



THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE NO. 47 OF 2022
(Arising from Labour Dispute No. KCCA/KWP/LC179/2021)

SADAT SSERUNJOGI **CLAIMANT**

VERSUS

GUINNESS TRANSPORTERS LTD T/A SAFEBODA.....**RESPONDENT**

Before:

The Hon. Justice Anthony Wabwire Musana

The Panelists: Hon. Jimmy Musimbi, Hon. Emmanuel Bigirimana and Hon. Michael Matovu.

Representation:

1. Mr. Leonard Kasibante of M/s. Rwakafuzi & Co Advocates, for the Claimant.
2. Mr. David Begyira holding brief for Mr. Geoffrey Kaddu of M/s. KTA Advocates for the Respondent.

Case Summary:

Employment law/Constructive dismissal/General damages for unlawful dismissal and termination. The central legal issue was whether the Claimant was eligible for general and aggravated damages in addition to the payment in lieu of notice. On considering precedent and recent Supreme Court rulings, particularly the Mukadisi case, the Court clarified that general damages can be awarded beyond payment in lieu of notice. Based on the Respondent's conduct and the procedural unfairness in handling the Claimant's termination, the court's decision was that the Claimant was entitled to general damages. This award aligned with recent jurisprudence that compensation is not limited to the notice period. The specific amount of these damages was determined based on factors such as suffering and inconvenience caused to the Claimant.

AWARD

Introduction

- [1] Sadat Sserunjogi joined the Respondent as a Community Leader in November 2014. The Respondent, trading as Safeboda, is a venture-funded company that has set out to revolutionise transportation, payments, and on-demand services in Africa's cities. Mr. Serungoji's duties involved vigorously marketing the Respondent's business, recruiting and interviewing potential riders and maintaining discipline amongst the riders. He was also in charge of collecting weekly subscriptions. In return for his services, he claims that the Respondent made several promises, including giving him shares, health insurance, education for his children, a parcel of land, a nice car and a big pay cheque if the Respondent grew. He was promoted first to Payment Manager in 2015 and then Walkin and Quality Senior Associate in 2019. On the 21st of July 2021, he was suspended pending investigations into unspecified misconduct allegations. He was invited to attend an investigative hearing on 30th July 2021, which was eventually held on 3rd August 2021. On the 9th of August 2021, he received a letter of termination. Aggrieved, he lodged a

complaint with the Labour Officer at Kampala Capital City Authority. Unresolved, the matter was referred to this Court.

- [2] In his claim, the Claimant sought a declaration that he was unfairly and illegally terminated, along with several orders and compensations. On the other hand, the Respondent opposed these claims, arguing that the termination was lawful and that the Claimant was not entitled to the remedies sought.
- [3] The Respondent opposed the claim, contending that he was not entitled to any remedies sought. The Respondent had received reports of helmets being sold at cheaper prices and launched an investigation into the misdeeds. The Claimant was suspended. Following the investigations, disciplinary proceedings were commenced against the Claimant for failure to adhere to the zero tolerance on corruption and safeguarding policies. After the hearing, the Respondent terminated the Claimant's services. It was argued that the termination was lawful.

The Proceedings

- [4] The case was sent for Court-annexed mediation. On the 5th of September 2022, the parties entered into a Partial-Settlement Agreement by which the Respondent agreed to compensate the Claimant for UGX 12,350,000/= being payment for lack of disciplinary hearing, payment in lieu of notice and severance pay. The other claims in the memorandum of claim were reserved for determination by the Court.
- [5] When the matter was called for scheduling conference on 28th of March 2024, Mr. Haruna Sewaya, appearing for the Respondent, conceded to the claim for unpaid salary from November 2014 to November 2015. Upon the concession, this Court entered a judgment on admission under Order 13 Rule 6 of the Civil Procedure Rules S.I 71-1(**the CPR**) in the sum of UGX 9,600,000/=(Nine Million Six Hundred Thousand Shillings Only). Following the judgment on admission, the parties agreed to the determination of a sole question of damages. Accordingly, and under Order 15 Rule 5 CPR, the following question was framed:
- (i) Whether the Claimant is entitled to general and or aggravated damages?

- [6] The parties called one witness each.

The Claimant's evidence

- [7] The Claimant testified that he worked for the Respondent in various capacities between 18th November 2014 to 5th August 2021. He told us that the Respondent made multiple promises in return for his services, and he worked with dedication, earning promotions, contract extensions and renewals. On 13th December 2020, he emailed the Respondent's Directors, complaining about being sidelined in the shares promised to him. The Directors did not reply and changed their attitude towards him. On 21st July 2021, he was suspended on unspecified allegations. An investigative hearing was conducted, and on 11th August 2021, he was terminated. He says he was treated shabbily. On 5th September 2022, he reached a partial consent judgment and was paid UGX 12,350,000/= as compensation for lack of a disciplinary hearing, payment in lieu of notice, and severance pay. He sought his unsatisfied claims. He was not cross-examined.

The Respondent's evidence

- [8] Mr. Nasser Nkoyoyo, the Respondent's Senior Compliance Manager, testified that there was an investigation before the disciplinary hearings culminating in the Claimant's dismissal. He confirmed the partial settlement and payment of the Claimant's statutory dues. He told us that the Claimant was not entitled to any damages since the statutory dues had been paid.
- [9] Mr. Kasibante opted not to cross-examine the Respondent's witness, who was discharged. At the close of the Respondent's case, Counsel were invited to address the Court through written submissions, which we have summarised below.

Claimant's submissions

- [10] In his submissions, Mr. Kasibante argued that this Court has held that it is not restricted to statutory relief under the Employment Act Cap. 226. Counsel cited *Kapio Simon v Centenary Bank Ltd*,¹ *Stanbic Bank (U) Limited v Okou*² and other cases in support of the proposition that an unfairly or unlawfully dismissed employee is entitled to general damages.
- [11] On the quantum of general/aggravated damages, Learned Counsel proposed UGX 70,000,000/= on the authority of *Uganda Breweries Ltd v Kigula*³, *Ochwo v Appliance World Ltd*⁴, and *Mbonyi v Appliance World Ltd*⁵. He submitted that the Claimant was treated in an inhumane and insensitive manner.

Respondent's submissions

- [12] It was submitted for the Respondent that the Claimant was not entitled to any damages but only statutory relief. Mr. Sewaya relied on *Bank of Uganda v Betty Tinkamanyire*⁶ and *Barclays Bank of Uganda v Godfrey Mubiru*⁷ for the proposition that compensation should be limited to the monetary value of the proper notice period. Learned Counsel also cited *Stanbic Bank Uganda Ltd v Asiimwe*⁸ concluding that UGX 2,600,000/= paid to the Claimant as payment in lieu of notice was sufficient. Counsel invited us to dismiss the claim.
- [13] The Claimant did not rejoin.

Determination

- [14] From the parties' submissions and as positioned by Mr. Sewaya for the Respondent, this Court is confronted with whether the Claimant is entitled to general or aggravated damages in addition to the payment in lieu of notice. We will treat the question of general damages first.

¹ LDC 300 of 2015

² [2023] UGCA 100

³ [2020] UGCA 88

⁴ [2019] UGIC 6

⁵ [2021] UGIC 10

⁶ [2008] UGSC 21

⁷ [1999] UGSC 22

⁸ [2020] UGSC 37

General damages

- [15] The decision in *Assimwe* holds that the general damages awardable for unfair termination are limited to the appropriate notice period. In that case, the Respondent was terminated by letter dated 19th January 2005 and paid three month's salary in lieu of notice. The Supreme Court considered that the Respondent was terminated under Section 25(3) of the Employment Act Cap. 219⁹. The Court was emphatic that by the doctrine of freedom of contract, the Court would not be called on to impose terms of contract where the employer and employee have agreed to terminate a contract by giving notice or payment in lieu of notice. Similarly, in *Stanbic Bank (Uganda) Limited v Nassanga*,¹⁰ where the Court of Appeal gave an expansive treatment to termination under Section 65(1)(c)¹¹ of the Employment Act 2006, Gashirabake JA relying on *Addis v Gramophone Co. Ltd*¹² and the common law principle of *restituto in intergram* declined to award damages for unlawful termination beyond payment in lieu of notice. The ratio in this case was that where a Court finds unlawful termination under Section 64(1)(a)EA where payment in lieu of notice is made, there would be no basis for an award of additional general damages. The decision in *Nassanga* followed *Assimwe*, which related to unlawful termination, as did *Tinkamanyire*.
- [16] In an article entitled Award of Damages for Unlawful Dismissal in Uganda. The Quest for Consistency after the Employment Act of 2006, Mr. Patson Arinaitwe¹³, Learned Author, traces the principle that general damages should be restricted to the contractual or reasonable notice period applied in *Tinkamanyire*, *Mubiru*, *Ahmed Ibrahim Bholim v Car and General Limited*¹⁴, *Gullabhai Shillingi v Kampala Pharmaceutical Limited*¹⁵ to *Addis* and the common law confines that no damages would be available for actual loss of job, pain and distress that may be suffered as a consequence of termination or dismissal. Mr. Arinaitwe also suggests an inconsistency with this position in *Stanbic Bank Ltd v Kiyemba Mutale*¹⁶ where the Supreme Court 're-opened' a settled position in *Tinkamanyire* by awarding general damages outside the notice period. This position was also taken by the apex Court in *Omunyokol v Attorney General*¹⁷ where the Court awarded UGX 150,000,000/= in general damages for loss of future earnings, embarrassment and inconvenience. The article highlights the restriction of general damages to the notice period in contradistinction to the award of additional general damages beyond the notice period. In effect, the article suggests that there is no consistency on whether, in our jurisdiction, the Courts should award additional general damages in employment disputes.
- [17] The Supreme Court has, by a recent precedent, settled that debate and assisted enormously in imposing consistency on whether an employee is entitled to general and aggravated damages for unlawful termination or dismissal beyond the notice period. In *Uganda Post Limited v Mukadisi*,¹⁸ the Respondent, who had a fixed-term contract, was suspended on allegations of discrimination, use of unacceptable language and professional misconduct. Following a protest, the suspension was lifted. She was invited to a disciplinary hearing and terminated. The Respondent's suit succeeded at the High Court, with the Court of Appeal confirming the award

⁹ Cap. 219 was repealed on the 7th of August 2006, at the Commencement of the Employment Act, 2006 now Cap. 226.

¹⁰ [2023] UGCA 342

¹¹ This section is now renumbered to Section 64(1)(a) of the Employment Act Cap.226

¹² [1909] AC 488

¹³ The Article can be found at <https://ssrn.com/abstract=3061754>. Mr. Arinaitwe Esq is a practising Advocate of the Courts of Judicature

¹⁴ [2004] UGSC 8

¹⁵ [1999] UGSC 21

¹⁶ [2011] UGSC 18

¹⁷ [2015] UGSC 4

¹⁸ [2023] UGSC 58

of UGX 150,000,000/= in general damages for the Appellant's unfair and unlawful act in terminating the Respondent. On appeal to the Supreme Court on two questions, the Honourable Professor Lillian Tibatemwa Ekirukubinza JSC confirmed that an employee would be entitled to payment in lieu of notice as compensation. Her Lordship observed that this could not and did not prevent the trial Judge from considering a claim for general damages as an independent award. The second question was framed thus: where it is proved that an employee's contract was unlawfully terminated, what principles are relevant to a determination of general damages? Her Lordship had this to say

I also hasten to add that general damages on the one hand and payment in lieu of notice on the other serve different purposes. General damages can be awarded in addition to the payment in lieu of notice given to an employee who has been unlawfully dismissed from employment.

Payment in lieu of notice is intended to compensate the wrongfully terminated employee for the employer's breach of contract in failing to give due notice of termination.

General damages are not tied to specific financial losses. General damages are assessed by the court and are not restricted to the salary or pecuniary benefit stipulated in the employment contract.

They are awarded to compensate the employee for non-economic harm and distress caused by the wrongful dismissal. These damages include compensation for emotional distress, mental anguish, damage to reputation, and any other non-monetary harm suffered due to the dismissal.

- [18] In making this distinction, the Supreme Court clarified that general damages can be awarded over and above payment in lieu of notice. In other words, compensation is not limited or restricted to payment in lieu of notice. Her Lordship considered that aggravated damages were awarded for abusive and unfair treatment in *Tinkamanyire*¹⁹ and courts can order the employer to pay damages to compensate for suffering arising out of the manner in which the termination of the contract was effected. The Court concluded that discretion can be exercised to determine whether to award general or aggravated damages. And perhaps most significantly, the Supreme Court in *Mukadisi*, with Mwendha JSC, Tuhaise JSC, Chibita JSC and Musoke JSC concurring, departed from its earlier decision in *Assimwe* to provide consistency in the principles regarding damages in employment disputes.
- [19] Therefore, as it now stands and by this departure, the Supreme Court's guidance in shaping the doctrine for damages in cases of unlawful termination and dismissal in our jurisdiction is a watershed judgment. Compensation (general damages) is not limited or restricted to the notice period. General and aggravated damages are awardable for the manner of termination. The Supreme Court's dicta is anchored on Article 126(2)(c)²⁰ of our Constitution on the adequacy of compensation for wrongs. This underlying constitutional edict resonates with Article 10 of the International Labour Organisation Termination of Employment Convention, 1982 (No. 158), which provides to the effect that if a court, labour tribunal, arbitration committee or arbitrator find that termination is unjustified and if they are not empowered or do not find it practicable,

¹⁹ Ibid page 15 [30]

²⁰ Professor Ekirukubinza J.S.C made reference to this Article in the Lead Judgement.

in accordance with national law and practice, to declare the termination invalid and/or order or propose reinstatement of the worker, they shall be empowered to order payment of adequate compensation or such other relief as may be deemed appropriate. In sum, proper compensation is within the Court's remit.

- [20] The final point in *Mukadisi* is the principle considerations in awarding damages, and the first of these is the compensation for the notice period where the termination is unlawful. The Supreme Court holds that an unfairly or unlawfully terminated or dismissed employee is entitled to compensation for the notice period as the first step in awarding damages. The second step is for the Court to consider whether an award of general or aggravated damages is tenable. For this, the Court is to consider the oft-cited dicta of *Stroms v Hutchinson*²¹ in that general damages are the direct natural or probable consequence of the wrongful act complained of and include damages for pain, suffering, inconvenience and anticipated future loss as monetary compensation for the non-monetary aspects of a wrong suffered by a plaintiff. The Court is guided by factors such as the value of the subject matter, and in this way, the Court may consider the salary earned and foregone and the economic inconvenience that a party may have been put through. The Supreme Court also noted the manner of termination, which was emphasized in *Tinkamanyire* and has been consistently applied in various decisions, including *Okou*. By the doctrine of judicial precedent, we are bound by the decision of the Supreme Court and have restated the law on general damages as we understand it from *Mukadisi*.
- [21] Comparative jurisprudence from the employment and labour sphere in Kenya and Tanzania supports the expanded approach in *Mukadisi*. In Kenya, Section 40 of the Employment Act Cap. 226 caps the award of damages for unlawful dismissal to 12 months' pay. However, in cases of violations of constitutional rights intertwined with breach of the employment contract, the Court may grant damages over and above the capped amount. In *Standard Group Limited v Jenny Luesby*²² the Court of Appeal of Kenya was of the view that *Addis* had been decided 100 years before the 2010 Kenya Constitution was promulgated. The Court thought *Addis* to be a 'doubtful authority'. In Tanzania, under Section 40 of the Employment and Labour Relations Act 2004, compensation is set at not less than twelve months remuneration. In these jurisdictions, the approach is not to limit damages to the notice period where the circumstances call for an award of general or aggravated damages. It might be helpful to add two points that negate the *Addis* limitation. First, our constitutional dispensation is not what obtained in the context in which *Addis* was decided. Secondly, *Addis* did not suggest a universal standard of respect for fundamental rights at work by limiting damages to the notice period. It was decided before member states' growth and subsequent ratification of international labour conventions.
- [22] Returning to the matter before us and applying the principles above, it is common and settled that the Respondent unlawfully dismissed the Claimant. It is also common that the Respondent agreed to or paid payment in lieu of notice in the sum of UGX 1,300,000/= and other statutory remedies. The only question for this Court is whether the circumstances warrant an award of general and or aggravated damages. The Claimant's evidence is that he joined the Respondent in 2014. In 2018, he was Walkin and Quality Senior Associate, earning UGX 1,300,000/= per month, and by 2020, he had an extension of two years on his contract. He testified that he had been promised shares, and when he raised the matter, the Respondent's directors became

²¹ [1905] A.C 515

²² [2018] eKLR

indifferent. He was suspended on 21st July 2021. He was only informed of the charges against him in an abortive Zoom meeting. The hearing was never concluded, and without being given the investigative report, he was given a termination letter on the grounds that he had failed to provide evidence to satisfactorily disprove allegations of misconduct and misuse of his role and responsibilities, thereby undermining the Respondent's confidence in him and failure to practice stringent control of financial processes or accountability. It was suggested that this was an objective decision following a sufficient opportunity to respond and a fair and transparent hearing.

- [23] From the joint trial bundle, according to Joint Exhibit No. 10(JEX 10), the Claimant was suspended on 21st July 2021 for two weeks to permit an investigation into the allegations of misconduct. By email dated 30th July 2021, he was invited for a hearing on 1st August 2021, two days later. This Court has held that two days is not sufficient time. There is also no evidence from the invitations to the disciplinary hearing that the Respondent complied with the golden standard laid down in *Ebiju v Umeme Ltd*²³ where the principles of a fair hearing or the right to be heard consist of a notice of allegations against the plaintiff are served on him or her in sufficient time to prepare a defence, clearly stating what the allegations against the plaintiff are and his or her rights at the hearing, including the right to respond to the allegations against him orally and or in writing, the right to be accompanied to the hearing and the right to cross-examine the Respondent's witness or call witnesses of his own. Further, the plaintiff should be given a chance to appear and present his case before an impartial committee in charge of disciplinary issues of the Respondent.
- [24] The investigative hearing report, JEX18, appears to have been prepared after the Claimant had filled out his clearance form on the 13th of August, 2021. There was no evidence that the investigative report was shared with the Claimant. In *Kabagambe v Post Bank Uganda Limited*²⁴ we held that a failure to share an investigation report was contrary to the rule of natural justice. The hearing report referred to interviews with a rider, who is said to have paid the Claimant UGX 100,000/=, which sum the Claimant did not disclose. However, the Claimant was not allowed to peruse the investigation report or cross-examine the rider who allegedly bribed him. In our view, the failure to allow him to defend himself was contrary to the principles of natural justice.
- [25] It would follow that the Respondent was procedurally unfair, and Counsel for Respondent acceded to this point early. The Respondent paid or agreed to pay the Claimant UGX 1,300,000/= for failure to give a fair hearing. Would the circumstances warrant a further award of general damages for termination or loss of employment? In keeping with Mukadisi, and given the evidence laid out in paragraphs [22], [23] and [24] above, we think the answer to this question is yes.
- [26] The other question is, what is the quantum of general damages? For this, we must turn to our decision in *Nabaterega v KCB Bank Uganda Limited*,²⁵ where we cited *Okou*²⁶ where Madrama JA(as he then was) held that general damages are based on the common law principle of *restituto in integrum* and 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. We

²³ [2015] UGHCCD 15

²⁴ [2023] UGIC 20

²⁵ [2024] UGIC 14

²⁶ [2023] UGCA 100

also cited *Donna Kamuli v DFCU*²⁷ where the Industrial Court considered the earnings of the Claimant, age, position of responsibility, and contract duration to determine the damages awardable. In *Nabaterega*, the Claimant earned UGX 900,000/= per month and had worked for the Respondent for seven years. She was 38 years old, and there had been substantive justification for her dismissal, albeit with a procedural misstep. On the authority of *Kabagambe*²⁸ on the diminution in damages, we awarded her UGX 10,800,000/=. In the present case, having served the Respondent for six years and at an earning of UGX 1,300,000/= per month, while Mr. Kasibante was contending for UGX 70,000,000 in general damages, we think the sum of UGX 15,600,000 in general damages would suffice, and we so award it.

Aggravated damages

- [27] Counsel for the Claimant was also contending for aggravated damages. Aggravating circumstances include illegalities and wrongs in the termination compounded by the Respondent's lack of compassion, callousness and indifference. The Respondent's conduct must be degrading to the employee²⁹. In the case before us, we are not satisfied that any aggravating circumstances to warrant a grant of aggravated damages have been shown or proven. We decline to grant this order.

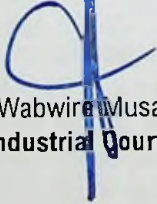
Costs

- [28] Neither of the parties sought for or justified an order of or award of costs. While the grain³⁰ is that costs follow the event, this Court has ruled that in employment disputes, costs are the exception and not the norm except where the losing party is culpable of misconduct.³¹ We do not find the Respondent culpable of any misconduct. It is the view of the Court that each party should be burdened with its own costs.

Final Order

- [29] In all, we determine that the Claim succeeds. The Claimant is awarded UGX 15,600,000/= in general damages.

Dated, delivered and signed at Kampala on this 16th day of August 2024


Anthony Wabwire Musana,
Judge, Industrial Court

The Panelists Agree:

1. Hon. Jimmy Musimbi,
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²⁷ [2015] UGIC 10

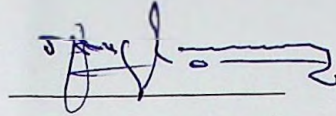
²⁸ See *Kabagambe(Opcit)*

²⁹ See *Tinkamanyire(Opcit)*

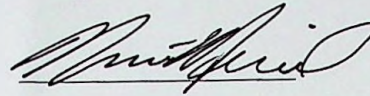
³⁰ Section 27 Civil Procedure Act Cap.

³¹ *Kalule v Deutsche Gesellschaft Fuer Internationale Zusammenarbeit (GIZ) GMBH* [2023] UGIC 89

2. Hon. Emmanuel Bigirimana &



3. Hon. Michael Matovu.



16th August 2024

9:30 a.m.

Appearances

1. For the Claimant: Mr. Leonard Kasibante
2. For the Respondent: Mr. Innocent Ngoboka

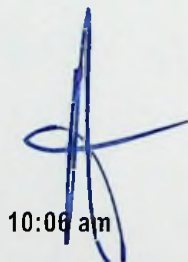
Claimant in Court.

Court Clerk: Mr. Samuel Mukiza.

Mr. Ngoboka: Matter is for award, and we are ready to receive it.

Mr. Kassibante: That is the position.

Court: Award delivered in open Court.



10:06 am

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