THE REPUBLIC OF UGANDA

IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA

LABOUR DISPUTE REFERENCE NO. 179 OF 2015

(Arising from Labour Dispute MGLSD/323/2015)

ACHIRO BEATRICE ADONG::CLAIMANT

VERSUS

UGANDA LAND ALLIANCE::RESPONDENT

Before.

The Hon. Mr. Justice Anthony Wabwire Musana:

Panelists:

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

Representation:

1. *Mr. Robert Irumba of M/S Tumusime, Irumba & Co. Advocates for the Claimant.*
2. *No one for the Respondent.*

AWARD

Introduction

[1] By a contract dated the 28th day of December 2011, the Claimant was employed by the Respondent as an Administrator. Two years later, she was asked to apply for the position of Operations Manager following the scrapping of the Administrator position. She presented a five-year contract in Court. In July 2014, shortly after taking up the position, she was asked to step aside to pave the way for investigations into allegations made against her. By September 2014, the suspension had not been lifted, and the Claimant asked the Respondent to clarify her employment status. In July 2015, having received no clarification, she filed a

complaint with the Labour Officer at the Ministry of Gender, Labour, and Social Development. The Respondent did not attend to the Commissioner of Labour's summons, and the matter was referred to this Court.

[2] In her memorandum of claim filed on the 7th of August 2015, she sought a determination of the lawfulness of her suspension and termination, payment of leave entitlement, salary arrears and other remedies. She computed these benefits at UGX 117,737,959/= in her affidavit supporting the memorandum.

[3] In a reply filed on its behalf by M/S Mutabingwa & Co Advocates, the Respondent conceded that the Claimant was its employee but contended that her contract had expired on 30th June 2014 and was not renewed. It was argued that she was never employed as an Operations Manager, and her contract renewal was a forgery. Her claim for terminal benefits was also denied.

[4] In rejoinder, the Claimant, relying on a handwriting expert's report, dispelled the allegations of fraud and forgery, reiterating her earlier claim.

Procedural History

[5] The case file was sent for mediation in May of 2016. However, the record does not contain any report of the outcome of the mediation process.

[6] When the matter was called before this Court on the 14th of July 2023 and 17th of August 2023, we directed Counsel for the Claimant to serve the Respondent. On the 24th of October 2023, we were not satisfied that service on the Respondent had been effective and re-directed Counsel for the Claimant to effect service by substituted means. In his affidavit of service filed in Court on the 30th of January 2024, Mr. David Odong, an accredited Court Process Server of the Courts of Judicature, demonstrated service through an advertisement in the Daily Monitor Newspaper on the 9th of January 2024. Satisfied that service was effective, we granted the Claimant leave to proceed exparte under Order 9 Rule 20(1)(a) of the Civil Procedure Rules S.I 71-1*(from now CPR)*.

[7] The Claimant's scheduling memorandum filed in Court on the 12th of October 2023, albeit unsigned and undated, contained five draft issues. Under Order 15

rule 5 CPR, which bestows on the Court the duty to frame issues[1], the issues for determination were reduced to two, viz:

(i) Whether the Claimant's suspension and termination were lawful? and

(ii) *What remedies are available to the Claimant?*

The Evidence

[8] The Claimant took oath and her witness statement made on 10th October 2023 was admitted in evidence. She testified to having an initial two-year contract effective 28th October 2011. Before its expiry, she was appointed Operations Manager. It was her evidence that by an email on 16th July 2014, she was asked to step aside to permit for investigations into allegations made against her. She was not told the outcome of the inquiry, and on the 1st of September 2011, she wrote a letter to the Respondent's Executive Director seeking clarification on her employment status. She was then summoned, hastily in her view, to appear before a disciplinary committee at which it was alleged that she had been complicit in hiring a relative during the Respondent's restructuring exercise, stealing a company laptop, and forging the signature of the Respondent's former Executive Director. She made her responses and was advised to await communication from the committee. The Respondent did not write to her, and as such, she sought the assistance of the Court to recover her salary arrears and benefits to the tune of UGX 112,737,959/=. She also asked for a determination on the lawfulness of her suspension and termination.

Analysis and Decision of the Court

Issue 1. Whether the Claimant's suspension and termination was lawful?

[9] Citing Section 58(1) of the Employment Act, 2006*(from now EA),* Counsel for the Claimant submitted that no contract can be terminated without notice. For this proposition, Counsel relied on the decision of the Court of Appeal of Uganda **in Stanbic Bank(U) Ltd v Okou Constant C.A.C.A No. 60 of 2020**. It was submitted that the Claimant was suspended for over five months. After writing to follow up, she was subjected to a hurried disciplinary hearing where strange charges were

[1] See dicta of Okello J in Ayella David v Kalokwera Gladys H.C.C.A No. 14 of 2015

laid against her. She refuted the same and was advised to wait for the committee's decision. The Respondent had not written when she lodged her complaint with the Labour Officer. For these reasons, Counsel argued that the Respondent's actions and omissions amounted to unlawful termination without notice or payment in lieu of notice.

Determination

[10] The Claimant's exit from the Respondent's service was not direct. There was no termination or dismissal letter to place the severance of the employment relationship in one category or the other. Various provisions of the Employment Act, 2006*(from now EA)* lay down the law relating to severing employment contracts. Broadly, under the EA, an employment contract is ended either by termination or by dismissal. There is a nuanced distinction between the two modes of bringing an employment contract to its end: a dismissal is at the instance of the employer for verifiable employee misconduct,[2] while a termination is at the instance of the employer for justifiable reasons other than misconduct, such as expiry of the contract, attainment of retirement age or as set out in Section 65EA.

[11] In either dismissal or termination, the EA, as interpreted by the Courts, set as a standard one paramount principle: that in any termination of an employment contract, the employer must follow the correct procedure for either the termination or dismissal. It is trite that an employer has an unfettered right to terminate its employee if it follows the procedure.[3]

[12] We think it worthwhile to restate the law on the processes and procedures of termination and dismissal in some brief detail.

[13] First, the provisions of **Sections 65, 66, 68, 69, and 70(6) of the EA, 2006,** spell out the various modes of severance of the employment relationship. This Court, in **Mariam Akiror v International Food Policy Research Institute,**[4] revisited these provisions, summing them up thus:

> *"(i) **Section 65EA** provides for circumstances where termination shall be deemed to take place, which include (a) where the*

[2] See Section (g)EA
[3] Per Mwangushya J.S.C in S.C.C.A No. 28 of 2012 Hilda Musinguzi vs Stanbic Bank (U) Limited SCCA 28/2012, See also Bank of Uganda v Geoffrey Mubiru S.C.C.A. No. 1 of 1998. The principle is repeated in a plethora of authorities.
[4] 1DR 235 of 2019

employer ends the contract without notice, (b) by expiry or effluxion of time or non-renewal, (c) where an employee ends the contract for unreasonable conduct of the employer or (d) where the employee receives notice but before the expiry of the notice period. ***Section 65(2) EA*** *delineates the time or date of termination in each of the above circumstances.*

(ii) ***Section 66 EA*** *provides for notice and a hearing before termination for misconduct or poor performance. It also spells out employee rights in a disciplinary hearing. The right to be heard in employment disputes has been very well articulated in the case of* ***Ebiju James v Umeme Ltd*** [5]

(iii) ***Section 68 EA*** *requires an employer to prove the reason for termination. The onus is on an employer to justify the termination or dismissal.*

(iv) ***Section 69 E****A proscribes summarily dismissal, which occurs without notice or less statutory notice when the employee has, by his or her conduct, indicated that he has fundamentally broken his or her obligations under the contract.*

(v) *And finally, under* ***Section 70(6) EA,*** *the employee has the Onus probandi or burden to prove that a dismissal has occurred while the employer must justify the grounds of dismissal."*

[14] In the matter before us, it is beyond dispute that the Claimant was suspended, and she did not return to work. She inquired as to the status of her employment, not once but thrice. The Respondent's Executive Director appears to have convened a special disciplinary sitting on the 11th of November 2015, four months after the suspension and undertook to advise the Claimant of the Board's final decision. This promise was repeated on the 21st of January 2015. A cutoff date was set for the 31st of January 2015 for the Respondent to advise the Claimant on

[5] H.C.C.S No. 133 of 2012

its Board's decision. Such communication was not forthcoming, prompting the Claimant to complain to the Commissioner for Labour. The Respondent did not respond to the Commissioner's summons. The Claimant elected to refer the matter to this Court for resolution.

[15] Despite service and by substituted means, the Respondent did not attend Court to present any evidence refuting the claim. Therefore, the Claimant's evidence was unchallenged; where evidence stands unchallenged, it is deemed admitted as inherently credible and probably accurate. Such evidence must be evaluated to give it quality and value.[6]

[16] The Claimant testified that she was suspended to pave the way for investigations. The suspension is believable and has a factual basis. By an email dated 16th July 2014, Mr. Edmond Owor, who was said to be the Respondent's Executive Director, asked the Claimant to step aside from all her responsibilities to pave the way for the final considerations of the matter. She was required to hand over by 3:00 pm on that date. In her letter to the Respondent dated the 1st of September 2014, which letter was admitted in evidence as CEX6, the Claimant sought to know her employment status together with payment of her salary arrears. This was more than four weeks after her suspension. The Claimant wrote two more letters seeking information. Her letter of the 15th of October 2014 was acknowledged by Mr. Owor, who, by his letter dated 27th October 2014, advised that the Respondent Board Human Resources Committee had agreed to give her a special hearing. He also reassured the claimant of a plan to settle her salary arrears. The special hearing was set for 11th November 2014. By a letter dated the 21st day of January 2015, the said Edmond Owor acknowledges that the Claimant was given a special hearing and that the Respondent Board had resolved to retain Counsel to investigate the Claimant's case and issue a report, the contents of which would be shared with the Claimant by the 31st of January 2015. This appears to have been the Respondent's final communication to the Claimant.

[17] These facts are inconsistent with the averments in the Respondent's pleadings in paragraph 2 of the memorandum in reply on record; the Respondent admitted that it was true that it employed the Claimant but that her contract expired on 30th June 2014. As the Respondent did not utilise the opportunity to press its case, first before the Labour Officer, then before the Court-appointed mediator and

[6] Per Ssekaana J in Geofrey Brown v Ojijo Pascal H.C.C.S No. 228 of 2017

finally before this Court, it is difficult to accept this proposition. In our view, it is believable that the Respondent suspended the Claimant and did not lift that suspension.

[18] The law on suspension is very clear. Under **Section 63(1)EA, an employer conducting an enquiry for which he or she believes may reveal a cause for dismissal may suspend an employee with half pay.** Under **Section 63(2)EA, such a suspension shall not exceed four weeks or the duration of the inquiry, whichever is shorter**. We have established that the Respondent asked the Claimant to step aside on the 16th of July, 2014. What transpires is that by the 21st day of January 2015, six months after the suspension, no final decision had been rendered by the Respondent regarding its inquiry into the Claimant's conduct. No evidence of communication of any decision was laid before this Court. It would follow, and we would find that the Respondent was in breach of **Section 63(2)EA** by way of its unending inquiry.

[19] We so find because suspension is not a permanent measure. According to **Black's Law Dictionary 11th Edn**[7], suspension is the act of temporarily delaying, interrupting, or terminating something. It is the temporary withdrawal from employment, as distinguished from permanent severance. Put differently, suspension is time-bound. Under **Section 63 (2) EA**, it is limited to four weeks or the duration of the inquiry or investigation and not several months, as was before us. This would make the Claimant's suspension unlawful, and we so find. We are fortified in this view by the decision of the Industrial Court in **Lusiba Deogratius v National Water and Sewerage Corporation,**[8] where a suspension in excess of four weeks or 28 days was found illegal. In **Paul Mwaura Mbugua v Kagwe Tea Factory and Another** [9] Ndolo J. observes that suspension is an interim measure and is not an end in itself. Suspension itself is not a form of termination; further action must be taken upon investigation completion. There is also persuasive Indian jurisprudence on the point. In **Dipendra Keshavlal Mehta v State of Gujarat**[10], the High Court of Gujarat held suspension not to be a punishment, highlighting the importance of a speedy trial and that suspension should not be unduly prolonged. The effect of these dicta is that an employee on interdiction or suspension expects

[7] Edited by Bryan Garner Page 1748
[8] LDR 120 of 2016
[9] Industrial Cause No. 28 of 2011[2011]LLR 243

[10] Per Kureshi J. (2005)2GLR1798

that there will be either disciplinary proceedings resulting in a sanction, which may include termination, or that they would be exonerated of whatever charges have been laid against them. That is a fair labour practice. Any denigration from this would be unfair. Indeed, in the Mwaura case(ibid), the Court found that to keep an employee on suspension without pay for over seven months, waiting for him to blink first is not only unlawful but inhumane. These dicta are most applicable to the case before us. The Claimant's prolonged suspension amounted to a fundamental breach that went to the root of her employment contract. Subjected to such a prolonged suspension, she would be entitled to treat herself as dismissed. The Claimant's suspension exceeded the statutory four-week period and was, therefore, unlawful.

[20] For the above reasons, we think the Claimant would be entitled to a declaration that her suspension from the Respondent's employment was unlawful, and we so declare.

[21] Having declared the suspension unfair and unlawful, the secondary question that this Court must now address is whether the Claimant's termination was lawful. First, there has been no evidence of an overt act of termination. There is no letter, email, or other communication of termination. What is clear from the facts is that the Respondent no longer employs the Claimant. However, that began with the impugned suspension, as in paragraph 14 above. We consider **Section 65(1)(c)EA** applicable in these circumstances. The section provides that:

> *"Termination shall be deemed to take place in the following instances*
> *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 employer towards the employee; and"*

[22] This Court has pronounced itself on what amounts to unreasonable conduct. In a recent decision on the point **Edema Mcjohn v Magnum Security**[11], we cited the case of **Edotun James v Okra Beverages Ltd**[12], and **George Wimpey Ltd v Cooper**[13] where it was suggested that unreasonable conduct is of the kind which, by good industrial relations practice, no employee could reasonably be expected to accept. We observed that unreasonable conduct must be severe, **a breach of**

[11] LDR 282 of 2022
[12] LDR 261 of 2021
[13] 1977(IRLR] 205

the employment contract so fundamental that it at once destroys the employer's implied duty of trust and confidence and destroys the employment relationship. It would be conduct that an employee would not be reasonably expected to tolerate under the regulatory architecture governing the workplace. We must address whether the unfair suspension amounts to a breach of the employment contract or constructive dismissal.

[23] In the Kenyan case of **Susan Njeri Warui v Postal Corporation of Kenya**[14] Gakeri J suggested two tests where an employee leaves employment without notice because of the employer's conduct: the unreasonable test and the contractual test. In the unreasonable test, the Court held that the employer's behaviour must be so unreasonable that the employee could not be expected to stay. In the contractual test, the employer's conduct was grave enough to constitute a repudiatory breach of the employment contract.

[24] It is beyond dispute that the Respondent did not come to Court to confirm its plea and give evidence that the employment contract expired and was not renewed. We have also found that the claimant was subjected to a prolonged and unresolved investigative suspension. In our view, this goes against the principles of fair labour practices. The Respondent did not communicate the outcomes of its investigation, the hearing or, as Mr. Edward Owor wrote in a letter on 21st January 2015, regarding the Board's final decision. From these circumstances, after evaluating the evidence on record, we must conclude that the prolonged suspension resulted in the constructive dismissal of the Claimant. The Respondent demonstrated that it did not wish to be bound to the Claimant under the employment contract. The indefinite and unresolved investigative suspension was unfair, and the Claimant had no choice but to file a labour complaint.

[25] We are fortified in adopting this approach because, in **Moses Kiplagat Changwony v Tana and Athi Rivers Development Authority,**[15] the Labour and Industrial Relations Court of Kenya observed that the employee must show that there has been no actual dismissal. Still, all the elements of dismissal are present, and the employer has fundamentally breached the contract. In the present case, while the prolonged suspension did not amount to a dismissal, all other elements

[14] Cause No. 1374 of 2016 [2022]eKLR

[15] Industrial Cause No.785 of 2010[2010] LLR 175

of dismissal were present, including a special disciplinary hearing, no provision of work, withholding of salary and no communication of the Board's final decision.

[26] For the reasons above, we find that the Respondent's indefinite investigative suspension of the Claimant was unlawful and amounted to constructive dismissal. The Claimant is entitled to a declaration that she was constructively dismissed, and we so hold. In all circumstances, issue number one is answered in the affirmative.

Issue II. What remedies are available to the parties?

[27] Counsel for the Claimant was contending for UGX 112,737,959 as salary arrears and other entitlements between August 2013 and November 2013, March 2014 to December 2014, and January 2015 to August 2015. It was submitted that based on the evidence before the Court, consisting of a salary matrix that was admitted as CEX7, the Claimant had discharged the legal burden of proof to prove that she was entitled to the above sum.

[28] The Industrial Court has adopted the approach that regarding salary arrears, an employee is only entitled to what they have worked for, and an employee who is unfairly or unlawfully dismissed is only entitled to damages. (See **Olweny Moses v Equity Bank**[16], **Simon Kapio v Centenary Bank Ltd**[17] and **Equity Bank v Mugisha Musimenta Rogers** [18]**.** The dicta in these cases is that **Section 41EA** provides for payment of salary only where the employee has provided services to the employer, and any claim for salary arrears after dismissal would be speculative. We agree with these dicta and hold that the Claimant would not be entitled to salary arrears for work done. However, what obtains in a case like the present one where the Claimant has been found to have been unlawfully suspended? Under **Section 63(1)EA,** the employer may suspend the employee with half pay. Such suspension is not to exceed one month, which means an employee would be entitled to half-pay for one month for lawful suspension. The Industrial Court took this approach in **Mudoma Charles v Kenfreight(U)Ltd.**[19] In the matter before us, the contract of employment, CEXH1, contained a monthly salary of UGX 4,496,154/=. The second contract of employment, CEXH4, included a monthly salary of UGX 6,803,800/=. These documents were uncontested and

[16] LDC 225 of 2019
[17] LDC 300/2015
[18] LDA 26 of 2017
[19] LDC 42 of 2015

based on the evidence before us, we determine that the Claimant was earning a gross pay of UGX 6,803,800/= at the time of her unlawful suspension. As she was suspended without pay, we would award her half-pay for one month for **UGX 3,401,900/=**.

[29] Several statutory terminal benefits also accrue by operation of law.

Payment in lieu of notice.

[28] The first of the statutory benefits is payment in lieu of notice. The Claimant joined the Respondent with effect from 2nd January 2012. She was suspended on 16th July 2014 and filed her complaint in June 2015. She served for three years and six months. Under **Section 58(3)(b)**EA, an employee is entitled to one month's notice if they have been in employment for more than twelve months but less than five years. In the circumstances, we award the claimant the sum of **UGX 6,803,800/=** as payment in lieu of notice.

Severance Pay

[29] **Section 87(a)EA** provides for severance pay where an employee is unfairly dismissed. The Industrial Court, in **Donna Kamuli v DFCU Bank Ltd,**[20] held that the calculation of severance shall be at the rate of monthly pay for each year worked.[21] In the circumstances that the Claimant was employed for three years and six months, she is entitled to **UGX 23,813,300/=** as severance pay, which we award.

General Damages

[30] As correctly stated by Counsel for the Claimant, the law is that general damages are those damages such as the law will presume to be the direct natural consequence of the action complained of[22]. In **Stanbic Bank (U) Ltd v Constant Okou**[23] Madrama, JA (*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 Respondent indefinitely suspended the Claimant and did not pay wages. The Respondent did not communicate its decision of final termination between July

[20] See DFCU Bank Ltd vs Donna Kamuli C.A.C.A No 121 of 2016 where the Court of Appeal of Uganda upheld the Industrial Courts' computation of severance pay.
[21] See also Mirimo Charles v Mcleod Russel(U)Ltd LDR No. 79 of 2018, where the Industrial Court holds that severance pay of one months pay for every year worked.
[22] Stroms v Hutchinson [1950]A.C 515
[23] Civil Appeal No. 60 of 2020

2014 and 31st January 2015, when the Respondent's Executive Director suggested he would communicate the Board's decision. This was over six months. In our view, this was an unfair labour practice where the Claimant was kept in the dark over whether she would return to work, or be found culpable or innocent. Considering these and all circumstances, including the Claimant's monthly pay and her service period, we would grant the Claimant the sum of **UGX 40,803,800/=** in general damages.

Costs

[31] The dicta of this Court on costs in employment disputes is that costs are awardable where the losing party has been guilty of some misconduct.[24] The misconduct includes pre-litigation misconduct. In the present case, the Respondent did not answer the Labour Officer's invitation to resolve the dispute amicably and filed a memorandum in reply but did not come to Court despite effective service. We think the Respondent has misconducted itself, and the Claimant would be entitled to the costs of the claim, and she is so awarded.

Final Orders

[32] In the final analysis, we make the following declarations and orders:

(i) We declare that the Claimant was unlawfully and unfairly suspended, constructively dismissed and, therefore, unlawfully terminated from employment by the Respondent.

(ii) We order the Respondent to pay the Claimant the following sums:

(a) **UGX 3,401,900/=** half pay for July 2014.

(b) **UGX 6,803,800/=** as payment in lieu of notice.

(c) **UGX 23,813,300/=** as severance pay and

(d) **UGX 40,803,400/=** in general damages.

(iii) Taking into account the date on which the Claimant was unlawfully suspended, considering the awards above in the principle of *resitituo in intergrum* and pursuant to Section 26(2) of the Civil Procedure Act Cap. 71, the sums in paragraph (ii) and (iii) above shall carry interest at 22% p.a. from the date of this award until payment in full.

[24] See LDR 190 of 2020 Jospeh Kalule v GIZ.

(iv) The Claimant shall have the costs of the claim.

Signed in Chambers at Kampala this 1st day of March 2024.

Anthony Wabwire Musana,
Judge, Industrial Court

The Panelists Agree:

1. Hon. Jimmy Musimbi
2. Hon. Robinah Kagoye and;
3. Hon. Can Amos Lapenga

1.03.2024
9.37a.m.

Appearances

1.	**For the Claimant:**	Mr. Jonathan Asiimwe The Claimant is not in Court
2.	**For the Respondent:**	None.
3.	Court Clerk:	**Mr. Amos Karugaba**

Mr. Jonathan Asiimwe : I appear for the Claimant. The respondent is absent. Matter for an award, and we are ready to receive it.

Court: Award delivered in open Court.

Anthony Wabwire Musana,
Judge, Industrial Court.