Hon. Mr. Justice Anthony Wabwire Musana,

Panelists:

1. Hon. Jimmy Musimbi,
2. Hon. Robinah Kagoye &
3. Hon. Can Amos Lapenga.

Representation:

1. Mr. Jason Njeru Kiggundu of M/s. Sebowa & Co. Advocates for the Claimant.
2. Mr. Patrick Mugalula of M/s. Katende & Ssempebwa & Co. Advocates for the Respondent.

AWARD

Introduction

[1] The Claimant was first employed as a Finance Manager of the Respondent on the 1st of November 2014. Owing to his stellar performance, he was appointed Acting General Manager on the 1st of September 2016 for a term of 2 years. On 15th November 2017, he was terminated under a Separation Agreement. He lodged a complaint at the Ministry of Gender, Labour and Social Development. Mr. Apollo Onzoma, Labour Officer, referred the matter to this Court for consideration of whether there are any remedies for termination.

[2] In his memorandum of claim filed in Court on 19th June 2019, the Claimant sought recovery of salary for the remaining part of his contract, special, general, aggravated and exemplary damages for breach of contract, interest, and costs of the claim. It was contended that the Respondent fraudulently, illegally, and dishonestly coerced the Claimant into signing a termination agreement to be paid his benefits, provided he did not take legal action against the Respondent. It was also contended that the Respondent partly paid the Claimant but declined to pay salary for the remaining part of the contract. The Claimant pleaded fraud, misrepresentation, and breach. He sought special damages of UGX 296,000,000/=.

[3] The Respondent opposed the claim, contending as a preliminary point of law, that the claim was prolix, misconceived, frivolous, vexatious, bad in law, and an abuse of the Court process. It was contended that the Claimant is estopped from bringing this action, and this Court did not have jurisdiction over the cause of action, which was not disclosed.

[4] Substantively, it was contended that because it was experiencing low flower production, significant loss of Pyrethrum production acreage, and significant financial loss in May 2017, the Respondent terminated ten staff members by agreement and paid each of them about US$ 5,801.01. That the Claimant actively participated in the terminations. In November 2017, following a conversation between the Claimant and Respondent, the Claimant was given the option to resign or be retrenched because the Respondent was ceasing operations in Uganda. Following the Claimant's resignation, a Separation Agreement was concluded, and the Respondent paid the Claimant UGX 111,428,571/= in terminal benefits. The Respondent protested the claims of fraud, illegality, dishonesty, coercion, and misrepresentation and argued that the Claimant was estopped from pursuing this claim and was not permitted to approbate and reprobate. The Respondent asked that the suit be dismissed with costs.

The proceedings and evidence of the parties

[5] The parties filed a joint scheduling memorandum, which was adopted on the 15th of May, 2023, with the following issues for determination:

(i) Whether the Claimant's termination was lawful?

(ii) What remedies are available to the parties?

[6] The parties presented one witness each.

The Claimant's Evidence

[7] The Claimant testified that on 15th November 2017, the Respondent's Director offered him a termination letter without a hearing or justification. He testified that he was fraudulently, illegally, and dishonestly coerced into signing a termination agreement to be paid his benefits on condition that he does not take legal action against the Respondent. He was partly paid his benefits but not paid a salary for the remaining part of the contract.

[8] In cross-examination, the Claimant first denied knowledge of and later admitted that he was aware of the Respondent's decision to stop growing pyrethrum and crude oil in Uganda in May 2017. He admitted to involvement in retrenching ten junior staff, suggesting that the Respondent entered agreements with the staff because their contracts had expired. He stated that his employment ended with a termination letter, which was admitted as CEX3. He testified that he did not understand that this letter meant that there would be an amicable discussion about his termination. He acknowledged receipt of a Separation Agreement by email marked as CEX4. He stated his expectations in his email: more notice and the settlement sum of UGX 240,000,000. Except for the salary for the remaining ten months of the contract, he admitted receipt of the rest of his benefits totaling UGX 111,428,571/=. He signed a Separation Agreement on a *'take it or leave it'* basis amidst threats of violence. He admitted that he had above-average English language skills and understood what he was signing. He testified that Brad Ward told him to sign or take UGX 39,000,000/=. It was his evidence that he was the only employee with a running contract. He admitted that he was given everything else he had asked for except the salary for the remaining ten months of his contract. He said he understood Clause 2.1 of the Separation Agreement and resigned. Without his salary loan in the separation documents, he testified that he would have used his

ten months' salary to pay off the loan. It was his testimony that Brad Ward was traveling to Entebbe International Airport, forcing him to sign the agreement.

[9] In re-examination, he testified that he was shocked to receive the termination letter because the Respondent was not closing due to non-performance but to a change of business interests. He stated that the kind of threat he had been put in would have been to go away empty-handed. He was required to hand over the office car keys and leave the company house immediately.

[10] He confirmed to the Court that the rest of the employees were happy with their packages because they did not have running contracts.

The Respondent's evidence

[11] Brad Ward (RW1), a Director of the Respondent, testified via audio video link. It was his evidence that on 5th May 2017, the Respondent's Parent Company, MGK, resolved to decrease the Respondent's operations due to low flower production, significant loss of pyrethrum production, and financial loss. The Directors agreed to devise a plan to reduce staff, and termination agreements were reached for ten staff. The Claimant actively participated in drafting the termination letters, exit forms, and agreements. In November 2017, he informed the Claimant that his contract would be terminated because the Respondent would cease operations in Uganda. I offered him two options: to resign or be retrenched through a separation agreement. A draft agreement was discussed on 16th and 17th November 2017, and the Respondent significantly increased its proposal to meet the Claimant's counter-proposal. It was agreed that the agreement would take effect on 17th November 2017, the Claimant would be paid UGX 111,428,571/= upon termination in two installments on 24th November 2017 and 31st December 2017, the Claimant would seek legal advice and not institute any suits against the Respondent. RW1 also testified that upon receiving the amount, the Claimant prepared a handover report and exit form and submitted the same to the Respondent's board via email on the 21st of November, 2017. It was his evidence that the termination had been lawful.

[12] In cross-examination, RW1 conceded that the Claimant was terminated by paragraph 13(a) of his witness statement. He also acknowledged that on 15th November 2017, a decision was made to terminate the Claimant, and the critical part was that a Separation Agreement was discussed and terms negotiated. A termination letter was issued on the 15th of November 2017, but on the 17th of November 2017, it was indicated that he had resigned. He recalled that the goal was to reach an amicable separation. The witness testified that he left Uganda on the 17th of November 2017 after signing the agreement and believed that the agreement could have been signed remotely. He testified that ten other staff members were terminated, and separation agreements were executed. He confirmed that another employee, Vickie Akampuriria, took up the position.

[13] In re-examination, he clarified that Ms. Akampurira's role was to continue to close the Respondent, and additional staff needed to be retrenched.

[14] At the close of the Respondent's case, Counsel were invited to address the Court on the issues through written submissions.

Analysis and Decision of the Court.

Issue 1. Whether the termination of the Claimant was lawful?

Submissions of the Claimant

[15] Counsel for the Claimant submitted that no provisions governing mutual separation agreements were in the employment law. Therefore, recourse was to be had to the common law and the Contracts Act 2010. The parties were generally free to enter any agreement, but valid prerequisites such as offer, acceptance, and consideration must be present. It was submitted that issuing a termination letter vitiated the parties' rights and is, therefore, not enforceable before a Court of law. Counsel cited the case of **Gbenga-Oluwatoye v Reckitt Benckiser South Africa (PTY) Ltd and Anor(2016) 37 ILJ 2723(CC)** in support of his argument.

[16] It was also submitted that the Separation Agreement was entered under duress. Counsel singled out the preamble, which contained a termination date of 17th November 2017, Clause 2. 2.1(a), which provided for resignation. Yet, the Claimant was terminated, and Clause 3.2 precluded the Claimant from pursuing legal action. It was submitted that the agreement was ambiguous regarding termination and resignation, and by termination, the Separation Agreement was null and void. Counsel suggested that the options to resign or be terminated were to pave the way for Vicky Akampurira's appointment. It was submitted that the Claimant was coerced into signing a Separation Agreement after he declined to resign. No reasons for termination were given, and no hearing was conducted. On the authority of **Kabagambe Rogers v Post Bank Uganda Ltd LDR No. 107 of 2020**, Counsel contended that the termination was unlawful and unfair.

The Respondents submissions

[17] It was submitted for the Respondent that the termination was lawful by **Section 65(1) of the Employment Act, 2006** *(from now EA),* which provides for an employee terminating a contract of service where the employee has received notice of termination but before the expiry of notice of termination. We were directed to **Section 65(2)(c)** and **(d)** for the proposition that termination took place on the 17th of November 2017 when the employee ceased work. It was the Respondent's case that was issued with a termination notice on the 15th of November 2017; the Claimant opted to resign on the 17th day of November 2017. Counsel relied on the case of **Serungoji v International Justice Mission LDR No. 211 of 2016** to support this proposition. It was also submitted that the Gbenga case (supra) cited by the Claimant also holds that separation agreements are valid and lawful.

[18] Regarding notice of termination, it was submitted that notice was issued on the 15th of November 2017, and the Claimant was invited to negotiate the terms of his separation agreement.

[19] Regarding coercion, it was submitted that the Claimant, who had negotiated his terms and received most of his benefits, cannot, in good faith, allege that he was coerced. Counsel cited Bukenya v Global Trust Bank

LDC 11 of 2014 for the definitions of coercion. Counsel rightly distinguished the **Kabagambe** case (supra), which related to dismissal for misconduct.

[20] Regarding contractual exclusion, exemption, release, and indemnity, it was submitted that such clauses are valid and enforceable, absent of any vitiating factors. Counsel relied on **Hexagon Agencies Ltd v Mogas International (U) Ltd (H.C.C.S No. 282 of 2014).**

[21] On estoppel, Counsel cited Section 14 of the Evidence Act Cap 6. for the proposition that the Claimant is estopped from denying that he exercised his free will, indicating that he wishes to resign, resigned, and agreed not to bring any claims against the Respondent.

[22] Finally, the Respondent submitted that the Claimant was prohibited from approbating and reprobating. Counsel cited the Serunjogi case (supra) in support of this argument. It was suggested that the Claimant had been duplicitous in seeking benefits after negotiating a separation agreement.

Resolution of Issue 1

[23] While making an employment contract is generally cordial, it is not uncommon for the end of the employment relationship to be strained, perhaps even antagonistic. Unlike Rule (4) of the Tanzanian Employment and Labour Relations (Code of Good Practice) Rules, 2007, where an employer and employee may agree to terminate the contract in accordance with their agreement, the framers of the Employment Act, 2006, did not provide for a regulated separation between an employer and employee.

[24] Legal writers agree that termination by agreement is one means of severing the employment relationship. John Bowers & Simon Honeyball, in their **"Textbook on Labour Law,"** [1] opine that if there is genuine agreement between the employer and employee that a contract of employment shall terminate there is no dismissal, either at common law or by statute. Malcolm Sargeant and David Lewis, on **Employment Law,**[2] observe that termination by mutual consent is an important concept widely used by

[1] 3rd Edition Blackstone Press Limited at page 70
[2] 5th Edition mylawchamber at page 82

employers to reduce the number of staff. They argue that the important question is whether the employer and employee have freely agreed to end the employment contract. In **Workplace Law**,[3] Professor John Grogan observes; *"Just as the consensus of the parties brings the employment contract into existence, so too consensus may end a contract... [this] does not constitute a dismissal for the purposes of the common law or the LRA."* The authors reinforce the idea that where parties freely agree to terminate an employment contract, such an agreement would be held valid.

[25] Where attempts to reach a compromised severance of the employment relationship are brought before the Courts, there has been judicial unanimity that termination of the employment contract by agreement is anchored in free will, mutuality, consensus, and kindred elements. Judicial consensus is evident in the following cases:

(i) In **Samuel Serungoji v International Justice Mission**[4] , the Industrial Court observed that termination of employment could also be by mutual agreement of the parties to the employment contract, irrespective of who initiates the termination.

(ii) In **Mulema Mawadiri Fiona v Stanbic Bank Kampala LDR No. 224 of 2018**, the Court also held that by failing to return to work after the employer reinstated her and after she rejected the compensation terms offered to her in the Separation Agreement that she had proposed, she had chosen to terminate her employment and the termination was not illegal.

(iii) In **Mwaka Moses v Road Master Cycles (U) Ltd LDC No. 155 of 2014**, following a disagreement over pay for additional work which was genuine and, the Claimant stopped working in circumstances considered as a resignation and not an unlawful termination. When the employer called him back to work, he declined to do so.

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[3] Workplace Law 8 Edn (Juta Cape Town 2005) at pages 84 and 85, The reference to LRA is the Labour Relations Act of South Africa.
[4] LDR 211 of 2016

(iv) In **Marylyn Nyambura Mbuthia v Safaricom Ltd,**[5] the Industrial Court of Kenya observed that an aspect of choice characterizes a mutual separation agreement. If this is missing, it cannot qualify to be such.

(v) Further afield, in the **South African case of Gbenga-Oluwatoye v Reckitt South Africa** (supra), which both Counsel cited, the Court held that an employment Separation Agreement should in law be treated in the same manner as any other agreement between the employer and the employee and that it is invalid when it is entered into under duress or undue influence that vitiates either party's consent and;

(vi) In **Mariam Akiror v IFPRI,**[6] we observed from the dicta of decided cases and treatise that choice, consent, consensus, or free will is central to terminating an employment contract by mutual agreement. We concluded that the absence of consent or choice would render a mutual Separation Agreement void.

[26] In the matter before us, the Respondent makes the case that the Claimant's employment was terminated on mutually agreed terms. At the same time, the Claimant contests his termination, suggesting that he was strong-armed into executing the agreement on the threat of non-payment of his entitlements. Therefore, in assessing whether the Claimant's termination was lawful, this Court would be concerned with whether the Separation Agreement was freely entered into.

[27] In the **Serungoji** case (supra), the Industrial Court observes that good practice requires an interview to define the termination package and the termination date. In that case, the Claimant was presented with a Separation and Release Agreement and signed the same. The Court found no evidence that the Claimant had been forced to sign the agreement, and he was estopped from denying its validity.

[28] The chronology of events leading up to the Claimant's termination in the present case is significant and common to both parties. It is common that in May 2017, the Respondent reduced ten of its employees, and the

[5] Industrial Cause No. 1413 of 2016
[6] LDR 235 of 2019

Claimant actively participated in this process. On the 15th day of November 2017, Brad Ward, the Respondent's Director, had a conversation with the Claimant regarding his future with the Respondent. According to Respondent's Exhibit No. 2(REX2), at 7:15 p.m., Mr. Ward emailed the Claimant forwarding a notice admitted as REX3. In the email, it was clear that the notice was for termination with payment in lieu of notice. The offer was three-and-a-half months' notice. Mr. Ward also indicated that the Respondent required a General Manager whom he would appoint and asked the Claimant for his counter-proposal or approval of the three-and-a-half months' notice. At 20:59 hours, the Claimant acknowledged receipt and said he would communicate by mid-day the following day. For the purposes of this award, it would be safe to assume that he meant the 16th of November 2017.

[29] As promised, on the 16th of November 2017, the Claimant, by return email, acknowledged that in May 2017, it had become clear that the Respondent did not wish to continue the pyrethrum business and staff had been retrenched. He noted that some staff *"had running contracts and were retrenched with favourable terms, setting a precedent on what should happen should there be more layoffs."* The Claimant felt he was not being given favourable terms and set his expectations. The Claimant asked for:

- Full November 2017 salary because he had worked for a half a month
- Full pay for the remaining ten months of the contract,
- Severance allowance
- Outstanding leave days
- Repatriation allowance
- Three months' notice pay

The Claim was tabulated as follows:

			3,600,000	
ITEM	DESCRIPTION	UGX	USD	COMMENT
1.	FULL NOVEMBER SALARY	13,000,000	$3,611	This came past mid-month
2.	10 MONTHS CONTRACT REMAINING PERIOD	130,000,000	$ 36,111	Subject to interpretation

3.	SEVERANCE ALLOWANCE	49,790,000	$ 13,831	Just like how previous....
4.	REPATRIATION ALLOWANCE	-	$ -	I will use the TOYOTA.
5.	OUTSTANDING LEAVE	7,428,571	$ 2,063	12 days outstanding
6.	NOTICE PERIOD	39,000,000	$ 10,933	As per contract
	TOTAL	239,219,571	$ 66,450	

The Claimant agreed to hand over while offsite.

[30] In his email (REX6) on the 17th of November 2011 at 12:11 p.m., the Claimant informed the Respondent's staff that he would be leaving employment with the Respondent with immediate effect. He thanked the staff for their support and cooperation and advised them to always focus on a bright future. He asked for forgiveness if he had made anyone angry, as he was only doing his job. He closed his email with these words:

> *" I will be officially handing over Tuesday 21st at 4 PM.*
>
> *Blessings*
>
> *Regards*
>
> *Solomon"*

[31] In REX7, which was an email dated 21st November 2017 at 18:26 Hours, captioned *"HANDOVER REPORT and Exit from MEL"* to Brad Ward and copied to Randy Nelson, Jeff Johnson, and Akan Solomon, the Claimant acknowledged the difficulties that the Respondent was facing. He had observed these difficulties from the position of Acting General Manager. He mentioned knowledge of the winding up and expressed the desire for his contract to be paid off. He wrote that the simple act of paying off his contract would give a clear image to future employers. He thanked the Respondent's officials and wished them well. He attached the handover brief containing recommendations. He admonished the manner of his

treatment and also reiterated his expectation of a decrease from May 2017. The brief was admitted as REX8.

[32] The Separation Agreement was duly executed by both the Claimant and Respondent. It was admitted as CEX4 and REX5. It was an agreed document. It contained an acceptance of the Claimant's immediate resignation from duty and payment of the following sums:

Full November Salary	13,000,000
3 Months' Notice	39,000,000
Severance Allowance	52,000,000
Repatriation Allowance	Use of Motor Vehicle as requested
Outstanding Leave	7,428,571
Total	**111,428,571**

The agreement contained a release and covenant not to sue clause, a clause barring any legal action, and an indemnity clause inter alia.

[33] In our view, the chronology leading to the Claimant's exit demonstrates that the Claimant was aware of the Respondent's scaling down in May 2017. He acknowledged variously in his emails and his testimony before the Court under cross-examination that he was aware of the Respondent's plans to wind down the business. He also participated in the retrenchment of ten staff members. When he was notified of his termination with payment in lieu of notice, a negotiated exit was discussed. He was given the option to resign or be terminated. In his exit emails, while he expressed reservations about non-payment of his salary for the remaining months of his contract, he acknowledged that this could be subject to legal interpretation. The Claimant then readily exited from the Respondent and completed his exit by signing the Separation Agreement and sending a handover report. His emails to management and staff were final. He decided to take a payment, executed a Separation Agreement, and exited the service of the Respondent. It is inconceivable, in our view, that in each deliberate step, the Claimant took, he was coerced or forced to make the decisions he took. This Court observed his demeanour. The Claimant was methodical and well organized. He considered each of his answers. Under cross-examination, he stated that he was unhappy with the terms of the

proposed agreement and sent an email to the Respondent asking them to change the terms of the agreement. He stated his expectations clearly. We do not think that he was under any mistaken belief as to what was transpiring. His hand could not be forced onto the Separation Agreement. He may have been displeased with the quantum of his separation package, but he was not forced. We are of the firm persuasion and find that the Claimant was not coerced into executing the Separation Agreement as Mr. Kiggundu would have this Court believe.

[34] We also think distinguishing the **Akiror** case (*supra*) is necessary. In that case, we held that mutuality ceased with the inconclusiveness of the discussions. The Respondent had correctly reached out to the Claimant to discuss mutual separation. The Claimant made a counteroffer and declined to sign the mutual Separation Agreement, withholding her consent to mutual termination on the terms proposed by the Respondent. Before the discussions could be finalized, the Respondent elected to terminate the Claimant. Our view was that the notion of mutuality was incompatible with inconclusive talks. The element of choice and free will to terminate was absent. In the present case, the Respondent sent a notice with a proposal to pay three months' salary in lieu of notice. The Claimant made a counter-proposal of UGX 239,219,571. The Respondent agreed to make further adjustments to its offer, arriving at a final payment of UGX 111, 428,571/=. The Claimant signed the agreement and took the benefits. He, therefore, gave his consent.

[35] For the above reasons, we would find that the Respondent carried out an exit interview in accordance with the recommended best practices laid out in the **Serungoji** case. A proposal with draft terms was sent to the Claimant, and he made his counteroffer. The outcome was improved terms contained in the Separation Agreement which the Claimant signed. From a scrutiny of the communication, starting with the notice of termination, the signing of the Separation Agreement and the final handover on the 21st of November 2017, there was consent and free will. We are unable to accept the Claimant's argument that he was forced or coerced to sign the agreement or that his consent was procured by fraud or dishonesty. The entire negotiation was done in the light of day. He had been aware of a

forthcoming retrenchment for over five months. We find that the Claimant entered the mutual Separation Agreement of his own will. In our view, there was neither coercion nor duress. He was not forced to sign the agreement. To this extent, his termination was lawful.

[36] We would be fortified in this finding by the decision of the Employment Appeals Tribunal (EAT)[7] of the United Kingdom in **Sheffield v Oxford Controls Co**[8] where the employee was threatened with dismissal if he did not resign. After some negotiations, he signed an agreement to leave in return for certain financial benefits, including GBP 10,000. Then, he claimed to have been unfairly dismissed. The Tribunal observed that an employee who resigns due to a threat is not denied. But where there is an intervening cause, *'He resigns because he is willing to resign as a result of being offered terms which are to him satisfactory terms on which to resign.'* In the circumstances of the present case, we do not find that the Claimant was forced to resign. He was offered terms which he accepted in the separation agreement. The said Separation Agreement contained an acceptance of his resignation. Therefore, we find that the Respondent obtained the Claimant's consent and lawfully terminated the employment contract through a valid mutual Separation Agreement.

[37] This leaves the questions of approbation and reprobation, estoppel, and the exclusions clauses.

[38] Regarding approbation and reprobation, in **Samuel Serunjogi v International Justice Mission LDR No. 211 of 2016**, cited by Counsel for the Respondent, the Industrial Court held that by signing the Separation Agreement, the Claimant agreed to be bound by the terms and benefits of the agreement. Therefore, he was estopped from denying its validity. The Court relied on the principle of approbation and reprobation and held that he was estopped from claiming that the termination was invalid because he was not accorded a hearing. His signing of the Separation Agreement amounted to a resignation, thus the contract's termination. This dictum

[7] The EAT is a tribunal in England and Wales and Scotland, and is a superior Court of record. Its primary role is to hear appeals from Employment Tribunals in England, Scotland and Wales. https://www.gov.uk/Courts-tribunals/employment-appeal-tribunal last accessed 26.110.2023 at 12:21 EAT

[8] [1979] ICR 396, [1979]IRLR 133. As quoted J. Bowers & S. Honeyball(Supra) at pages 70-72.

applies to the present case coupled with the decision of the Supreme Court of India in the **State of Punjab and Others v Dhanilt Sins Sandhu Civil Appeal No. 5697-5699 of 2009,** *where 'the principle is based on the doctrine of election, which postulates that no party can accept and reject the same instrument and that a person cannot say at one time that a transaction is valid and then turn around and say it is void for the purpose of securing some other advantage.'* In the matter before us, it would be impossible to reach any other conclusion on the facts than that by bringing the present action, the Claimant sought to approbate and reprobate.

[39] In a similar view, and having found as we have, regarding the separation agreement, we agree with Counsel for the Respondent that the evidentiary rule of estoppel would estop the Claimant. Under Section 114 of the Evidence Act Cap. 6, when one person has, by his or her declaration, act, or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon that belief, neither he or she nor his or her representative shall be allowed, in any suit or proceeding between himself or herself and that person or his representative, to deny the truth of that thing. In effect, the Claimant agreed to the terms of the Separation Agreement and signed the deed and now attempts to deny and repudiate the same. The Separation Agreement has not been shown to be ambiguous. We would agree that the Claimant is estopped from denying the truth of the Separation Agreement.

[40] On exclusion clauses, it was submitted for the Respondent on the authority of **Hexagon Agencies Ltd v Mogas International (U) Ltd** *(supra)* that the release, exclusion, and indemnity clauses were valid and enforceable as against the Claimant before this Court. In our view, the approach to these clauses under the Employment Act is to be found under **Section 4**, where it is provided that any provision in an agreement or a contract of service shall be void where it precludes the operation of provisions of the Act to the detriment of the employee or precludes the person from presenting a complaint to a Labour Officer or initiating proceedings under this Act. Clause 3.3 of the Separation Agreement *'forever bars'* the Claimant from suing or otherwise asserting a claim against the Respondent. Clause 4 provides for unknown claims, and Clause 9 is an indemnity for a breach or non-observance of the agreement. In effect, by contending the

enforceability of these clauses against the Claimant in the matter before this Court, the Respondent would have this Court believe that the Claimant is precluded from bringing this matter or any other complaint to Court. We think this would not be correct. Beyond being contrary to public policy, barring an employee from bringing to Court a labour complaint is expressly prohibited under **Section 4 of the Employment Act**. The Employment Act provides for the irreducible minimum standards of the employment relationship in all employment matters. Any agreement relating to the employment relationship, including a mutual Separation Agreement, must conform to the minimum standards under the Act. For this reason, we would hold that the provisions of clauses 3, 4, and 9 of the Separation Agreement executed between the Claimant and Respondent would be void. We would be fortified in this conclusion by the decision of the Industrial Court in **Giorgio Zenegalia v Sari Consulting Ltd,**[9] where the Court, considering an arbitration clause in an employment agreement, found that clauses of the contract that sought to exclude sections of the Employment Act that grant jurisdiction to Labour Officers were void and of no effect. In a similar vein, clauses 3, 4, and 9 of the Separation Agreement, the subject matter of this claim, would be void and of no effect. They are severable.

[41] In the final analysis and after objectively considering the facts, circumstances, evidence, and the law, we determine that the Claimant was fairly and lawfully terminated. Issue 1 would be answered in the negative.

Issue III: What remedies are available to the parties?

[42] Having found as we have, the Claimant would not be entitled to any remedies sought. We would, however, have some brief comments on some of the remedies.

[43] The claim for salary for the remaining part of the contract is not one which this Court would grant. The standing principle is that an employee is only entitled to salary for work done. Futuristic earnings are speculative[10] and cannot be awarded.

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[9] LDR 229 of 2019

[10] Irene Rebecca Nasuuna v Equity Bank (U) Ltd (Labour Dispute Claim 6 of 2014) [2020] UGIC 38 (2 October 2020)

[44] The heads of claim for a salary loan and continued financial loss stand unproven. The law is that special damages are specifically pleaded and strictly proven.[11] There was no evidence led of the salary loan, how it was acquired, and whether the employer guaranteed it.

[45] Regarding repatriation allowance, it was demonstrated that the Claimant had sought and was granted use of the Respondent's vehicle for repatriation purposes. It would be unjust enrichment to consider this head of claim had the Claimant proven his termination to be unlawful.

[46] The claim for aggravated and exemplary damages requires the Claimant to prove malice and outrage occasioned on him. In the case of **Okumu Godfrey and others v Shreeji Stationers Ltd,**[12] this Court cited the cases of **Blanche B. Kaira v Africa Epidemiology Network,**[13] where it was held that aggravated damages are awardable where terminations are with malice and **Africa Epidemiology Network v Peter Wasswa**[14] where it was held for the proposition that aggravating circumstances should be pleaded. No such evidence was led to warrant a finding of aggravating circumstances.

Costs of the Claim

[47] The Respondent sought costs of the claim. 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 culpable of some form of misconduct.[15] We do not find any such misconduct by the Claimant. We also do not think his action to have been wholly frivolous. He maintained that he should have been paid for the remaining part of his contract. Perhaps it was his view that this argument was meritorious and sustainable. As we have found that it was not, we are not inclined to award costs against the Claimant.

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[11] Per Ssekaana J. in H.C.C.S NO. 160 of 2014 Nasif Mujib & Another (Through Mujib Juma Kenyi, Attorney) V Attorney General
[12] LDR 138 of 2021
[13] LDR 131 Of 2010
[14] C.A.C.A 124 of 2017
[15] Joseph Kalule Vs Giz LDR 109/2020(Unreported)

[48] As a final order, this claim is dismissed with no order as to costs.

Signed in chambers at Kampala this 27th day of October 2023

Anthony Wabwire Musana,
Judge, Industrial Court

The Panelists Agree:

1. Hon. Jimmy Musimbi,
2. Hon. Robinah Kagoye &
3. Hon. Can Amos Lapenga.

27th October 2023

Representations:

1. For the Claimant, **Ms. Abaruhanga Gloria**
2. For the Respondent, **Mr. Patrick Mugalula**

Court Clerk: **Mr. Samuel Mukiza**

Ms. Abaruhanga Gloria: Matter is for award. We are ready to receive it.
Mr. Patrick Mugalula: That is the position.

Court: Ruling delivered in open Court.

Anthony Wabwire Musana,
Judge, Industrial Court