



THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE NO. 220 OF 2022
(Arising from Labour Dispute MGLSD/LC/003/2021)

AHWERA EDGAR:.....CLAIMANT

VERSUS

ADAAN PROPERTY SOLUTIONS LTD:.....RESPONDENT

Before:

The Hon. Mr. Justice Anthony Wabwire Musana:

Panelists:

1. Ms. Adrine Namara,
2. Ms. Susan Nabirye &
3. Mr. Michael Matovu.

Representation:

1. *The Claimant appeared pro se.*
2. *Mr. Jamil Mpiima of M/S Kiwanuka, Mpiima & Co. Advocates for the Respondent.*

AWARD

Introduction

- [1] In January 2021, the Claimant was hired as the Respondent's Operations Manager with a starting salary of UGX 500,000/=. He was later promoted to Business Manager. He continued working until October 2021, when the Respondent's Manager posted on a WhatsApp workgroup platform indicating that the Claimant had embezzled company funds and was terminated in May 2021. Aggrieved, the Claimant filed a complaint with the Labour Officer at the Ministry of Gender, Labour, and Social Development. The Respondent did not respond, and the matter was referred to this Court on the 22nd of August 2022. By his claim memorandum, the Claimant sought a declaration of unlawful dismissal. He contended that the Respondent had failed to pay salary arrears of UGX 9,840,000 and asked for severance allowance, damages, and costs of the claim.

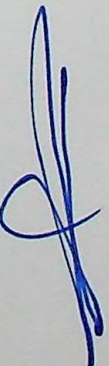
- [2] M/s. Kiwanuka & Mpiima Advocates filed a reply on behalf of the Respondent. It was conceded that the Claimant was the Respondent's employee on probation for six months from January 2021 until May 2021, when it was discovered that he had embezzled large sums of money. He was summoned for a disciplinary hearing but did not respond to the calls or letter of invitation. He was then notified of his termination. When the Respondent discovered that the Claimant was still on an Adaan WhatsApp page, it issued a notification of his ceasing to be an employee in May 2021. The Respondent feigned ignorance of the proceedings before the Labour Officer and commissioner.
- [3] In his rejoinder, the Claimant denied receiving any notifications to attend disciplinary proceedings. He said the WhatsApp group was not the Respondent's official social media platform. He contended that he was still employed as of September 2021. He claimed that he had given the Labour Officer the Respondent's telephone contacts and that the Respondent had received the notifications.

The proceedings.

- [4] On the 31st of August 2023, Mr. Mpiima, appearing for the Respondent, informed the Court that pleadings were closed and that the matter was ready for trial. Accordingly, we fixed the matter for scheduling and hearing on the 14th of November, 2023. On that date, three issues were framed for determination viz:
- (i) *Whether there was an employment contract between the Claimant and Respondent between February and October 2021?*
 - (ii) *Whether the Claimant was terminated and if so, whether that termination was lawful? and*
 - (iii) *What remedies are available to the parties?*

The Evidence

- [5] The Claimant took oath, and his witness statement, made on 21st June 2023, was adopted as his evidence in chief. He testified to having been hired by the Respondent under an oral contract in February 2021 at a monthly salary of UGX 500,000/=, which was agreed to in March 2021. He was paid his first salary and arrears in May 2021 in the sum of UGX 1,500,000/=. He told us that a written contract had been prepared but left unsigned. He said that he worked but was not paid. He had survived on allowances. In October 2021, when he asked for his salary arrears, it was alleged that he was not working as required and had embezzled company funds. He told us that on 23rd October 2021, the Respondent posted a message on a WhatsApp group indicating that his



services had been terminated in May 2021 for embezzlement of company funds. He then lodged a complaint with the Labour Officer for unpaid wages and unlawful termination. The Respondent did not appear before the Labour Officer or Commissioner of Labour (*from now CLR*), hence this dispute. The Claimant also told us that the Respondent did not notify him of the termination, and he asked this Court to assist him in recovering his salary arrears of UGX 9,840,000/=.

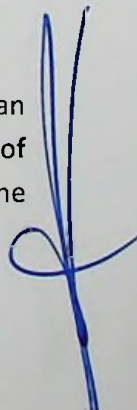
- [6] In cross-examination, he was shown CEX2, a printout of an announcement by Tumusiime Dan on an ADAAN BROKERS WhatsApp group platform, and he testified that he had printed it from his phone. He also told us he was paid on 14 May 2021 via his Equity Bank Ltd Account. He clarified that he had no evidence showing he demanded a written contract, nor was there any witness to his signing the draft contract. He also told us that the Respondent was a single-member company.
- [7] In his self-re-examination, the Claimant told us that by the time he joined the Respondent, it was limping. His signed written contract was taken for stamping and never returned to him. He said that after the WhatsApp message(CEX2), he spoke to the Respondent's Manager, Mr. Tumusime, who admitted placing it on the group. On 25 October 2021, Mr. Tumusime changed the locks at the Respondent's premises, denying him access to the workplace.

Closure of hearing

- [8] After re-examination, the Claimant closed his case. Mr. Mpiima sought time to present the Respondent's case. The matter was adjourned to the 20th of February 2024 for hearing of the Respondent's case. On that date, when the matter called for hearing before this Court, the Claimant was in Court, and the Respondent was not. Under Order 17 Rule 4 of the Civil Procedure Rules S.I 71-1(*from now CPR*), which provides for the Court to decide a suit immediately were a party to whom time has been given to produce his evidence fails to do so, we directed the Claimant to make his final written submissions which we have considered in rendering this award.

Analysis and Decision of the Court

Issue 1. Whether there was an employment contract between the Claimant and respondent between February and October 2021?

- [9] The Claimant submitted that he was employed as a Business Development Officer on an oral employment contract from February 2021 to October 2021. He cited **Section 25 of the Employment Act, 2006**(*from now EA*) to support this assertion. He argued that he was not on a probationary contract because he worked for nine months.
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[10] In paragraph 4(a) of the memorandum in response to the claim, the Respondent stated;

"The Claimant was employed on probationary employment for six months from January 2021."

This position was repeated in the Respondent's witness statement filed by Mr. Dan Tumusiime, the Respondent's Managing Director.

Determination

[11] In our view, and following the Respondent's concession of a probationary contract, the question for determination is not whether there was an employment contract between the parties but rather what kind of employment contract the parties had. The contestation is more about the nature of his employment, the two contesting positions being an oral contract versus a probationary contract. As the framing of issues is finally a matter for the Court under Order 15 of the Civil Procedure Rules S.I 71-1, it is that question that we shall ultimately address.

[12] Under **Section 2EA**, employee means any person who has entered a contract of service or an apprenticeship contract, and the employer includes a company. The provision defines a "contract of service" to include any contract, whether oral or in writing, whether express or implied, where a person agrees to work for an employer in return for remuneration and includes a contract of apprenticeship. The Claimant claims he made an oral contract in the matter before us. The Respondent suggests it was a probationary employment contract for six months. The only variance of accounts is whether the contract was oral or probationary. **Section 2EA** defines a probationary contract as a written employment contract of not more than six months duration and expressly states that it is for a probationary period.

[13] In our view and considering the definition of a probationary contract at law, the Respondent does not make an arguable and sustainable case for a probationary contract of employment. The provision of **Section 2EA** is explicit. The probationary contract must be in writing and strictly for six months. That is our dicta in **Ben Raheim Aimen v Granada Hotels Ltd**¹, which case discusses probationary contracts at some length.

[14] From the evidence before us, there is no written probationary contract. None was attached to the memorandum in response to the claim or the witness statement of Daniel Tumusiime, the Respondent's Managing Director. We, therefore, do not accept the Respondent's assertion. In our view, the Claimant makes a much more believable proposition that there was an oral contract for remuneration at UGX 500,000/= per

¹ LDA 002 of 2023

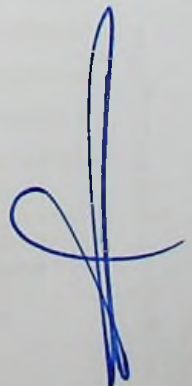
month. The Claimant produced an identity card issued to him in the Respondent's corporate name, "ADAAN PROPERTY SOLUTIONS LTD"; the card has some very telling features. First, it is titled "EMPLOYEE IDENTITY CARD". In it, the Claimant is designated as "OPERATIONS MANAGER". The card was issued on the 30th of January 2021 and expires on the 30th of January 2025. The second identity card was also issued to the Claimant under the Respondent's corporate name, "ADAAN PROPERTY SOLUTIONS LTD", was titled "EMPLOYEE IDENTITY CARD" and designated the Claimant as "BUSINESS DEVELOPMENT OFFICER". The card was issued on the 31st of May 2021 and was valid until 31st December 2022. These identity cards were exhibited as CEX1. The Claimant also produced housing allowance payment vouchers for September 2021, which were admitted as CEX3. Counsel for the Respondent did not object to the admission of the identity cards and the vouchers. Therefore, on the balance of probabilities, we are inclined to accept the Claimant's proposition of an oral employment contract effective January 2021, which contract existed as late as September 2021. Therefore, we find that the Respondent employed the Claimant on an oral contract of service, and Issue number (i) is answered in the affirmative.

Issue II: Whether the Claimant was terminated and if so, whether that termination was lawful?

- [15] The Claimant submitted that he was unlawfully terminated contrary to **Sections 68(2), 66(5)(1) and 69(1)EA**. It was his case, from these provisions, that the Respondent did not comply with **Sections 68EA**, did not give a reason for dismissal, and summarily terminated him. In its defence in paragraphs 4(c)-(e) of the memorandum in response to the claim, the Respondent contended that in May 2021, it discovered the loss of huge amounts of money, which it genuinely believed was caused by the Claimant. He was advised to return the money, but he refused. He was summoned for a disciplinary hearing but declined to attend, and he was then notified of his termination. This is contained in Mr. Tumusiime's witness statement and the memorandum in response to the claim. Mr. Tumusiime did not attend Court to own his statement. For his part, the Claimant contends that he was only terminated in October 2021, when the Respondent placed a notification on the WhatsApp platform, and the message read as follows;

" Urgent Announcement

Edgar Ahwera ceased to be an employee of Adaan property Solutions limited by end of May 2021 due to embezzlement of company funds he, no longer represents the company. Whoever deals with him does so at his own risk announced Managing director Adaan Property solutions limited."



- [16] In our view, because its proposition stands unproven and unsubstantiated, the Respondent does not make a believable proposition. Mr. Tumusiime, who made a witness statement in support of the Respondent's case, did not come to Court. His witness statement was not admitted as evidence. Under Order 18 Rule 5A(2)CPR(as amended), a witness statement is formally tendered as evidence in chief after the witness has appeared in Court and taken oath. The rationale for the rule seems to be found in the judgment of Lady Justice Eva Luswata in **Kiridde Mathew Vs Busulwa Vincent & Ors**² where her Lordship held that witness statements are dispositions made on oath. Statements need not always be commissioned, but on all occasions, can only be admitted in evidence after the witness presenting a statement has taken oath so as to confirm its truth. The Respondent did not provide any evidence of notifications to attend the disciplinary hearing or return the allegedly embezzled funds. There was no evidence of any telephone logs, messages, or notifications. Under Order 18 Rule 5A(5) CPR(as amended), it is provided as follows;

"Except with the consent of the parties, a witness who does not appear to tender in the witness statement and be cross examined, shall have his or her statement expunged from the Court record"

- [17] As Mr. Tumusiime did not attend Court or take oath, his witness statement, made on 28 August 2023 and filed in Court on 31 August 2023, is hereby expunged from the record.
- [18] The second difficulty that the Respondent finds itself in is that it was only able to make the announcement of termination on 23rd October 2021 and not in May 2021, when the Claimant is said to have refused to return the money or attend disciplinary hearings. This is a false proposition. Did the Respondent have no contact with the Claimant for four months? For the Claimant, evidence was adduced of payment vouchers for housing allowances as late as the 22nd of September of 2021. On the balance of probabilities, it is more likely that the Claimant was dismissed in October 2021 and not May 2021.
- [19] There is one principle, standard, threshold, or yardstick for any dismissal or termination of a contract of employment; **an employer has an unfettered right to terminate its employee provided it follows procedure.**³ Having established that the Claimant was dismissed, the narrow question is, did the Respondent follow procedure? The Respondent argues that the Claimant was terminated for misconduct. He is said to have been responsible for the loss of huge amounts of money, which the Respondent genuinely believed him to have caused. Under **Section 66(1) EA** it is provided that before reaching a decision to dismiss an employee on grounds of misconduct or poor

² H.C.C.S.449/13. See also the dicta of Kakuru J.A (*as he then was*) in C.A.C.A No. 93 of 2011 Kashongole G. v Kafeero Francis

³ Per Mwangushya J.S.C (*as he then was*) in S.C.C.A No. 28 of 2012 Hilda Musinguzi vs Stanbic Bank (U) Limited SCCA 28/2012, See also Bank of Uganda v Geoffrey Mubiru S.C.C.A. No. 1 of 1998.

performance, the employer shall explain to the employee the reason for which the employer is considering dismissal. The employee is entitled to have another person of his or her choice present during the explanation. This provision, read together with **Section 66(2) and (3)EA**, epitomises the right to be heard. The provisions also spell out employee rights in a disciplinary hearing. These rights are best explained in the notable case of **Ebiju James v Umeme Ltd**⁴. In that case, 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:

Notice of Allegations against the plaintiff was served on him, and a sufficient time allowed for the plaintiff to prepare a defence.

The notice should set out clearly what the allegations against the plaintiff and his rights at the hearing 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.

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.”

[20] In the matter before us, while the Respondent suggested that the Claimant was notified of a hearing, no such notice was presented before us. Therefore, it is impossible to consider an inexistent notice against the **Ebiju** standard. The Respondent was given an opportunity to attend Court, at which time it could have demonstrated that it respected the Claimant’s right to be heard. Mr. Mpiima appeared for the Respondent and cross-examined the Claimant but declined to attend Court to press the Respondent’s case. We can, therefore, only arrive at the inescapable conclusion that the Respondent did not respect the Claimant’s right to be heard or any other fair labour practice. In other words, the Respondent was unfair. Unfairness is unlawful within the employment law sphere.⁵

[21] The other consideration for dismissal for misconduct is under **Section 68 EA**, which requires an employer to prove the reason for termination. The onus is on the employer to justify the termination or dismissal. In paragraph 4(c) of the memorandum of response to the claim, the Respondent pleaded its genuine belief that the claimant caused a huge loss of money. This plea was repeated in Mr. Tumusiime's witness statement, which

⁴ H.C.C.S No. 0133 of 2012

⁵ See our dictum in *Nicholas Mugisha v Equity Bank Uganda Ltd* LDR 281 of 2021

witness statement we have expunged from the record. As the onus to prove the reason for termination rests squarely on the employer, the Respondent would be expected to attend Court to justify the Claimant's termination. It did not. In the circumstances, we cannot accept the Respondent's proposition that it genuinely believed the Claimant to have caused it a loss and that this was the reason for termination. This is untenable.

- [22] Therefore, and for the reasons laid out above, we find that the Claimant was unlawfully dismissed from his employment, and he would be entitled to a declaration to that effect.
- [23] Assuming the Respondent's alternative argument that he was on probation for six months with effect from January 2021 was correct, the dominant strand in **Ben Raheim Aimen** (supra) is that an employee on probation would also be entitled to a hearing if the employer considered releasing the employee on grounds of misconduct or poor performance. In other words, a converse holding would not stand even in a probationary contract. Therefore, having found no hearing was conducted, we would still hold that the Claimant was unlawfully dismissed. Issue two would be answered in the affirmative.

Issue III. What remedies are available to the parties?

Salary Arrears

- [24] The Claimant was contending for UGX 9,840,000/= as salary arrears for February 2021 to October 2021. He submitted that he was earning a piece rate system and claimed UGX 500,000/= for February 2021, UGX 800,000/= for March 2021, UGX 1,000,000/= for April 2021, UGX 1,240,000/= for May 2021 and UGX 1,560,000/= for each of June, July, August, September and October 2021. He subtracted UGX 1,500,000/=, which had been paid as salary arrears on 14th May 2021. The Claimant made this computation in his final written submissions for the first time. In his memorandum of claim, in paragraph 1, the Claimant pleaded that he was earning a starting salary of UGX 500,000 per month. He repeated this in paragraph 10 of his memorandum and paragraph 4 of his witness statement. In his pleadings and evidence, he did not suggest that the arrangement was for a piece-rate payment system.
- [25] Piece rate pay occurs when workers are paid by the unit performed (e.g., the number of tee shirts or bricks produced) instead of on the basis of time spent on the job.⁶ No evidence was led to demonstrate that the Claimant and Respondent agreed on a piece rate payment and for what work.

⁶ https://www.ilo.org/moscow/areas-of-work/wages/WCMS_439067/lang-en/index.htm last accessed on 4/4/2024 10:18pm

[26] This Court requires a claim for salary to be proven in a manner similar to that of special damages in an ordinary civil suit.⁷ A contract, payslips or bank statements are proof of salary. Further, under **Section 50(1)EA**, every employee is entitled to an itemized pay statement with each payment. Under **Section 50(3) EA**, a Labour Officer has the power to issue a pay statement; under subsection (5), such a written statement takes the place of the employer's pay statement. We are not inclined to accept the Claimant's contention that he was earning at piece rate. There is no evidence to support that proposition. The agreed monthly salary was UGX 500,000/=; the Respondent does not contest this. On the material before us, we cannot find a basis to support the claim for UGX 9,840,000/= as salary arrears. In the circumstances, the Claimant is entitled to salary for June to October 2021 at the rate of UGX 500,000/= per month. We therefore award **UGX 2,500,000/=** in salary arrears. We are fortified in this award by the dicta of several cases where this Court has held that employees are only entitled to what they have worked for. (See *Simon Kapio v Centenary Bank Ltd*⁸)

[27] Several statutory terminal benefits also accrue through the operation of law.

Payment in lieu of notice.

[28] The first of the statutory benefits is payment in lieu of notice. The Claimant joined the Respondent at the end of January 2021 and served until October 2021, which is eight months. Under **Section 58(3)(a)EA**, an employee is entitled to two weeks' notice if they have been in employment for more than six months but less than one year. In the circumstances, we award the claimant the sum of **UGX 250,000/=** as payment in lieu of notice.

Severance pay.

[29] **Section 87(a)EA** provides for severance pay where an employee is unfairly dismissed and has been in continuous service for six months or more. The Industrial Court, in *Donna Kamuli v DFCU Bank Ltd*,⁹ held that the calculation of severance shall be at the rate of monthly pay for each year worked.¹⁰ In the circumstances of the Claimant's eight-month employment, he is entitled to **UGX 333,336/=** as severance pay prorated over 8 months, which we award.

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⁸ LDC 300/2015

⁹ See *DFCU Bank Ltd vs Donna Kamuli C.A.C.A No 121 of 2016* where the Court of Appeal of Uganda upheld the Industrial Courts' computation of severance pay.

¹⁰ See also *Mirimo Charles v Mcleod Russel(U)Ltd LDR No. 79 of 2018*.

Compensation for failure to give a fair hearing.

[30] 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.”

The Respondent failed to hold a disciplinary hearing, which we find to be in breach of Section 66(4) EA. Since the Claimant was earning UGX 500,000/= per month, the Respondent is ordered to pay the Claimant **UGX 500,000/=** as basic compensation.

Other Remedies

General damages

[31] General damages are those damages such as the law will presume to be the direct natural consequence of the action complained of¹¹. In **Stanbic Bank (U) Ltd v Constant Okou**¹² it was held that general damages are based on the common law principle of *restituto in integrum*. In the case before us, the Respondent dismissed the Claimant unlawfully and did not pay wages. The Respondent did not communicate its termination decision between May 2021 and October 2021. In our view, this was an unfair labour practice. Considering these and all circumstances, including the Claimant’s monthly pay and service period, we would grant the Claimant the sum of **UGX 1,500,000/=** in general damages.

Exemplary damages

[32] The Claimant sought exemplary damages which are awardable to punish, deter, and express outrage of Court at the defendant’s egregious, highhanded, malicious, vindictive, oppressive and/or malicious conduct. They are also awardable for improper interference by public officials with the rights of ordinary subjects. The Court of Appeal in its treatment on the application of punitive damages in **DFCU Bank v Donna Kamuli**¹³ held that they are awardable in employment disputes with restraint, as punishment ought to be confined to criminal law and not the law of tort or contract. In this regard, while we found the dismissal unlawful, we do not find any circumstances to warrant an award of exemplary damages.

¹¹ *Stroms v Hutchinson* [1950]A.C 515

¹² Civil Appeal No. 60 of 2020

¹³ C.A.C.A No. 121 of 2016

Costs

- [33] Under Section 8(2a)(d) of the Labour Disputes(Arbitration and Settlement) Amendment Act 2021, this Court may make orders as to costs as it deems fit. We have held that in employment disputes, the grant of costs to the successful party is an exception on account of the nature of the employment relationship except where it is established that the unsuccessful party has filed a frivolous action or is culpable of some form of misconduct.¹⁴ The Respondent filed a defence but did not prosecute its case. The Respondent has miscondacted itself, in our view.
- [34] The Claimant appeared pro se. By very sound reasoning and solid judgment in **Hon. Jesca Ababiku v Eriyo Jesca Osuna**¹⁵ Mubiru J. held that litigants whom counsel does not represent are not entitled to advocates' fees (otherwise referred to as legal fees) but only their disbursements.¹⁶ In **Aporo George Goldie v Mercy Corps Uganda**¹⁷ we found that a Claimant who did not appear as an Advocate was not entitled to collect professional fees under The Advocates (Remuneration and Taxation of Costs) Rules S.I 267-4(as amended). In the present case, the Claimant shall only be entitled to his disbursements upon ascertainment by the Registrar of this Court.

Final Orders

- [32] In the final analysis, we make the following declarations and orders:
- (i) We declare that the Claimant was unlawfully dismissed from employment by the Respondent.
 - (ii) We order the Respondent to pay the Claimant the following sums:
 - (a) UGX 2,500,000/= as salary arrears.
 - (b) UGX 250,000/= as payment in lieu of notice.
 - (c) UGX 333,336/= as severance pay
 - (d) UGX 500,000/= as basic compensation and
 - (e) UGX 1,500,000/= in general damages.
 - (iii) The Claimant shall have disbursements of his claim as ascertained by the Registrar of this Court.

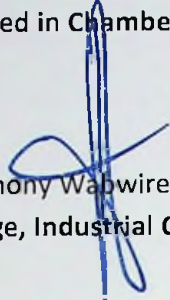
¹⁴ Joseph Kalule Vs Giz LDR 109/2020(Unreported)

¹⁵ Consolidated H.C.M.A Nos. 004,0031 and 0037 of 2015

¹⁶ Per Mubiru J. in Hon. Ababiku Jesca v Eriyo Jesca Osuna H.C.M.A No's 0004,0031 and 0037 of 2015

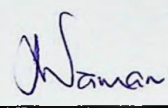
¹⁷ LDR No. 14 of 2021(Unreported)

Signed in Chambers at Kampala this 5th day of April 2024.



Anthony Wabwire Musana,
Judge, Industrial Court

The Panelists Agree:

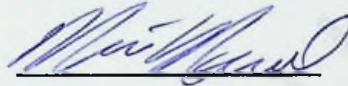
1. Hon. Adrine Namara,



2. Hon. Susan Nabirye &



3. Hon. Michael Matovu.



5.04.2024

9.37 a.m.

Appearances

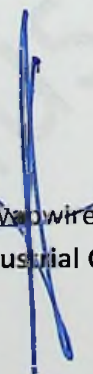
1. For the Claimant: The Claimant appears pro se.

2. For the Respondent: None.

Court Clerk: **Mr. Samuel Mukiza**

The Claimant: Matter for award, and I am ready to receive it.

Court: Award delivered in open Court.


Anthony Wabwire Musana,
Judge, Industrial Court.