



THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT MUBENDE
LABOUR DISPUTE REFERENCE NO. 01 OF 2022
*(Arising from Labour Dispute at Kyakwanzi District Local Government dated
22nd December 2021)*

NAZZIGA LILLIAN.....**CLAIMANT**

VERSUS

KYANKWANZI DISTRICT LOCAL GOVERNMENT.....**RESPONDENT**

Before:

The Hon. Mr. Justice Anthony Wabwire Musana:

Panelists: Hon. Jimmy Musimbi, Hon. Emmanuel Bigirimana & Hon. Michael Matovu.

Representation:

1. *Mr. Muzamil Ndhego of M/s. SMAK Advocates for the Claimant.*
2. *Mr. Sahid Kiwanuka Ochol for the Respondent.*

AWARD

Introduction

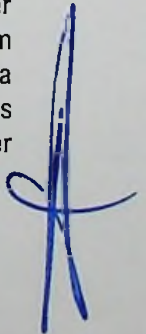
- [1] On the 3rd of April 2012, the Respondent employed the Claimant as an Office Attendant. After successfully serving her probation, she was confirmed in service on the 27th of February 2013. Four years later, she was promoted to Parish Chief and transferred to Kyababuga Sub-County in Kyenjojo District in Kabarole. In 2019, her accident prevented her from going to work. When she recovered and attempted to return to work, she was told her services had been terminated for presenting a forged Universal Certificate of Education.
- [2] The Claimant lodged a complaint with the Labour Officer in Kyakwanzi District on the 8th of December 2021. On the 14th of March 2022, her lawyers, M/S SMAK Advocates, requested a reference to this Court. No such reference was forthcoming, and on the 28th of March 2022, the lawyers referred the matter to this Court.

The Pleadings

- [3] In her memorandum of claim, the Claimant sought a declaration that she was unfairly and unlawfully terminated and asked for an order of reinstatement, general and aggravated damages, interest thereon and costs of the claim.
- [4] In its memorandum in reply, the Respondent admitted the employment and promotion of the Claimant. It was also admitted that on 11th October 2018, the Claimant's name had been submitted to the District Service Commission for dismissal after it was established that she had presented forged documents for an appointment in service. Consequently, on 12th October 2018, her services were terminated. The Respondent contended that the Claimant's accident had not been substantiated and asked that the claim be dismissed.

The proceedings and evidence.

- [5] When the matter was called before this Court on the 23rd of May 2024, we asked Mr. Ndhego to complete the filing of pretrial documents by 31st May 2024, serve the Respondent and furnish us with proof of service. On the 4th of June 2024, Mr. Sahid Kiwanuka Ochol, State Attorney appearing for the Respondent, asked for a few days to file the Respondent's trial documents. We gave the Respondent until the 7th of June 2024. When the matter came before us on the 13 of June 2024, the Respondent was unrepresented. Mr. Ndhego sought to proceed under Order 9 Rule 20(1)(a) of the Civil Procedure Rules S.I 71-1(**the CPR**). Satisfied that the Respondent had due notice of the day's fixture, we granted the Claimant leave to proceed exparte.
- [6] The draft joint scheduling memorandum filed in Court on the 4th of May 2024 was adopted with the following issues for determination:
- (i) *Whether the Claimant's contract of employment was unfairly and unlawfully terminated? and;*
 - (ii) *What remedies are available to the Parties?*
- [7] The documents in the trial bundle filed in Court on the 4th of May 2024 were admitted in evidence and marked CEx1 and CEX13. Her witness statement, made on the 30th day of May 2024, was adopted as her evidence in chief. She testified that she applied for the position of Office Attendant and was appointed in 2012. She attached her academic documents, which include her primary, secondary, and tertiary education. She was confirmed and promoted to Parish Chief in 2018. She was transferred from Kiteesa Parish in Bunanaywa sub-county to Kyababuga sub-county, effective on 3rd September 2018. She told us she had an accident in 2019, and when she recovered, she was not allowed to work. When she inquired why she should not work, she was advised that her services had been terminated because she had submitted forged documents from Nsamizi Institute. She said she was not served with any invitation to any hearing or a termination letter. She denied studying at Nsamizi Institute and testified to the malafides of the Respondent's officials. She said she had not received terminal benefits since her termination. She asked that we enter judgment in her favour.



- [8] Mr. Ndego closed the Claimants case, and we directed the filing of written submissions. We asked Counsel to serve the Respondent. Both parties filed written submissions, which we have summarised and considered in this award.

Analysis

Issue 1. Whether the Claimant's contract of employment was unfairly and unlawfully terminated?

Claimant's submissions

- [9] Counsel for the Claimant argued that she was terminated without notice, a hearing, or a chance to defend herself. Counsel suggested a variance between the Respondent's written defence alleging dismissal for forgery of documents from Nsamizi Institute and the forged Universal Certificate of Education from the Uganda National Examinations Board. Counsel argued that there was no report from UNEB. He suggested that the Respondent could not justify the reason for dismissal as required by Section 68EA. It was also argued that the Respondent contravened Section 66EA by not providing a hearing. It was suggested that the Respondent had committed fraud and was malicious, and we were invited to find that the dismissal was unfair and unlawful.

Respondent's submissions

- [10] For the Respondent, it was submitted that an employer was entitled to dismiss an employee summarily if the employer had fundamentally broken his or her obligations under the service contract. Counsel cited Section 61(3) EA in support of this proposition.
- [11] In respect of a fair hearing, the Learned State Attorney cited Section 66EA, *Oyet v Uganda Telecom Limited*¹, *Batuli v Nakasongola District Local Council*² and *Jabi v Mbale Municipal Council*³. It was submitted that a verification letter was obtained from Nsamizi Training Institute of Social Development showing that the Claimant's documents were forged. We were also referred to Section (f-R) of the Uganda Public Service Standing Orders 2021, which provides for gross misconduct resulting in retirement in public interest. It was argued that the Claimant had been dismissed for uttering a false document, an offence under Section 351 of the Penal Code Act, Cap 120. We were asked to dismiss the reference with costs.

Determination

- [12] It was common cause that the Claimant was dismissed from employment with the Respondent. The position of the law on dismissal is now well settled. Where a claim of unjustified summary dismissal is made to the Industrial Court, this Court has held that it must be procedurally and substantively fair for a dismissal to be justified⁴.

¹ [2015] UGHCCD 40

² [2015] UGHCCD 13

³ (1975) HCB 91

⁴ *Mugisa v Equity bank U Ltd*[2023] UGIC 62

Procedural fairness

- [13] Under Section 66 EA, an employer considering dismissal for misconduct or poor performance must afford the employee a hearing. The grain of the cases cited by the Learned State Attorney makes the precise point that the right to a fair hearing is at the centre of procedural fairness in disciplinary proceedings, and we agree with this restatement of the law. For emphasis, in *Ebiju v Umeme Ltd*⁵ the principles of a fair hearing or the right to be heard consist of a notice of allegations against the plaintiff are served on him in sufficient time to prepare a defence, clearly stating what the allegations against the plaintiff are and his rights at the hearing, including the right to respond to the allegations against him orally and or in writing, the right to be accompanied to the hearing and the right to cross-examine the Respondent's witness or call witnesses of his own. Further, the plaintiff should be given a chance to appear and present his case before an impartial committee in charge of disciplinary issues of the Respondent.
- [14] In assessing procedural fairness, the Court considers the employer's rules regarding dismissal and the law governing dismissal. We have set out the law in paragraph [13] above. In this case, the Claimant was an employee of Uganda Public Service. The Learned State Attorney pointed us to Section (F-r) of the Standing Orders. The orders are elaborate on discipline procedure. It is provided that proper disciplinary procedures should be followed in all cases, and the rules of natural justice must apply in all disciplinary cases of whatever nature. A public officer shall first be informed in writing of what he or she has done and be allowed to defend himself or herself in writing. It is further provided that those handling disciplinary cases must be impartial, and both sides must be heard. On the evidence before this Court, there was no letter informing the Claimant of the offences she allegedly committed. There is no evidence that she was allowed to defend herself in writing, that her rights to be heard were respected, that the District Service Commission (**the DSC**) to whom her name was submitted for action invited or heard her or that the DSC was impartial. The Respondent did not submit any evidence to show that the proceedings leading to the dismissal of the Claimant were consistent with the provisions of the Standing Orders. Unquestionably, armed with the Standing Orders, the DSC should have known and done better. If, in the opinion of the DSC, the Claimant committed any offence, procedural rules should have been respected. The disciplinary proceedings against the Claimant did not adhere to the rules of natural justice. In this regard, finding that the Respondent was procedurally fair is impossible.

Substantive fairness

- [15] In *Mugisa*, substantive fairness relates to the reason for termination. Under Section 68EA, an employer must prove the reason or reasons for termination. The employer must genuinely believe the reason exists at the time of dismissal. The other aspect of this threshold of substantive fairness is in Section 69 EA, where the dismissal is justified when the employer can demonstrate that the employee has fundamentally broken his or her obligation arising under the contract. In *Uganda Breweries Ltd v Robert Kigula*⁶ the Court of Appeal held that for summary dismissal, gross and fundamental misconduct

⁵ [2015] UGHCCD 15

⁶ [2020] UGCA 88

must be verified. Mere allegations do not suffice. In our view, the employer must hold a hearing to prove the allegations. There must be evidence of the allegations. The Industrial Court has held that allegations of gross misconduct must be provable to a reasonable standard.⁷

- [16] No evidence of a hearing was presented to us in the present case. There was no investigation report of correspondence between Nsamizi and the Respondent or between UNEB and the Respondent to bolster the allegation that the Claimant had uttered false academic documents at the time of her entry into the Respondent's service. This lack of evidence contradicts the version of events recounted in the Respondent's written submissions. Notably, this recount of events was by way of written submissions and not evidence, as the Respondent chose not to call any witness. It is not the practice of the Court to receive evidence by way of written submissions. Therefore, we do not find that the Respondent has proven or justified its reason or reasons for termination. As a result, the Respondent was not substantively fair.

Conclusion

- [17] In *Mugisa*, we held that procedural and substantive fairness are twin tenets. We observed that the employer must maintain procedural fairness and vice versa to ensure substantive fairness. In other words, for a summary dismissal to be justified, there must be both procedural and substantive fairness. We concluded that the absence of one or the other would render the dismissal unjustified and, therefore, unlawful. We have found neither procedural nor substantive fairness in the matter before us. Consequently, we must conclude that the Claimant was unlawfully dismissed. In this case, we would be fortified by the words of Lord Viscount Simon⁸ where he observes;

If the principles of natural justice are violated in respect of any decision, it is indeed immaterial whether the same decision would have been arrived at in the absence of the departure from the essential principles of natural justice. That decision must be declared to be no decision.

- [18] In the case before us, there was a flagrant disregard of the principles of natural justice and the decision of the Respondent in dismissing the Claimant cannot be permitted to stand. In all circumstances, issue one is answered in the affirmative. The Claimant was unlawfully and unfairly dismissed.

Issue II. What remedies are available to the parties?

- [19] Having found that the Claimant was unfairly and unlawfully dismissed, she will be entitled to remedies. We do not accept the Respondent's contention that she is not entitled to any remedies.

⁷ *Kamegero v Marie Stopes Uganda Limited* [2023] UGIC 52

⁸ *General Medical Council v Sparkman* (1943) AC 627 at 644 quoted in *Wakiso District Local Government v Serwada* [2023] UGHCCD 385

Declaratory relief

- [20] For the preceding conclusions, we hold that the Claimant is entitled to a declaration that she was unfairly and unlawfully dismissed from employment by the Respondent.

Reinstatement

- [21] Citing Section 71(5) EA, Counsel for the Claimant submitted that she was willing to work and should be reinstated. The Respondent did not address this prayer specifically. Under Section 71(6)EA, there are conditions related to reinstatement. It is provided that:

The Court shall require the employer to reinstate or re-employ the employee unless;

- a. The employee does not wish to be reinstated or re-employed.
- b. The circumstances surrounding the dismissal are such that a continued employment relationship would be intolerable.
- c. It is not reasonably practical for the employer to re-instate or re-employ the employee or
- d. The dismissal is unfair only because the employer did not follow a proper procedure.

- [22] In *Busuula v Attorney General*⁹ the Industrial Court found reinstatement applicable where the respondent can re-employ the claimant. In that case, the Respondent had not shown any unnecessary hardship that could be encountered by re-employment of the Claimant, and the prayer of reinstatement was allowed. In this case, while the Claimant has expressed an interest in reinstatement, the Respondent has not expressly agreed to redeploy the Claimant. Employment relationships are built on trust and confidence. In *Akeny v Uganda Communications Commission*¹⁰ the Industrial Court observed that by the time the dispute escalated to the Court for adjudication, the trust and confidence between the employer and employee were so badly damaged that reinstatement would not be practicable. The Court observed that a Court cannot impose an employee on an employer. It cited *Bank of Uganda v Betty Tinkamanyire*¹¹ where Kanyeihamba JSC observes that it is trite that a Court of law should not use its powers to force an employer to retake an employee it no longer wishes to engage. In *Akeny*, the Industrial Court considered that the Respondent adduced evidence about the Claimant's misconduct and poor performance as a clear indication that it had lost trust and confidence in the Claimant. It was found unreasonable for him to be reinstated.

- [23] In the case before us, the Claimant's willingness notwithstanding, we consider that the employment relationship was damaged over the last six years. The Respondent

⁹ LDC No. 029 Of 2014

¹⁰ [2018] UGIC 37

¹¹ [2008] UGSC 21

suggested that the Claimant had committed a criminal offence, rendering a reinstatement impractical and unreasonable. The prayer is, therefore, denied.

General Damages

- [24] Counsel for the Claimant was contending for **UGX 100,000,000/=** in general damages. General damages are those damages such as the law will presume to be the direct natural consequence of the action complained of¹². In *Stanbic Bank (U) Ltd v Constant Okou*¹³ Madrama, JJA (*as he then was*) held that general damages are based on the common law principle of *restituto in integrum*. In the case before us, the Claimant was earning UGX 5,664,943 to 7,885,869 p.a when she was promoted to Parish Chief, a post she did not effectively take. That was in June 2018. In the circumstances that the Claimant has not been in employment for the last six years, we consider the sum of UGX 47,315,214/= to be adequate in general damages, and we hereby award the same.

Aggravated damages

- [25] Relying on *Rookes v Barnard*¹⁴ Counsel suggested that aggravated damages are awarded in tort as compensation for mental distress where the defendant has committed the tort with motive that aggravates the injury to the Plaintiff. In *Bank of Uganda vs Betty Tinkamanyire*¹⁵; the Respondent had been dismissed in her absence, and a circular was displayed on notice boards which read that staff who are incompetent, poor time managers (particularly Late coming), alcoholics, thieves, fraudsters and those who are insubordinate, will no longer be tolerated in the bank. The respondent received a letter terminating her services on the date the circular was posted on the notice boards, and no reasons were given in the termination letter. In awarding aggravated damages, Kanyeihamba JSC stated the illegalities and wrongs of the appellant were compounded further by its lack of compassion, callousness, and indifference to the good and devoted services the Respondent had rendered to the bank. The Respondent had a good employment record, and her peers' expressed praises and commendations of her. In the post-dismissal inquiry, it was found that she could have been reinstated. In *DFCU Bank Limited v Donna Kamuli*¹⁶ citing *Uganda Revenue Authority v Wanume David Katamirike*¹⁷ it was held that aggravated damages are, like general damages, compensatory in nature, but they are enhanced as damages because of the defendant's aggravating conduct. They reflect the exceptional harm done to the Plaintiff because of the Defendant's actions/omissions.
- [26] In the case before us, failing to constitute a hearing before dismissal humiliated and embarrassed the Claimant. The Claimant was shocked by the attitude of the Respondent's officials; Counsel for the Claimant argued that she was rising to the top of her career when she was stopped from working, which had dented her career as she was maliciously terminated. She was to take on a new posting. We therefore consider that she is entitled to aggravated damages of UGX 20,000,000/=, which we hereby award.

¹² *Stroms v Hutchinson* [1950] A.C 515

¹³ Civil Appeal No. 60 of 2020

¹⁴ (1964) A.C 1129

¹⁵ [2008] UGSC 21

¹⁶ [2019] UGCA 2088

¹⁷ [2012] UGCA 3

Order of compensation

- [27] We do not consider it necessary to award any other compensation as the Claimant has been awarded general and aggravated damages. We decline to order compensation as prayed.

Interest

- [28] We consider interest at the rate of 18% per annum from the date of this award until payment in full would be appropriate, and we so award it.

Costs

- [29] Under Section 8(2a)(d) of the Labour Disputes(Arbitration and Settlement) Amendment Act 2021, this Court may make orders as to costs as it deems fit. We have held that in employment disputes, 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.¹⁸ We think that in the present case, the Respondent has miscondacted itself. It filed a defence and then did not attend Court. We therefore award costs against it.

Final Orders;

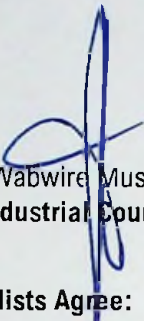
- [30] In the final analysis, we find that the Respondent was procedurally and substantively unfair in the proceedings leading up to the Claimant's dismissal. Therefore, we conclude that the Claimant was unfairly and unlawfully dismissed from employment with the Respondent.
- [31] As the result, we make the following declarations and orders:
- (i) We declare that the Claimant was unfairly and unlawfully dismissed from employment by the Respondent.
 - (ii) We direct the Respondent to pay the Claimant the following sums:
 - (a) UGX 47,315,214/= as general damages.
 - (b) UGX 20,000,000/=as aggravated damages.
 - (iii) The sums above shall carry interest at 18% p.a. from the date of this award until payment in full.
 - (iv) The Claimant shall have costs of the claim.

It is so ordered.

¹⁸ Joseph Kalule Vs Giz LDR 109/2020(Unreported)



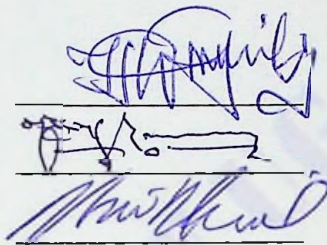
Signed in Chambers at the High Court of Uganda in Fort Portal this 25th day of June 2024.



Anthony Wabwire Musana,
Judge, Industrial Court

The Panelists Agree:

1. Hon. Jimmy Musimbi,
2. Hon. Emmanuel Bigirimana &
3. Hon. Michael Matovu.



Three handwritten signatures in blue ink, each on a separate line, representing the panelists.

25.06.2024
10:19 a.m.

Appearances:

1. **For the Claimant:** Mr. Muzamil Ndhego
Parties absent.

2. **For the Respondent:** None.

Court Clerk: Mr. Samuel Mukiza

Mr. Ndeghe: Matter for award, and I am ready to receive it.

Court: Award delivered in open Court.



Anthony Wabwire Musana, 10:40 am
Judge, Industrial Court.