**THE REPUBLIC OF UGANDA**
**IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA**
**LABOUR DISPUTE REFERENCE No. 121 OF 2015**
*(ARISING FROM MGLSD/292/2015)*

**KAYIWA MUHAMUD KIGONGO & 13 OTHERS ..... CLAIMANTS**

**V**

**MAKERERE UNIVERSITY ..... RESPONDENT**

**Before:**
The Hon. Head Judge, Linda Lillian Tumusiime Mugisha

**Panelists:**
1. Hon. Harriet Mugambwa Nganzi
2. Hon. Frankie Xavier Mubuuke
3. Hon. Ebyau Fidel

**Representation:**
1. Mr. Patrick Mugalula of Katende, Ssempebwa & Co. Advocates for the Claimant.
2. Mr. Hudson Musoke of Makerere University Directorate of Legal Affairs for the Respondent.

## AWARD

### Introduction/Brief Facts

[1] Save for the 11th Claimant, Ms. Anabella Grace Ebal who was the Respondent's domestic bursar, all the other Claimants were non-teaching staff employed by the Respondent University on various dates between 1980 and 2000. They were

employed as kitchen staff in its different departments. Their appointment letters provided the same terms and conditions of service, save that they were deployed in different departments in the University. The terms of employment included the possibility of being transferred to any department.

[2] On 14/02/2014, the Respondent placed a bid notice in the daily monitor seeking outside catering services. On 19/05/2014, it issued a letter to the Labour Union where the Claimants belonged, setting out 4 options that would be available for them to choose from, following the decision to outsource catering services, where they served. These included: re-designation, early retirement, resignation, and retrenchment.

[3] On 17/06/2014, the Respondent, wrote to each of the Claimants, informing them that, they had been **re-designated and transferred** to new departments as Cleaners at new stations within the University. They were also informed that the Wardens at these stations would assign them their new duties. The Respondent also directed the Claimants to take up the new roles or else they would be deemed to have absconded from duty. They refused to assume the new roles and as a result, in August 2016, they were deleted from the Respondent's payroll.

[4] They contended that by unilaterally changing the nature of their jobs, the Respondent had unlawfully terminated their employment, therefore t they were accordingly entitled to various remedies.

[5] The Respondent on the other hand contends that the Claimant's re-designation was provided for in its Human Resource Manual, which empowered it to re-designate its the claimants. The Respondent further contended that by refusing to assume the new roles assigned to them, the Claimants had absconded from duty but they were not terminated.

**Issues**

The Parties amended their Joint Scheduling Memorandum and filed an amended one in Court on 25/06/2022. They framed the following issues for resolution:

1. **Whether the Respondent's re-designation of the Claimants was lawful?**
2. **Whether the termination of the Claimants' employment was lawful?**

### 3. What are the remedies available to the parties?

### Evidence Adduced

[6] The Claimants called two witnesses, Mr. John Peter Okello the Branch Secretary of the National Union of Educational Institutions (NEUI), to which all the Claimants belonged as the first witness (CW1) and the 1st Claimant Muhamud Kayiwa as the second witness (CW2). The Respondent adduced evidence through its Acting Director Human Resources, Mr. Lawrence Ssanyu, (RW1).

### CW1: John Peter Okello

[7] CW1 who was the Branch Secretary of the National Union of Educational Institutions (NEUI), to which the Claimants belonged, testified that, after the Union learned about the Respondent's decision to outsource the Claimants' roles, it wrote to the Respondent and informed them that their actions amounted to restructuring which was done contrary to the provisions of the Employment Act 2006, therefore it was unlawful. The Respondent through its Director Human Resources, in response, confirmed the Respondent's intention to outsource the Claimant's roles. However, it undertook to give them the opportunity to choose from 4 options that are: (i) re-designation/re-deployment to other departments in other capacities, (ii) early retirement for those between 55 and 60 years, (iii) voluntary early retirement or resignation and (iv) retrenchment.

[8] The Respondent also notified the Claimants that, they would be contacted once the details and computations for each of the options were ready and they would be asked to select the option that they preferred. However, it did not communicate, to them as promised, in spite of the several letters from the Union to the Respondent and a meeting it held with the Respondent's officials on 14/08/2014. To the Unions' dismay, the Respondent threatened the Claimants instead by directing them to report to the new roles or else be deemed to have absconded.

### CW2: Muhamud Kayiwa

[9] In his evidence in chief, Mr. Kayiwa stated that the Claimants were employees of the Respondent, having joined the Respondent employment at different times as follows:

| No. | Name | Job Title | Date of recruitment | End of service | Duration of service (Years) | Net Pay | Home District | Km to the home district |
|---|---|---|---|---|---|---|---|---|
| 1. | Kayiwa Muhamud | Assistant cook | 14/6/1996 | 30/6/2018 | 22 | 658,691/- | Mukono | 30 |
| 2. | Mukiibi Ephraim | Cook | 08/4/1997 | 30/6/2018 | 21 | 658,691/- | Mubende | 250 |
| 3. | Bakira Emmanuel | Head Cook | 7/71980 | 30/6/2018 | 38 | 658,691/- | Kisoro | 500 |
| 4. | Sekiziyivu Godfrey | Cook | 1/1/1978 | 30/6/2018 | 40 | 658,691/- | Kampala | 20 |
| 5. | Turyasingura George | Cook | 2/4/1996 | 30/6/2018 | 22 | 658,691/- | Kabale | 400 |
| 6. | Owinyi George | Waiter | 17/10/1989 | 30/6/2018 | 29 | 658,691/- | Arua | 600 |
| 7. | Kirya Jesse Mbulamberi | Storeman | 6/1/2000 | 30/6/2018 | 18 | 658,691/- | Pallisa | 200 |
| 8. | Magezi Karim | Storeman | 04/6/1984 | 30/6/2018 | 34 | 658,691/- | Masaka | 250 |
| 9. | Agwette Esau | Assistant Cook | 5/2/1989 | 30/6/2018 | 29 | 658,691/- | Pallisa | 200 |
| 10. | Kabarangira Grace | Cook | 13/3/1995 | 30/6/2018 | 23 | 658,691/- | Fort Portal | 300 |
| 11. | Anabella Grace Ebal | Domestic bursar | 2/2/2000 | 30/6/2018 | 18 | 1,602,949/- | Lira | 400 |
| 12. | Namubiru Harriet | Waitress | 1/2/1988 | 30/6/2018 | 30 | 658,691/- | Masaka | 250 |
| 13. | Mbele Maria | Waitress | 3/11/1981 | 30/6/2018 | 37 | 658,691/- | Tanzania | 1500 |
| 14. | Solome Ntabadde | Waitress | 21/10/1987 | 30/6/2018 | 31 | 658,691/- | Mubende | 250 |

[10] It was further his testimony that, all the Claimants were members of the National Union of Educational Institutions (NUEI). That during their employment, they came across an advert in the Daily Monitor, in February 2014, by which the Respondent was calling

for bids from the public to provide outside catering services to the Respondent, yet these were roles they were performing, at the time. The advert was placed on the record marked as "CEX1" at page 6 of the Claimants Trail bundle (CTB). That the Claimants through their union wrote to the Respondent on 17/02/2014 inquiring about their fate.

[11] On 19/05/2014, the Respondent through its Director Human Resources confirmed that the Respondent intended to outsource the Claimant's jobs but it would give them the opportunity to choose from 4 options; (i) re-designation/re-deployment to other departments in other capacities, (ii) early retirement for those between 55 and 60 years, (iii) voluntary early retirement or resignation and (iv) retrenchment (see ("CEX 5").

[12] According to Mr. Kayiwa, the letter stated that the Respondent would contact them once the computations for each of these packages were ready and they would be asked to select the option they preferred. They were, however, surprised with letters redesignating each of them to new jobs and duty stations, without their consent. When they refused to assume the new roles, they were subsequently deleted from the Respondent's payroll in August 2016.

[13] Each having served the Respondent for over 20 years, they were all aggrieved by how the Respondent high-handedly and unilaterally threw them out of the Respondent institution and this was the reason they refused to assume the new jobs even after the Respondent's several ultimatums.

**RW1: Ssanyu Lawrence**

[14] The Respondent called one witness, a one Ssanyu Lawrence, the Acting Director Human Resources, who testified that the Claimants' employment was governed by the regulations at the Respondent, including the Respondent's Human Resource Manual 2009. He confirmed that the University Council decided to outsource catering services and all kitchen staff including the Claimants were notified about it on 19/05/2014. They were also asked to choose between 4 options. That is; (i) re-designation/re-deployment to other departments in other capacities, (ii) early retirement for those between 55 and 60 years, (iii) voluntary early retirement or resignation, and (iv) retrenchment.

[15] When the Claimants failed to choose from the options, the Respondent was left with no option but to re-designate them and it did so on 17/06/2014. The re-designation was done in accordance with Section 16.3(a)(i) of the Respondent's Human Resource Manual 2009.

[16] According to him, by refusing to assume the new roles, the Claimants absconded from duty, therefore the Respondent was right to delete their names from the payroll after they absconded.
He also stated that all the Claimants had open-ended contracts and they were permanent and pensionable employees and their employment was governed by the Public Service Standing Orders. He admitted that he had no evidence to show that they were ever made aware, of the Respondent's Human Resource Manual, which provided for re-designation.

**Submissions**

**Issue 1. Whether the Respondent's re-designation of the Claimants was lawful?**

[17 In his submissions, Mr. Patrick Mugalula, Counsel for the Claimants contended that an employer could not at law unilaterally alter a fundamental term in a contract of employment without an employee's consent. He contended that, by changing the job title and actual duties, the jobs that the Claimants were supposed to perform had fundamentally changed, and having done so without their consent amounted to a breach of the employment contract between them.

[18] He relied on *Ugafode Microfinance Limited vs. Mark Kyoribona* LDA 34 of 2019, *Kiwalabye Joseph Kayondo and others vs. Posta Uganda* LDC 18 of 2015, and *Wagaba Francis vs The Chief Administrative Officer Maracha and Maracha District Local Government* HCCS 5 of 2016, for the legal proposition that where an employer unilaterally changes an employee's status by altering the fundamental terms of the contract, without his or her consent, amounted to a breach of the essential terms of the contract.

[19] He further argued that it would be iniquitous for an employer to have the right to wake up and at his or her whims change the fundamental terms agreed upon in a contract

of employment with an employee. In his view to allow this would be to condone forcing a person to do what they did not offer to do voluntarily. He argued that the re-designation of the Claimants in the instant case amounted to forced and compulsory labour, which is defined under Section 2 of the Employment Act as "All work or service which is extracted from any person under the threat of a penalty including the threat of any loss of rights or privileges or for which that person has not offered himself or herself voluntarily."

[20] He contended that the unilateral redesignation of the Claimants was in effect work extracted from them under the threat of loss of privileges or rights for which they had not voluntarily offered themselves. This is because they offered themselves as Kitchen staff, but the Respondent unilaterally redesignated them to the roles of cleaning staff for which they had not voluntarily offered themselves and threatened to dismiss them if they did not report for duty. Therefore, their re-designation was unlawful for violating the express provisions of the Employment Act 2006.

[21] Counsel further contended that no evidence was led to show that the Claimants who were all hired before the year 2000 and whose employment was subject to the Public Service Standing Orders, had ever been subjected to the Respondent's Human Resource Manual which was only introduced in 2009, let alone that they had consented to the introduction of the new terms. He relied on *Mary Pamela Ssozi vs. PPDA*, HCCS 63 of 2012, where the High Court held that an employer could not unilaterally alter a fundamental term in a contract of employment by simply introducing new terms in a new Human Resource Manual except, where the employee consented to the same. He also cited *Francis vs Canadian Imperial Bank* of Commerce 1994 Can LII 1578 which is of the same proposition.

[22] He argued that the Respondent in its letter to the Union, informed the Claimants that it would offer them 4 options from which to choose, *that is, (i) re-designation/re-deployment to other departments in other capacities, (ii) early retirement for those between 55 and 60 years, (iii) voluntary early retirement or resignation and (iv) retrenchment)*, and the last 2 paragraphs of the letter, assured them that, the Respondent was considering computation for each of the scenarios and they would be notified about the detail s and benefits of each. They were advised to remain calm until such communication was rendered, but instead the they each received letters from the Respondent, requiring them to report to a new job which was a violation of the legitimate expectation which it had created and which it was bound to honour.

[23] He relied on *Bank of Uganda v Joseph Kibuuka and 4 others* CACA 281 of 2016, where the Court of Appeal defined legitimate expectation as *"A legitimate expectation, whether substantive or procedural, arises where an express promise, representation or assurance that is clear, unambiguous and devoid of relevant qualification is made by an authority to an individual or group of persons."* He also cited *Ayikoru Gladys v Board of Governors St. Mary's Ediofe Girls Secondary School* HCCS 26 of 2016, to the effect that, a Public Authority's power to change policy is constrained by the legal duty to be fair and R(*Bhatt Muruphy* v *Independent Assessor [2008] EWCA Civ 755),* where it was stated that; *" if the public authority has distinctly promised to implement policy for a specific person or group of persons who would be substantially affected by the change then ordinarily it must keep the promise. Acting contrary to the legitimate expectation would be to act so unfairly as to perpetrate an abuse of power."* And submitted that the Respondent could not at law be allowed to change policy to the Claimant's detriment, after causing them to rely on its own representation.

[24] He concluded by stating that, the re-designation of the Claimants was unlawful and a breach of the terms of the Claimant's employment relationship with the Respondent and it amounted to constructive dismissal. He cited the authority of the Kenyan Court of Appeal in *Board of Governors, Cardinal Otunga High School Mosocho and 3 others vs. Elizabeth Kwamboka Khaemba*, which he stated is on all fours with the instant case, where the Court's held that the act of an employer unilaterally assigning an employee new duties amounted to significant breach that went to the root of the employment contract and in such a case an employee would be right to consider him or herself as discharged from the performance of any of his or her duties under the contract of employment and he or she cannot be considered to have absconded duty, this was a classic case of constructive dismissal.

[25] In reply, Mr. Hudson Musoke, Counsel for the Respondent, submitted that the University Council is the Respondent's supreme governing body, and it is responsible for the overall administration of the Respondent as provided for under Section 40(1) of the Universities and Other Tertiary Institutions Act 2001. Therefore, in that capacity, the Council enacted a Human Resource Manual which became operational on 1/10/2009. On 16/07/2009, it resolved to outsource the Kitchen and catering services and on 1/02/2014, it decided to implement this resolution by placing an advert in the

newspapers calling for suitable service providers for catering services to all its halls of residence.

[26] According to Counsel the Claimants were employed in the catering Service of the Respondent at different times and initially their employment was subject to the Public Standing Orders, but later, the University Council introduced the Human Resources Regulations which provides for re-designation, which is what happened to the Claimants.
Counsel contended that in May 2014, the Respondent asked the Claimants to choose one of 4 options that is; re-designation, voluntary retirement, resignation, or retrenchment, and upon their failure to make a choice, it opted to re-designate them. He further stated that there was no requirement for the Respondent to first seek their consent, before redesignating the Claimants, and to require the Respondent to seek their consent would lead to the Respondent losing its control and prerogative of managing the Institution.

[27] He insisted that the Claimants were given an opportunity to make a choice, but they declined to do so hence the redesignation. In any case, the redesignation did not disadvantage them in any way because they retained their salary and other benefits, which rendered their complaint baseless.
He contended that there was no fundamental change in the employment contracts because, in the first place, the contract stated that they could be transferred to any department and they each consented to the terms of the contract. He argued that the redesignation and transfer was done in accordance with the employment contracts therefore, there was no fundamental change in the contracts. The Court should therefore find that their re-designation was lawful.

**Decision of Court**

**Issue 1. Whether the Respondent's re-designation of the Claimants was lawful?**

After carefully analyzing, the evidence on the record, the oral evidence adduced by the parties in court, and the submissions of both Counsel and the law applicable, we found as follows:

[28] The requirement to give an employee a written contract stating the fundamental terms and conditions of employment are well laid down under section 58 of the Employment Act 2006. The law entitles an employee to receive notice in writing of the particulars of his or her employment. Section 59 of the same Act provides that where there is any dispute between an employee and an employer concerning the terms and conditions of employment, the written particulars shall be admissible evidence of the said terms and conditions about which there is a dispute.

[29] It is not in dispute that the Claimants in the instant case, were appointed to as kitchen staff at various positions and at different times in the Respondent's catering service. It is equally not in dispute that they were deployed to different halls of residence and departments. The sample letters of appointment marked CEX15 on the CTB and REX3 on the RTB indicate that they could be transferred to any department, which we construed to be within the catering service. The letter also stated that the terms and conditions of employment were governed by the Uganda Public Service Standing Orders Part ii: group employees. The letter read in part as follows:

> *"I am authorised to offer you an appointment as a Waiter in the services of the University. You will in the first instance be posted for duties in University Hall but **may be transferred** to another Department as the University authorities may decide…*
> *"The General Conditions of Service governing the appointment are contained in the Uganda Public Service Standing Orders Part II: Group Employees. "*

[30] Counsel for the Respondent seemed to suggest that the term "may be transferred to another department gave the Respondent the right to redesignate the Claimants'. We respectfully disagree because the transfer of service to another department in our considered view is change in location and not fundamental change of job title and roles. According to Black's Law dictionary11th edition, on page 1803, transfer is defined as:

> "To convey or remove from one place to another; or one person to another: to pass or hand over from one to another ..."

Therefore, transfer to another department would entail transfer of the service as a catering staff from one department to another. This Court has taken judicial notice of the fact that transferring staff from one department to another in Public Institutions is

a practice that does not involve change in designation but rather change in location. Therefore "transfer" cannot be used as a basis to redesignate staff.

We have already established that the Respondent recruited the Claimants on various dates in different capacities under the catering/ Kitchen department, as follows:

| No. | Name | Job Title | Date of recruitment |
|---|---|---|---|
| 1. | Kayiwa Muhamud | Assistant cook | 14/6/1996 |
| 2. | Mukiibi Ephraim | Cook | 08/4/1997 |
| 3. | Bakira Emmanuel | Head Cook | 7/7/1980 |
| 4. | Sekiziyivu Godfrey | Cook | 1/1/1978 |
| 5. | Turyasingura George | Cook | 2/4/1996 |
| 6. | Owinyi George | Waiter | 17/10/1989 |
| 7. | Kirya Jesse Mbulamberi | Storeman | 6/1/2000 |
| 8. | Magezi Karim | Storeman | 04/6/1984 |
| 9. | Agwette Esau | Assistant Cook | 5/2/1989 |
| 10. | Kabarangira Grace | Cook | 13/3/1995 |
| 11. | Anabella Grace Ebal | Domestic bursar | 2/2/2000 |
| 12. | Namubiru Harriet | Waitress | 1/2/1988 |
| 13. | Mbele Maria | Waitress | 3/11/1981 |
| 14. | Solome Ntabadde | Waitress | 21/10/1987 |

[31] We observed that they were all recruited by between 1980 and 2000, before the enactment of the Employment Act 2006 and at the time, their employment was subject to the Uganda Public Standing Orders. However, upon the coming into force of the Employment Act 2006, their contracts were subsumed in the Act under Section 24(currently 23 in the 7th revised edition of the principal laws of Uganda 2024) which provides that:

> "All contracts of service valid and in force at the commencement this Act shall continue to be in force on the commencement of this Act and shall be deemed to have been made under this Act".

[32] Section 27 is to the effect that an agreement between an employer and an employee which excludes any provision of the Employment Act shall be null and void. Section

26(b) empowers parties to vary the terms of the contract in so far as the new terms and conditions of service are more favorable than those contained in the Act, and the transitional section under Section 100 of the Act makes it mandatory for all employers to ensure that the terms and conditions of service in all contracts after the coming into force of the EA, are no less favourable than those in the repealed Cap 219. It provides that:

> *"Subject to section 3(2), every person who is employed by an employer under a contract of service, must be offered employment by the same employer as from the day of this Act comes into force on terms and conditions of employment no less favorable than those that applied to the employee's employment under the Employment Act repealed by section 98. The Act that was repealed is the Employment Act Cap 219..."*

[33] In the circumstances with effect from 2006, the Claimants' employment came into the ambit of the Employment Act 2006.
The Claimants, case as we understand it is that they were employed as Kitchen staff, and when the Respondent decided to outsource the kitchen and catering services, it gave them 4 options from which to choose, that is: *(i) re-designation/re-deployment to other departments in other capacities, (ii) early retirement for those between 55 and 60 years, (iii) voluntary early retirement or resignation and (iv) retrenchment).* The Respondent also promised to work out the details and benefits of each option to enable them to make an informed choice and it would communicate to them accordingly. Instead, the Respondent unilaterally redesignated them as cleaning staff. They contend that the unilateral redesignation was a fundamental breach of their contracts of employment, as kitchen staff and it amounted to forced labour and to constructive dismissal.

[34] They also contested the Respondent's application of its Human Resource Manual to their employment, yet they were never made aware of the changes it introduced regarding their terms and conditions. In any case, they never signed it. They contested the Respondent's failure to keep its promise to enable them to choose from the 4 options it had given them, to choose from, which had created legitimate expectations for them to make a choice.

[35] It is a settled position of the law that an employer has the managerial prerogative to run his or her business including reorganizing it for its survival or prosperity, and this may involve relocation, reorganization of work, changing the methods of doing

business, and expanding or diminishing the scope of operations, among others. When undertaking this prerogative, the employer is expected to maintain mutual trust and confidence in the employment relationship with his or her employees, and most importantly the employer must ensure procedural and substantive fairness in the process. (see *Birmingham City Council v Wetheril*(2007) )

[36] In the instant case, on 17/06/2014, the Respondent decided to outsource its Kitchen and catering services. It however offered the sitting Kitchen staff 4 options from which to choose, that is; *(i) re-designation/re-deployment to other departments in other capacities, (ii) early retirement for those between 55 and 60 years, (iii) voluntary early retirement or resignation and (iv) retrenchment).* Instead, it redesignated the Claimants who as cleaning staff.
The redesignation varied both the job titles and duties of each of the Claimants from catering services to cleaning services. No evidence was led by the Respondent to show that the Claimants notified any of them about the changes which the 2009, Human Resource Manual introduced regarding their terms and conditions of service.

[37] We had an opportunity to consider clause 24 of the Human Resource Manual which provides as follows:
*"Re-designation*

*(i) Re-designation shall not amount to promotion. It shall be a lateral re-assignment of duties and responsibilities at the same level deemed administratively prudent. The Director Human Resources shall in consultation with the Deputy Vice-Chancellor (Finance and Administration) re-designate employees as shall be deemed necessary to promote efficient human resource utilization.*

*(ii) Where duties and responsibilities remain unchanged, re-designation shall not apply. A change of title without a change in substance of the job does not call for re-designation but an automatic change of title".*

[38] The wording of this clause suggests that the Respondent has a unilateral right to redesignate an employee where it deems it administratively prudent to do so. It is our considered view that the provision goes against the doctrine of freedom of contract and although it is an unequal contract, an employment contract of employment still creates rights and duties of the parties.

[39] The process of entering into a contract of employment usually starts with an advertisement, which sets out the qualifications required of the prospective employees, together with a summary of the job specification, a process of consideration of written applications, drawing of shortlists, followed by the selection process and eventually selection of the most suitable candidate is usually undertaken. It therefore, more likely than not, that where a person applies for and is appointed for a particular job, the person has the requisite qualifications for the job and he or she has chosen to do that job in particular.

[40] Courts have however taken cognizance that notwithstanding, an employer retains the discretion to determine how the job will be done, but this must be associated and connected with the job which the employee applied for and agreed to do. In the circumstances, the variation of the fundamental terms (that is job titles and roles) must be agreed upon by the parties. We are fortified by Section 58(4) which is to the effect that any changes to the particulars of employment must be agreed and the employer must issue a written notice of the changes to the employee. In our considered view this is intended to ensure consistency and to prohibit any unilateral variations by the employer, which would amount to a breach of contract

[41] The section ensures that the employer does not unilaterally change the fundamental terms of an employment contract under the guise of exercising managerial prerogative, to do so would amount to a fundamental breach of contract (see *Burdett-Coutts v Herts CC(1984).* This Court in *Ugafode Microfinance Limited v Mark Kyoribona*, Labour Dispute Appeal No. 34 of 2019, in line with this principle, emphasizes that:

> "... whereas a job title is a fundamental component of the contract of services which may not be altered without the consent of the employee, the job descriptions or roles of the employee are totally in the discretion of the employer so long as they are associated and directly connected with the employee's job title. A job title ordinarily changes either on promotion or demotion of an employee...".

[42] The Court emphasized that an employer could only change an employee's job title if the employee consented to it otherwise, a unilateral variation would amount to fundamental breach of contract.

Upex et al[1] cited in.... identified 7 principles of variation as follows:

1. For variation of an employment contract to be effective the proposed change must be notified to the employee and the employee must consent to it;
2. The employee's consent may be express or inferred and, if express it need not be in writing.
3. Consent may be inferred from other contractual material, such as a collective agreement, a flexibility clause, or a clause in the employment contract giving the employer power of unilateral variation.
4. A unilateral notification by one party to the other of a change in the contract will not amount to a variation in the absence of an agreement with the other party.
5. An employer who is unable to obtain the employee's agreement to the proposed change may choose to unilaterally dismiss the employee but the employer risks being sued for unfair termination or redundancy."

[43] Applying the same principles to the instant case, it is undisputed that, the Respondent decided to outsource its catering services. In its letter to the Union to which the claimants were members, dated 19/05/2014, the Respondent advised the Union, about the process the outsourcing would take and that, the affected staff would be given 4 options from which to choose, as follows: *(i) re-designation/re-deployment to other departments in other capacities, (ii) early retirement for those between 55 and 60 years, (iii) voluntary early retirement or resignation and (iv) retrenchment)*. The letter also stated that:

"... Please note that management is working out details of each of the above scenarios and Kitchen staff will be informed in good time about details and benefits of each of the above.
All those concerned, are therefore requested to remain calm as management works with the UNION leaders to come up with amicable implementation of the council decision..."

[44] A reading of this letter indicates that it distinctly gave the Claimants 4 options from which to choose, it also promised the Claimants that they would receive communication about the details and benefits of each of the 4 options before they could exercise their choice. No evidence was led to show that the Respondent communicated the details and benefits to the Claimants as promised or that they were given an opportunity to exercise their choices. It was the Respondent's evidence that they had refused to exercise their choice leading to their unilaterally redesignated cleaning staff. We reiterate that the Respondent did not adduce evidence of their refusal.

[1] In Employment Relations, Principles, Processes and Practice, 2014, Edwin Osea Nyaencha

[45] It is undisputed that the Claimants refused to assume, the new roles in spite of several ultimatums from the Respondent for them to report for duty or be considered as having absconded. In the absence of evidence to the contrary, given the letter to the Union(supra), the Claimants had reason to believe that they had an opportunity to choose from the 4 options after receiving communication from the respondent as promised, about the details and benefits of each option. In *Bhatt Murphy v Independent Assessor* [2002] which was cited with approval in *Ayikoru Gladys v Board of Governors St. Ediofe Girls Secondary school Arua* HCCS No 26 of 2016, that: "If a public authority has distinctly promised to implement policy in a specific manner for a specific person or group who would be substantially affected by a change, then ordinarily it must keep its promise. Acting contrary to the legitimate expectation would be to act so unfairly as to perpetrate an abuse of power."

[46] We reiterate that, in the instant case, the Respondent in its letter to the Union distinctly gave the Claimants 4 options from which to choose (supra) and promised to compute the details and benefits of each option and communicate the same to them, to enable them to exercise their choice. The Respondent went further to request the Claimants to exercise patience as the details were being worked out. The letter stated thus:
"... Please note that management is working out details of each of the above scenarios and Kitchen staff will be informed in good time about details and benefits of each of the above.
All those concerned, are therefore requested to remain calm as management works with the UNION leaders to come up with and amicable implementation of the council decision..." (quoted again for emphasis).

[47] The Respondent however, reneged on its promise to provide the said details and benefits of each of the options to the Claimants, and it did not adduce any evidence to show that they were given opportunity to exercise their choice before it redesignated them and as already discussed no evidence was adduced about their alleged refusal to choose.
We are convinced that the Respondent did not communicate the outcome of its engagement with the Union or about the details and benefits of the 4 options nor did it give them any opportunity to make their choice before it redesignated them. We also found nothing on the record to indicate that their consent was sought. We have no doubt in our minds that the claimants' redesignation as cleaning staff went to the root of their contract because it completely altered their job title and duties as kitchen staff.

[48] We are, therefore, inclined to agree with Mr. Mugalula Counsel for the Claimant that, the unilateral redesignation was not only unfair but also unlawful because it amounted to the variation of the fundamental terms and conditions of their contracts, which amounted to a fundamental breach. We are fortified by the Kenyan case of the *Board of Governors, Cardinal Otunga High School Mosocho, and 3 others vs. Elizabeth Kwamboka Khaemba* Civil Appeal No. 55 Of 2015 which we found persuasive and is almost on all fours with the instant case. In this case, a school caterer was issued new duties as a housekeeper and the Kenyan Court of Appeal held that:

> *"... that the appellants' action of unilaterally assigning the respondent new duties amounted to significant breach that went to the root of the employment contract. The respondent was right in treating herself as discharged from any further performance of her duties as a caterer. She cannot be said to have absconded duty. This was a classic case of constructive dismissal of the respondent by the appellants."*

[49] It is very clear that, by redesignating the Claimants as cleaning staff, this changed their duties from catering to cleaning, therefore they were right to treat themselves as discharged from performing the duties as catering staff. In any case, the Respondent decided to outsource its catering services and in the process of doing so it gave the Claimants 4 options from which to choose, after details and benefits of each option was computed and communicated to them and this was not done.

[50] In the absence of any evidence to the contrary, we are not convinced, that the Respondent took any steps to implement the promise it made to the Claimants regarding the 4 options, or that it sought their consent before redesignating them. We do not associate ourselves with the assertion by Counsel for the Respondent that the Respondent had the prerogative to unilaterally vary their contracts because this was contrary to Section 58(4) of the Employment Act.

[51] It is glaring clear that by its letter to the Union(supra), regarding the 4 options, the Respondent created a legitimate expectation in the Claimants' mind that they would be advised about the details and benefits of each option before they exercised their choices and they would be given the opportunity to exercise their choice. This promise was violated when the Respondent completely abandoned it in favour of the unilateral action to redesignate them as cleaning staff instead. In *Ayikoru Gladys vs. The Board*

*of Governors of St. Mary's Edioffe Girls Secondary School,* HCCS 26 of 2016, it was held that:

> "The doctrine of legitimate expectation is a relatively new concept that has been fashioned by Courts for the review of administrative action. A legitimate expectation is said to arise "as a result of a promise, representation, practice or policy made, adopted or announced by or on behalf of government or a public authority." Therefore, it extends to a benefit that an individual has received and can legitimately expect to continue or a benefit that he expects to receive. When such a legitimate expectation of an individual is defeated, it gives that person the locus standi to challenge the administrative decision as illegal. Thus, even in the absence of a substantive right, a legitimate expectation can enable an individual to seek a judicial remedy."

The Court of Appeal *Bank of Uganda vs. Joseph Kibuuka and 4 others* Court of Appeal Civil Appeal No. 281 of 2016, the Court of Appeal held that.

> "A legitimate expectation, whether substantive or procedural, arises where an express promise, representation or assurance that is clear, unambiguous, and devoid of relevant qualification is made by an authority to an individual or group of persons."

[52] The Respondent's letter distinctly promised the Claimants that they had 4 options as follows: be (i)re-designated/re-deployed to other departments in other capacities, (ii) take early retirement for those between 55 and 60 years, (iii) to volunteer to take early retirement or to resign or be retrenched, it also promised to give them the details and benefits of each the option, before they exercise their choice, to either and it called for them to exercise patience as the details and benefits are worked out. These promises created a legitimate expectation, in the minds of the Claimants, which gave them the right to consider their unilateral redesignation as illegal. We have already established that the Respondent's reliance on its Human Resource Manual 2009, which did not require it to seek for the consent of an employee before re-designation contravened section 58(4) of the Employment Act, which is emphatic on the requirement of the parties agreeing in writing.

[53] Therefore, even if it as an agreed legal proposition that Human Resource Manuals forms part of an employment contract, where one is introduced with the intention of varying the terms and conditions under an existing contract, as in this case, the consent of the employee in issue must be sought first, otherwise, such variation is null and void.

We reiterate that unilateral redesignation alters both the job title and duties of an employee without his or her consent and it is different from a transfer of the same

services to another department, which was what was provided in their contracts of employment.

[54] In conclusion, reneging on its promise to allow the Claimants to choose from the 4 options and unilaterally re-designated them instead, amounted to fundamental contract breach of their employment contracts.

**Did this conduct amount to constructive dismissal?**

[55] Constructive dismissal is not explicitly defined under the Employment Act 2006; however, Section 64(1)(c) thereof provides that termination shall be deemed to take place:

> "... ( c) Where the contract of service is ended by the employee with or without notice, as a consequence of unreasonable conduct on the part of the employee...".

The section unlike other provisions in the Act places the burden of proving that the termination was fair on the employee. The employee, in this case, must prove that his or her resignation or termination was justified, it was the result of the employer's conduct. He or she must demonstrate that the employer's conduct was so intolerable and wicked and went to the root of the contract to warrant it be construed as a fundamental breach of the contract of employment. The employee must in the same vein show that the employer is no longer interested in being bound by the terms and conditions of the employment contract.

[56] In *Allen Namuyiga vs Export Trading Co. Limited* Labour Dispute Reference No. 49 of 2020 this court held.

> *"A unilateral variation of the terms and conditions of service of an employee, in our considered opinion is a fundamental breach of the contract between the parties which can entitle an employee to terminate his or her contract without notice in accordance with section 65(1) (supra(currently 64 of the7th edition of the revised edition of the principal laws of Uganda). Such an employee will succeed in a claim of constructive dismissal. Also, See (Section 65(1) (c) of the Suzanna Haarbosh vs Kamtech Logistics LDC 233 of 2015 and Nyakabwa Abwoli vs Security 2000 Ltd LDC No. 108 of 2014)."*

We are also persuaded by the Kenyan case of Coca-Cola *East & Central Africa Limited v Maria Kagai Ligaga CA No. 20 0f 2012,* where the Court of Appeal of Kenya cited Lord Denning MR, in *Western Excavating (ECC) Ltd v Sharp* [1978] ICR 222 or [1978] QB761 in which Constructive Dismissal was defined as follows:

"If the employer is guilty of the conduct which is a significant breach going to the root of the contract of employment or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract then, the employee is entitled to treat himself as discharged from any further performance. If he does so then he terminates the contract by reason of the employer's conduct.
He is constructively dismissed. The employee is entitled in those circumstances to leave at the instant without giving notice at all or alternatively, he may give notice and say that he is leaving at the end of the notice. But the conduct must in either case be sufficiently serious to entitle him to leave at once."

[57] The Court further noted that the factual circumstances giving rise to constructive dismissal are varied but the key element in its definition is that the *employee must have been entitled or have the right to leave without notice on account of the employer's conduct.* The employee must therefore prove that the employer's conduct towards the employee is so unreasonable that he or she could not be expected to stay, and the conduct is so grave that it constituted a repudiatory breach of the contract of employment. In *Western Excavating (ECC)Ltd v Sharp* [1978] ICR 222 proposed that when determining, claims of constructive dismissal the court must find that the conduct of the employer must constitute a repudiatory breach of contract and it must be established that the employee left in response to the employer's conduct (also see *Office v Roberts* (1981) IRLR 347). Therefore, a causal link must be shown and the employer's conduct when viewed objectively must amount to repudiatory and fundamental breach of the contractual obligations. We are guided by the Kenyan Cout of Appeal, summation of the principles which relevant in determining constructive dismissal as follows:

1. The fundamental and essential terms of the contract must be known.
2. There must be a repudiatory breach of the fundamental terms of the contract through conduct of the employer.
3. The conduct of the employer must be a fundamental or significant breach going to the root of the contract of employment or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract.
4. An objective test is to be applied in evaluating the employer's conduct.
5. There must be a causal link between the employer's conduct and the reason for the employee terminating the contract i.e causation must be proved.
6. An employee may leave with or without notice so long as the employer's conduct is the effective reason for termination.

7. The employee must have accepted waived, acquiesced, or conducted himself to be estopped from asserting the repudiatory breach; the employee must within a reasonable time terminates the employment relationship pursuant to the breach.

8. The burden to prove repudiatory breach or constructive dismissal is on the employee.

[58] Based on these principles to the instant case, it is very clear that the Respondent's unilateral redesignation of the Claimants' employment fundamentally changed the essential terms and conditions of their contracts and it amounted to a repudiatory and fundamental breach of the contracts of employment which went to the root of their contracts. This is because their job titles and roles were changed, thus discharging them from performing their roles as catering staff.
By redesignating the claimants as cleaning staff, the Respondent had indicated that it no longer intended to be bound by the essential terms of their contract catering staff and their deletion from the payroll confirmed this. Therefore, their refusal to assume the new roles as cleaning staff cannot be considered as absconding from duty, but rather as constructive dismissal. (see *Ayikoru Gladys v Board of Governors St. Mary's Ediofe Girls Secondary School* HCCS 26 of 2016, *Wagaba Francis vs The Chief Administrative Officer Maracha and Maracha District Local Government* HCCS 5 of 2016 and *Board of Governors, Cardinal Otunga High School Mosocho and 3 others v. Elizabeth Kwamboka Khaemba).*

[59] In conclusion, the Claimants have demonstrated that their redesignation as cleaning staff amounted to constructive dismissal which is unlawful. This issue is therefore resolved in the negative.

**Issue 2. Whether the termination of employment of the Claimants was lawful?**

[60] Having resolved that the unilateral redesignation of the Claimants amounted to constructive dismissal, which was unlawful, there is no requirement to discuss this issue any further.

**Issue 3: What are the remedies available to the parties?**

[61] Having established that the Claimants' dismissal was unlawful, the Claimants are entitled to some remedies. According to their memorandum of Claim, they prayed for the following:

1. **A declaration that the Respondent's unilateral re-designation of the Claimants was unlawful.**

An order that the Respondent's unilateral redesignation of the Claimants amounted to constructive dismissal which is unlawful doth issue.

2. **An order under Section 31 of the Employment Act terminating the Claimants.**

Section 31(currently 30) provides for circumstances where an employer is unable to pay wages to its employer. No evidence was led to prove that the Respondent failed and or refused to pay the Claimants their salaries when they refused to assume the position to which they were redesignated. It is undisputed that they were deleted off the payroll ceased 2 years later. We have already discussed that their deletion confirmed their constructive dismissal, which is unlawful. In the circumstances, a claim under section 31 cannot stand. It is denied.

3. **Severance allowance**

Section 86(a) of the Employment Act entitles an employee who has been in an employer's continuous service for a period of 6 months to an award of severance pay if he or she is found to have been unfairly dismissed/terminated. Section 88 of the same Act is to the effect that severance allowance should be negotiated between the employer and employee. However, where there is no agreement regarding the calculation of severance allowance, the court formula established by this court in *Donna Kamuli v DFCU Bank LDC,* No. 002 of 2015, that the reasonable method for calculating severance pay shall be payment of 1 month's salary for every year served, the employee has served, shall apply. This decision was upheld by the Court of Appeal in *African Field Epidemiology Network (AFNET) vs Peter Waswa Kityaba* CA. *No.0124/2017.*

The Claimants, in this case, contended that they were entitled to 3 months' wages per year of service in accordance with a formula prepared by the Ministry of Public Service. While this evidence was not controverted by the Respondent, no witness was called from the said Ministry to attest to the said formula nor was documentary evidence adduced to confirm the assertion. In the absence of the basis of this formula, we form

the opinion that there was no negotiated formula for calculating severance allowance between the parties. Therefore, the Formula in Donna Kamuli a rate of 1 month's salary per year of service, shall apply as follows:

| No. | Name | Monthly wage | Years of service | Severance due |
|---|---|---|---|---|
| 1. | Kayiwa Muhamud | 658,691 | 22 | 14,491,202 |
| 2. | Mukiibi Ephraim | 658,691 | 21 | 13,832,511 |
| 3. | Bakira Emmanuel | 658,691 | 38 | 25,030,258 |
| 4. | Sekiziyivu Godfrey | 658,691 | 40 | 26,347,640 |
| 5. | Turyasingura George | 658,691 | 22 | 14,491,202 |
| 6. | Owinyi George | 658,691 | 29 | 19,102,039 |
| 7. | Kirya Jesse Mbulamberi | 658,691 | 18 | 11,856,438 |
| 8. | Magezi Karim | 658,691 | 34 | 22,395,494 |
| 9. | Agwette Esau | 658,691 | 29 | 19102039 |
| 10. | Kabarangira Grace | 658,691 | 23 | 15,149,893 |
| 11. | Anabella Grace Ebal | 1,602,949 | 18 | 28,853,082 |
| 12. | Namubiru Harriet | 658,691 | 30 | 19,760,730 |
| 13. | Mbele Maria | 658,691 | 37 | 24,371,567 |
| 14. | Solome Ntabadde | 658,691 | 31 | 20,419,421 |
| TOTAL | | - | | **275,203,516** |

**4. Basic Compensatory order**

This court has held that Section 77 of the Employment Act 2006 provides for compensation remedies that should be awarded by a labour officer where he or she believes that a Claimant merits receiving compensation for unlawful dismissal or termination. That is why the compensation is capped. This court on the other hand is dressed with jurisdiction to award damages which are at large for the Court to compute based on the merits of each case. In the circumstances, we decline to grant compensation under Section 78.

**5. General Damages**

It is trite that in awarding damages courts are guided by the principle of *restituo in integrum* which is supported by Article 126 (2) (c) of the Constitution, which provides that in adjudicating cases, adequate compensation shall be awarded to victims of

wrongs. It is also trite that in assessing general damages, the court seeks to return the injured party to the position he or she would have been had the injury complained of not occurred. In a recent case of *Uganda Post Limited v Consolette Mukadisi,* SCCANo.13 of 2022, the Supreme Court was of the Legal position that general damages are not tied to specific financial loss but are awarded to compensate the non-economic harm or distress caused by the wrongful dismissal. The Court departed from its decision in *Bank of Uganda v Betty Tinkamanyire* SCCA No.12 of 2007. The Supreme Court further stated that in addition to payment of the contractually agreed amount in lieu of notice, Courts can order the employer to pay damages to compensate for the suffering arising out of the manner in which the termination of contract was effected, and it has the discretion to determine whether to award general or aggravated damages.

We have already established that the Claimants were constructively dismissed, and the dismissal was unlawful. We have also established that the Claimants worked with the Respondent for between 18 and 20 years and no evidence has been led to show that they had any disciplinary or performance-related issues during the tenure of their employment with the Respondent.
It was very clear from the evidence that the Respondent's unilateral redesignation of the Claimants fundamentally breached their contract as catering staff. In the circumstances, they would be entitled to an award of General damages as compensation *for unlawful dismissal.* The Court of Appeal in *Stanbic Bank (U) Limited v Okou,* CA No. 60/ 2020, guided that, where severance allowance has been awarded the assessment of general damages should be based on the prospect of the employee getting alternative employment.

Save for the fact that they were redesignated, the Claimants did not adduce any evidence regarding their ages, to enable us to determine their employability at the time they were deleted from the payroll. However, they did not dispute that, they continued to receive their salaries from the time they were redesignated in 2014, until 2016, when they were deleted from the payroll, moreover when they were not working.
This notwithstanding, we strongly believe that they are entitled to compensation for their constructive dismissal. Considering that the Claimants continued receiving salary for 2 years without working and given that we have awarded each of them severance pay, an award of **Ugx.5,000,000/- each** is sufficient as general damages.

**6. Repatriation allowance**

It is an agreed fact as stated under the joint scheduling memorandum filed by the parties, that the Claimants joined the Respondent's employ on the following dates:

| No. | Name | Job Title | Date of recruitment | Length of service (years) | Home district | Distance to home district (km) |
|---|---|---|---|---|---|---|
| 1. | Kayiwa Muhamud | Assistant cook | 14/6/1996 | 22 | Mukono | 30 |
| 2. | Mukiibi Ephraim | Cook | 08/4/1997 | 21 | Mubende | 250 |
| 3. | Bakira Emmanuel | Head Cook | 7/7/1980 | 38 | Kisoro | 500 |
| 4. | Sekiziyivu Godfrey | Cook | 1/1/1978 | 40 | Kampala | 20 |
| 5. | Turyasingura George | Cook | 2/4/1996 | 22 | Kabale | 400 |
| 6. | Owinyi George | Waiter | 17/10/1989 | 29 | Arua | 600 |
| 7. | Kirya Jesse Mbulamberi | Storeman | 6/1/2000 | 18 | Pallisa | 200 |
| 8. | Magezi Karim | Storeman | 04/6/1984 | 34 | Masaka | 250 |
| 9. | Agwette Esau | Assistant Cook | 5/2/1989 | 29 | Pallisa | 200 |
| 10. | Kabarangira Grace | Cook | 13/3/1995 | 23 | Fort Portal | 300 |
| 11. | Anabella Grace Ebal | Domestic bursar | 2/2/2000 | 18 | Lira | 400 |

| | | | | | | |
|---|---|---|---|---|---|---|
| 12. | Namubiru Harriet | Waitress | 1/2/1988 | 30 | Masaka | 250 |
| 13. | Mbele Maria | Waitress | 3/11/1981 | 37 | Tanzania | 1500 |
| 14. | Solome Ntabadde | Waitress | 21/10/1987 | 31 | Mubende | 250 |

Based on this tabulation above, by the time of their deletion from the pay roll in 2016, all the Claimants had served the Respondent for over 10 years each.

Section 38 of the Employment Act 2006 and in particular Section 38(3) of the Employment Act 2006 provides that,

> *"39. Repatriation*
> *(1) ....*
> *(2) ....*
> *(3) Where an employee has been in employment for at least ten years he or she shall be repatriated at the expense of the employer, irrespective of his or her place of recruitment.*

In *Ben Kimuli vs Sanyu Fm 2000 Limited* LDR No 126 of 2015, this Court held that;

> "Whereas Section 39(1) of the Employment Act provides for repatriation of employees recruited more than 100kms from home, Section 39(3) dispenses with the minimum mileage for employees who have worked for at least 10 years. Irrespective of the mileage from home to the recruitment place, this category of workers by virtue of this Section is entitled to be repatriated. No doubt the claimant was from Mukono and having worked for 10 years he falls in this category. Given the distance from Kampala where the respondent is based, we form the opinion that UGX. 500,000/= (Uganda shillings five hundred thousand only) would be sufficient for this purpose and we hereby grant this as repatriation allowance".

The Claimants in the instant case prayed for a sum of UGX 500,000/- per 50km, which amounts to a rate of Ugx.10,000/= per km. We think that a rate of 10,000/- per km is reasonable and we accordingly award the same as follows:

| **No.** | **Name** | **Home District** | **Distance to home district (km)** | **Repatriation allowance (UGX)** |
|---|---|---|---|---|
| 1. | Kayiwa Muhamud | Mukono | 30 | 300,000 |
| 2. | Mukiibi Ephraim | Mubende | 250 | 2,500,000 |
| 3. | Bakira Emmanuel | Kisoro | 500 | 5,000,000 |

| | | | | |
|---|---|---|---|---|
| 4. | Sekiziyivu Godfrey | Kampala | 20 | 200,000 |
| 5. | Turyasingura George | Kabale | 400 | 4,000,000 |
| 6. | Owinyi George | Arua | 600 | 6,000,000 |
| 7. | Kirya Jesse Mbulamberi | Pallisa | 200 | 2,000,000 |
| 8. | Magezi Karim | Masaka | 250 | 2,500,000 |
| 9. | Agwette Esau | Pallisa | 200 | 2,000,000 |
| 10. | Kabarangira Grace | Fort Portal | 300 | 3,000,000 |
| 11. | Anabella Grace Ebal | Lira | 400 | 4,000,000 |
| 12. | Namubiru Harriet | Masaka | 250 | 2,500,000 |
| 13. | Mbele Maria | Tanzania | 1500 | 15,000,000 |
| 14. | Solome Ntabadde | Mubende | 250 | 2,500,000 |
| **TOTAL** | | | | **51,500,000** |

**7. Notice pay**

Section 57 of the Employment Act 2006 provides for notice or payment in lieu of notice and it provides as follows;

*"57. Notice periods.*

*(1) A contract of service shall not be terminated by an employer unless he or she gives notice to the employee except-*

*a. Where the contract of employment is terminated summarily in accordance with section 69.*

*b. Where the reason for termination, is attainment of retirement age.*

*(2) The notice referred to in this section shall be in writing and shall be a form and language and that the employee to whom it relates can reasonably be expected to understand.*

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

*a. Not less than two weeks, where the employee has been employed for a period of more than six months but less than one year.*

*b. Not less than one month, where the employee has been employed for a period of more than twelve months, but less than five years,*

c. *Not less than two months where the employee has been employed for a period of more than five years, but less than ten years; and*
d. *Not less than three months where the service is ten years or more.*

We have already established that all the Claimants worked for the Respondent for more than ten (10) years and as such each Claimant is entitled to claim for payment in lieu of notice in accordance with section 57(5) which provided that any agreement between the parties to exclude the operation of this section shall be to no effect, but this shall not prevent an employee accepting payment in lieu of notice. We established that save for Annabel Grace Ebal, who earned Ugx. 1,602,949/- per month, and therefore she is entitled to Ugx.4,808,847/- as 3 months' salary in lieu of notice, the rest were paid uniform salary of Ugx. 658,691 per month therefore each is entitled to payment of Ugx. 1,976,073/- as 3 months' salary in lieu of notice. Therefore, they are entitled to payment of 3 months' salary each in lieu of notice.

**8. Accrued Pension**

The uncontroverted evidence as per CW1's witness statement and the Claimant's Trial Bundle Item Exhibit C17 is that the Claimants are entitled to accrued pension and additional pension awards of 25%. In the case of *James Sowabiri & Another v Uganda* Cr. Appeal No. 5 of 1990 that

> *"Whenever the opponent has declined to avail himself of the opportunity to put his essential and material case in cross-examination, it must follow that he believed that the testimony given could not be disputed at all. Therefore, an omission or neglect to challenge the evidence in chief on a material or essential point by cross-examination would lead to the inference that the evidence is accepted subject to its being assailed as inherently or palpably incredible."*

The Respondents having not adduced any evidence to the contrary, it is the uncontroverted evidence that the Claimants contracts were governed by the Uganda Public standing orders, therefore, they are entitled to payment of their accrued pension and additional pension awards at 25% in accordance with Section L-I (1) of the Uganda Standing Orders. The Section provides that:

> *" When the Appointing Authority directs that a public shall retire because his or her post is abolished or retires to facilitate improvement in the organisation to which he or she belongs, by which greater efficiency or economy may be achieved, he or she is eligible for a pension in accordance with the law.*

*by which greater efficiency or economy may be achieved, he or she is eligible for a pension in accordance with the law.*

*2. A submission by a Responsible officer shall be made to the Appointing Authority that a public officer should be retired because of the abolition of office or on grounds of reorganization upon clearance by the responsible Permanent Secretary.*

*3. When the Appointing Authority directs that a pensionable officer shall retire in the circumstances mentioned in paragraph 1 above, the public officer will benefit from severance packages and will in addition be entitled to pension, irrespective of whether he or she has reached the statutory minimum age or completed ten years' qualifying service, in accordance with the formula provided in section L-d paragraph 2...".*

By deciding to outsource its catering services, the Respondent had in essence abolished those services and this was confirmed by their redesignation. The Respondent is, therefore, ordered to compute each of the Claimant's pension entitlement in accordance with section L-i(1) (supra).

**9. Aggravated damages**

In *Huljiah v Hall* [1973]2 NZLR 279 at 287, cited in *Stanbic Bank (Uganda) Limited v Nassanga Saphinah Kasule* CA No.182 of 2021, aggravated damages were defined as follows:

> "Aggravated damages are extra compensation to a plaintiff for the I jury to his feelings and dignity by how the defendant acted. exemplary damages on the other hand are damages which in certain circumstances are allowed to punish a defendant for his conduct in inflicting the harm complained of." Also see *Fredrick Zaabwe vs Orient Bank* SCCA No. 4 of 2006).

The Claimants in the instant case did not adduce evidence to account for factors such as malice and arrogance on the part of the Respondent. In the circumstances, we found no basis to award them aggravated damages. This claim is denied.

**10. Exemplary damages**

The holding *Bholm v Car and General Ltd* CA No 12 of 2002, is to the effect that, the distinction between aggravated and exemplary damages is not easy to see, and to some extent, they may be construed as the same. However exemplary damages are not intended to compensate but are entirely punitive in nature. We found no evidence on which to base an award of exemplary damages. It is therefore denied.

**11. Interest**

In *Adam Kafumbe Mukasa and 2 others v Uganda Breweries Limited* Court of Appeal Civil Appeal No. 115 of 2018 Gashirabake JA held that:

*"According to Section 26 of the Civil Procedure Act, Court is empowered to award any rate of interest it deems reasonable. In Charles Lwanga v Centenary Rural Development Bank CA No. 30 of 1999, it was held that interest in cases of wrongful dismissal runs from the date of dismissal. In the circumstances, the court awards interest of 10% on the pecuniary general damages from the time of dismissal."*

In line with this decision, the Claimants in the instant case, are each awarded interest of 8% p.a on general damages from the date of dismissal and 15% per annum on all other pecuniary awards from the date of the award until payment in full.

**12. Costs**

It is the principle of this court that costs are granted in exceptional circumstances this is because of the unequal contract between the employer and the employee. Whereas the employer is the holder of capital and therefore he or she can afford to incur the costs of litigation, the employee who has lost the means of earning is not in the position to pay costs. Therefore, to award costs against him or her would amount to condemning him to destitution. Therefore, in order to ensure equality in justice, this principle applies to the employer as well. In circumstances, no order as to costs is made in this case.

[62] This claim succeeds in the above terms. No order as to costs is made.

Signed in Chambers at Kampala this **23rd** day of **August 2024**.

Hon. Justice Linda Lillian Tumusiime Mugisha,
**Head Judge**

**The Panelists Agree:**

1. Hon. Harriet Mugambwa,
2. Hon. Frankie Xavier Mubuuke &
3. Hon. Ebyau Fidel.

23rd August 2024
9:30 am