

AWARD

Introduction

- [1] The Respondent, a financial institution governed by the Financial Institutions Act Cap. 57, employed the Claimant from 23rd September 2015 as Head of Human Resources until the 30th of January 2018, when it parted ways with her. The Respondent alleged that the Claimant had been complicit in losing a missing battery and a questionable proforma invoice. She was invited to a disciplinary hearing, and the disciplinary committee recommended her suspension. Subsequently, the Claimant was served with a termination letter which stipulated negligence and wilful damage to property, failure to perform assigned tasks, delay and failure to follow approved procedures, dishonesty, lack of integrity, and failure to follow the Bank code of conduct as the grounds for termination. She appealed against her termination, and the Respondent's appellate committee confirmed her termination. Aggrieved, she complained to the Directorate of Gender, Community Services, and Production at the Kampala Capital City Authority. On the 27th day of November 2020, Ms. Irene Nabbumba, labour Officer, referred the matter to this Court, the parties having failed to reach a settlement.

The Claim

- [2] By a memorandum of claim filed in Court on the 2nd of March 2020, the Claimant sought a declaration that she was unlawfully dismissed because the disciplinary committee before which she attended recommended her suspension and asked her to refund the battery, but she was terminated instead. She asked for UGX 34,500,000/= as payment in lieu of notice, compensation of UGX 46,000,000/=, Special Damages of UGX 82,560,000/=, general damages of UGX 700,000,000/= aggravated and punitive damages, interest at 25% and costs of the claim.

The Response

- [3] The Respondent opposed the claim, contending that the Claimant's action was fatally defective and brought against a wrong party.
- [4] In its substantive defence, the Respondent contended that the termination was lawful and in accordance with its Staff Handbook (the Handbook). The Claimant was notified of a disciplinary hearing on the 27th of November 2017 to answer the charges above, and a hearing was held on the 11th of December 2017. The committee entered a verdict and suspended for 15 days plus a refund of the missing battery but did not formally communicate this decision to the Claimant. It was contended that having not communicated the decision, the Respondent was entitled to terminate the claimant for gross misconduct. It was also contended that the Claimant was advised to direct her appeal to the Respondent's Executive Manager, but she could not do

so. She was, therefore, not entitled to any remedies. The Respondent contested the jurisdiction of this Court and asked that the claim be dismissed.

The Issues

- [5] The issues were agreed upon in Court on the 10th of February, 2023. The issues are:
- (i) *Whether the Claimant's termination was unlawful/unfair?*
 - (ii) *What remedies are available to the parties?*

The proceedings and evidence of the parties

- [6] On the 10th of February 2023, we found the preliminary objections without merit.
- [7] The parties called one witness each.

The Claimant's evidence

- [8] The Claimant testified that she had been an outstanding performer and was surprised to be served with a Notification of Disciplinary hearing letter requiring her to answer to charges and allegations of "missing battery for Jinja Road generator/ questionable proforma invoice from Maseka's Consult Ltd.' On the 11th of December 2017, a hearing took place. She submitted her response. Following the hearing, the disciplinary committee(DC) recommended her on suspension for 15 calendar days without pay effective January 2018 and refund the generator to the Landlord. She told us the DC did not make any other recommendation.
- [9] To her surprise, on the 30th of January 2018, she was terminated on the grounds of negligence, wilfully causing damage to company property, which caused loss to the bank, failure to meet assigned tasks/responsibilities, delay and failure to follow the proper approval procedures on the medical insurance approval and dishonesty, lack of integrity and failure to follow the bank code of conduct. She testified that these grounds were not part of the disciplinary hearing.
- [10] She challenged her unfair termination by writing a letter to the Respondent's Head of Human Resources notifying them of her decision to appeal the dismissal. On the 8th of February 2018, the Respondent advised her that her appeal should be directed to the Bank's Executive Management. She said the Respondent received her appeal on 12th March 2018 and did not receive any response.

- [11] Under cross-examination, the Claimant confirmed that she had been served with notice of the disciplinary hearing and had provided her responses in writing. She also confirmed having authorized the purchase of a new battery because the Respondent's office was experiencing power blackouts. She said that the missing battery was not negligence on her part. She confirmed the notice of termination, acknowledged receipt of payment in lieu of notice, and was advised on the appeals procedure.
- [12] In reexamination, she told us that the disciplinary hearing was held on 11th December 2017, and the notice was issued on 8th November 2017. She told us that in the minutes CEX6, negligence was not mentioned. She confirmed the DC recommendations on refund and suspension and reiterated the grounds for termination as listed in the termination letter.

Respondent's evidence

- [13] Mr. Nicholas Namanya testified that the Claimant, as the then Head of the Product unit, was in charge and directly responsible for the purchase and safety of Bank property, which was a duty she neglected when she approved payment of an invoice for a generator battery that went missing, causing financial loss to the Respondent. He confirmed service of the notification of the disciplinary hearing letter and the hearing held on 11th December 2017 at the request of the Claimant, as she was allegedly bedridden and unable to attend on the notified day. He told us that at the hearing, the Claimant was afforded an opportunity to address the DC and made a written submission in reply to the charges in the Notice. He told us that the Claimant was further questioned to clarify and explained her statements at the DH. He said gross misconduct was proved by the Claimant's concession that she oversaw the procurement of a missing battery, which could not be traced. He also said that the Claimant attested to the accuracy of the DH's minutes.
- [14] He confirmed the recommendations of the DC because this made it the third occurrence of an act of negligence/ failure to perform an assigned task/ responsibility for which the risk of loss to the Bank has crystallized within a six-month appraisal cycle. He confirmed the sanctions imposed by the DC. He also told us that no formal verdict was communicated to the Applicant that she had been suspended, nor did she serve any suspension.
- [15] He said the Respondent was entitled to issue a termination decision for gross misconduct as per the HR Policy. Following the Notice of Termination, the Claimant was informed of her right to appeal against her termination. He confirmed that the Respondent received a letter from the Claimant's Lawyers, notifying the Respondent of the Claimant's intention to appeal the DC's decision and seeking guidance on the appeal process. He also confirmed that the Respondent advised that the notice of appeal should be directed to the bank's executive management.

Despite being advised on the appeal procedure, He said the Claimant chose not to pursue the appeal.

- [16] Under cross-examination, he told us that by the time he joined the Respondent, the Claimant had already been terminated. He confirmed that the DH was about two issues: the battery and the questionable proforma invoice. He could not confirm if there had been an investigation. On DC composition, he explained that at the Claimant's level, the DC should have consisted of the Managing Director, Executive Director, Chief Financial Officer, Company Secretary, Heads of Human Resources, Audit, and Internal Control. He said the DH was attended by the Managing Director, Executive Director, Head of Risk, Head of Legal, and the Acting Head of Human Resources. He told us that the Claimant had damaged no property and that the DH had not discussed any negligence, medical insurance, failure to perform dishonesty, or lack of integrity.
- [17] He could not explain why the DH recommendation sanctions of suspension and withholding salary were not implemented or why the Respondent chose to terminate the Claimant instead. He confirmed that CEX9(*the termination letter*) did not list the recommended sanctions. He told us that the grounds in Clause 15.3 of the Respondent's HR Disciplinary Process and Sanctions Policy(REX7) were not in CEX9. He also told us that the proforma invoice issue was part of the DH but not part of the termination letter. He confirmed that the Respondent's Managing Director received the letter from the Respondent's Counsel dated the 9th March 2018(CEX12).
- [18] In re-examination, he clarified that the Claimant did not take any other steps to pursue her appeal. He also told us that under the HRM, there was no requirement for all members of the DC to attend a DH. He said that the reason for termination was within the Respondent's sanctions policy. While the Claimant had been put on suspicion at the beginning of January 2018, she was terminated on the 31st of January 2018. He could not confirm whether the Claimant was attending work during suspension.
- [19] At the close of the Respondent's case, we invited the parties to address us by way of written submissions.

Analysis and Decision of the Court.

Issue 1. *Whether the Claimant's termination was unlawful or unfair?*

Submissions of the Claimant

- [20] Mr. Bazira referred to *Mugisa v Equity Bank Uganda Limited*¹ for the twin tests in determining the lawfulness of a termination, i.e., whether the employer adhered to or followed the

¹ [2023] UGIC 62

termination procedure and whether the termination was substantially fair. Counsel argued that the termination was unlawful because the Respondent did not follow the procedure, and the grounds were not substantial or proven.

- [21] For the definition of procedural fairness, we were referred to *Wabwire v Experta General Supplies Limited*² and *Ebiju James versus Umeme Limited*³ for what constitutes the right to be heard.
- [22] Relying on *Kabagambe v Post Bank Uganda Limited*⁴ and *Kamegero v Marie Stopes Uganda Limited*⁵, it was submitted that the Claimant was terminated on allegations for which she was never given a fair hearing. The allegations in CEX9 were never put before the Claimant. No disciplinary hearing was conducted to enable the Claimant to answer these charges or allegations. It was contended that CEX9 was not a true reflection of the outcome or recommendation of the Disciplinary Committee that heard the allegations on 11th December 2017.
- [23] Further, because the DC sanctions were not implemented, it was submitted that this termination process was procedurally unfair. The Claimant was never informed why the Respondent refused to implement the recommendations of the DC, which elected to terminate her services instead of suspending her. It was suggested that it was unlawful to terminate the Claimant contrary to what is provided in the Human Resource Manual. Counsel argued that the right sanction was suspension, not termination. Counsel submitted that CEX5 did not state the right to cross-examine witnesses or bring any witnesses as per *Kabagambe* and did not canvass the right to respond, be accompanied, cross-examine, and call witnesses. Counsel submitted that a procedural defect invalidated the disciplinary proceedings, eroded the employee's right to a fair hearing, and resulted in substantive unfairness.
- [24] On substantive fairness, it was submitted that mere attendance of a disciplinary hearing by an employee did not imply that the employer exercised substantive fairness. Counsel argued that the reasons for termination were not proven and remained unsubstantiated. It was contended that the Respondent's HR Disciplinary Process and Sanctions Policy provided that all DC were to be preceded by an investigation by the Head of Internal Control or inspection division to determine the involvement of the staff. Regarding gross misconduct, Clause 17.3.2 of REX7 provides that a full and proper investigation should take place before issuing a dismissal or warning. As the Respondent did not do this, no investigations were carried out, no evidence was presented, and the DC was improperly constituted. On the authority of *Kamegero*, it was submitted that the Claimant's termination fell short of the threshold for substantive fairness.

² [2023] UGIC 75

³ H.C.S No. 133 of 2012

⁴ [2023] UGIC 50

⁵ [2023] UGIC 52

Mr. Bazira concluded that since there was no fair hearing, the Claimant was not terminated but was summarily dismissed.

Submissions of the Respondent

- [25] Citing Sections 58 and 65 EA and the cases of *Barclays Bank of Uganda v Godfrey Mubiru*⁶ *Stanbic Bank Ltd v Kiyemba Mutale*⁷ and *Musinguzi*, it was submitted that the Claimant was served with a notice of termination on 30th January 2018 with payment in lieu of notice. Therefore, her termination complied with the Employment Act Cap.226(EA)
- [26] On procedural fairness, Mr. Wasswa correctly cited Section 66(now 65) EA, *Ebiju*, and *Lusiba v National Water and Sewerage Corporation*⁸ for the prerequisites of a fair hearing. It was submitted that the Claimant was subjected to all the conditions in accordance with the disciplinary code and procedures of the Staff Handbook, namely, she was served with a notice, given adequate time to prepare her defence, given an opportunity to be heard before an impartial disciplinary committee together with a representative of her choice and the right to an appeal in the event she was dissatisfied with the DC's decision was explained to her. That she confirmed these during cross-examination. It was argued that the infraction of a missing battery in the Landlord's generator and questionable proforma invoice constituted acts of negligence and failure to perform an assigned task, resulting in loss to the Respondent. That, therefore, there were justifiable reasons for which the Claimant was terminated. We were asked to find that the Claimant was accorded a fair hearing and that the Respondent complied with procedural fairness.
- [27] Regarding the investigation report, it was submitted that the Respondent conducted an investigation, which was admitted by the Claimant herself in DC minutes. The non-availability of the investigation report did not prejudice the Claimant since she understood the charges and presented her defence to the DC during the hearing. We were referred to *Namyalo v Stanbic Bank*⁹. It was argued that the Claimant's termination was fair, lawful, and in compliance with the EA and the Staff Handbook.

Rejoinder

- [28] Mr. Bazira agreed with the dicta in *Kiyemba Mutale*, *Musinguzi*, and *Mubiru*, arguing that termination must follow procedure. He contended that under Section 68(1)(now 67(1))EA, an employer is required to prove the reason for dismissal. It was submitted that an employer could not unreasonably terminate an employee's contract because there is a provision of payment in

⁶ [1999] UGSC 22

⁷ [2011] UGSC 18

⁸ [2020] UGIC 7

⁹ [2018] UGIC 36

lieu of notice, as was the case under common law. Failure to prove the reason means that the dismissal is unfair. We were referred to *Okello v Rift Valley Railways (U) Ltd*¹⁰ and *Uganda Development Bank v Mufumba*¹¹ for the proposition that whether the employer chooses to “terminate” or “dismiss” an employee, such employee is entitled to reasons for the dismissal or termination. We were also pointed to *Bwayo v DFCU Bank Ltd*.¹² It was submitted that the Claimant’s termination fell short of the threshold of procedural and substantive fairness.

- [29] Concerning the contention that the final notice of termination contained grounds of negligence, which arose from the initial grounds of suspension and hearing, Counsel leaned heavily on *Bwayo*. He argued that in *Bwayo*, where the High Court found a termination unlawful, the reasons for termination were at variance with the matters before a disciplinary hearing.
- [30] On the non-availability of the investigation report, we were referred to *Airtel Uganda Limited v Katongole*¹³ for the proposition that the essence of the Investigations report was to establish, among others, whether the battery went missing, was stolen, and, if so, which person was responsible. Counsel argued that if the Respondent had conducted investigations, probably it could have been found that the claimant was not responsible for the missing battery, begging the motive for the non-disclosure of the investigation report. We were also referred to the Kenyan case of *Misheck v Kenya Airways Limited*¹⁴ where the Court found a failure to give a copy of the investigation report was a violation of the right to a fair hearing. It was argued that the procedure employed by the Respondent did not meet the threshold of procedural fairness and substantive justice, as elucidated in the *Ebiju* test.

Determination

The Decision of the Court on Issue 1

- [31] The jurisprudence in our jurisdiction in matters of severance of the employment relationship is fairly well settled now. In a recent decision by this Court¹⁵, we held that termination must follow procedure. Otherwise, it is unlawful.
- [32] In the present case, the issue framed was one of the lawfulness of termination. Employment contracts end in one of two ways: termination or dismissal.

¹⁰ [2014] UGHCCD 52

¹¹ [2020] UGCA 205

¹² [2015] UGHCCD 12

¹³ [2023] UGIC 17

¹⁴ [2024] KEELRC 1291 (KLR) The Court referred to *Postal Corporation of Kenya versus Andrew K. Tanui* (2019) eKLR

¹⁵ See *Akewa Milly v One by One Loving Ministries* LDR 212 of 2017 Industrial Court of Uganda(30th September 2024)

- [33] Under Section 64EA, termination typically occurs where the employer ends the employment with notice, the fixed term or task contract ends, the employee reaches retirement age, or the employee is constructively dismissed¹⁶. This is what termination at the employer's initiative means for justifiable reasons other than misconduct.¹⁷
- [34] Where the employment relationship ends on grounds of misconduct or poor performance, that will be termed a dismissal. Under Section 2EA, a dismissal means the discharge of an employee at the employer's initiative for verifiable misconduct.
- [35] The distinction, therefore, is termination is for justifiable reasons other than misconduct, while dismissal is for verifiable misconduct or poor performance.
- [36] In the case before us, it was common cause that the employment contract was ended on the 30th of January 2018 on grounds of negligence and wilfully causing damage to company property, which caused loss to the bank, failure to meet assigned task/responsibilities, delay and failure to follow the proper approval procedures on the medical insurance approval and dishonesty, lack of integrity and failure to follow the bank code of conduct. The uncontested termination letter was admitted in evidence as CEX9. By its content, these were offences relating to the conduct and performance of the Claimant. The evidence of the Claimant and the Respondent's witness was consistent with a severance of the employment relationship on account of the Claimant's conduct and performance. Mr. Wasswa referred us to the Respondent's staff handbook clauses, which provided the sanction for these offenses.
- [37] From our understanding of the precise definitions of dismissal and termination under Section 2EA, it is indisputable that the Claimant was dismissed for misconduct and poor performance. Therefore, the question that must be addressed is not whether the termination was lawful. Instead, this Court is called to consider whether the Claimant's dismissal was lawful. In the exercise of Order 15 Rule 5 of the Civil Procedure Rules S.I 71-1, we shall consider the question as reframed. This is important because, as Mr. Wasswa argues, an employer can terminate with or without notice as long as payment in lieu of notice has been paid. This contention merits some comment.
- [38] Termination of employment with notice is provided for under Section 64(1)EA and is considered a no-fault termination. A no-fault termination means that there is no question of misconduct or poor performance. In *Stanbic Bank (Uganda) Limited v Nassanga*¹⁸ the Court of Appeal held that an employer may terminate with or without reason with notice or by payment in lieu of notice. Gashirabake, JA, with Buteera, DCJ, and Bamugemereire, JA(*as she then was*) concurring, was

¹⁶ Constructive dismissal means that the employer has created a situation that causes the employee to resign. See *Lubega v Tropical Bank Limited* [2024] UGIC 39 (6 September 2024)

¹⁷ Section 2EA

¹⁸ [2023] UGCA 342

emphatic that when a reason for termination is given, then the employer must hold a hearing. In our reading of the Appellate Court's dicta, the exemption from providing reasons is limited to a Section 64 (1)(a)EA termination. In the present matter, four reasons for misconduct were listed in the termination letter. Therefore, we cannot accept Mr. Wasswa's¹⁹ argument that the termination complied with the law because it was a dismissal for misconduct.²⁰

- [39] Returning to the threshold for a lawful dismissal in *Mugisa*, as rightly cited by Mr. Bazira, we held it to be one of procedural and substantive fairness. The absence of one or the other will render the dismissal unlawful. Procedural fairness concerns the processes followed during dismissal, ensuring fairness and an opportunity for the employee to respond. In contrast, substantive fairness focuses on the reasons for dismissal, ensuring they are valid and fair.

Procedural fairness

- [40] Under Section 65EA, before deciding to dismiss an employee on the grounds of misconduct, the employer must explain why the employer is considering dismissal, and the employee is entitled to have another person of their choice present during this explanation. As guided by *Ebiju*, the right to a fair hearing consists of a notice of allegations against the plaintiff is served on him or her in sufficient time to prepare a defence, clearly stating what the allegations against the plaintiff are and his or her rights at the hearing, including the right to respond to the allegations against him or her orally and or in writing, the right to be accompanied to the hearing and the right to cross-examine the Respondent's witness or call witnesses of his or her own. The *Ebiju* test also requires that the employee appear before an impartial committee in charge of the employer's employment issues.
- [41] Regarding the matter before us, the notification of disciplinary inquiry dated the 8th of November 2017 passes the *Ebiju* test in terms of being in written form, setting out two alleged infractions, and setting out a hearing date some nine days ahead. It did not indicate the right to bring witnesses, cross-examine witnesses, or be accompanied by a person of her choice.
- [42] One of the chief procedural complaints by the Claimant was that the allegations in the Notice of Termination (CEX9) were never put before the Claimant and that no disciplinary hearing was conducted to enable the Claimant to answer charges or allegations. It was contended that the Notice of Termination, CEX9, was not a true reflection of the outcome or recommendation of the Disciplinary Committee that heard the allegations on 11th December 2017. Counsel for the Respondent countered that the missing battery in the Landlord's generator and questionable

¹⁹ We understand that in Ganda culture, Wasswa is a title, not preceded by the prefix Mr.

²⁰ See *Egimu v Henly Distributors Ltd* LDR 178 of 2020 (Industrial Court 30th September 2024)

proforma invoice constituted acts of negligence and failure to perform an assigned task, resulting in loss to the Respondent, and were justifiable reasons for the Claimant's termination.

[43] What is the essence of notification? As we understand, notification under Section 65EA is about the alleged infractions to enable the employee to understand the allegations and respond to them. In this case, the Respondent listed two alleged infractions on the missing battery and questionable proforma invoice in CEX5. It, however, dismissed the Claimant for negligence and wilfully causing damage to the Company property and causing loss, failure to perform an assigned task or responsibility, delay, and failure to follow proper approval procedures on the medical insurance approval, and dishonesty, lack of integrity and failure to follow the bank code of conduct. These were contained in CEX9. Therefore, the question that confronts this Court is whether the Claimant had sufficient and adequate particulars of the reasons the employer was considering for dismissal. The answer to this question would be yes, regarding the missing battery and questionable proforma invoice. However, concerning the reasons in the termination letter, the answer would be a resounding no because these reasons were never communicated to her before the DH. For this reason, we would be unable to accept Mr. Wasswa's view that his client complied with the law. The different content in CEX5 and CEX9 does not fit within the ambit of a right to a fair hearing because the charges and final reasons for dismissal are at variance. On a reading of CEX9, a fair-minded observer would not conclude that Ms. Musimenta was dismissed for a missing battery and a questionable proforma invoice because she was not. She was dismissed for negligence and wilfully causing damage to the Company property and causing loss, failure to perform an assigned task or responsibility, delay, and failure to follow proper approval procedures on the medical insurance approval and dishonesty, lack of integrity, and failure to follow the bank code of conduct.

[44] There is a broad consensus that strictures of procedural fairness are mandatory or that the right to a fair hearing is non-derogable, inalienable, and sacrosanct. As explained by this Court in *Ben Rhaeim Aimen v Granada Hotels (U) Limited*²¹, these words mean that Article 44(c) of the Constitution of the Republic of Uganda prohibits derogation from the enjoyment of the right to a fair hearing. Under all circumstances except an admission of misconduct by an employee²², an employee alleged to have committed any infractions must be heard. Therefore, the idea that an employee is called for a disciplinary hearing for one infraction only to be dismissed for a different unrelated infraction would have no place in our legal system. And jurisprudence supports this conclusion. Mr. Bazira referred us to *Bwayo*, which decision we find most instructive on the point that the right to a fair hearing is non-derogable. In *Bwayo*, the plaintiff was charged, investigated, and heard before a disciplinary committee on allegations regarding loan recovery matters. He was later terminated. At trial, the reason of poor performance was

²¹ [2023] UGIC 97

²² In *Kabojja International School v Oyesigye* [2016] UGIC 10, the Industrial Court presided over by Chief Judge Ntengye with Tumusiime Mugisha J concurring, found an admission dispensed with the need for a hearing or proving the reason for termination.

advanced. The Court held that the Claimant was not given a hearing on poor performance. In the present matter, the inescapable conclusion is that the Claimant was not given a hearing on the grounds that appear in the dismissal letter, inaptly and perhaps because of the legislative accident of interchangeable use of termination and dismissal, named the NOTICE OF TERMINATION OF CONTRACT OF EMPLOYMENT. As we have found, this was a dismissal and was procedurally defective. We are fortified in taking this view by the persuasive decision of the then Industrial Court of Kenya in *Zephania O. Nyambane & Anor v Nakuru Water and Sanitation Service Company Ltd*²³ where Ongaya J. held that where the reasons alleged in the notice to show-cause letter are substantially at variance with the reasons for termination, the reasons for termination must be found to have been invalid and termination thereby unfair.

- [45] The other significant procedural defect relates to the production of an investigation report. It also relates to substantive fairness, which we shall address later in this award. But for purposes of procedural fairness, Clause 2 of the Disciplinary and Sanctions Policy(REX7), provided that all DC sittings are preceded by an investigation by internal control to determine the involvement of the staff in the matter, and the report of the investigation shall be presented to the Committee by the investigator. In the invitation letter and minutes of the DC, it is not shown that an investigation report was produced. This means that the Respondent was in breach of its internal procedure, and such a breach has been held to constitute unfair termination. In Kenya, in *Charles Ochieng Opiyo v Lake Basin Development Authority*²⁴ the Respondent's human resource policies and procedure manual set out different phases of a disciplinary hearing. Radido J. found the dismissal procedurally unfair for failure to comply with internal disciplinary processes. We find this decision persuasive and hold the Claimant's dismissal procedurally unfair for failure to follow its internal investigative processes.
- [46] Therefore, we find, as we hereby do, that the Respondent was procedurally defective regarding the notification of invitation to a disciplinary hearing *vis a vis* the final grounds for dismissal. Because of the variance CEX5 and CEX9, we find that the Claimant's right to be heard was not respected. We are persuaded that the Claimant's dismissal was procedurally unfair.

Substantive fairness.

- [47] Under Section 67EA, an employer is required to prove the reason for termination. Section 67(2) EA provides that the reason or reasons for dismissal shall be matters that the employer genuinely believed existed at the time of dismissal and which caused the employer to dismiss the employee. In the present case, the Claimant argues that the reasons for dismissal were not proven, no investigation was carried out, there was a lack of quorum of the DC, and the Claimant had directed Internal Control to investigate the missing battery case. The Respondent counters

²³ [2013]LLR 272

²⁴ [2021] eKLR

that the Claimant admitted to an investigation during her sick leave, and she was not prejudiced by lack of access to the investigation report. Mr. Wasswa directed us to *Namyalo*, which we will return to shortly.

[48] To pass the substantive fairness threshold, an employer must prove that the reasons for dismissal were valid and fair. In *Ogwal v Kampala Pharmaceutical Industries Limited*²⁵ we observed that Section 68EA(now 67EA) set the conditions or threshold for substantive fairness. We held that the employer was required to prove the reason for the dismissal. We referred to *Uganda Breweries Ltd v Kigula*²⁶ where the Court of Appeal held that substantive fairness subsists when a valid and substantive reason for dismissal exists. The Court of Appeal regarded this as verifiable misconduct. The reasons why the employer dismisses an employee must be good and well-grounded and not based on the suppositions or whims of the employer. The employer must demonstrate that the employee was actually guilty of misconduct. It is not that the standard of proof is akin to a civil trial before a court of law but proven to some reasonable degree. Therefore, the threshold for substantive fairness is a matter of proof or justification of the reason for termination. It is intertwined with the requirement for procedural fairness.

[49] In the present case, did the hearing prove the grounds for dismissal? We indicated that we would return to *Namyalo*, where the Claimant admitted using company vehicles for personal use. Based on the admission, the Court found that the non-availability of the investigation report did not prejudice her. In the present case Mr. Wasswa argues that from the minutes of the hearing, the Claimant understood the charges and that this dispensed with the need to supply her with a copy of the investigation report. That would not be a very compelling argument on the grain of authorities of decided cases. An understanding of the charges is not an admission²⁷. The authorities cited in *Kamegero*, including *Lukwago*²⁸ *Allan Kwagala Balese v Soliton Telmec Uganda*,²⁹ *Stephen Mukooba v Opportunity Bank Ltd*,³⁰ *Kibobbery Ltd v John Van ber Voort*,³¹ and *Mweru & Another v Uganda Electricity Distribution Company Ltd*,³² read together with *Kabagambe, Mischeck, and Tanui*, cited by Mr. Bazira, all point to the school of thought of Employment and Labour relations Court, including this Court's, that where allegations are based on an investigation, the report ought to be shared with the employee. For instance, in *Lukwago*,³³ the Industrial Court observed that it is well-settled that where the termination of an employee is based on an investigation, principles of natural justice dictate that the employee in issue must be given the report before the disciplinary hearing to enable them to respond to its findings. The Court held the omission as a breach of the principles of natural justice and declared the hearing unfair. In *Kabagambe*, we

²⁵ [2023] UGIC 68

²⁶ [2020] UGCA 88

²⁷ An admission is defined in *Uganda Communications Employees Union and Others v Uganda Telecom Limited and Another* [2024] UGIC 21 (28 March 2024)

²⁸ Labour Dispute No. 057 of 2016

²⁹ Labour Dispute Claim 13 of 2017

³⁰ Labour Dispute Claim 051 of 2015

³¹ Civil Appeal No. 248 of 2021

³² H.C.C.S No 270 of 2011 Per Ssekaana J.

³³ LD 57 of 2016

followed *Lukwago*, finding that omitting an audit report eroded the right to a fair hearing. In the matter before us, the detailed particulars of the four reasons for the Claimant's dismissal, had they been investigated and reported, were not provided to the Claimant to enable her to formulate a defence. We would think the omission in the present case eroded the Claimant's right to a fair hearing. This was a post-hearing imposition of charges. In this Court's view, it is impossible to find that this was substantively fair.

- [50] We conclude that while the Respondent may have genuinely believed it had reasons to dismiss the Claimant, it has not justified the same. Proof of the reason or reasons for dismissal has a diminutive effect on damages³⁴. However, the Respondent has not proven the reasons for termination. It was both procedurally and substantively unfair. In his concise and most aptly named ninety-seven-page treatise "Essentials of Uganda's Employment Law," the Learned Author Nelson Nerima *Esq* observes, "the applicable contractual or statutory procedure for dismissal must be followed. If the grounds or procedure are faulty, the dismissal is unlawful and wrongful". This expression is in tandem with modern employment relations precedents and fair labour practices. We hold that the Claimant's dismissal was unfair and unlawful. Issue One is answered in the affirmative.

Issue II. What remedies are available to the parties?

- [51] Having found, as we have on issue one above, the Claimant would be entitled to remedies as below.

Declarations

- [52] It is hereby declared that the Claimant was unlawfully and unfairly dismissed from her employment with the Respondent.

Payment in Lieu of Notice

- [53] This prayer was abandoned and merits no further comment.

Compensation of UGX 34,500,000/=

- [54] Mr. Bazira was seeking UGX 34,500,000/=, which is three months' wages under Section 78(1) and (3) EA. This is now Section 77(1) and (3)EA. In our view, compensation in terms of Section 77 resides in the purview of a labour officer as provided under Section 76EA, which reads as follows:

"Where a labour officer decides that an employee's complaint of unfair termination under section 70 is well founded, the labour officer shall, subject to subsections(2) and

³⁴ *Kabagambe opcit*

(3) of section 70, give the employee an award or awards of compensation specified in Section 77."

- [55] In our view, the framers of the EA restricted the award of compensation under Section 77 with the labour officer, who may grant anywhere between four weeks and twelve weeks' wages by exercise of discretion. This Court has jurisdiction to grant damages over and above the restrictions in Section 77EA. We agree with Mr. Wasswa that this prayer is not in line with this Court's jurisdiction, and we, therefore, decline to grant this prayer.

Severance pay

- [56] The Claimant sought severance pay of UGX 23,000,000/= and cited *Kibuuka & Ors v Bank of Uganda*³⁵. The Respondent did not comment on severance pay. The circumstances under which severance pay becomes due in Section 87EA include where an employee is unlawfully dismissed. Having found as we have, the Claimant was unlawfully dismissed, and she is entitled to severance pay. As to quantum, it has been held in *Kamuli v DFCU Bank*³⁶ the Claimant's severance calculation shall be at the monthly pay rate for each year worked. As the Claimant was earning a gross annual salary of UGX 144,399,996/= and had worked for the Respondent from the 2nd of November 2015 until the 30th of January 2018, being two years, two months, and twenty-nine days, she is entitled to UGX 26,707,316/= in severance pay which we hereby award.

General Damages

- [57] The Claimant sought UGX 600,000,000/= in general damages due to the inconveniences caused and on the principle of *restitutio in integrum*. In *Kabagambe*, we cautioned against the practice of throwing a figure at the Court and expecting the Court to agree with an unsupported figure. A foundation for general damages ought to be set. The Respondent countered that the Claimant was not entitled to any general damages because she had been subjected to due process. The position of the law is that per *Uganda Post Limited v Mukadisi*,³⁷ general damages can be awarded in addition to the payment in lieu of notice given to an employee who has been unlawfully dismissed from employment. The Supreme Court of Uganda held that general damages are awarded for non-monetary loss, including pain, suffering, inconvenience, and anticipated future loss as monetary compensation for the non-monetary aspects of a wrong suffered by a plaintiff and the value of the subject matter. As to quantum, in *Stanbic Bank (U) Ltd v Constant Okou*³⁸ Madrama, JA (*as he then was*) held that general damages are based on the common law principle of *restituto in integrum*.

- [58] In the matter before us, the Claimant lost her job and source of income. She is about 45 years old. She did not provide evidence of her employability. We are persuaded that she suffered

³⁵ [2016] UGIC 1

³⁶ [2015] UGIC 10

³⁷ [2023] UGSC 58

³⁸ Civil Appeal No. 60 of 2020

inconvenience associated with loss of employment. In *Mugisa*, we considered that the Claimant had worked for the Respondent for two years and was earning UGX 13,000,000/= per month. We awarded UGX 52,000,000/= in damages. In *Okumu v Equity Bank Uganda Limited*³⁹, the Claimant had worked for the Respondent for one year, two months, and 19 days and was about 51 years old and a vetted employee at the time of his termination. On a monthly salary of UGX 14,000,000/=, we awarded UGX 42,000,000/= as general damages will suffice. Considering all circumstances and the Claimant's gross monthly salary of UGX 12,033,333/=, we would grant the Claimant the sum of UGX 36,099,909/= in general damages, which we hereby award.

Aggravated damages

- [59] On aggravated damages, the Claimant argued that the Respondent was highhanded, for which the sum of UGX 100,000,000/= was justified. Mr. Wasswa argued no aggravating factors were pleaded to warrant an award of the same. We agree. In *Bank of Uganda v Betty Tinkamanyire*⁴⁰ the Supreme Court considered lack of compassion, callousness, degrading treatment, and indifference to the good and devoted services of the employee to be aggravating circumstances that compounded the illegalities in the wrongful termination. We are not satisfied that the Claimant established any aggravating circumstances on the evidence before us, so we should award aggravated damages.

Interest

- [60] On the authority of *Mukankusi v Uganda Revenue Authority*⁴¹ the Claimant sought interest on special damages from the date of loss and interest on general damages from the date of the award. We agree with the proposition that interest rates are set at the discretion of the trial Court. We do not think 25% to be applicable because this was not a commercial contract. We award the Claimant interest at 14% per annum from the award date until payment in full.

Costs

- [61] This Court has ruled that costs are the exception and not the norm in employment disputes except where the losing party is guilty of some form of misconduct.⁴² We do not find that the Respondent has misconducted itself so that we may award costs against it.

Final orders

- [62] We make the following declarations and orders:

³⁹ [2021] UGIC 27

⁴⁰ [2008] UGSC 21

⁴¹ [2019] UGCA 2027

⁴² *Kalule v Deutsche Gesellschaft Fuer Internationale Zusammenarbeit (GIZ) GMBH* [2023] UGIC 89

(i) It is hereby declared that the Claimant was unlawfully and unfairly dismissed from her employment with the Respondent.

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

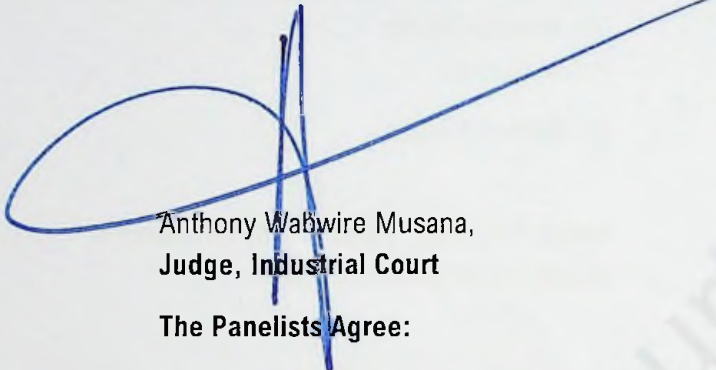
(a) UGX 26,707,316/= in severance pay; and

(b) UGX 36,099,909/= as general damages;

[62] Neither party shall be burdened by the other's costs.

It is so ordered.

Dated, signed, and delivered at Kampala this 11th day of October 2024.

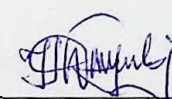

Anthony Wabwire Musana,
Judge, Industrial Court

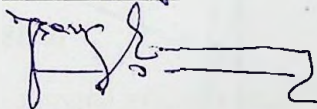
The Panelists Agree:

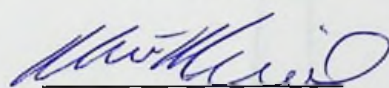
1. Hon. Jimmy Musimbi

2. Hon. Emmanuel Bigirimana

3. Hon. Michael Matovu







11th October 2024.

10:20 am

Appearances

1. For the Claimant:

Mr. Anthony Bazira
Parties absent.

Court Clerk:

Mr. Samuel Mukiza.

Mr. Bazira

Matter for award. We are ready to receive it.
Award delivered in open Court.

Court:

10:58 a:m

Anthony Wabwire Musana,
Judge, Industrial Court.