**THE REPUBLIC OF UGANDA**
**IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA**
**LABOUR DISPUTE REFERENCE NO. 193 OF 2019**
*(Arising from Labour Dispute Complaint No. MGLSD/LC/075/2019)*

**NABATEREGA KHADIJAH :::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::CLAIMANT**

**VERSUS**

**KCB BANK (U) LTD:::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::RESPONDENT**

**Before:**

1. The Hon. Justice Anthony Wabwire Musana

**The Panelists:**

1. Hon. Adrine Namara,
2. Hon. Suzan Nabirye &
3. Hon. Michael Matovu.

***Representation:***

1. *Mr. Ivan Geofrey Mangeni of M/s. Mangeni Law Chambers & Co Advocates, for the Claimant.*
2. *Stella Okumu of M/s. OSH Advocates, Solicitors and Legal Consultants for the Respondent.*

**AWARD**

**Introduction**

**[1]** The Respondent employed the Claimant from the 1st of April 2013 until the 13th of July 2018, when she was dismissed for violating the Respondent's information technology policy by sharing a password. The dismissal followed the issuance of a notice to provide a written explanation and later an invitation to attend a disciplinary meeting. Aggrieved by the decision to dismiss her, the Claimant lodged a complaint with the Commissioner for Labour (*from now CLR*). On the 27th of May 2019, Ms. Ritah Nakonde, Labour Officer, referred the matter to this Court.

**[2]** In her memorandum of claim dated the 11th of November 2019, the Claimant sought a declaration that she was unlawfully terminated. She claimed general,

exemplary, and punitive damages, interest, and costs of the claim. She argued that she was not given a fair hearing.

[3] The Respondent opposed the claim, contending that the Claimant was given a fair hearing at which she admitted the allegations. The Respondent contended that all the Claimant's employee rights were respected. Therefore, she had exercised her right of appeal and was lawfully terminated.

**The Proceedings**

[4] At the scheduling conference, two issues were framed for determination, namely;

i. *Whether the Claimant's dismissal was lawful?*
ii. *What remedies are available to the parties?*

[5] The parties called one witness each.

**The Claimant's Evidence**

[6] The Claimant testified that she joined the Respondent in 2011 as a sales executive. In April 2013, she was appointed graduate clerk. Due to her exceptional performance and commitment, she served for seven years. She heard reports that she was involved in money laundering and violated the information technology policy by permitting a third party, Mebra Tusabaomu, to use her T24 profile to post transactions in the core banking systems. She attached a copy of the letter requesting an explanation and her detailed written explanation. These were admitted as CEX2 and CEX3.

[7] She testified that on the 20th of June 2018, at around 4:00 pm, she was called to attend a disciplinary hearing scheduled for the 22nd day of June 2018 at 10:00 am at the Respondent's head office. She was given only 24 hours to prepare her defence, which was insufficient. She was not informed of her rights at the hearing, was not advised to bring any witnesses and was not given time to cross-examine the Respondent's witnesses. She was not given the system-generated information, camera footage, or evidence of the alleged money laundering. She suggested that the minutes had been doctored, and the committee did not explain the charges to her. She denied admitting the charges. She testified that she was dismissed without justifiable reason and has suffered endless hurdles. Her attempt at getting a job in DTB Bank (U) Ltd was rescinded because of her issues with the Respondent. She asked for general damages for UGX 100,000,000/=.

[8] In cross-examination, she confirmed having been charged with three offences but denied ever receiving a letter of invitation to a disciplinary hearing (REX3). She maintained that she had responded to the charges in REX2 and was invited to the hearing by telephone. She confirmed receipt of the request for an explanation. She confirmed responding to it. She also confirmed that she was dismissed for sharing a password, and her appeal against the dismissal had been heard. She conceded that the disciplinary committee had read the charges to her but maintained that the video footage was not shown to her. She testified that the time between the request for explanation and the hearing was three weeks and two weeks between the hearing and the decision. She told us there were four weeks between the appeal and the final decision. She also confirmed having signed the minutes.

[9] In re-examination, she denied ever receiving REX 3 and maintained that she was invited via telephone. She maintained that she did not sign page 1 of REX5, the dismissal letter. She clarified that she had asked for the video footage, but it had not been shown to her. The Human Resources Office sent her to the Audit department, and the footage she was given was dark, and she could not see the transaction. She also denied ever having been given the password technology policy.

**The Respondent's evidence**

[10] The Respondent called Mr. Bruno Muhindi, its Head of Finance, who testified there were queries about the Claimant's performance at work. She had failed to question suspicious money lending transactions and was a conduit to these questioned financial dealings. She had posted a fictitious transaction crediting a customer's account with UGX 500,000/= without receiving cash. When she shared her password on the T24 profile, she was asked to write an explanation on 1st June 2018. She wrote her explanation, and on 22nd June 2018, she was invited to a hearing. Mr. Muhindi testified that the notice set out the allegations and rights of the Claimant, and she had ample time to prepare her defence, three weeks from the date she was asked to provide a written explanation and the hearing date.

[11] He also testified that as Chairman of the Disciplinary hearing, he had read out the rights to the Claimant, and evidence was presented to her. She admitted to violating the Respondent's policy on using information technology and passwords. The Claimant's explanations were unsatisfactory, and she was dismissed two weeks after the hearing. She appealed against the committee's decision and was invited to an appeal hearing. The appellate body considered her appeal and upheld the decision of the committee. The outcome was communicated to the Claimant three weeks after hearing the appeal. Mr.

Muhindi maintained that the dismissal was justified under the law and terms of the Claimant's employment.

[12] Under cross-examination, he testified that he did not have a report to show the Claimant's inconsistent and poor performance. He could not explain the suspicious moneylending transaction he had referred to, did not remember the name of the customer's account on which a fictitious posting had been made and confirmed that he did not attach the information technology and passwords policy nor give a copy to the Claimant. He also confirmed that the particulars and dates of the alleged offences were not in REX1. He could not provide proof of having shared a copy of the investigation report with the Claimant. He indicated that Albert Yiga's name had been put in the minutes by mistake. He confirmed that one Nasser Munyagwa was taking notes during the disciplinary hearing and had not carried the notes to show the exact words the Claimant had spoken when she admitted the offences. He conceded that he did not remember the name of the investigator who shared the footage and that the Respondent did not transcribe the footage. He testified that the footage was played during the hearing but was not provided before the hearing. He also suggested that the Claimant did not dispute the footage.

[13] He confirmed that no witness had been called to pin the Claimant. He confirmed that the invitation letter was written on Wednesday, 20th June 2016, requiring the Claimant to appear on Friday, 22nd June 2016. The witness testified that he did not know if one day was sufficient notice. He also conceded that the investigation report was not provided, the video footage was not discussed, and the offences were not highlighted in the invitation letter. He acknowledged that his report was incomplete and that reliance should be placed on his final report.

[14] In re-examination, he confirmed that REX 3 referred to REX 1, which was a request to explain allegations in the investigation report. It contained three offences: money lending, money fraud, and violation of information technology policy on passwords. He confirmed the disciplinary hearing on 22nd June 2018, 21 days after the invitation. He confirmed that he was Chairperson of the committee and that the video footage was played to the Claimant, who confirmed viewing it in REX 6. He clarified that the sanction for password violations was dismissal as contained in REX5 and that the policy that informed the decisions to terminate was based on one offence for non-adherence to the information security policy. After considering the Claimant's appeal, he confirmed that the Appeals panel upheld the disciplinary committee's finding.

[15] We invited Counsel to address the Court in written submissions. The Court thanks Counsel for their industry, research, and the authorities produced.

## Analysis and Decision of the Court.

### Issue 1. Whether the Claimant's dismissal was lawful?

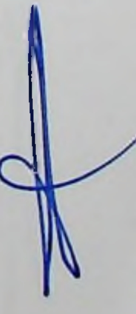
### Submissions of the Claimant

[16] It was submitted for the Claimant that the Respondent terminated her contract without justification or a fair hearing. She was given one day's notice. She was not given a copy of the investigation report, and the closed-circuit television(CCTV) footage of the alleged disciplinary incident was not shown to her clearly. No witnesses were called at the disciplinary hearing, and she was denied an opportunity to prepare her defence. Counsel for the Claimant relied on the decision of Ssekaana J . in **Mweru v UEDCL H.C.C.S No 270 of 2011** for the proposition that a fair hearing demands full disclosure of evidential facts and documents to be used against a party. Counsel also cited Articles 28 and 44 of the Constitution 1995, **Sections 66** and **68 of the Employment Act, 2006** *(from now EA)* and the case of **Abdallah Kimbugwe v Kiboko Enterprises Ltd** LDA No. 13 of 2021.

### Submissions of the Respondent

[17] For the Respondent, it was submitted that its decision to terminate the Claimant was lawful, and all due processes were followed. The Claimant was granted an opportunity to defend herself, and the Claimant admitted to violating the Respondent's code of sharing passwords. She was given an appeal and eventually dismissed. It was the Respondent's position that a dismissal is unfair if the disciplinary procedure, communication of decision and appeal do not comply with **Section 73(2)EA.** Counsel drew our attention to the notices dated 1st June 2018 and 20th June 2018, which laid down the charges against the Claimant and her rights. It was suggested that the Claimant did not deny that there was a disciplinary hearing, that she was accorded an opportunity to appeal and that she admitted the offence. It was submitted, on the authority of **Caroline Gumisiriza v Hima Cement Ltd H.C.C.S No. 84 of 2015,** that strict adherence to procedures in Courts of law need not be demanded of employment disciplinary bodies.

[18] We were also referred to page 5 of the minutes of the disciplinary hearing for the proposition that the Claimant had admitted to having shared a password with another person. Counsel cited the case of **Namyalo Dorothy v Stanbic Bank LDC 166 of 2014** in support of the proposition that the Claimant cannot claim her dismissal was unlawful after having admitted breaching the Respondent's policies.



**Submissions in rejoinder**

[19] In rejoinder, Counsel for the Claimant suggested that the Respondent's submissions were false and misleading as the Claimant had, in her evidence, challenged the procedure and decision to terminate her services. It was submitted that REX1 requested an explanation and was not a disciplinary hearing notice; it was not established that REX2 was served on the Claimant, and REX3 did not lay out any specific charges. Counsel relied on **Florence Mufumba v UDBL LDC 138 of 2014** and **Mbonyi Julius v Appliance World Ltd LDR 104** of 2016 in support of the proposition that the reason for dismissal was unproven and the charges vague. The Claimant reiterated the absence of evidence, witness, and proof of the allegations. It was suggested that the video analyst was fictitious and that any submissions on the CCTV be disregarded. Counsel reiterated the decision in the **Mweru** case regarding furnishing a copy of any investigative report and the absence of full disclosure. Counsel for the Claimant believed that the Respondent did not adhere to the principle of natural justice and did not give the Claimant a fair hearing before termination. As such, she was unlawfully terminated.

**Determination**

[20] Termination and dismissal were used interchangeably in the written submissions filed before this Court. Under **Section 2EA,** dismissal from employment means the discharge of an employee from employment at the initiative of his or her employer when the said employee has committed verifiable misconduct. The meaning ascribed to termination of employment is the discharge of an employee from employment at the initiative of the employer for justifiable reasons other than misconduct, such as expiry of the contract, attainment of retirement age and the circumstances set out in **Section 65EA**, which include termination by notice, non-renewal of a contract of service and resignation. The distinction is that where verifiable and justifiable misconduct is established, the sanction is dismissal, giving rise to a claim for unfair dismissal. All other forms of severance of the employment contract are categorized as termination. The distinction is important because, in each instance, a specific procedure is laid by statute that reads into procedural and substantive fairness. This means the threshold for a lawful termination is not necessarily the same as for a lawful dismissal.

[21] The thrust of the Claimant's case, as we understand it, is that she was not given a fair hearing and, therefore, unlawfully dismissed. The Claimant's complaints are the variance between the request for a written explanation and the notice of invitation to attend a disciplinary hearing, the absence of the investigation report, the lack of CCTV footage, insufficient time to prepare her defence and the lack of evidence implicating her.

[22] On its part, the Respondent submits that the dismissal was justified because the Claimant admitted to the allegations of breach of a password policy, which was classified as gross misconduct, and that the Respondent duly observed the procedural law before and after deciding to dismiss the Claimant.

[23] In **Nicholas Mugisha v Equity Bank Uganda Ltd**[1] this Court held that the threshold of lawfulness of a dismissal consists of procedural and substantive fairness. Procedural fairness tests whether the process leading up to the dismissal was procedurally compliant, while substantive fairness tests the justification of the reason for dismissal. The former is governed by **Section 66EA**, while the latter is under **Section 68 EA.**

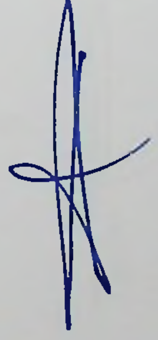
**Procedural fairness**

[24] Procedural fairness is about the failure to follow the laid down procedure of termination. In the oft-cited dicta of Mwangushya J.S.C in **Hilda Musinguzi Vs Stanbic Bank (U) Ltd** where his Lordship held;

> *"... the right of the employer to terminate a contract cannot be fettered by the Court so long as the procedure for termination is followed to ensure that no employee's contract is terminated at the whims of the employer and if it were to happen the employee would be entitled to compensation..."*[2]

**Section 66EA** requires that before dismissing an employee for misconduct, the employer shall explain to the employee why dismissal is being considered. The employee is entitled to have another person of their choice present during this explanation. The employer must also allow the employee to present their defence and give the employee a reasonable time to prepare a defence. In **Ebiju James v Umeme Ltd,**[3] Musoke J(*as she then was*) held:

> *" On the right to be heard, it is now trite that the defendant would have complied if the following was done.*
>
> ***1)*** *Notice of Allegations against the plaintiff was served on him, and a sufficient time allowed for the plaintiff to prepare a defence.*
>
> ***2)*** *The notice should set out clearly what the allegations against the plaintiff are and his rights at the hearing*



[1] LDR 281 of 2021
[2] S.C.C.A No 05/2016
[3] H.C.C.S No. 0133 of 2012

*where such rights would include the right to respond to the allegations against him orally and or in writing, the right to be accompanied to the hearing and the right to cross-examine the defendant's witness or call witnesses of his own.*

***3)*** *The plaintiff should be given a chance to appear and present his case before an impartial committee in charge of disciplinary issues of the defendant."*

**[25]** The evidence before this Court is that by letter dated 1st June 2018 (REX1), the Respondent's Human Resource Manager required the Claimant to provide an explanation regarding two issues. The first was a money lending business at Jinja Branch, and the second was field money fraud regarding posting a fictitious transaction and violating the Respondent's policy on the use of information technology and passwords. The Claimant was required to explain by the 8th of June 2018. The Claimant provided a written explanation, which was admitted as REX2. She disputed the allegations.

**[26]** Following her explanation, by letter dated 20th June 2018(REX 3), the Claimant was invited to attend a disciplinary hearing on the 22nd of June 2018. It was the Claimant's evidence that she did not receive this letter and that she was called by telephone. The letter read as follows:

*" Wednesday, June 20, 2018*

*Khadijah Nabaterega*
*Staff No. 30376*
*KCB-Forest Mall Branch*

*Dear Khadijah,*

*RE: DISCIPLINARY HEARING*

*We refer to our letter dated 1st June 2018 requesting for an explanation. Having received your explanation, you are hereby invited to attend a disciplinary hearing on Friday, 22nd June 2018 at 10:00 am at Head Office; Sixth Floor Board Room.*

*I wish to draw your attention to your rights:*

- *Put your version of the story to the Disciplinary Committee*
- *Invite witnesses in support of your version*

> - *Be represented by a fellow employee of your choice*
> - *An interpreter if you so elect*
> - *Challenge evidence brought against you*
> - *Challenge the outcome of the hearing within three days of the decision through an appeal procedure if you are dissatisfied with such outcome.*
>
> *Please sign the attached copy to acknowledge receipt of this letter.*
>
> *Yours faithfully,*
>
> *SARAH KAJUMBA KWEHANGANA*
> *HEAD OF HUMAN RESOURCES*
>
> *Copy: Branch Manager, Forest Mall Branch*
> *Personal File*
> *DC File"*

**[27]** Placed against the **Ebiju** standard, while the letter clearly stipulated the Claimant's rights, it did not lay the allegations against or state the specific infractions the Claimant is alleged to have committed. The notice of disciplinary hearing would not meet the **Ebiju** standard.

**[28]** By way of explanation, Counsel for the Respondent contended that there was a reference to REX 2, a letter requesting the Claimant to give a written explanation. In Mr. Megere's view, this letter, dated the 1st of June 2018, listed four allegations against the Claimant. The letter read as follows:

> *"Friday, June 01, 2018*
>
> *Khadija Nabateregga*
> *Staff Number 30376*
> *Jinja Branch*
> *Dear Khadija,*
>
> *RE: REQUEST FOR EXPLANATION*
>
> *It has been reported that in the course of your duties as Teller at Jinja Branch;*

Industrial Court of Uganda

*Case 1: Money lending business at Jinja Branch.*

*i* *You failed to report suspicious accounts deposits that were done by several staff and other customers on the accounts of Noah Kimaite's account No. 2200296126 and Anyabeat Services Ltd and Anyango Beatrice account. Your failure to question the source of funds and or report consequently makes you a conduit to these financial dealings. The said transactions have since been confirmed to be sources of money lending business carried out within the banking premises.*

*Case 2: Field Money Fraud at Jinja Branch*

*ii* *Posted a fictitious transaction crediting a customer's account (Veer Ceramic account. 2290607967) with 500,000 well knowing you had not received cash from the Branch Manager, Albert Yiga.*

*Iii* *You violated the bank's policy on use of information technology and passwords by allowing a third party, Tusabaomu Mebra to use her T24 profile to post transactions in the core banking system.*

*Be advised that your actions above even constitute a gross negligence and breach the bank's policies and procedures.*

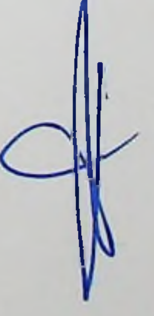
*Accordingly, you are hereby required to provide a written explanation as regards your involvement in this matter stating why disciplinary action should not be taken against you. Please direct your explanation in writing to the undersigned and ensure it reaches her by close of business Friday 8th June 2018.*

*Please sign the attached copy to acknowledge receipt of this letter.*

*Yours faithfully.,*

*SARAH KAJUMBA KWEHANGANA*
*HEAD OF HUMAN RESOURCES*

*cc: Branch Manager, Jinja*
*Personal File*
*DC File'*



Industrial Court of Uganda

[29] The above letter listed two cases and particularized three allegations. These were money lending, fictitious postings, and violation of information technology policies. Starting with an investigation was the correct approach to commencing a disciplinary process. The EA does not outline a standardised disciplinary procedure, but there is persuasive Kenyan jurisprudence in **Nicholus Muasya Kyula v Farmchem Limited**[4], where the Employment and Labour Relations Court of Kenya outlines the procedural steps in a disciplinary process. The case suggests that a show cause letter, which would be the request to explain in the matter before us, must spell out the intended grounds for termination to enable employees to effectively defend themselves and the essential steps in investigatory and disciplinary processes. We shall return to this case a little later in this award.

[30] In **Section 66(1) EA**, by asking the Claimant to provide a written explanation, she was notified of an investigation and three allegations against her. The question, therefore, would be whether the notice to show cause letter or to give a written explanation which tabled the three allegations dispensed with the need to repeat the alleged infractions in the invitation to a hearing. Put otherwise, is a request to provide a written explanation sufficient when the notice to attend a disciplinary hearing does not mention the charges?

[31] In this question, **Section 66(1)EA** requires a notification, as explained in paragraph 30 above. This notification is a tenet of a fair hearing. The gold standard of a fair hearing is in the **Ebiju** case. In our view, REXH 1 notified the Claimant in detail of allegations of money lending, fictitious postings, and password policy violations. The Claimant answered this invitation by detailing in CEX3 her responses to the allegations. In her answer, she made the following key points;

(i) On money lending, she stated that she was not aware of activities being carried out by Noah Kimaite's account operated by Oliva, Patrick, and Thomas were money lending.

(ii) In respect of accounts of 'Anybeat/anyngo' she said she had provided a written explanation to audit.

(iii) Regarding field money fraud, she stated that she was not aware of it being fraudulent and had been told to deposit the money by the Manager.

(iv) In respect of the sharing of the T24 profile, the Claimant wrote:

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> *" I please beg to be clear on this(Tusabaomu Mebra to use her T24 profile to post transactions in the core banking system) if you meant that I allowed tusabaomu Mebra to post transactions in my user, am I have never given her password to my T24 neither have I ever used her T24 profile to post transactions in her user. "*

In terms of this, she denied giving the T24 profile to Mebra Tusabaomu.

**[32]** REX3 (notice of disciplinary hearing) referred to REX1 (the request for explanation) and the Claimant's written explanation. Therefore, REX 3 could only have been concerning the offences for which the Claimant was asked to make a written explanation, which she did in REX2. The notice of disciplinary hearing is to be read together with the letter requesting an explanation. These were a series of documents and not one isolated document. In effect, by the date of her disciplinary hearing, the Claimant had had notice of the investigation, explaining it to the audit team and providing a written explanation to the Human Resource Department. Therefore, we do not agree with Mr. Mangeni that she had not been notified of what she was being disciplined for. On the contrary, she knew about the offences for which she was being investigated. We find that the Claimant was aware of the charges against her in REX 1, which she responded to in writing in CEX3. We accept Mr. Megere's argument that the notice to attend a disciplinary hearing (REX 2) specifically referenced the charges contained in REX1. To this extent, the Claimant was duly informed of the allegations against her.

**[33]** We are fortified in reaching this conclusion by the decision of the Industrial Court in **Dr. Barnabas Kizza v Makerere University Kampala**[5] where it was held that once an employee has responded to allegations against him or her before a disciplinary hearing, the employee is deemed to be aware of the allegations against him or her. Similarly, in Kwikiriza **Charles and Another v Umeme Ltd**[6] where the Claimant, in their testimonies in Court, admitted that they were aware of the charges against them and they responded to the allegations both in writing and orally, the assertion that the charges were not clear simply because they were not categorised under the disciplinary code before the hearing could not hold.

**[34]** The principle that emerges from these two decisions is that a request for a written explanation and a notification to attend a disciplinary hearing will be read together. The requirement under **Section 66EA** is to provide information about why the employer is contemplating dismissal for misconduct or poor performance. It is not to be expected that the Employer drafts charge sheets.

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[5] LDC 019 of 2015

[6] LDC No. 16 of 2017

While this would be desirable to clarify the offences alleged to have been committed, disciplinary proceedings are not as formal as a judicial process.[7] For emphasis, in **Nambafu Sam v Stanbic Bank**[8] L.J Linda L. Tumusiime Mugisha, while considering an argument on the inconsistency of charges, found that the Claimant, having responded to the allegations in writing, was accorded a fair hearing. In sum, notice by a letter requesting a written explanation is sufficient. The Claimant had been notified.

[35] The other complaint relates to insufficient time to prepare her defence. The notice to attend the disciplinary hearing was dated the 20th of June 2018, and the disciplinary hearing was slated for the 22nd day of June 2018 at 10:00 am. The Claimant denied receiving this letter, maintaining that she received a phone call in the late afternoon of the 20th of June 2018. This would be about 40 hours before the disciplinary hearing. The invitation letter required the Claimant to acknowledge receipt. No such evidence acknowledging receipt of the invitation letter was placed before this Court. Under cross-examination, Mr. Bruno Muhindi (RWI), who chaired the disciplinary meeting, could not confirm whether the claimant had received the notification. The minutes of the disciplinary hearing CEX 4 do not indicate that the Claimant protested being summoned at short notice or asked for more time. Was 40 hours sufficient?

[36] **Section 66(3)EA** requires an employer to give an employee reasonable time to prepare any representations concerning misconduct allegations. The section does not stipulate the number of days considered reasonable. In **Namyalo Dorothy vs Stanbic Bank**[9] the Court stated that two days were insufficient for the Claimant to prepare her defence given that the Respondent's human resource manual stipulated time. However, in **Akello Beatrice v Tropical Bank Ltd** [10] the Industrial Court, distinguishing Namyalo, found two days to be sufficient because the Claimant had prior opportunity to present a written explanation, had confirmed the charges and did not offer any protest for the short period. While the facts in Akello appear relatable to the present case regarding a pre-existing notification to provide particulars, we are inclined to agree with the Namalyo decision because of the Respondent's internal disciplinary standards. These procedures and standards titled 'Guidelines on Disciplinary Actions Employees are Liable on Committing the Offence Indicated' were admitted as REX11. On page 18[11] of the Respondent's Trial Bundle, the Respondent gives its managers guidance in disciplinary actions, and it is provided that an employee should not have less than three (3) days to respond to any allegations. In keeping with the Namyalo decision, the 40 hours of

[7] See DFCU Bank Ltd v Donna Kamuli C.A.C.A No. 121 of 2016 where the Court of Appeal observed that disciplinary. proceedings are not a "mini court. See also LDA 220 of 2015 Albert Nuwamanya v Post Bank Ltd.
[8] LDR 111 of 2018
[9] LDC 116 of 2014
[10] LDR 25 of 2018
[11] Two pages of the guidelines do not appear to have been provided, and pages 19 and 20 are not on record.

notification to attend the disciplinary hearing was insufficient. In our view, any breach of internal disciplinary procedure[12] is a procedural irregularity. To this extent, we think the Mweru decision, as cited by Counsel for the Claimant, is not applicable regarding the sufficiency of notice.

**[37]** The EA provides only irreducible minimums. The standards set out in the EA are the bare minimums below which no employer or employee should fall. Therefore, where an employer and employee agree to be bound by a standard higher than the EA's, a breach of the higher standard is a procedural misstep.

**[38]** Therefore, in terms of procedural fairness, we conclude that the omission to note the charges in the notice to attend the disciplinary hearing REX3 did not amount to a procedural irregularity because the allegations had been laid out in detail in the request for an explanation, which was REX1. However, the Respondent is liable for the procedural misstep in not giving the Claimant sufficient time to appear for the disciplinary hearing. The 40 hours was not enough time. In all, the Respondent was procedurally unfair for failure to accord the Respondent sufficient time.

**Substantive fairness**

**[39]** Substantive fairness is about the employer's proof of the reason or reasons for the dismissal. We observed in **Nicholas Mugisha v Equity Bank Ltd**[13] that the Court is concerned with the employer justifying an act of misconduct or disobedience by the employee and following **Uganda Breweries Ltd v Robert Kigula**[14] where the Court of Appeal of Uganda observes that substantive fairness requires the employer to show that the employee had repudiated the contract or any of its essential conditions to warrant summary dismissal. Gross and fundamental misconduct must be verified for summary dismissal. Therefore, we must interrogate the substance of the disciplinary process, the hearing. This is the essence of **Section 68EA**.

**[40]** **Section 68(2)EA** provides that a reason for dismissal shall be matters that the employer genuinely believed existed and caused the employer to dismiss the employee. In the matter before us, the Respondent gave us minutes of the hearing.

**[41]** The other significant aspect of dismissal is under **Section 69(3)EA**, which entitles the employer to summarily dismiss an employee if, by his or her conduct, the

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[12] In Charles Ochieng Opiyo v Lake Basin Development Authority Cause No. 147 of 2016[2021], eKLR an employer's failure to comply with its
own internal disciplinary process amounted to an unfair termination of employment.

[13] LDR 281 of 2021

[14] C.A.C.A No. No. 0183 OF 2016) [2020] UGCA 88 (30 July 2020);

employee indicates that he or she has fundamentally broken the employment contract.

[42] From these provisions, we must interrogate the reason for dismissal. In REX 5, the reason for the dismissal is stated to be a violation of the bank's policy on the use of information technology and passwords by allowing a third party, Tusabaomu Mebra, to use the Claimant's T24 profile to post transactions in the core banking system.

[43] Mr. Mangeni launched a scathing attack on the reason for termination. Counsel submitted that the Respondent did not substantiate suspicious account deposits and failed to produce bank statements and system log information. It was also submitted that the critical evidence, which consisted of the investigation report and CCTV footage, was not produced. They were not served on the Claimant nor produced in Court, and the video analyst referred to by RW1 was fictitious. Citing the Mweru and Kimbugwe cases, Mr. Mangeni asked us to find that the reason for termination was not justifiable.

[44] Mr. Megere preferred the view that upon being shown the video of a third party logging onto her T24 profile, the Claimant admitted to breaching the Respondent's policies. Counsel also suggested that the Claimant repeated the admission in her appeal letter. Citing Namyalo, Mr. Megere argued that dismissal was lawful.

[45] We will deal first with the failure to provide the video footage and investigation report. The evidence does not support the proposition that the claimant was denied footage of the transaction, the subject matter of her disciplinary proceedings and dismissal. As will be noted from our lengthy evaluation of the Claimant's appeal later in this award, the Claimant did review the footage at the oral disciplinary hearing and anchored her appeal on the footage. Therefore, we do not accept the proposition that the video footage evidence was nonexistent or that the video analyst was fictitious because, in her own words, the Claimant reviewed the video. Indeed, in **Ogwal Jaspher v Kampala Pharmaceutical** where the Claimant asked for video footage, which was not shown to him, we found the Respondent to have been substantively unfair because the video footage was critical evidence against the employee. He had asked for it, but it was not shared. In the present case, the Claimant was clearly shown the video, which was the basis of her appeal. As a result, on this point the Respondent was substantively fair.

[46] The other complaint by the Claimant is that the investigation report was not shared with the Claimant. It has been the position of this Court that where there is an investigation report forming the basis of allegations against the employee,

it should be shared with the employee. This was the position in **Airtel Uganda Ltd v Peter Katongole**[15] **Abdallah Kimbugwe v Kiboko Enterprises Ltd** [16] and **Kabagambe Rogers v Postbank Uganda Ltd**[17]. The common feature in each of these cases is that the investigation report contained the allegations leading up to the dismissal of the employees. These were audit and investigation reports; we found the dismissal substantively unfair. In the present case, of the three allegations against her, it is the violation of the password policy which was the reason for her dismissal and not the fictitious transaction or money lending. Mr. Mangeni made an appreciable argument about full disclosure based on the Mweru decision. However, in the employment sphere, it is the position that the failure to avail an investigation report by itself cannot be fatal to the case of the employer if the facts revealed in the report implicating the employee were already put to the employee in the notification of the hearing. Availing the report is only mandatory if the report is the basis of the allegations against the employee and he or she is not aware of the allegations at all. Where the employees have been made aware of the infractions levelled against them, failure to avail the investigation report would not render the disciplinary process unfair. **(See Kwikiriza Charles v Beshumbusa Fred LDC 16 of 2017, Dr. Barnabas Kiiza Amooti Makerere University Kampala LDC 019 of 2015 and Ekemu Jimmy v Stanbic Bank Uganda LDC 308 of 2014).**

**[47]** The employer is not adjudged at the standard of an administrative body or a mini-court. In **Patrick Abuya v Institute of Certified Public Accountants of Kenya (ICPAK) and Another**[18] Radido J observes that investigation within the employment relationship is to gather the facts to establish whether there are grounds for disciplinary action. It is not mandatory for the employee to be involved in the investigations, nor should the investigations have the strictures of police investigations. Where the employer has reasonable and sufficient facts to commence a disciplinary process, the Claimant will not be prejudiced. We find the dicta of Abuya quite persuasive. In the matter before us, the Respondent gathered some facts, including information on the password policy violation, which was sufficient to commence the disciplinary proceedings against the Claimant. We do not think that she was prejudiced.

**[48]** That brings us to admission matters because, as correctly submitted by Mr. Megere, an admission dispenses with the need for proof of procedural and substantive fairness. In the application of the law of admission to matters at the Industrial Court, this Court has held in Kabojja **International School v Godfrey Oyesigire** and **Bureau Veritas Uganda Ltd v Dalvin Kamugisha,**[19] where the Respondents (employees) made written admissions of wrongdoing in response

[15] LDA 013 of 2022
[16] LDA 013 of 2021
[17] LDR 107 of 2020
[18] Cause No. 126 of 2014[2015]eKLR
[19] LDA 25 of 2017

to allegations of misconduct, that the admissions vitiated the need for an oral hearing. The dismissals, in both these cases of admissions, were held to be justified.

**[49]** What is the law on admissions? Under Section 16 of the Evidence Act Cap.6, an admission is an oral or documentary statement that suggests an inference as to any fact in issue or relevant fact and which is made by any person. The law on admissions states that they dispense with the need for proof of a fact and mean that a party has conceded to the truth of an alleged fact.[20] The admission must be unambiguous[21].

**[50]** In the matter before us, the sequence of events started with the request for an explanation, to which the Claimant replied. Regarding password policy violations and T24 Profile sharing, the Claimant denied this, and we reproduced her denial in paragraph [31](iv) above. In that wording, there was no unambiguous admission of complicity or wrongdoing.

**[51]** The next event of significance would be during the oral disciplinary hearing. The hearing was held on the 22nd of June 2018 and the minutes bore the Claimant's signature. She did not disown the minutes entered on the record as REX4. According to these minutes, in the case of Field Money fraud at the Jinja branch, the Claimant denied sharing her password with anyone. Video footage showed her logging into T24 and letting Mebra post transactions. When asked to respond, she is reported to have looked shocked and admitted she allowed Mebra to transact with her login details. It is reported that she may have been overwhelmed with transactions.

**[52]** Following this admission, the Respondent dismissed the Claimant. Mr. Megere submits that in exercising her right of appeal, the Claimant admitted the offence once again. The Respondent submitted that the Claimant accepted the offence of violating the bank's password policy. Mr. Mangeni protested this admission, but we do not find these protests sustainable. The Claimant, in her evidence, was shifting between having been shown unclear video footage and writing as she did in her appeal letter that she had seen the footage, scrutinised the Tusabaomu transaction, and then remembered the facts. The disciplinary hearing report and dismissal letter were the basis of the Claimant's appeal. Her appeal letter was admitted in evidence as REX6, and it read as follows:

[20] See Matovu Luke & ORS vs. Attorney General, HC Misc. Appl. No. 143 of 2003.

[21] See Mwebeiha Amatos vs A.G [2015] UGHCLD 49 Per Bashaija J. *"It would appear clearly that where the admission of facts is clear and unambiguous, the court ceases to have the discretion whether to enter a judgment or not. It must do so"*

*"*

*Nabaterega Khadijah*
*Tel*
*0702789596/0774205175*

*THE CHAIRMAN DISCIPLINARY APPEALS COMMITTEE*
*KCB BANK UGANDA LTD*
*P.O.BOX 7399, KAMPALA*

*RE: APPEAL AGAINST DISMISSAL*

*In line with disciplinary procedure, please consider this correspondence to constitute a formal appeal against my dismissal. I was dismissed effective from 13th July 2018 on grounds of misconduct. I would like to appeal against my dismissal. I was showed video as evidence of I having shared my password contrary to the bank policy Information technology and password use.*

*On that fateful day I remember I worked when I was sick and I requested for a day off but my supervisor asked me to stay around all in the name of not compromising service because the second teller mebra on that day was on leave and she wouldn't be called back because she had exams. Work was overwhelming and much as I was sick, I had my first cup of tea at 5pm tending to 6pm as it is clearly shown in the footage.*

*The video footage showed I logged onto my computer and my colleague Mebra Tusabomu came and posted a transaction in my presence and our supervisor Manager Operations (Not transactions as highlighted in my dismissal letter) and actually this transaction is not highlighted to me during the disciplinary hearing. After critically thinking and trying to remember on that day Mebra asked me that she had a customer deposit to make and since it was end of day, and I was preparing to balance but also having late tea as highlighted earlier, she requested me to log on and in my presence and our supervisor post this transaction and give the customer the deposit slip receipt.*

*Our supervisor allowed and this transaction was completed and Mebra left the till area. I later proceeded to end the day's work. I couldn't remember this whole at Disciplinary because it was my first experience and I was timid. I have diligently served this organization for seven years and have never been involved in any misconduct.*

*I look forward to a positive response from this appeal which averts this decision and I go back to work.*

*Yours Sincere*

*Khadija Nabateregga."*

**[53]** The furnishing of this letter must be placed in its context and perspective.

**[54]** The appeal letter's difficulty for the Claimant is that it differs manifestly from her original written explanation. In her original explanation, she categorically denied having permitted Mebra Tusabaomu to use her profile. She also did not refer to the presence of her supervisor. In the disciplinary hearing, she was shown a video. In her pleadings and submissions, she suggests that the video was unclear. In the appeal letter, in terms of admissions, she makes it abundantly, unambiguously, and unequivocally clear that she did allow Mebra Tusabaomu to use her login credentials to post a transaction under the ostensibly watchful eye of her supervisor, who seems to have permitted her to share her T24 profile. The variance between her written explanation and the appeal letter does not make for a believable account. While we note that while human memory may not always be inherently reliable, it is not possible that before the disciplinary hearing, the Claimant misremembered her version of the facts at the hearing on being shown evidence by way of video footage admitted to permitting Mebra Tusabaomu to use her profile and then upon her dismissal, remembered in finer detail that she did allow Mebra Tusabaomu to use her profile but with the express permission of her supervisor. How would this Court accept the view that she did not admit to the misuse of the password profile? The evidence before us points to the admission at the disciplinary hearing and expressly in the appeal letter.

**[55]** We observed Ms. Nabaterega's demeanour while in Court; she appeared to fully comprehend both the proceedings before the Court and recounted, vividly, the events leading up to her disciplinary proceedings and what transpired at her disciplinary proceedings. She did not baulk under cross-examination. In this regard, we could not agree with Mr. Mangeni that the Claimant did not understand REX3. She understood the charges and formulated a lucid and well-thought-out appeal (REX 6) where she now remembered the facts, clearly.

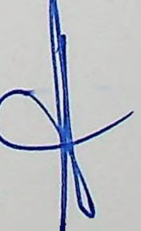
**[56]** In assessing whether the Respondent was substantively fair and therefore justified in imposing the sanction of dismissal, this Court must stand back from the employer's decision and assess whether the decision to dismiss was reasonable based on the information available to the employer when the

decision was taken. In the matter before us, it is quite clear that the Respondent had carried out an initial audit and received the Claimant's explanation. Upon considering the explanation, the Claimant was invited to a disciplinary hearing and shown a video of herself sharing a T24 profile with Mebra Tusabaomu. In our view, this information informed the decision to dismiss the Claimant. The Claimant's appeal only cemented the conclusion that the decision to dismiss was well-founded. Mr. Mangeni took the view that there were no witnesses to pin the Claimant, the suspicious accounts were not shown, and neither was the report completed. The procedure and evidentiary balance in a disciplinary hearing is not a mini court. It is not a civil or criminal trial. The standard of proof is on some reasonable grounds. [22] This Court assesses the reasonableness of the employer's decision.

[57] Finally, employees in the financial sector are held to a very high degree of accountability and ethical responsibility. In **Barclays Bank of Uganda v Godfrey Mubiru**[23] the Supreme Court of Uganda observed that managers in the banking business were required to be particularly careful and exercise a duty of care more diligently than managers in other businesses because they managed depositors' money. His Lordship opined that any careless act or omission could cause great losses to a bank and its customers. The dictum in the Mubiru case has been cited in various decisions of the Industrial Court, including **Ekemu Jimmy v Stanbic Bank Ltd**[24] and later in **Akello Beatrice v Tropical Bank Ltd**[25].

[58] Technology has evolved since Barclays Bank of Uganda v Mubiru was delivered on the 24th day of February 1999. In 1999, a bank manager likely carried many keys before the millennium's turn. Today, a bank manager is much more light-footed than in 1999, holding onto a logical key or a password stored in memory for access control. The financial industry relies less on manual processes and paper-based documentation. Modern banks depend on digital technologies and integrated digital banking systems, services, and protocols to manage operations and serve customers. Access to these systems is restricted to authorised and authenticated users. Employees should never need or be coerced, compelled, or encouraged to share their passwords with anyone.

[59] Passwords that serve as a defence against financial fraud need to be confidential to guard bank resources effectively. Password policies are put in place to protect organisations against access compromise. This is what password policies are about to protect advanced technological platforms from threats of cybercrime that potentially damage financial services. Any password misuse poses a real and present danger to financial systems. Employees of



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[22] Ibid
[23] Per Kanyeihamba J.S.C in S.C.C.A No. 1 of 1998
[24] LDC No. 308 of 2014
[25] LDR No. 25 of 2019

financial institutions must adhere to information systems protocols, policies, and procedures. Any deviation from these policies, such as in the present case, is a serious systemic threat inviting fraud and compromising the integrity of the Bank's system. The prohibition of sharing passwords is a basic and standard internal control worldwide. In our view, this is the context of the Claimant's password policy breach.

**[60]** Therefore, after objectively considering the facts before us, we have no hesitation in concluding that the Respondent had justifiable and reasonable cause to consider dismissing the Claimant. In our judgment, the answer to whether the Claimant's dismissal was substantively fair must be and is in the affirmative.

**Conclusion**

**[61]** We have previously ruled that procedural and substantive fairness are twin tenets **(See Mugisa v Equity Bank Uganda Ltd Supra).** This means procedural unfairness can be found in conjunction with substantive fairness and vice versa. However, the sum effect is that the dismissal will be unlawful either for procedural unfairness, substantive unfairness, or both. In the instant case, substantive fairness is infected been procedural unfairness. We came to this conclusion in **Kabagame Rogers v Postbank Ltd (supra),** where we held that procedural requirements are strict. They inform the whole notion of fairness. For a disciplinary process to be wholly lawful, there must be procedural and substantive fairness. The decision of the Industrial Court of Kenya at Nairobi supports this conclusion. In **Walter Ogal Anuro v Teachers Service Commission**[26] the Court observed that for termination to pass the fairness test, it ought to be shown that there was not only substantive justification for the termination but also procedural fairness. In the present case, the procedural misstep was in not giving the Claimant insufficient time to prepare for the disciplinary hearing. We therefore find on the whole that the dismissal was unlawful.

**Issue II. What remedies are available to the parties?**

**[62]** Having found that the Claimant's dismissal was substantially fair and justifiable, the Respondent failed to meet the procedural threshold for which the Claimant would be entitled to some remedies.

**[63]** We declare that the Claimant was unlawfully dismissed.

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[26] Cause No. 955 of 2011

**[64]** The failure to give a fair hearing has a specific remedy of statutory compensation. It is compensation by operation of law. Under Section 66(4)EA, it is provided;

> *"Irrespective of whether any dismissal which is a summary dismissal is justified, or whether the dismissal of the employee is fair, an employer who fails to comply with this section is liable to pay the employee a sum equivalent of four weeks net' pay."*

In the circumstances that the Respondent gave the Claimant only 40 hours to attend the disciplinary hearing, and is therefore in breach of Section 66(3) EA, which requires the employer to give the employee reasonable time. According to her contract of employment, which was admitted CEX1, the Respondent was earning UGX 900,000/= per month. The Respondent is ordered to pay the Claimant the sum of UGX 900,000/=, which is four weeks of net pay as basic compensation.

**[65]** The Claimant sought general damages for UGX 100,000,000 on the basis that she had worked for the Respondent for seven years, was unjustifiably dismissed, her reputation was destroyed, and she received a job from DTB Bank Ltd, but it was rescinded. We could not establish any nexus between the DTB bank job offer's recission and this case's circumstances. There was no direct evidence. This Court, in **Aporo George Goldie v Mercycorps Uganda** [27] declined to grant damages for negligent or malicious reference to a prospective employer without proof of such malice.

**[66]** Authorities of decided cases suggest that the law will presume general damages to be the direct natural consequence of the action complained of[28]. The Court of Appeal [29] held that general damages are based on the common law principle of *restituto in integrum*. Appropriate general damages should be assessed on the prospects of the employee getting alternative employment or employability, how the services were terminated, and the inconvenience and uncertainty of future employment prospects. In the case of **Donna Kamuli v DFCU** [30] the Industrial Court considered the earnings of the Claimant, age, position of responsibility, and contract duration to determine the damages awardable. The Claimant was earning UGX 900,000/= per month and worked for the Respondent for seven years. She was not known to have misconducted herself during that period. Considering all circumstances and considering that the Claimant is now about 38 years old and there is to be a diminution of damages on account of the substantive justification for dismissal. We have

[27] LDR 014 of 2021(Unreported)
[28] Stroms v Hutchinson [1950]A.C 515
[29] Stanbic Bank (U) Ltd v Constant Okou Court of Appeal Civil Appeal No. 60 of 2020
[30] LDC No. 002 of 2015

found that the Respondent was justified in dismissing the claimant but had a procedural misstep. That is the effect of a diminution in damages.[31] We award the Claimant UGX 10,800,000/= in general damages.

**[67]** Mr. Mageni was contending for punitive and exemplary damages for UGX 50,000,000/=. The dicta of decided cases is that exemplary or punitive damages are an exception to the rule that damages are to compensate the injured person. These are awardable to punish, deter, and express outrage of court at the defendant's egregious, highhanded, malicious, vindictive, oppressive, and malicious conduct. They are also awardable for the improper interference by public officials with the rights of ordinary subjects. The Court of Appeal in **DFCU Bank v Donna Kamuli**[32] held that punitive damages are awardable in employment disputes with restraint as punishment should be confined to criminal law and not the law of tort or contract. We do not consider that the procedural misstep in the case before us warrants any expression of outrage by this Court, and we decline to make any such award.

**Costs of the Claim**

**[68]** Under Section 8(2a)(d) of the Labour Disputes(Arbitration and Settlement) Amendment Act 2020, this Court may make orders as to costs as it deems fit. We have held that in employment disputes, the grant of costs to the successful party is an exception on account of the nature of the employment relationship except where it is established that the unsuccessful party has filed a frivolous action or is culpable of some form of misconduct.[33] We do not think the Respondent's defence was frivolous, but as the matter partially succeeded, the Claimant shall be entitled to half her taxed costs.

**[69]** Given the foregoing findings and conclusions, we make the following orders:

(i) We declare that the Claimant was unlawfully dismissed from the Respondent's service.

(ii) The Respondent is ordered to pay the Claimant the following sums;

(a) UGX 900,000/= as basic compensation.

(b) UGX 10,800,000/= as general damages.

(iii) The Claimant is entitled to half of her taxed costs.

**[70]** Before taking leave of this matter, we indicated that we would return to the Muasya case(supra).In that case, Ongaya J. outlined the disciplinary steps to be taken, starting with a preliminary report to gather information on an alleged

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[31] See Kabagambe(Supra)
[32] C.A.C.A No. 121 of 2016
[33] Joseph Kalule Vs GIZ LDR 109/2020(Unreported)

misconduct, then issuing a show cause letter with precise particulars of the alleged misconduct, giving the employee time to respond. The employee is called for a hearing, and all rights are accorded. A hearing report will be drawn after that. A decision is then communicated. This approach is the essence of the Disciplinary Code in Schedule 1 of the Employment Act, 2006. The Code serves as a procedural guideline or blueprint for procedural fairness. We think the human resource manuals that outline procedural processes and steps in considerable detail avoid the pitfalls of procedural missteps and procedural unfairness. Such approaches would promote transparent and fair labour practices.

**Signed in Chambers at Kampala this 15th day of March 2024**

Anthony Wabwire Musana,
**Judge, Industrial Court**

**THE PANELISTS AGREE:**

1. Hon. Adrine Namara, ____________________
2. Hon. Susan Nabirye & ____________________
3. Hon. Michael Matovu. ____________________

**15th March 2024**
**9.25 a.m.**

**Appearances**

1. **For the Claimant:** Mr. Joseph Bwire
   Claimant in Court
2. **For the Respondent:** Ms. Patricia Alowo
   Respondent absent

Court Clerk: **Mr. Samuel Mukiza.**

**Mr. Bwire** : Matter is for the award, and we are ready to receive it.

**Ms. Alowo** : That is the position.

**Court** : Award delivered in open Court.

Anthony Wabwire Musana,
**Judge, Industrial Court**

Industrial Court of Uganda