THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE NO. 345 OF 2019
(Arising from Labour Dispute Complaint No. 05.05 of 2019)

NAMAKULA NORAH::CLAIMANT

VERSUS

SCOOBY-DOO DAYCARE AND NURSERY SCHOOL:::::::RESPONDENT

BEFORE:
THE HON. MR. JUSTICE ANTHONY WABWIRE MUSANA,

PANELISTS:
1. MS. ADRINE NAMARA,
2. MS. SUSAN NABIRYE &
3. MR. MICHAEL MATOVU.

AWARD

Introduction

[1] Ms. Norah Namakula (*the claimant*) was employed as a head teacher by the Respondent on 1st January 2017 on a three-year contract. She was terminated from her employment on the 14th day of September 2018. She filed Labour Dispute No. 05.05.19 at Wakiso District Labour Office. On 2nd September 2019, the Senior Labour Officer referred the matter to this Court. By a memorandum of claim dated 15th December 2019, the Claimant sought a declaration that she was unlawfully terminated. She prayed for special damages in the sum of UGX 62,370,000/= (Sixty Two Million. Three Hundred Seventy Million Uganda Shillings) being salary arrears, NSSF contributions, an outstanding loan, fuel, airtime, and severance allowances. She also asked for the claim's general and aggravated damages, interest, and costs.

[2] The Respondent opposed the claim. The Respondent's case was that the Claimant was summarily dismissed due to grave misconduct. She had been found braiding her hair during office hours. Coupled with absenteeism and late-coming,

she failed to meet the school targets. As to her claim, the Respondent held the view that the benefits were part of the Respondent's reward scheme, were not mandatory, and did not form part of the employment contract. The Respondent added that it had remitted contributions to the National Social Security Fund, denied liability for the salary loan and required the Claimant to hand over school property, including a Toyota Rav 4, before payment in lieu of notice could be made.

Issues for determination by Court

[3] At the scheduling conference, three issues were framed for determination viz:

(i) Whether the claimant's employment with the Respondent was legally terminated?
(ii) Whether the claimant is entitled to terminal benefits?
(iii) What remedies are available to the parties?

The Proceedings

[4] The Claimant filed a witness statement, testified, and was cross-examined on the 8th of September, 2022. The matter was set for a hearing of the Respondent's case on 23rd September 2022. On that date, Mr. Milton Muhumuza, appearing for the Respondent, informed the Court that the Respondent's chief witness was unwell and he sought an adjournment. The Court granted the Respondent a last adjournment to the 3rd of October 2022. On that date, the Respondent did not attend Court, and no reason was ascribed for the Respondent's absence. We were satisfied that the Respondent was aware of the hearing date, and issued directions for written submissions. The Claimant filed her written submissions on the 10th of October 2022. The Respondent opted out of filing any final arguments.

Analysis and Decision of the Court

[5] For wholeness, we shall consider issue 1 alone and issues 2 and 3 jointly. It is our view that terminal benefits are remedies and we are of the persuasion that issues 2 and 3 should be merged and rephrased as **what remedies are available to the parties.**

Issue 1. Whether the Claimant's employment with the Respondent was legally terminated?

[6] Mr. Ronald Mugisa, appearing for the Claimant, submitted that the grounds of dismissal in the letter of termination dated 14th September 2018 were not consistent with Clause 11 of the employment contract which provided grounds for dismissal without notice. He submitted that the Claimant was not given a hearing in accordance with Article 28(1) of the Constitution of the Republic of Uganda. The Respondent's acts also contravened **Section 66(1), (2), and (3) of the Employment Act, 2006**. Further, that failure to bring disciplinary proceedings against the Claimant rendered the Respondent's actions ultra vires and illegal. Counsel posited that the termination without notice contravened **Section 58 of the Employment Act** while failure to give proof of termination was contrary to **Section 68 of the Act**. He cited the cases of **Birungi Grace v The Management Committee of Kampala Quality Primary School LDR No. 15 of 2019, Ebiju James v Umeme H.C.C.S No. 0133 of 2012, Francis O.Ojera v Uganda Telecom Ltd H.C.C.S No 0161 of 2010 and Kabojja International School v Godfrey Oyesigye LDA No.003 of 2015**, in support of his propositions.

[7] It was a common position that the Claimant was employed by the Respondent as head teacher. It was also common to both parties that she was terminated by a letter dated 14th September 2019. The said letter was admitted in evidence and marked as "CEXH3". The said letter, signed by the Director of the Respondent, Mr. Kyewalabye Male, read as follows:

> *"I am writing to inform you that effective today 14/09/2018 a decision has been taken to terminate your services as Principal Scooby Doo Day Care and Nursery School. This arises out of both verbal and written expressions of the below par of the delivery of your services. We realize we had different dreams and visions and find it important to let you pursue your dreams elsewhere"*

[8] From this letter, the reason ascribed for the Claimant's termination was the below-par delivery of services. It is also very clear that the Claimant's employment relationship with the Respondent ceased on the date of the letter. It was effective on the 14th of September 2018. In paragraph 4 of his witness statement, the Respondent's Director, Mr. Kyewalabye Male stated that the

Claimant was summarily dismissed. He added at paragraphs 5 and 6 of his witness statement that the reasons for her dismissal were professional incompetence, absenteeism, late coming and previous gross misconduct of braiding hair during official working hours. In her evidence, the Claimant, in paragraphs 12, 13, and 14 of her witness statement confirmed receipt of the termination letter indicating below-par delivery of services. During cross-examination, she confirmed discussions of prior allegations of braiding hair at the school. The Claimant also confirmed that no hearing was held prior to her termination.

[9] From the evidence presented to this Court, the Claimant was summarily dismissed on the 14th of September 2018. She was not given a hearing. The Respondent prepared and signed the termination letter severing the employment relationship instantly on the 14th of September 2018.

[10] **Section 66 of the Employment Act** provides;

> *"(i) Notwithstanding any provision of this part, an employer shall, before reaching a decision to dismiss an employee, on the grounds of misconduct or poor performance, explain to the employee in a language the employee may be reasonably expected to understand, the reason for which the employer is considering dismissal and the employee is entitled to have another person of his or her choice present during this explanation.*
>
> *(ii) Notwithstanding any other provision of this part, an employer shall, before reaching any decision to dismiss an employee, hear and consider any representation which the employee on the grounds of misconduct or poor performance, and the person, if any chosen by the employee under subsection (i) may make."*

[11] We find that the Claimant was not given a hearing. The termination letter was unambiguous. It was explicit. Quite simply, the Respondent severed the employment relationship instantaneously. The use of the words "*effective today*" in the termination letter expressed the Respondent's profound desire for an immediate terminus. The Claimant was not invited to a hearing where the reason or reasons for her dismissal were explained to her. She was not advised of her right to have a person of her choice attend the hearing. The actions of the Respondent were contrary to the clear provisions of the Employment Act and

very well-settled principles of labour law *viz* the right to a hearing and adherence to disciplinary procedures. The Respondent's actions in terminating the Claimant were procedurally defective. The decision of this Court in the case of **Donna Kamuli v DFCU Bank Ltd Labour Dispute 002 of 2015**[1] also cited by the Claimant, is very instructive on the point. Citing the Kenyan case of **Queenvelle Atieno Owala v Centre For Corporate Governance (Industrial Court Of Kenya, Cause 81/2012**) in which the court held that:

> *"It was insufficient that the Respondent had various discussions with the Claimant. It was immaterial that the Claimant was even at one time appraised and found wanting by Dr. Okumbe. Appraisals and discussions held between employees and their employers touching on employees work performance, do not add up to a disciplinary hearing, and can only be evidence in support of good or poor performance at a disciplinary hearing. Whatever records the respondent held against the Claimant were to be subjected to the rigours of a disciplinary process before a decision could be made. Termination was lacking in both substantive validity and procedural fairness...."*

[12] We agree with the dictum expressed in the above case. In effect, the prior verbal and written expressions of the below-par delivery of services were inconsequential to the decision to terminate. It is this Court's determination that the Claimant's termination was unlawful. Issue Number 1 is therefore answered in the affirmative.

Issue II. What remedies are available to the parties?

The claimant sought various statutory and other remedies which we shall dispose of individually.

Unpaid Salary:

[13] The Claimant led evidence that she was not paid a salary for the month of September 2018. She had testified that her monthly salary at the time of termination was UGX 1,900,000/= (One Million Nine Hundred Thousand

[1] This conclusion was left undisturbed by the Superior Courts.

Shillings Only). Under **Section 41 of the Employment Act**, an employee is entitled to wages for work performed. This Court has ruled that unpaid salary for wrongful termination is to be paid for the period worked.[2] Any claim beyond the period worked is speculative. Having worked for 14 days in the month of September 2018, we award the sum of UGX 886,666/= (Eight Hundred Eighty Six Thousand Six Hundred Sixty-Six Shillings) being unpaid salary up to 14th of September 2018.

[14] We find the claim for salary for 1 year and 30 months amounting to UGX 30,400,000/= speculative. In the case of **African Field Epidemiology Network vs Peter Waswa Kityaba[3],** the Court of Appeal held that a former employee should not get more than what he or she would have earned. Applying that decision to the Olweny case (supra), this Court rejected the prayer for salary arrears for the remaining period of the contract. Mr. Mugisa attempted to buttress the claim for unpaid salary for the remaining term of the contract on the decisions of the Supreme Court in **Bank of Uganda v Betty Tinkamayire S.C.C.A No. 12 of 2007** and **Omunykol Akol Johnson vs Attorney General SCCA No. 06 of 2012**. In a way this claim would be linked to lost employment income which the Claimant sought. We think that the two decisions are inapplicable to the facts before us. In the case of **Irene Rebecca Nassuna v Equity Bank (U) Ltd** [4] on the matter of loss of future earnings, this Court had this to say;

> *"Although the Supreme Court awarded the Appellant in this case salary until the date of retirement, this court distinguished it in **Mufumbo (supra)** and held that **Omunyokol** applies to Civil Servants and not apply employees employed in private enterprises. It is trite that once an Employment contract has been terminated, unlike an ordinary contract, Court cannot make an order for specific performance and the only remedy to an employee in issue is the award of General damages in addition to other remedies prayed for under the Employment Act.....In **Richard Kigozi vs Equity Bank Uganda Limited, LDC No. 115 of 2014,** this court stated in line with **Kiyimba Mutale**(supra),that: "...Even then it is not a guarantee that an employee will serve the term of employment to the end. There is a possibility that the contract could be terminated by unforeseen*

[2] LDC 225 of 2019 Olweny Moses vs Equity Bank Ltd
[3] C.A Civil Appeal No. 124 of 2017
[4] LDC 06/2014

reasons other than termination, such as death, lawful termination, resignation etc. For the same reasons therefore, there was no guarantee that the Claimant would have served the Respondent until retirement..."

[15] In the case of **Kapio Simon Vs Centenary Bank Ltd LDC 300/2015** this Court held that such speculative future loss ought not to be granted. It follows that the Industrial Court's current jurisprudence is that a claim for future earnings, is speculative. In the case before us, we find that the claim for salary for 1 year and 30 months amounting to UGX 30,400,000 speculative. The prayer is hereby denied.

Notice:

[16] Under **Section 58(3)(b) of the Employment Act**, where an employee has been in employment for a period of more than twelve months but less than five years, the employee would be entitled to not less than one month's notice. The Claimant had been in the Respondent's employment from 1st January 2017 to 14th September 2018, a period of 21 months. In the circumstances, we award the sum of **UGX 1,900,000/= (One Million Nine Hundred Thousand Shillings Only)** in lieu of notice.

NSSF Benefits

[17] The Claimant did not present her National Social Security Fund Registration Number or Card before the Court. During cross-examination, she admitted that she had not given the same number to the Respondent. In re-examination, she stated that the Respondent had her NSSF details and had made remittances for about one month. She did not present any evidence proving the remittances to NSSF or a statement from the Fund showing the status of her account with the fund. This Court has held that under **Section 12 of the N.S.S.F Act**, an employer is obliged to remit 5% of the salary of the employee and 10% as the employer's contribution to the NSSF account for Social Security of the employee.[5] There has also been a unanimity of view that where the claimant does not adduce any proof, a claim for NSSF benefits would be speculative and be denied.[6] Indeed, in the case of **Stanley Aijukye Vs Barclays bank (U) Ltd. LDC 243/2014**, this Court held that NSSF deductible amounts could only be recovered if they were in fact deducted and not remitted to the claimant and that only NSSF had the

[5] See Otim Robert vs Tirupati LDR 104 of 2017,
[6] See Otim Robert vs Tirupati (Ibid), Lubega Moses vs Holycross Orthodox Hospital LDR 118 of 2018 and LDR 029/295 Bugisu Robert vs Young Women's Christian Association in Uganda.

mandate to prosecute or file civil proceedings against the employer for recovery of the same. In view of the above authorities, the claimant has not demonstrated that any sum was deducted from her salary and remitted to the NSSF. We find that the claim would be speculative for want of evidence and it is denied.

Outstanding Loan

[18] The Claimant submitted that based on the contract of employment, she obtained a salary loan of UGX 17,000,000/= (Seventeen Million Shillings Only). It was the Claimant's case that the loan was guaranteed by the Respondent using the Claimant's salary as security. According to Counsel, the Respondent's letter of undertaking addressed to the Manager Stanbic Bank Ltd Nateete Branch, dated 24th November 2017. The letter was entered as an Identification Document. To appreciate its import, we have reproduced it verbatim. It read as follows:

> *"To;*
> *The Manager*
> *Stanbic Bank Uganda Ltd*
> ***EMPLOYERS LETTER OF UNDRETAKING RE-SALARY DEPOSIT***
> *We hereby confirm that NAMAKULA NORAH employee number OO1 ID/Passport number CF78082102EFGA has been employed by this company since 2016/JAN/05 and is a permanent staff member.*
>
> *We further confirm having received an instruction from the above mentioned staff member to deposit his (sic) monthly salary to:*
> *Stanbic Bank Uganda Ltd*_____
> *Branch NATEETE Code*_____
> *Account Number 9030011532836 with effect from*
> *Pay day 10th JANUARY*
>
> *We undertake to deposit the above mentioned staff's monthly salary into the above account to facilitate the recovery of the loan.*
>
> *It is fully understood that the above arrangement will remain in force until the above loan is repaid and changes pertaining to this*

instruction will not be effected without the consent of Stanbic Bank Uganda Ltd.

We further undertake to promptly notify Stanbic Bank Uganda Limited in the event of the employee's termination of service and to pay any terminal benefits due to the employee in the event to Stanbic Bank Limited.

Authorised Signatories

Company Stamp/Seal……."

[19] A plain and literal reading of this letter has the following implications;

(i) Under its title, the Respondent undertook to deposit the Claimant's salary in her bank account held at the Nateete Branch of Stanbic Bank (U) Ltd.

(ii) The Respondent confirmed that the Claimant was a member of its permanent staff.

(iii) The Respondent undertook to deposit the said salary until the loan sum was retired.

(iv) Any changes in the instructions to deposit the salary were to be communicated to Stanbic Bank (U) Ltd.

(v) In the event of termination of the Claimants employment, the Respondent undertook to pay the terminal benefits to Stanbic Bank (U) Ltd.

[20] The question this Court must address is whether the Respondent is liable to pay the outstanding loan. Mr. Mugisa relied on the case of **UDB vs Florence Mufumba**[7]**.** In that case, the Court of Appeal agreed with the Industrial Court's finding that the Respondent was obliged to continue servicing her loan after her retirement. The loan was to be secured by her terminal benefits and dealt with as an offset from any terminal benefits or awards in lieu of compensation, therefore. In our reading, this Court of Appeal decision did not impose a liability on the

[7] Per Madrama J.A (As he then was) in Uganda Development Bank v Florence Mufumba C.A.Civ Appeal No. 241 of 2015.

employer to pay the loan on Ms. Mufumba's termination. Rather, that the loan would be offset against any terminal benefits held by the Appellant Bank as security. Notably, the Mufumba case was in respect of a staff loan and consisted of a series of loan agreements between Florence Mufumba and the Respondent Bank, as her employer.

[21] The Court of Appeal has most recently assisted enormously on the current jurisprudence on salary loans. In the case of Stanbic Bank (U) Ltd v Constant R. Okou[8] Madrama, JJA (as he then was) held that the Mufumba case did not establish a general principle and each case has to be considered on the basis of its own facts. His Lordship posited that the contract on which the loan is based is a material consideration and there can be no blanket conclusion that there was an understanding that all loans are payable by salary deductions. Evidence on the subject matter of the outstanding loan amounts would be required.

[22] The position in earlier decisions of the Industrial Court where an employee is unlawfully dismissed was that the employee had to prove that the loan was approved/guaranteed by the employer and that it was purely unsecured and solely premised on salary for its payment. [9] The underlying principle and a common thread in all the cases are that the loan was guaranteed by the employer and the salary is the sole source for recovery of the loan.

[23] In definitive terms, under Section 68 of the Contract Act 2010, a contract of guarantee means a contract to perform a promise or to discharge the liability of a third party in case of default of that third party, which may be oral or written. In other words, the guarantor promises the lender to be responsible, in addition to the principal borrower for the due performance by the principal of his existing or future obligations to the lender, if the principal fails to perform those obligations. Following the dictum of the Court of Appeal in the Stanbic case (supra) in the context of salary loans, the employer's obligation on an employee's salary loan must be defined in the underlying loan documents. The obligation ought to be clear and unambiguous. In the final analysis, the determination of whether the employer should be liable for the outstanding loan, is a matter of construction of the loan documents.

[8] C.A C.A No. 60 of 2020

[9] Per. Ntengye J., Tumusiime Mugisha J. *et al* in Irene Rebecca Nassuna v. Equity Bank(U) Ltd LDC 06/2014. See also Assimwe Apollo & Ors v Law Development Centre Labour Dispute No. 218 of 2014 and Akeny Robert v Uganda Communications Commission Labour Dispute Claim 023 of 2015.

[24] Applying these principles to the facts of the present case, the undertaking by the Respondent was limited to depositing the claimant's salary into the nominated account with Stanbic Bank (U) Ltd. And in the event of termination, the Respondent undertook to deposit the terminal benefits in the said account. We were not presented with the loan agreement or any other evidence which demonstrates that the Respondent agreed to guarantee the Claimant's loan. Considering the wording in Exhibit CEXH4, the obligations created were limited to the Respondent depositing the salary on the nominated account, obtaining the Bank's consent in the event of changes to the instructions, notifying the Bank in the event of termination of the employment relationship and depositing terminal benefits in the said account. Accordingly, we find that the Respondent is not liable to pay any outstanding loan. Rather, the Respondent's obligation is to deposit any terminal benefits due to the Claimant into Stanbic Bank Nateete Branch, Account Number 9030011532836.

Severance Allowance

[25] Under Section 87(a) of the EA, an employee who is unfairly dismissed is entitled to severance allowance. We have declared that the claimant was unfairly dismissed. We adopt this court's reasoning in **Donna Kamuli Vs DFCU Bank Ltd (Op cit)**[10] the claimant's calculation of severance shall be at the rate of his monthly pay per year worked. Since she was employed on 1 year and nine months she is entitled to UGX 3,325,000/= (Three Million Three Hundred Twenty Five Thousand Shillings Only) as severance allowance. And it I so ordered.

Fuel and Airtime

[26] The Claimant estimated the sum of UGX 2,560,000/= (Two Million Five Hundred and Sixty Thousand Shillings) as fuel allowance and UGX 960,000/= (Nine Hundred Sixty Thousand Shillings) as airtime. In the contract of employment, the other benefits beyond salary were a housing allowance of UGX 200,000= (Two Hundred Thousand Shillings) per month and Fuel and Airtime Allowance of UGX 55,000= (Fifty Five Thousand Shillings) per week. The Claimant did not lay a very firm foundation for her claim for fuel and airtime allowances. It was not proven whether these were accumulated over the contract

[10] See foot note 1 above. The reasoning was left unchanged by the Court of Appeal in DFCU Bank Ltd vs Donna Kamuli C.A.C.A No 121 of 2016.

period. In the circumstances that these are not statutory remedies, we are unable to grant the same. We are of the persuasion that these were discretionary entitlements.

General Damages

[27] The issue for this Court to consider is should the Respondent pay general damages. The answer to that question in our judgment is yes. Having held that the Claimant was unfairly dismissed we appreciate, as her legal counsel rightly submitted, that she suffered inconvenience and financial distress as well as mental and emotional anguish which can be atoned in an award of general damages. Counsel did not propose to the Court an appropriate quantum. The principles in considering an award of general damages in cases of wrongful dismissal or unlawful termination are laid out in the Stanbic Bank (U) Ltd case (op cit), the principle of *restituto in integrum* is applicable, analogously, to loss of employment and future prospects of re-employment. The Court is required to consider the actual loss of earnings up to the date of the award as well as any prospective losses. Applying these principles to the case before us, the Claimant was earning UGX 1,900,000/= (One Million Nine Hundred Thousand Shillings) per month and was 38 years of age at the time of her termination on 21st September 2018. She had worked for the respondent for over 1 year and 9 months. She testified that as a Headteacher, her prospects of re-employment in a kindred position were limited. It is our determination that on the basis of her monthly salary and in view of her position as Headteacher, the sum of **UGX 22,800,000/=(Twenty Two Million Eight Hundred Thousand Uganda Shillings)** as general damages, will suffice. And it is so ordered.

Aggravated Damages

[28] The Claimant listed aggravated damages as one of the remedies sought. However, Mr. Mugisa did not address the Court on this remedy. Aggravated damages are extra compensation to a plaintiff for injury to his feelings and dignity caused by the manner in which the defendant acted. Lord Delvin, in **Rookes vs Banard [1964] A.C 1129** suggested that aggravated damages are damages awarded for a tort as compensation for the plaintiff's mental distress, where the manner in which the defendant has committed the tort or his motives in so doing, or his conduct subsequent to the tort, has upset or outraged the plaintiff. In the case of **Stanbic Bank(U) Ltd v Okou** (op cit) the Court of

Appeal considering the decision in **Bank of Uganda v Betty Tinkamayire**[11] observing the illegalities and wrongs of the employer, found the lack of compassion, callousness and indifference to the good and devoted services of the employee to be aggravating circumstances. Considering the facts of the case before us, we have not found any aggravating factors present to warrant an award of aggravated damages. We decline to award any aggravated damages under this head of claim.

Interest

[29] Given the inflationary nature of the currency, the total sum awarded in this Award shall attract interest at the rate of 15% per annum from date of Award till payment in full.

Costs

[30] In the case of Joseph Kalule v GIZ[12] we ruled that in the employment law practice, the grant of costs appears to be the exception rather than the rule and will be granted to the successful party where there has been some form of misconduct, abusive, improper or unreasonable conduct. The evidence before us does not denote any form of misconduct on the part of the Respondent that might warrant a grant of costs and we hereby decline to grant costs to the Claimant.

Orders of the Court

[31] The orders of this Court are:

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

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

(a) A sum of **UGX 886,666/= (Eight Hundred Eighty Six Thousand Six Hundred Sixty Six Shillings)** being unpaid salary up to 14th September 2018.

[11] S.C.C.A No 12 of 2007
[12] Labour Dispute Appeal No. 109 of 2020

(b) A sum of **UGX 1,900,000/= (One Million Nine Hundred Thousand Shillings Only)** being one month's salary in lieu of notice.

(c) **UGX 3,325,000/=(Three Million Three Hundred Twenty Five Thousand Shillings** Only) as severance allowance and;

(d) A sum of **UGX 22,800,000/= (Twenty Two Million Eight Hundred Thousand Uganda Shillings)** in general damages.

(iii) The sums in paragraph (ii) above shall attract interest at the rate of 15% per annum from the date of this Award until payment in full.

(iv) There is no order as to costs.

It is so ordered and declared.

Delivered at Kampala this 24 day of March 2022

SIGNED BY:
THE HON. JUSTICE ANTHONY WABWIRE MUSANA, _____

THE PANELISTS AGREE:

1. **Ms. ADRINE NAMARA,** _____
2. **Ms. SUSAN NABIRYE &** _____
3. **Mr. MICHAEL MATOVU.** _____

Delivered in open Court in the presence of:

1. Mr. Ronald Mugisa for the Claimanat.
2. The Claimant is in court.
3. Respondent is absent.

Court Clerk. Ms. Matilda Nakibinge.