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THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE NO. 238/2019
(Arising from Labour Dispute Complaint No. KCCA/RUB/LC/139/2019)

MUTWAZAGYE NICHOLAS:.....CLAIMANT

VERSUS

THE ELECTORAL COMMISSION:.....RESPONDENT

Before:

The Hon. Mr. Justice Anthony Wabwire Musana,

Panelists:

1. Hon. Adrine Namara,
2. Hon. Robinah Kagoye &
3. Hon. Michael Matovu.

Representation:

Mr. Bernard Olok of Ms. Oculus Advocates for the Claimant.

Mr. Godfrey Musinguzi from the Legal Department of the Respondent.

AWARD

Introduction

- [1] On the 4th of July 2011, Mr. Nicholas Mutwazagye was employed as a Driver at the Respondent Commission. His starting salary was UGX 262,000 p.m. and increased to UGX 980,300 p.m. at the time of his termination. On the 23rd day of February 2018, he was dismissed from work on the grounds of forgery of medical documents with intent to defraud the Respondent, persistent misconduct of absenteeism, misuse of the official vehicle, and disrespectful behaviour. He filed this claim seeking salary arrears, severance allowance, repatriation fee, non-remitted social security contributions, interest thereon, unpaid accumulated leave, general damages, costs, and reinstatement to employment.

[2] The Respondent opposed the claim. In the brief memorandum in reply, the Respondent admitted paragraphs 3,4(n)(s) and (t) of the claim and paragraphs 15,16,18 and 19 of the affidavit verifying the claim. Regarding the rest of the claim, the Respondent contended that it would put the Claimant to strict proof. The Respondent prayed that the claim be dismissed, and this Court grants an order directing the Claimant to pay damages for malicious prosecution of the Respondent.

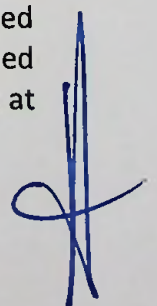
[3] On the 7th of September 2022, the following issues were framed for determination;

- (i) Whether the termination of the Claimant was unlawful and
- (ii) What are the remedies in the circumstances?

The Claimant's evidence.

[4] The Claimant's evidence was that in November 2015, he sought sick leave and was advised to present medical documents. He obtained medical records from St George's Allied Health Center and submitted the same to one Mr. George Wafura. He was granted sick leave from 3rd to 9th December 2015, which was extended. When he sought a refund for medical expenses, Mr. Wafura told him to consult the Respondent's Secretary. The Secretary denied receipt of any of the Claimant's medical documents. The Claimant complained in 2017, and the Head of Human Resources was asked to investigate. Mr. Wafura then told the Claimant that his documents were lost and that he would use substitutes to process the claim. The Claimant also testified that he was victimized for some UGX 94,570,000/=, which had been drawn by one Komuhangi Alex, the Luwero District Returning Officer. He testified that on 9th January 2018, he received a letter to show cause on allegations of falsifying records and documents. On 11th January 2018, he responded in writing. On 7th February 2018, he was invited for a hearing on 14th February 2018. He could not defend himself or call a legal representative or witness at the hearing. On 23rd February 2018, he received a dismissal letter based on the grounds of forgery of medical documents with intent to defraud the Respondent, persistent misconduct of absenteeism, misuse of the official vehicle, and disrespectful behavior, which grounds were never mentioned in the show cause letter. He unsuccessfully appealed the decision. He then filed a complaint with the labour office, which referred the matter to this Court.

[5] Under cross-examination, he testified that his employment was terminated because of forgery, absenteeism, and misuse of a motor vehicle. He confirmed receiving REX4 and REX5 letters from his supervisor on unacceptable conduct at



work. He denied submitting REX11B and REX11D. He confirmed that he had claimed a refund of medical expenses and had been sick for three years. He confirmed that he attended a disciplinary hearing and was allowed to defend himself and appeal the outcome of the disciplinary hearing.

- [6] In reexamination, he clarified that he did not respond to the letters relating to unacceptable conduct. He explained that he was not satisfied with the hearing because when he entered the disciplinary hearing venue, the Heads of Legal and Human Resources told him not to speak. Later he was asked to leave the room. He was not permitted to be accompanied by a lawyer, and the Respondent did not permit him to call Mr. Wafura, who oversaw medical records. He testified that Mr. Wafura misplaced the documents. Four months after his dismissal, a committee was formed at which Mr. Wafura admitted that the Claimant's medical records were lost. It was for this reason that he filed a complaint in Court.

The Respondent's evidence

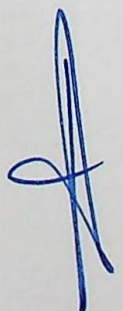
- [7] The Respondent called four witnesses. Mr. James B. Niwamanya (RW1) testified first. His witness statement opposed the memorandum of claim and affidavit supporting the claim. His evidence was that some other institution handled the Claimant's terminal benefits. The events leading to the Claimant's dismissal were submitting forged medical documents with intent to defraud the Respondent, persistent misconduct, and misuse of official motor vehicle Isuzu Dmax Reg. No. UG 0637B. These were among several complaints raised and written to RW1. RW1 also testified that the Claimant was dishonest, disrespectful, and always masquerading as an Army Officer, illegally possessing military attire in the Respondent's vehicle. Investigations were carried out, and required procedures for a fair hearing were complied with, including the right to appeal.
- [8] Under cross-examination, he conceded that REX2 did not show the second ground of dismissal. He also acknowledged that the Claimant did not sign REX 11 B. He maintained that the Respondent had asked Mulago National Referral Hospital to confirm the medical records. He confirmed that REX11B and REX11D referred to Mutwazagye K. Nicholas while REX12 referred to Mutwazagye Nicholas. He also confirmed that the disciplinary meeting minutes and the appeal process were available but had yet to be produced in Court. Regarding CEX24, RW1 testified that he did not know who the Returning Officer of Luwero District was in December 2017. He also confirmed that he first heard about the non-utilization of funds in the Luwero district during his cross-examination. He confirmed that the grounds of dismissal would be misconduct in Luwero, which Kashangire Harriet and Alex Komuhangi handled.



- [9] In re-examination, RW1 listed the grounds in REX2 as forgery and persistent misconduct. Each of these amounted to gross misconduct, which would lead to dismissal. Regarding REX 12, RW1 confirmed that he did due diligence before the dismissal of the Claimant. Confirmation was received from Mulago Hospital, and the person being investigated was the Claimant. Kashangire Harriet and Alex Komuhangi were the returning and accounting officers of the Luwero district.
- [10] Jenina Sabiiti RW2 was called as the next witness. She testified that several concerns were raised to her as Regional Elections Officer-Central North by members of the public about the misuse of the official car Reg No UG 0637B. The same issues were also forwarded to the Respondent's Head of Human Resources. She testified of being stopped by security and advised to hand over military attire to the headquarters in Mbuya. She instructed the Claimant to hand over the attire and baton and wrote several letters. Investigations commenced, and a confidential report was prepared and handed to the Commission by the District Registrar. The Claimant was given a fair hearing, and the disciplinary committee's outcome was upheld on appeal to management.
- [11] Under cross-examination, RW2 confirmed that she did not write the letter to Mulago National Referral Hospital to verify the forged documents. Neither RW1 nor anybody else told her about the forged documents. She did not sit in the MDC or AC. She testified that she left Luwero in 2018 and was replaced by IDDI KAAWHA. She testified that she knew the differences and bad working relationship between the Claimant and Alex Komuhangi. She confirmed that the Claimant was sickly and did get sick leave. She clarified that she did not carry out any investigation on the forged medical records but that she believed the Claimant could have forged the documents. She also confirmed that while she was asked to give an opinion about the Claimant, she did not see the forged documents.
- [12] In reexamination, she confirmed that she knew the Claimant well and that the investigations were into his character, which was done before his dismissal. She concluded that his conduct was found wanting.
- [13] The Respondent then called Mr. Steven Kiggundu (RW3), the Commissions Senior Transport Officer, who testified that he received reports from the District Registrar about the misuse of the motor vehicle Reg No. UG 063B. He testified that prior complaints were written about this issue and the illegal possession of military attire. He referred to REX 4, REX5, and REX6, respectively. He also testified that investigations were carried out and required procedures for a fair hearing complied with.



- [14] Under cross-examination, RW3 clarified that the forged medical documents were not submitted to him. He was only told that one of the Respondent's drivers had a case of forged medical records. He did not recall the full details. He did not have much interest and did not follow this. He counseled the Claimant on the matters of misuse of the vehicle. The Claimant did not tell RW3 about the military attire. In his view, persistent misuse of a motor vehicle could become gross misconduct. He recalled seeing a notice of a disciplinary hearing but did not recall the offence.
- [15] In re-examination, RW3 clarified that he had learnt of the disciplinary hearing from the Head of Human Resources. He also confirmed that he counseled drivers regularly.
- [16] Finally, the Respondent called Alex Koumhangi (RW4), who testified that the events leading to the Claimant's dismissal were submitting forged medical documents with intent to defraud the Respondent, persistent misconduct, and misuse of official motor vehicle Isuzu Dmax Reg. No. UG 0637B. Before his dismissal, several complaints were written to RW2 about the Claimant's dishonesty, disrespect, and masquerading, illegal possession of military attire in the Respondent's vehicle. She testified that investigations were carried out, and she was tasked to prepare a confidential report in consultation with the head of the region. The required procedures for a fair hearing were complied with, including the right to appeal. On appeal, the Commission upheld its decision to dismiss the Claimant.
- [17] Under cross-examination, RW4 conceded that she did not see the alleged forged medical documents and did not participate in the investigation. She was convinced that the Claimant forged the documents because she knew him well. She testified that she was asked to give a report on the professional conduct of the Claimant but was neither directed nor asked to provide him with a copy. The report was addressed to the Secretary, and the Claimant must be made aware of the investigation. She testified to having given the claimant administrative sanctions. She confirmed that CEX24 was addressed to the Returning Officer of Luwero.
- [18] In re-examination, RW4 testified that she participated in the investigation by writing a confidential report. She confirmed that it was procedural to caution staff and that it was not a driver's duty to account for funds. She listed the grounds in REX2 as forgery and persistent misconduct. Each of these amounted to gross misconduct.



Preliminary Points

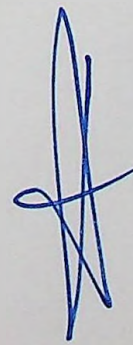
- [19] It was submitted for the Claimant that the Respondent's witness statements introduced new facts not pleaded in the memorandum in reply. They introduced forgery of medical records, persistent misconduct, absenteeism, misuse of official government vehicle and disrespectful behaviour. Counsel cited the case of **Interfreight Forwarders (U) Ltd v East Africa Development Bank SCCA No. 33 of 1992** in support of the proposition that a party is expected and is bound to prove the case as alleged in the pleadings.
- [20] The Respondent did not make a specific submission on this point but suggested that this Court sitting as the Court of Equity could consider the Respondent's evidence. We were referred to this Court's ruling regarding the preliminary objections raised. The Respondent contended that the Claimant had not come to equity with clean hands.

Resolution of Preliminary Point

- [21] The system of pleadings relates to formal documents in which a party to a legal proceeding sets forth or responds to allegations, claims, denials, or defenses¹ Under Rule 5(2) and (4) of the Labour Disputes (Arbitration and Settlement) (Industrial Court Procedure) Rules, 2012 the claimant in a labour dispute referred to the Industrial Court is required to file a memorandum detailing the nature and particulars of each item of the claim while the Respondent is required to file a reply to it. The system of pleading serves to articulate each respective party's case to establish specific facts or points of law that point to an issue upon which the Court would be invited to decide.
- [22] In the objection before us, the Claimant contends that the Respondent's evidence is a departure from the memorandum in reply filed on the 20th of March 2020. According to the learned authors M. Ssekaana J and S. Ssekaana in their treatise **Civil Procedure and Practice in Uganda**,² the primary object of the defence is to inform the plaintiff precisely how much of the claim is admitted and or what grounds and facts the defendant relies on to defeat the claim of the plaintiff. By necessary implication, therefore, the system of pleadings does not envisage a bare denial of the Plaintiff's claim as an effective or permissible defence. In the case before us, the Respondent admitted that the Claimant wrote a letter in reply to the notice to show cause and that the Claimant lodged a complaint with the labour

¹ Black's Law Dictionary 11th Edn by Bryan Garner at page 1394. See also M. Ssekaana J and S Ssekaana "Civil Procedure and Practice in Uganda" 2nd Edn at page 155

² Ibid at page 178-179



office, which claim was not resolved and was referred to this Court. The Respondent also admitted paragraphs 1,2,15,16,18, and 19 of the affidavit verifying the claim. These paragraphs relate to the Claimant's particulars, the fact of his employment, the dismissal on the grounds of forgery of medical documents and persistent misconduct of absenteeism, misuse of the official vehicle and disrespectful behavior. The fact that persistent misconduct of absenteeism, misuse of the official vehicle and disrespectful behaviour were not raised in the show cause letter and the reference to the Industrial Court.

[23] In its memorandum in reply, which is the Labour and Employment Practices equivalent of a written statement of defence in Civil Proceedings, the Respondent did not set up any facts upon which it denied the claim. The entire defence consisted of the above admissions and a traverse. According to Black's Law Dictionary,³ a traverse is a formal denial of a factual allegation made in the opposing party's pleading. It is the law that a traverse must not be general. Under Order 6 Rule 8 of the Civil Procedure Rules S.I 71-1 (*from now CPR*), it is not sufficient for a denial to be general. In the matter before us, except for the admissions, there were no facts for the Respondent, and the denials were general. The Respondent did not specifically traverse the Claimant's facts. Paragraphs 2 and 4 of the memorandum in reply contained generally grouped denials; we think this was imprecise, inelegant, and unhelpful drafting. It is arguably true that by adopting a general traverse, the Respondent dispossessed itself of an opportunity to mount any robust and meaningful defence. Such is the system and function of pleadings.

[24] Be that as it may, Mr. Olok was of the firm view that by relying on the grounds of forgery of medical documents and persistent misconduct of absenteeism, misuse of official vehicle and disrespectful behaviour in their witness statements, the Respondent was introducing new facts. We think not because while the Respondent adopted a general denial approach, paragraph 3 of the memorandum in reply admitted paragraphs 15 and 16 of the memorandum of claim. These paragraphs read:

"15. That on the 23rd day of Feb, 2018, I received a dismissal letter from the respondent on two grounds that is forgery of medical documents with intent to defraud the respondent and persistent misconduct of absenteeism, misuse of the official vehicle and disrespectful behavoiur. (a copy of the dismissal letter is attached and marked "H")."

³ Black's Law Dictionary(supra) at page 1806



16. *The 2nd ground in the dismissal letter is persistent misconduct of absenteeism, misuse of the official vehicle and disrespectful behaviour was never mentioned in the show cause letter and as such I was condemned unheard of the 2nd Offence which is contrary to law*"

In the memorandum in reply, the Respondent pleaded that:

" MEMORANDUM IN REPLY

1. *Save what is herein specifically admitted to be true, the respondent denies each and every allegation of fact and claim together with the particulars thereof contained in the claimant's memorandum of claim as if the same were herein set forth and traversed seriatim.*
-
2. *Paragraph 3,4(n) in respect to notice to show cause, 4(s) in respect to lodging a complaint and 4(t) on inability to resolving the dispute, all of the Memorandum of claim are admitted save for respondent denials of each and every allegation; the claimant will be put to strict proof.*
3. *Paragraph 1,2,15,16, 18 and 19 of the Affidavit verifying the claim are admitted."*

While we agree with Mr. Olok's restatement of the law that a party will not be allowed to depart from its pleadings⁴ we think that because of the Respondent's admissions as described above, it was entitled to make the case of the lawfulness of the Claimant's dismissal on the ground of forgery of medical documents and persistent misconduct of absenteeism, misuse of official vehicle and disrespectful behaviour. It is not that there were any new facts. These were admitted facts. The law of admissions overrides matters of pleading and procedure⁵. The case of **MMatovu Luke & ORS vs. Attorney General**. For this reason alone, we are inclined to overrule the preliminary objection and return to the mainstay of this dispute.

⁴ See *Painento Semalulu v Nakitto Eva Kasule* (Civil Appeal No. 4 of 2008) [2017] UGHCLD 49 (27 April 2017) and *Muwakanya Elias v Kakombe Fabiano* H.C.C.A No 0059 of 2019

⁵ See *Mwebeiha Amatos vs A.G* [2015] UGHCLD 49. See also *Matovu Luke & Ors v Attorney General* HC Misc. Appl. No. 143 of 2003

Consideration of Issue No. 1

Submissions of the Claimant

- [25] It was submitted that the termination of the Claimant was unlawful because he was not accorded a fair hearing before he was dismissed in contravention of Section 66 of the Employment Act 2006 (*from now EA*). It was also submitted that the Respondent did not hear and consider the Claimant's representations, did not allow the Claimant to appear with a person of his choice, or gave him reasonable time to prepare his defence. Mr. Olok referred us to paragraph 17 of the Claimant's witness statement. Counsel contended that RW1 did not produce minutes of the management disciplinary committee meeting (*from now DCM*) or the Appeals Committee (*from now AC*). There was no evidence that the Claimant was notified of the hearing's date, time, and place within a reasonable time.
- [26] It was also submitted that the Claimant should have been notified of the charges of persistent misconduct of absenteeism, misuse of official vehicle and disrespectful behaviour. RW1 did not deny the lack of communication. CEX 12 and CEX 13 did not contain this ground nor the response to it.
- [27] Finally, it was submitted that the Claimant denied the medical evidence of forgery. Alex Komuhangi's confidential report on the Claimant was not shared with the Claimant nor tendered in Court. Mr. Olok submitted that the Respondent's conduct was in breach of Articles 28 and 42 of the Constitution of the Republic of Uganda, and the decision to terminate the Claimant was biased. Learned Counsel invited us to find in favour of the Claimant.

Submissions of the Respondent

- [28] Mr. Musinguzi, appearing for the Respondent, affirmed the grounds for dismissal. He submitted that the Claimant had not come to equity with clean hands. The offences for which the Respondent dismissed the Claimant did not warrant a fair hearing, in Learned Counsel's view. These offences were contrary to the Respondent's Human Resource Manual. He referred this Court to REX1, REX 11, and REX12. Learned Counsel summed up the Respondent's evidence suggesting that the witnesses were consistent in that the Claimant repeatedly committed the offences for which he was dismissed. He was cautioned informally and formally but refused to comply or change and became even more insubordinate. Learned Counsel suggested that the Claimant was allowed to defend himself before a panel of 17 members and had the chance to appeal. Citing the cases of **Okello Nymlord v Rift Valley Railways(U)Ltd** H.C.C.S No. 195 of 2009 and **Milly K Juuko v Opportunity Uganda Ltd** H.C.C.S No 327 of 2012, Mr. Musinguzi emphasized the



right to defend oneself as paramount and the right of an employer to terminate an employee unfettered if it is according to the contract.

Analysis and Decision of the Court

[29] What is common from the pleadings, evidence, and submissions of the parties is that the fact of the Claimant's dismissal is not in dispute. The short question is whether that dismissal was lawful. Dismissal is one of several means of termination of a contract of employment. There has been ample jurisprudence on the test for the lawfulness of a termination. The test of whether the termination or dismissal is lawful is whether it was procedurally or substantively fair.⁶ It is trite that an employer has an unfettered right to terminate its employee provided that the termination followed procedure.⁷ In this regard, both Counsel were accurate in restating the law. We will therefore deal first with the matter of procedural fairness.

[30] Under Section 66(1) EA, an employer contemplating the termination of an employee on the grounds of poor performance or misconduct is required to explain to the employee in a language the employee is reasonably expected to understand the reason for which the employer is considering dismissal and the employee is entitled to have another person present of their choice during the explanation. The procedure is straightforward. In the **Ogwal Jasper v Kampala Pharmaceuticals Ltd**,⁸ we cited the case of **Ebiju James v Umeme Ltd**,⁹ it 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 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.*
- 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."*

⁶ Per Nicholas Mugisha v Equity Bank Uganda Ltd

⁷ Per Hilda Musinguzi

⁸ LDR 035/2022

⁹ H.C.C.S No. 0133 of 2012

- [31] To conclude the procedural fairness, subjecting the entire body of evidence to an evaluation would be necessary.
- [32] In the matter before us, it was common to both parties that the Respondent authored a letter asking the Claimant to show cause for falsification of documents. It was dated 9th January 2018 and admitted as CEX 12. For context, it is necessary to employ the full content of the show cause letter.

*"Mr. Mutwazagye Nicholas
Driver
LUWERO DISTRICT.*

9th Jan, 2018

RE: SHOW CAUSE

Reference is made to your claim dated 8th August 2017 of Shs 4,500,000(Four Million, Five Hundred Thousand Shillings Only) as medical expenses incurred when you fell sick and were admitted at Mulago Referral Hospital.

The claim was subjected to verification with the Management of Mulago Hospital which denied ever issuing the medical reports and receipts, implying you tendered falsified documents.

This is to remind you that falsification of documents or records is a major offence as provided for under Section 11.4.3(viii) of the Electoral Commission Human Resource Manual and may lead to your dismissal.

This, therefore, is to ask you to show cause why disciplinary action should not be taken against you.

Your response should reach the under-signed, no later than 25th January 2018.

James B. Niwamanya.

For: SECRETARY, ELECTORAL COMMISSION."



From this letter, it is emergent that;

- (i) The Respondent issued a notice to show cause and
- (ii) The Respondent listed the allegations of forgery of medical documents against the Claimant.

In effect, the show cause letter attempted to comply with the principles enunciated in the Ebiju case and as set out in the Disciplinary Code in Rule 1(11) of Schedule 1 of the Employment Act. This was to the extent that it stated the allegations against the Claimant to be forgery of medical records.

- [33] What transpired after CEX5 is that the Claimant filed a written response. The Claimant's letter was dated and admitted in evidence as CEX 6. It was a detailed response dated 11th January 2018, by which the Claimant explained that he had submitted his original medical records to Mr. Charles Wafura in 2015. It can be surmised that the Claimant had understood the allegations of forgery of medical records levied against him. Following this response, the Respondent invited the Claimant to meet the management committee. The Letter read as follows:

*“Mr. Mutwazagye Nicholas
Support Staff/Driver
LUWERO DISTRICT.*

7th Feb 2018

RE: INVITATION TO MEET MANAGEMENT COMMITTEE

In line with Section 11.5.3 of the Election Commission Human Resource Manual, this is to summon you to meet Management Disciplinary Committee on Wednesday 14th February 2018, at 9:00 a.m in the Electoral Commission Board room, on a charge of submitting forged medical documents with intent to defraud the Commission, and that tantamount to gross misconduct.

Please endeavor to keep time.

*Sam A Rwakoojo.
SECRETARY, ELECTORAL COMMISSION.”*

- [34] The letter listed the time and date of the meeting and provided at least seven days before the date of the disciplinary hearing. The letter also repeated the charge of submitting forged medical documents with intent to defraud the Respondent. What the letter did not contain are the other elements of the right to be heard as



stipulated in S66EA and the Ebiju case, and that is the letter did not advise the Claimant of the right to be accompanied by a person of his choice, to call witnesses or cross-examine any witnesses. We shall return to this later in the award.

- [35] The outcome of the disciplinary process, which the Claimant now contests, was the decision to dismiss him. This was contained in the letter of dismissal dated 23rd February 2018. This letter was admitted as CEX8. It read;

*“Mr. Mutwazagye Nicholas 23rdFeb 2018
Driver
LUWERO DISTRICT.*

RE: DISMISSAL FROM ELECTORAL COMMISSION

Reference is made to appearance before the Management Disciplinary Committee on 14th February 2018 to defend yourself against allegations of gross misconduct.

I regret to inform you that in accordance with section 11.6.9 of the Electoral Commission Human Resource Manual, Management under minute MGT248/2018(ii) of the 314th meeting held on Wednesday 14th February 2018 dismissed you from the service of the Commission with immediate effect.

The specific grounds of your dismissal are;

- (i) Forgery of medical documents with intent to defraud the Commission.*
- (ii) Persistent misconduct of absenteeism, misuse of the official vehicle and disrespectful behavior.*

You are therefore directed to immediately hand over all Commission property in your custody, including the official Identity Card to Head, of Human Resources through the District Registrar, Luwero.

*Sam A Rwakoojo.
SECRETARY, ELECTORAL COMMISSION.”*

- [36] From this letter, the Claimant was dismissed for two reasons. In our view, there is a need to retrace the chronology of the Respondent’s MDC decision to dismiss the

Claimant. The Claimant's evidence before this Court is that the invitation letter to meet the MC contained only one ground. His evidence was also that the second ground for dismissal was not included in the show cause letter or the invitation to meet the MC. We find this evidence to be consistent. The law under S66EA and jurisprudence is that notification must be express and unambiguous. The employee must understand the allegations. The charges of persistent misconduct were not contained in the show cause and invitation letters. Coupled with the absence of an explanation of the Claimant's rights at the hearing, we would find that the procedure leading to the Claimant's dismissal was unfair. He was not allowed to address the second ground that the Respondent was contemplating for his dismissal.

[37] The next event of significance would be the disciplinary hearing itself. The hearing is the crux of substantive fairness. Under S68(1) EA, in any claim arising out of termination, the employer must prove the reason or reasons for the dismissal. In its defence of a claim such as the present one, the onus is on the Employer to justify the dismissal. This proof is not a clog on the Employer's unfettered right to terminate but promotes fair labour practices. In **Uganda Breweries Ltd v Robert Kigula**,¹⁰ The Court of Appeal held that an employer must show that the employee had repudiated the contract or any of its essential conditions to warrant summary dismissal and that gross and fundamental misconduct must be verified for summary dismissal. Mere allegations do not suffice.

[38] The Claimant's evidence is that when he entered the meeting room, the Respondent's head of legal and Head of Human Resources did not allow him to speak. It was his evidence that he was later asked to exit the room. The Respondent did not controvert that position in cross-examination. The Respondent's witness did not testify to having attended the meeting. This Court did not benefit from meeting minutes or any other record of what transpired at the hearing. Did the meeting amount to a fair hearing? Precedent holds and has imposed sufficient clarity and consistency on what amounts to a fair hearing. In **Ssejemba Israel v Attorney General**,¹¹ the Constitutional Court lists, in an elaborate discourse, the elements of a right to a fair hearing. Drawing from the African Commission guidelines on the right to a fair hearing, Article 14 of the International Covenant on Civil and Political Rights, and Article 28 of the Constitution, the Court listed some of the elements, including:

¹⁰ Civil Appeal No. 183 of 2016

¹¹ Constitutional Petition No. 37 of 2014



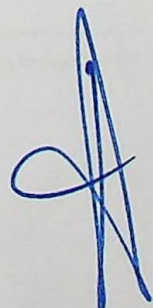
- Adequate opportunity to a case, present arguments, and evidence.
- The right to challenge evidence or respond to opposing arguments or evidence.
- An entitlement to consult and be represented by a legal representative or other qualified persons,
- The right to appear before an impartial and independent tribunal,
- Sufficient notification of the nature and charges ¹²

In Uganda's employment and labour law, the principles of fair hearing are enacted within the EA and equally pronounced by the Courts. What emerges as consistent principles of fair hearing are, in a nutshell, what was covered in the Ebiju case and as listed in Schedule 1 of the Employment Act.

- [39] The evidence before this Court demonstrates that none of the Respondent's witnesses, each of whom testified to the view that the Claimant was disrespectful, attended the disciplinary hearing. The Respondent did not produce minutes of the hearing to demonstrate that the allegations were laid before the Claimant and that his rights to controvert the allegations and question any of the witnesses were respected. The lack of minutes is significant and places the Respondent in some difficulty in establishing an accurate record of what transpired at the hearing. Minutes are memoranda or notes of a transaction, proceeding, or meeting¹³. Because of human memory's inherent fallibility and unreliability, keeping and producing minutes when a dispute occurs is a helpful practice.
- [40] Each of the Respondent's witnesses testified to investigations being carried out, but no investigation report was said to have been presented to the Claimant at the disciplinary hearing, nor was it adduced in the proceedings before us. RW3 testified to having made a confidential report about the Claimant's character. All the facts surrounding the Respondent's establishment of the charges of persistent misconduct of absenteeism, misuse of the official vehicle, and disrespectful behaviour appear to have sprung up in the termination letter. Mr. Wafura, who appeared to be at the centre of the Claimants' claim for a refund of medical expenses, was not brought to the disciplinary hearing to establish a nexus between the documents submitted for reimbursement in 2015 and the verification from Mulago Hospital in 2017. The Claimant stated that he submitted documents from St. Raphael's Medical Centre. He did not speak of Mulago National Referral Hospital. The Respondent's Counsel was of the conviction that the offences for which the Claimant had been sanctioned were so grave that they did not require a

¹² Charles Harry Twagira v Uganda S.C. Criminal Appeal No 27 of 2003

¹³ Black's Law Dictionary 11th Edn (supra) at page 1194



hearing. We think this submission to be inconsistent with Section 66 EA and fair labour practices. A hearing is necessary in all circumstances. Taking an objective consideration of the evidence before us, the Respondent may have had reasonable cause for considering the dismissal of the Claimant on the grounds of forgery of medical records and charges of persistent misconduct of absenteeism, misuse of the official vehicle, and disrespectful behaviour, but because of the foregoing lapses, these could not be justified as having been proven. In our view, the Respondent has not demonstrated substantive fairness. The decision was unreasonable because of the documents and information before the MDC. As a result, we find that the dismissal of the Claimant was unfair.

- [41] While the Respondent Commission set out to conduct the Claimant's disciplinary process according to the law, we have observed several procedural lapses. These lapses erode the principles of fair labour practices and diminish the sacrosanct non-derogable right to a fair hearing. The Claimant was not allowed to appear with a person of his choice to confront and cross-examine the witness or access copies of the reports of his alleged misconduct. He was not informed of the second ground of alleged misconduct for which he was dismissed. The Respondent did not justify the grounds for dismissal. On the Respondent's part, these acts were antithetical to the right to fair hearing precepts and would render the outcome ill-fated. In a nutshell, we determine that there was procedural and substantive unfairness on the part of the Respondent, and the Claimant was unfairly dismissed. Issue 1 is answered in the affirmative.

Issue No. 2 What remedies are available to the parties

- [42] Mr. Musinguzi contended that on account of the nature of the offence, the Claimant was not entitled to a hearing but that the Respondent had granted him a hearing. His dismissal was justified; thus, he was not entitled to any remedies. We disagree with this proposition. We have found that the dismissal was unlawful. The Claimant is entitled to remedies arising from unlawful dismissal as enumerated below.

Severance allowance

- [43] Mr. Olok contended for UGX 7,448,000/= as severance allowance. Under **Section 87(a) of the Employment Act**, an unfairly dismissed employee is entitled to a severance allowance. Having found that the claimant was unfairly dismissed, we hold that he is entitled to severance pay. We also adopt this Court's reasoning in **Donna Kamuli v DFCU Bank Ltd**¹⁴ that the Claimant's calculation of severance shall

¹⁴ The Court of Appeal maintained this position in *DFCU Bank Ltd vs Donna Kamuli C.A.C.A No 121 of 2016*.



be at the rate of his monthly pay for each year worked. The Claimant was employed from 4th July 2011 until 23rd February 2018, a period of six years, seven months, and 26 days. He was earning a salary of **UGX 980,300/=** per month at the time of his dismissal. Based on the evidence on record, we hereby award **UGX 6,524,442/=** as severance allowance.

Repatriation Allowance

- [44] Mr. Olok premised the claim on the recruitment of the Respondent while he was resident in Bushenyi and was shifted to Luwero with his family. Counsel submitted that the repatriation allowance had been earned under S39(1)(d) EA. This provision reads:

“(1) An employee recruited for employment at a place which is more than one hundred kilometers from their home shall have the right to be repatriated at the expense of the employer to the place of engagement in the following cases-

(a)

(b)

(c)

(d) on the termination of the contract by order of the labour officer, the Industrial Court or any other court.”

Under this provision, the primary qualification for the right to repatriation is recruitment from a place 100 kilometers from the employee’s home. It follows that an employee seeking to enforce the right of repatriation out to prove by evidence that recruitment was at a place 100 kilometers from their home. The Claimant did not lead evidence in proof of this, and we decline to award the same.

General damages

- [45] Mr. Olok contended for UGX 70,600,000/= in general damages submitting that the Respondent unlawfully and callously terminated the Claimant. He submitted that the Claimant had failed to find a job since he was terminated, leading to a breakdown in his family life and the sale of his property in Bushenyi. Counsel cited the case of **URA v David Wanume Kitamirike Court of Appeal Civil Appeal No. 43 of 2010** in support of the proposition that a wrongly dismissed employee is entitled to full compensation for financial loss occasioned by the dismissal subject to the duty to mitigate loss.

- [46] We propose to briefly examine the dicta expressed in the Kitamirike case (ibid) cited by Counsel for the Claimant. David Wanume Kitamirike joined Uganda Revenue Authority in 1999 and rose from Revenue Officer to Regional Manager of the Domestic Tax Department. In October 2008, he was summarily terminated for unsatisfactory performance. He sought damages. The Hon. Mr. Justice Remmy Kasule J.A(*as he then was*) premised the award of damages on dicta that courts were now, awarding damages, for other consequences of employment, in addition to the traditional damages that the plaintiff is entitled to recover by way of payment of salary in lieu of termination notice, where the employment contract is terminable by notice, or by way of remuneration for the remainder of the contract period, where the employment contract is not terminable by notice.
- [47] More recent precedent from the Court of Appeal has held that general damages in employment disputes are based on the common law principle of *restituto in integrum*. To guide the award of general damages, the Court of Appeal observes that 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.¹⁵ We are persuaded by the more recent decision.
- [48] In the case of **Donna Kamuli v DFCU**¹⁶ the Industrial Court considered the earnings of the Claimant, age, position of responsibility, and contract duration to determine the damages awardable. In the case of **Nicholas Mugisha v Equity Bank Ltd**,¹⁷ we considered that the Claimant had worked for the Respondent for a about two (2) years and was earning UGX 14,000,000 per month. We awarded UGX 52,000,000/= in general damages. We hold that the Claimant is entitled to general damages. The Claimant was employed from 4th July 2011 until 23rd February 2018 for six years, seven months, and 26 days. He was earning a salary of **UGX 980,300/=** per month. He was 38 years at the time he was unlawfully dismissed. He did not lead any evidence demonstrating that he mitigated the loss by applying for rejected alternative employment. Considering all circumstances and the Claimant's employability, we determine that based on his monthly salary, we award the sum of **UGX 11,763,600/=** as general damages.
- [49] We are not persuaded that the termination was callous to attract aggravated damages. We have found procedural lapses and substantive unfairness, but we do not find evidence of callousness. We, therefore, decline to award the sum of UGX 300,000,000 as aggravated damages.

¹⁵ Stanbic Bank (U) Ltd v Constant Okou Civil Appeal No. 60 of 2020

¹⁶ LDC No. 002 of 2015

¹⁷ LDR No. 281 of 2021



[50] The Claimant sought a sum UGX 12,351,780/= as National Social Security Fund Contributions. He did not provide his NSSF statement or any other evidence to prove this claim. We decline to award the same.

51] The Claimant also sought an order of reinstatement. Under **Section 71(6) of Employment Act 2006**, the Court may not require the employer to reinstate or re-employ the employee when the circumstances surrounding the dismissal are such that a continued employment relationship would be intolerable, it is not reasonably practical for the employer to re- instate or re-employ the employee or the dismissal is unfair only because the employer did not follow a proper procedure. In the case of **Busuula Samuel v Attorney General**¹⁸ the Industrial Court found reinstatement to be applicable where the respondent has the ability and capacity to re-employ the claimant. In that case, the respondent having not shown any unnecessary hardship that could be encountered by re-employment of the Claimant, the prayer of reinstatement was allowed. In the matter before us, the Claimant was dismissed for persistent misconduct and disrespectful disposition. In the purview of workplace harmony, we are not entirely satisfied that the Claimant would not find himself in a hostile environment were he to be reinstated. It is not reasonably practicable. For this reason, we are not inclined to grant the order.

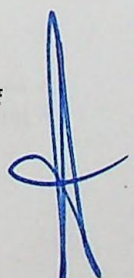
[52] Finally, the Respondent also sought an order from this Court directing the claimant to pay damages for malicious prosecution. We would be unable to consider this prayer because the Industrial Court is a special Court to handle labour disputes.¹⁹ A claim for malicious prosecution is a tort and, in the circumstances of the Respondent's prayer, quite unrelated to a labour dispute. It might as well be classified as a spurious claim. And had we the subject-matter jurisdiction to consider the prayer, no evidence was led to substantiate the claim. As a result, we must decline the prayer for damages for malicious prosecution.

[53] In the final analysis, we make the following orders;

- (i) We declare that the Claimant was unlawfully dismissed from employment with the Respondent Commission.
- (ii) The Respondent is ordered to pay the Claimant the following sums:
 - (a) **UGX 1,960,600/=** as salary in lieu of notice

¹⁸ Labour Dispute Claim No. 029 Of 2014

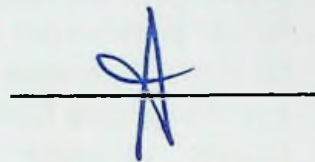
¹⁹ Per Kakuru J.A(as he then was) in *Engineer John Eric Mugenzi v Uganda Electricity Generation Co. Ltd* C.A.C.A No. 167 of 2018



- (b) UGX 6,524,442/= as severance pay.
 - (c) UGX 11,763,600/= as general damages,
 - (d) The sums above shall carry interest at 18% p.a. from the date of this award until payment in full.
 - (e) The Respondent shall also issue a certificate of service to the Claimant within 21 days of this award.
- (iii) There shall be no order for costs per our dicta in Joseph Kalule v Giz.²⁰

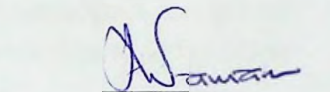
Dated, signed, and delivered at Kampala this 7th day of July 2023

Anthony Wabwire Musana,
Judge, Industrial Court

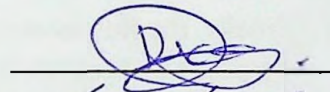


The Panelists Agree:

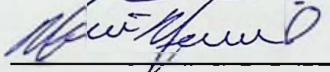
Hon. Adrine Namara,



1. Hon. Robinah Kagoye &



2. Hon. Michael Matovu.



Award delivered in open Court on **7th July 2023** at **10:17 a.m** in the presence of:

- 1. The Claimant,
- 2. For the Respondent, **Mr. Godfrey Musinguzi for the Respondent**

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

Anthony Wabwire Musana,
Judge, Industrial Court

²⁰ Joseph Kalule Vs Giz LDR 109/2020(Unreported)