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THE REPUBLIC OF UGANDA

IN THE INDUSTRIAL COURT OF UGANDA AT JINJA

LABOUR DISPUTE REFERENCE No. 014 OF 2022

ARISING FROM IGANGA DISTRICT LABOUR COMPLAINT 14/2022

10 **YASIN KIYINGI CLAIMANT**

VERSUS

POST BANK UGANDA LTD RESPONDENT

BEFORE:

THE HON. AG HEAD JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA

15 **PANELISTS**

1. MR. EBYAU FIDEL

2. MS. HARRIET MUGAMBWA NGANZI

3. MR. FX MUBUKE

AWARD

20 **BACKGROUND**

The Claimant was employed by the Respondent as an Agriculture Credit Officer. He While in that position, he met his annual targets, until he was re-designated to the position of Business Banker in August 2020. In November 2020, the Respondent appraised his performance, and he scored a 2A which according to Respondent's Policies, was poor and
25 unsatisfactory performance according to the Respondent's policies. He was duly informed of these results and put on a performance improvement plan (PIP) for 3 months (January-March 2021) to enable him to improve his performance.

During the PIP, the Claimant's performance was reviewed on a monthly basis and at the end of the PIP period. At the end of the PIP period, he had not registered satisfactory
30 performance in line with the agreed performance targets and the Respondent's policies. As a result he was invited for a hearing on his performance scheduled for 19th May 2021. He was accorded a hearing before the Disciplinary Committee and at the hearing he requested for more time to improve his performance. The Committee considered his prayer and recommended that he is given more time to improve his performance. Accordingly, his PIP
35 was extended up to the end of June 2021. Upon the review of the Claimant's performance, on 18/08/2021, he was invited for a subsequent hearing scheduled for 26/08/2021, to further explain his continued poor and unsatisfactory performance. The Claimant appeared before the Committee which noted that despite the extension, he had been given, he did not register any substantial improvement. Consequently, the Committee recommended that he is
40 terminated which was done on 8/09/2021.

REPRESENTATION

The Claimant was represented by Julius Naita of M/s Naita & Co. Advocates, Iganga While the Respondent was Represented by Paul Keishari of M/s Legal Department Post Bank Ltd, Kampala .

45 According to the Parties Joint scheduling memorandum the following were the agreed issues:

- **Whether the Claimants termination was lawful?**
- **What are the remedies available to the parties?**

RESOLUTION OF ISSUES

50 **1. Whether the Claimants termination was lawful?**

It was submitted for the Claimant that in order for the Claimant's termination to be considered lawful, it must be fair in all terms and it is done in accordance with all the laid down procedures and consideration of the circumstances of the case. He contended that, the in the instant case, the termination of Mr. Kiyingi Yasin employment was unfair, therefore
55 it unlawful.

He restated the facts of the case and submitted that, although the Respondent states that, the claimant was terminated in accordance with Section 65(1) of the Employment Act 2006, which provides for the instances where termination is deemed to have taken place, the Supreme Court in **Stanbic Bank Ltd Vs Kiyemba Mutale SCCA No.2 of 2010**, held that
60 an employer who does not follow the law must suffer the consequences of not doing so as



provided for under section 2, 66 and 68 of the employment Act. He contended that, the Respondent terminated the Claimant's contract unlawfully/unfairly, because while he was an Agricultural Officer, he achieved his targets which were disbursing (25) loans a month of at least Ugx. 100,000,000/-valued at a recovery of 95%, as assessed bi- annually. 65 According to him, due to his exceptional performance as an Agricultural loans Officer, he was promoted to the position of Business Banker with new targets where he was required to disburse 4 loans valued at least Ugx.200,000,000/- which was twice his pervious target moreover in the after math of the 1st phase of Covid 19.

He also argued the reasons that were given for the termination of the Claimant's contracts 70 were vague and unjustified. According to him this was because, from 2014, his performance was good and he worked with dedication until because the Claimant had a good and dedicated performance, from 2014 until August 2020, when he was re designated, with double the targets.

Counsel contended that, the Claimant's appraisal marked CEX8, which was done 2 months 75 after redesignation and new targets was done in haste. Therefore, it was unfair, especially given the economic period which was characterized by the aftermath of the 1st phase of Covid 19 Pandemic.

He also contested the Claimant's placement on a PIP in 2021, when the whole Country was under total lock down from 1/03/2021 to July 2021, as a result of the corona pandemic In 80 any case, during the period of 31/12/2022 the Claimant achieved his targets because he was required to disburse 20 loans but disbursed 28 loans instead thereby achieving his target.

He contended that, the letter which communicated the Claimant's placement on a PIP stated that, indicated that it would be for 6 months with supervision, support and motivation from his supervisors but due to the financial constraints at the time the Respondent
85 auctioned the motorcycles and vehicles including the one which had been allocated to the Claimant.

According to him the Claimant was subjected to disciplinary proceedings before the expiry
of the PIP period moreover during the pandemic and the Respondent did not uphold the principles of natural as espoused by the Court of Appeal in **DFCU vs Donna Kamuli and
90 Bakaluba Peter Mukasa vs Nambooze Betty Bakireke Election Petition Appeal No. 04 of 2009 and** as prescribed under Article 28 and 44 of the Constitution because he was not allowed to explain circumstances surrounding his work during the lockdown. According to him, the parameters for assessment as per REX 12, at page 20 of the Respondent's trial
95 bundle the 1st parameter indicated he had to show the number of loans sold, yet the Bank was on lending stop resulting from the corona pandemic and lock down. Counsel argued that, since the Bank was on a lending stop, which was not lifted until the Claimant's
termination, he was not able to achieve both sales and value of loans as key measurement parameters for his performance, which in turn affected his overall performance. As a result he was not able to meet his targets.

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He contended that, since Schools were the major clients and were one of the hardest hit, during covid 19, this should have been taken into consideration when evaluating his performance.

105 He relied on the case **Rogers Kasozi vs NIC No.283/2014** where court relied on **Florence Mufumbo Vs UDB LDC No.138/2014** and **Kanyangoga Vs Bank of Uganda LDC No.080/2014** court noted that the legal proposition that the “reason” used in section 68 connotes an explanation or justification for terminating or dismissing an employee.

Counsel insisted that, the Claimant was appraised 3 months after he was appointed to the
110 position of business banking moreover when the nation was engulfed with the Corona Virus which affected all financial institutions country wide. It was his submission that RW1 in his testimony during cross examination confirmed that the Claimant was appraised for the targets as business Banker and his PIP during the same period the nation was hit with the pandemic. He also confirmed that Banks were issued with guidelines for structuring the
115 provision of loans due to the pandemic.

He contended that performance assessment is the basis for performance management and decisions based on performance where appraisal was done after a period of three months and in a period of corona pandemic where the nation was widely hit with financial distress and it was not his making to bring the pandemic, in the absence of an objective appraisal,
120 the decision to dismiss the claimant was baseless. It is not only discriminatory but also in contravention with the law and it illustrated malice against the claimant.

It was further his submission that the Respondent's actions in this case were in violation of Section 73 of the employment Act and specifically subsection 1(b), 2(b) and (c) because she did not follow the procedure to ascertain whether the poor performance of only a period of three months was attributed to the Claimant given the Covid 19 pandemic pertaining at the time. He further stated that this was also a violation of section 66 of the procedural requirements because the Claimant did not even complete the 6 months on PIP as per the CEX 8, which lays down the procedure for PIP, at page 29 of the Claimants trial bundle. He insisted that the claimant could only be subjected to disciplinary procedures after 6 months but his was 3 months moreover even when the letter placing him on the PIP was issued on 22/0/2021 but he received on 2/2/2021, yet it was taking effect on 18/1/2021, therefore very unfair.

In reply Counsel for the Respondent was of the view that, the fundamental question to be answered is whether there are any provisions of the law the Respondent declined to follow in terminating the employee.

It was his submission that, the Respondent complied with the provisions in section 66(1) and (2), and REX 4 clearly indicates that the Respondent was invited for a hearing due to his poor performance. According to him the invitation set grounds for the hearing, as well as the time within which he should prepare his response, that is, not later than 7 days, and advised him to give a written response for his poor performance. He was further informed of his right to appear with a person of his choice at the hearing. Finally, the committee considered his oral representations before deciding to terminate the claimant on 8/09/2021



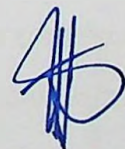
and the reasons for his termination were well set out in the termination letter. Therefore, the Respondent complied with section 58(1) and 65(1) of the Employment Act, 2006, when it
145 terminated the Claimant with notice.

He argued that, whereas the Claimant complained about being appraised after only 3 months on the role, resulting in his being placed on a PIP, this was done in accordance with its Performance Management Guidelines (REX15) which provides for the circumstances under which an employee may be placed on a PIP, that is where an employee shows that he or she
150 is underperforming during a quarterly review. It was his submission that the Claimant was appraised for the 3 months he had been on the role and was found to have underperformed, leading to his being placed on a PIP. According to him a PIP was in the best interest of the employee because as provided under paragraph 7.2 on page 17 of the guidelines, at page 76 of the trial bundle, the PIP was intended “...to support the employee to bridge the
155 *performance gaps through specific and clearly documented objectives and deliverables*” and the Bank is not expected to keep an underperforming employee on its roll, yet the survival of the employer and the employee’s remuneration and benefits depended on the employee meeting his or her targets. He contended that whereas the claimant contended that he should have been placed on the PIP for 6 and not 3 months according to the Policy, he
160 did not attach the said Policy but a presentation from Human Resources, which could not be relied on as Policy. Even then the said document stated that performance should be reviewed on a quarterly basis and where the employee was found underperforming he or she should be enrolled on a PIP. He contended that it was not in dispute that, the Claimants was placed on a PIP from January 2021 till August 2021. Therefore, he spent 8 months on

165 the PIP, therefore he his complaint that he was not given enough time to improve his performance was unfounded.

He contended that the assertion that the Claimant was not given opportunity to explain why he was not hitting his targets and he was given an additional 1 month instead, was not correct because, The Claimant admitted that he wrote the lettee marked REX7 at page 11 of the Respondent's trial bundle and requested for the 1 month, therefore he cannot claim that he
170 was not heard. He also refuted the assertion that, he was not given support by management because the motorcycle that facilitated him to follow up on loans was one of the motorcycle sold by the Respondent, because after the motorcycles were sold all the staff were facilitated with funds to hire vehicles and he did not adduce evidence to indicate that he requested for
175 facilitation and he it was not given to him.

It was also his submission that the contention that he was assessed when the natin was on partial lock down could not stand. Because the evidence in REX3 indicates that by 24/08/2021 he had not hit his targets in terms of sales, portfolio and Risk(PAR) and Non-Performing Assets (NPA) and even if he claimed he had loans in the pipeline they did not
180 come through. He argued that by 16th June 2021 when the Bank put a lending stop, his performance was not improving to blame it on the condition for his decline. He insisted that the Claimant's argument that Banks at the time were in processes of restructuring loans did not hold water because the restructuring would have greatly improved his performance but that was not the case, which was an indication that the claimant did not make any effort to
185 hit his targets, in spite of the restructuring. He invited court to conder whether it was fsir for



n employer to keep a non performing employee for over a 1 year period. He asserted that the Corona Pandemic did not stop the Respondent bank from carrying out appraisals and it was the testimony of RW1 Wandera, that other Business bankers were appraised and they were not placed on PIP's like the Claimant was. According to Counsel "*a business banker*
190 *who despite extra coaching and support for a period of 8 months is unable to sell and recover loans cannot be retained by the bank, otherwise its business would collapse.*

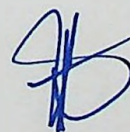
He insisted that, the claimant was accorded all the support but even after being placed on a PIP he did not care to establish whether he was improving, which was indicative of a bad attitude which led to his nonperformance and keeping him would have been prejudicial to
195 the Respondent, who had to keep in business.

DECISION OF COURT

Although employers are at liberty to dismiss employees on grounds of poor performance so long as they follow the correct procedure for termination as laid down under the Employment Act, 2006, the law is silent on performance management which in our
200 considered opinion is a matter of the contract as agreed between the Parties. It is equally silent on what court should consider when determining whether the performance management process is fair and objective.

We were persuaded by Goerge Ogembo's Book, on Employment Law, Guide for Employer, (Revised edition), La Africa,2017, at page 452, where he states that, *Performance*
205 *Management is an everyday human Resource routine function in the workplace. It is during this process that behaviors and outcomes are closely monitored and re-measured against*

present and past goals.” He cites the definition of Appraisal as defined under the Concise Oxford English Dictionary, 12th edition, as “*a formal assessment of the performance of an employee.*” According to him in conducting a performance Appraisal the elements of fairness, objectivity and consistency should be emphasized and the process must be credible and verifiable. The Performance Standard set must be reasonable, understandable, verifiable, measurable, equitable and achievable. He emphasized that, the appraisal must be done within a defined policy framework to ensure substantive participation of the employee. There must be cooperation between the employer and the employee when conducting the evaluation and where there is disagreement the employee must be given opportunity to present his or her views and supervisor must justify his or her conclusions regarding the employee’s performance, otherwise the performance appraisal would not be fair. He cites **Jane Wairimu Machira Vs Mugo Waweru and Associates ELRC Cause No. 621 of 2012, Cited by Ogembo(supra)** where Nzioki , J held that: “ *...the performance of an employee must of necessity involve active participation of the employee. A credible performance appraisal process must be evidently participatory. A comment made by the supervisor without the participation of an employee cannot pass for performance appraisal. Even where there may be disagreement between an employee and their supervisor on the verdict of a performance appraisal, the disagreement must be documented to show that the appraisal did indeed take place...*” and **John Retemo Ondieki vs Islamic Relief World wide, RLRC, cause No. 1422 of 2012** where Ndolo J, held that, “*...if the employer decides to take the side of the supervisor without affording the employee an opportunity not only to present their view but also to question the basis of the supervisor’s conclusions then*



230 *the appraisals process is compromised and its results cannot be used as a basis for disciplinary action against the employee. To rule otherwise would be to hand performance appraisal as a blunt weapon in the hands of overzealous supervisors against employees they do not like... ”*

235 It was the Respondent’s case that the Claimant was placed on a Performance Improvement Plan (PIP) because of poor performance, and he was subsequently dismissed for failing to meet the PIP targets. According to Goerge Ogembo(supra), Performance Improvement Plan(PIP) “ ... is a tool for progressive and consistent monitoring of an employee’s performance once found to be below expectations with the aim of addressing his unsatisfactory performance issues. It also provides avenues through which struggling employees can engage with the management in developing strategies aimed at improving performance. ...hence if upon the conclusion of a performance appraisal process an employer is of the view that an employee's performance ought to be closely monitored for improvement, it should document performance issues and proceed to place the employee on a PIP(emphasis ours). A PIP is a corrective action tool,...the primary aim is of improving and not as a veil or conduit to dismiss an employee. He set down the elements of an objective PIP as follows:

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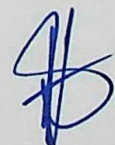
- a) *Explain the deficient performance and why it needs to be corrected,*
- b) *Provide specific expectations and describe the desired performance in either quantitative or qualitative terms; the standard should be S.M.A.R.T(Specific, Measurable, Attainable, Relevant and Timely)*

- 250 c) *Develop an action plan that also follows S.M.A.R.T guidelines . timelines shall be set based on areas of improvement cited and v=severity of performance deficits (PIP timelines are usually 30,60, 90 days in duration.*
- d) *Allow reasonable time to resolve the deficient performance and establish periodic review dates*
- 255 e) *Describe the resources available to assist the employee including coaching or training where necessary to meet objectives.*
- f) *Allow for an objective periodic performance review of performance will be monitored or reviewed*
- g) *Notify the consequences of continued deficient performance. Example : "Further disciplinary action up to and including termination, will be necessary if performance does not improve or if performance does not improve or if performance issues arise."*
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This Court in **Martin Imakit vs Vivo Energy (U) Ltd LDC No. 034 of 2017**, was of the considered view that, that before introducing a PIP a supervisor should conduct a meeting with the concerned employee to explain the process and an employee should agree to subject himself to the PIP and the PIP should clearly document the areas which require improvement, it should stipulate the expected outcomes and clearly state the targets to be achieved during its duration. The targets must be agreed between the employee and the Supervisor and the supervisor attached to an employee under a PIP is required to provide consistent and timely feedback to him or her regarding his or her progress. Ogembo(ibid)

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270 also emphasized the need to provide additional support or resources necessary for the employee to meet the objectives of the PIP. (also see **Tamale Musisi Rita vs Airtel Uganda**



Limited LDR No. 183/2017) Although in **Stanbic Bank V Twinomuhangi Labour Dispute Appeal 21 of 2020**, the Court proposed that Courts should not delve too much into the assessment under the PIP, an analysis of the process in our considered view is important
275 in order to establish whether the elements of the PIP as elucidated by Ogembo and the authorities cited above were complied with in the instant case.

It is not in dispute that on 24/07/2020, the Claimant was notified about his redesignation to the position of Business Banker, reporting to the Business Manager, following the Respondent's comprehensive institutional reviews and restructure. It is also not in dispute
280 that his grade also changed. There was no indication that, the Claimant had a choice in the decision to redesignate him. He, however, accepted the position and the targets which he was given. Both and both parties agreed that, his targets doubled after resignation .According to the Respondent's Human Resources Policy Manual , having appointed him to a new position he had to be confirmed in accordance with section (g), "...*(i)which provides that an employee in a role shall be subject to satisfactory performance as appraised by the line Management and approved by line Exco Mamber.*"

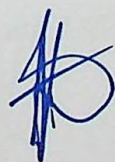
(ii)Upon confirmation, an employee shall continue to be employed in the Bank subject to satisfactory performance until retirement."

Although this provision is silent about the duration of the probation, period, the Section
290 67(2) of the Employment Act provides that "*the maximum length of probationary period is six months, but it may be extended for a further period of not more than six months with the agreement of the employee.*"

We believe that the Legislature was alive to the fact that, an employee had to be given reasonable to time to adjust into a new role hence the provision of 6 months' probation. It is not in dispute that, the Claimant was appraised 3 months after he assumed the role of Business Banker, which in our considered view was too soon given the provision under section 67(2) (supra) and therefore it was unfair.

We had an opportunity to analyse REX 15, the guidelines for undertaking a PIP, which provide that a PIP is a corrective tool intended to track specific areas of performance inefficiencies, with a view of supporting the affected employee to improve and particularly support the employee to address the performing gaps. Even if these Guidelines (REX15), provide that, an employee may be put on a Performance Improvement Plan (PIP), after a quarterly appraisal, they were not explicit about a new appointment. We found it unfair for the Claimant who had just assumed the role of business Banker to be subjected to a review requiring him to be placed placement on a PIP, just 3 months after he assumed the new role. Whereas the quarterly review was undertaken in accordance with the performance policy, the fact that the claimant had only recently assumed the role moreover in a period less than the 6 months' probation, should have been taken into consideration before placing him on a PIP. Even the PIP was intended to enable a non-performing employee to improve and therefore it was in the best interest of the employee, it had be done fairly.

It was not in dispute that, the Claimant was placed on a PIP from January to March which should have been part of the probation period and according to the Respondent, when was assessed for this period his performance had not improved. On 10/05/202, he was invited

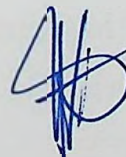


for a disciplinary hearing scheduled for 19/05/2021, which he attended and during the
315 meeting he was given an extension of 1 month. The extension given to him was during the
period when the nation was experiencing a total lockdown resulting from the Covid 19
Pandemic. It was RW1's testimony that this notwithstanding the Respondent Bank
continued to operate during the total Lock down. **We took judicial notice of the fact that
320 during the covid 19 lockdown, movement of goods and persons was restricted and
many businesses either fully or partially closed and the economy was on a slowdown.**
In the circumstances, if the Banks were allowed to continue their operations they were
required to move in branded vehicles, yet the Respondent Bank disposed its motor vehicles
including the motorcycle which had been assigned to the Claimant to enable him carry out
his role as Business Banker. We respectfully did not agree with the testimony of RW1,
325 Wandera, when he stated that the Bank provided money for hiring vehicles to enable its staff
continue operating because, at the time, the President of Uganda, issued directives banning
the use of both Public and private Vehicles, save for branded vehicles. Therefore, if the
Bank hired vehicles this was done in contravention of the Lockdown guidelines. As already
discussed, only branded Vehicles attached to institutions providing essential services were
330 given a waiver to move and no evidence was adduced to show that the vehicles which were
purportedly hired were branded. We are therefore inclined to agree with Counsel for the
Claimant that, the sale of the branded motorcycle, which was assigned to the Claimant, not
only hindered his movement, but also rendered it impossible for him to carry out any follow
up on NPA and this impacted his performance.

335 We also found it peculiar that a Bank which depended on a healthy and robust economy,
did not take into consideration pertaining circumstances occasioned by the Pandemic which
led to a total lock down, which affected the sources of the money which was the primary
source of its operations, such as the suspension of public/ passenger transport vehicles
including privately owned transport, closure of non -food businesses, entertainment centers,
340 where production in factories was limited and work in plantations was curtailed by the
limited numbers of workers allowed at work, and where schools were closed, to also review
its performance standards accordingly.

We are fortified by the fact that the Respondent put in place a “**lending stop**” policy on
16/06/2021 which in our considered view was intended to address the negative impacts of
345 the pandemic. It is our considered opinion that the Bank having put a stop on lending there
was no reason why it could not make concessions for its staff who had the very difficult
task of making recoveries during these very unhealthy economic circumstances such as the
Claimant was operating in. We have no doubt in our minds that the Lockdown made the
functioning of any business entity very difficult which in turn rendered the recovery of any
350 loans already issued, very difficult and this was recognized by the Respondent when it put
a stop to lending.

In the circumstances, it was not farfetched for us to conclude that in the absence of a branded
vehicle and in the absence of evidence to show that the Claimant was given any support
by the Respondent during the Pandemic, to enable him follow up debtors, the Claimant had
355 a legitimate expectation to be given more time to improve his performance and meet the

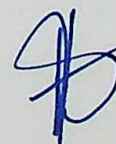


targets of the PIP but this was not the case. If indeed the PIP was implemented for corrective purposes and not as a veil to be used to dismiss the Claimant, the Respondent should have taken into consideration the circumstances and the environment in which the PIP was being implemented, and which both parties had no control over before deciding to dismiss him.

360 We also had an opportunity to analyze the periodic review reports on the Respondent's trial bundle, and found no indication that, the Respondent rendered any support to the Claimant to enable him ,mitigate the challenges arising out of the Lockdown during this period. We respectfully disassociate ourselves with the submissions by Counsel for the Respondent that the Claimant received coaching and guidance from the Respondent to bridge his
365 performance gaps because there was nothing on the record to prove the alleged coaching and guidance. It was also not clear what the actual performance challenges the claimant had, and there was no evidence to indicate that his performance gaps were identified and communicated to him and save for stating the targets he had to meet during the PIP period, there was nothing to indicate that there was any agreement between the Respondent and the
370 Claimant, on the strategies the Claimant would apply to enable him achieve the targets that were set for him. There was nothing on the record to indicate that the Respondent was rendering any support to the Claimant, because the PIP review form only covered what action the employee in issue had accomplished or failed to accomplish, but it did not show what role the Respondent played in supporting him to achieve the PIP targets. It only
375 provided for action for failure or success of the Claimant. In light of the principles that govern the implementation of a PIP as already discussed, the expectation was that the the Respondent would assist the Claimant to address the reasons for the claimant's failure as

expressed during the periodic review, and where the claimant failed to improve further action would be taken. For instance, although the Claimant under “REX 5” indicated that performance was affected by the Respondent’s delay in restructuring the loans, nothing was said about this observation in the next review period. There seemed to be no provision for feedback or for the consideration of suggestions or proposals for improvement, nor was there any comment on the proposals that he Claimant made to the Performance Committee, at page 6 of the Respondent’s trial bundle. Instead the proposals were discounted, by the committee when they stated that, “...*The committee wondered why it would take Yasin all this long to realize he needed to diversify in his portfolio amidst challenges arising from covid 19. Instead of offering to him support and or resources to implement the proposals. ...The committee further expressed concern how Yasin would make use of the three months to turn around his performance, something he filed to achieve in the previous 6 months while on PIP.*” No consideration was given to the fact that the PIP was affected by the Lockdown. On the face of it, the PIP review reports placed more responsibility the Claimant yet it was a tool in which the Respondent was expected to participate and render support to the Claimant’s process of improvement. In our considered opinion it was not sufficient for the Committee to just “wonder” without making any suggestions to support him.

We reiterate that it was too early to place the Claimant on a PIP having just assumed the new position of Business Banker , the Claimant should have been given time to settle in the new position at least for 6 months. Secondly the extension period of the PIP having been implemented during the Covid 19 Pandemic when the economy was on a slowdown, the PIP targets should have been reviewed accordingly but they remained the same. This was



400 further exacerbated by the sale of the only means of transport the branded motorcycle which clearly curtailed his movement.

Even if the employer retains managerial prerogative, to determine the terms and conditions of service, of his or her employees and to manage their performance, this has to be fair, consistent and objective. We are convinced that given circumstances of the Respondent's
405 actions were unfair and not objective. It seems to us that the PIP was intended to fail and not to improve the Claimant's performance. Even if the Respondent followed due process in terms of procedure, we are not satisfied that the Claimant was treated fairly and that the evaluation of the PIP was objective given that no consideration was given to the circumstances under which he undertook it.

410 It is therefore our finding that the reason for his dismissal was not justified, therefore the dismissal was unlawful.

2.What are the remedies available to the parties?

Having found that the Claimant was unlawfully terminated he is entitled to some remedies. According to his memorandum of Claimant he prayed for the following.

415 a) General Damages of 190,000,000/=

It is a settled position of the law that, the only remedy available to an employee who was unlawfully dismissed is an award of general damages and statutory remedies prayed for under the Employment Act. The employee is however expected to do everything reasonably possible to mitigate his or her loss of employment. **The Court of Appeal in Stanbic Bank**

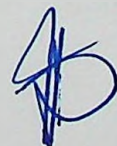
420 (U) **Ltd vs Constant Okuo**, held that, General damages are based on the common law principle of *restitutio integrum*. Appropriate general damages in employment matters, should be assessed based on the prospects of the employee getting alternative employment or employability, how services were terminated and the inconvenience and uncertainty of future employment prospects. It was well settled in **Stanbic Bank Vs Kiyimba Mutale**
425 **SCCA No. 2/2010**, by Chief Justice Katureebe, on the award of General Damages when he stated that:

“... Having found that the appellant was wrongfully terminated, the Court should have proceeded to make an award of general damages which are always in the discretion of the court to determine. ...

430 *In my view, that adequate compensation would have been a payment in lieu of notice, a measure of general damages for wrongful dismissal (emphasis ours)...* Damages are awarded at the discretion of Court and are intended to return an aggrieved party to the position he or she was in before the injury caused by the Respondent. Having established that the Claimant worked for the Respondent for 7 years and he was
440 performing very well until he was redesignated. He is entitled to an award of general damages for unlawful dismissal. We think **Ugx.35,000,000/-** is sufficient as general damages.

a) Payment in lieu of Notice.

Section 58 of the Employment Act entitles an employee to receive notice before termination
440 and Section 58(3) in particular, provides for notice periods. The Claimant worked for the



Respondent for a period of 7 years before he was unlawfully terminated therefore in accordance with subsection 3(c) of section 58, which provides that:

(3) The notice required to be given by an employer or employee under this section shall be-...

445 *(c) not less than 2 months where the employee has been employed for a period of five years but less than 10 years;... ”*

he was entitled to 2 months' notice or payment of 2 months' salary in lieu of notice amounting to amounting to **Ugx. 2,163,679/=**.

c)Recovery of loan amounting to Ugx. 5,894,217/- plus interest accrued.

450 This court has held in many cases that, where an employee has applied for and has been granted an unsecured loan whose repayment is solely based on salary for its repayment and the employee is unlawfully dismissed, the liability of paying the loan would shift to the employer who unlawfully dismissed him or her. This was confirmed by the Court of Appeal in the recent case of **Stanbic Bank (U) Ltd vs Constant Okuo**,(supra). However, the
455 employee has the onus to prove that the repayment of the loan was based on salary loan and nothing else. In other words the that the loan is purely unsecured and solely premised on salary for its repayment.

The Claimant in the instant case did not adduce any evidence to indicate that the recovery of the loan was premised on his salary alone. The loan agreement was not furnished to court

460 to enable us to determine what kind of loan it was, therefore, we had no basis to grant his claim. It is therefore denied.

d)Interest

An Interest rate of 12% per annum shall accrue on all pecuniary awards granted above, from date of Judgement until payment in full.

467 No Order as to costs is made.

Delivered and signed by:

THE HON. AG HEAD JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA.....

PANELISTS

1 MR. EBYAU FIDEL

470 **2. MS. HARRIET MUGAMBWA NGANZI**

3. MR. FX MUBUKE

DATE: 4/07/2023

