THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE NO. 183 OF 2020
(Arising from Labour Dispute Complaint No. KCCA/RUB/LC/597/2019)

IGA ISAAC KASOZI ::CLAIMANT

VERSUS

UNITED BANK OF AFRICA (U) LTD ::RESPONDENT

Before: The Hon. Mr. Justice Anthony Wabwire Musana:

Panelists: Hon. Adrine Namara, Hon. Susan Nabirye & Hon. Michael Matovu.

Representation:

1. Mr. John Mugalula of M/s. Mugalula & Omalla Advocates for the Claimant.
2. Mr. Jude Byamukama of M/s. JByamukama & Co. Advocates and Mr. Brian Kalule of AF Mpanga for the Respondent.

Case Summary

Employment Law: Unfair dismissal- Procedural and substantive fairness- This award concerns a dispute between a former Chief Dealer and their employer, a bank. The claimant alleged unfair and unlawful termination and sought various remedies, including severance pay, bonuses, overtime pay, and damages. The court reviewed the evidence and legal arguments from both sides, addressing issues of procedural fairness during the dismissal process and the substantive reasons for termination. The court found the dismissal to be procedurally unfair but substantively justified, resulting in specific awards for the claimant.

AWARD

Introduction

[1] This was a reference by Miss Irene Nabbumba, a Labour Officer (LO) at the Kampala Capital City Authority, following a mediation session that had been held, where the parties failed to reach an amicable settlement. Miss Nabbumba referred two questions to this Court: Was the Claimant's termination unfair and unlawful, and was he entitled to other remedies?

The factual background

[2] The background facts are that the Respondent employed the Claimant on the 16th day of January 2017 as Chief Dealer (CD). He was given a job description of CD at a monthly salary

of UGX 12,560,000/= (shillings twelve million five hundred sixty thousand only). On 8th October 2019, he was invited for a disciplinary hearing for authorizing transactions worth UGX 3,075,400,000 (shillings three billion seventy-five million four hundred thousand only). On the 20th of November 2019, he was found guilty of gross misconduct in which the Respondent Bank's accounts were debited UGX 7,918,720,000/= (seven billion nine hundred eighteen million seven hundred twenty thousand) without appropriate transaction approvals. He was advised to resign from employment. On the 27th of November 2019, he preferred an appeal against the decision. On the 29th of November 2019, the Respondent's Managing Director upheld the decision of the disciplinary hearing. On the 9th of December 2019, the Claimant was terminated from employment. On the 16th of December 2019, he lodged a complaint of unfair and unlawful termination with the Kampala District Labour Officer. By letter dated 30th January 2020, the Respondent maintained that the Claimant was terminated after due process and was not entitled to any remedies. On the 15th of October 2020, the matter was referred to this Court.

The Claim

[3] In his memorandum of claim filed in Court on the 3rd of November 2020, the Claimant sought a declaration that he was unfairly and unlawfully terminated. He asked for special damages consisting of UGX 10,037,862/= (shillings ten million six hundred twenty seven thousand eight hundred sixty two) as reimbursement of a deduction, UGX 5,627,000,000/= (shillings five billion six hundred twenty seven thousand) as overtime payment, UGX 3,600,000,000/= (shillings three billion six hundred thousand) as salary arrears for the position of head of treasury, UGX 8,900,000,000/= (shillings eight billion nine hundred thousand) as bonus payments, an order for the Respondent to pay the salary loan of UGX 159,311,970/= (shillings one hundred fifty nine million three hundred eleven nine hundred seventy), general, exemplary, and aggravated damages, interest at bank prime rate, and costs of the claim.

The Response

[4] The Respondent opposed the claim, contending that the Claimant was never appointed Head of Treasury (HOT) but was CD, having been found unsuitable for the position of HOT by the Bank of Uganda. It was contended that the deductions were made because the Claimant was found guilty of breach of the Cash Reserve Requirement (CRR). It was claimed that the bonuses were discretionary, overtime was not authorised, and he was given a fair hearing. There was no obligation for the Client to write his responses, and the advice to resign was a recognised sanction that could be lawfully imposed. It was also contended that the appeal procedure was proper. The Respondent denied all claims for relief, arguing that the Claimant was not entitled to salary arrears after termination, as the salary loan was with a different bank; there was no agreement for severance pay; and the Claimant had conceded to acting without the approval of HOT, hence the sanctions. We were asked to dismiss the claim.

The Proceedings

[5] At the scheduling conference, three issues were framed for determination, namely;

i. Whether the Claimant was wrongfully/unfairly and unlawfully terminated from employment?
ii. Whether the Claimant was employed as acting HOT by the Respondent Bank?
iii. Whether the Claimant is entitled to the remedies sought?

[6] The parties called one witness each.

The Claimant's Evidence

[7] In his witness statement, the Claimant told us that he was headhunted to fill the position of HOT at the Respondent in December 2016. He was first employed as Treasury Chief Dealer (TCD) in January 2017 and was issued a job description that implied he became the Country Head of Treasury (CHOT). He said he only received a TCD salary while performing both TCD and HOT roles. He described his duties, objectives, responsibilities and job description. He informed us that on August 6, 2017, when he was penalized and UGX 10,037,862/= (shillings ten million thirty-seven thousand eight hundred sixty-two) was deducted from his salary, the Respondent addressed him as the acting Country Treasurer. He said it was unfair to take a beating for the position of HOT without taking the benefit. He told us that when a substantive country HOT was appointed at a salary of UGX 28,000,000/= (shillings twenty-eight million), his workload was reduced. Therefore, he computed his unpaid acting salary at UGX 672,000,000/= (shillings six hundred seventy-two million) for two years.

[8] He also told us that he had a legitimate expectation of bonus payment, having been promised a bonus if he met his targets. He testified to Johnson Agoreyo, the Managing Director, that he had made these promises and that the performance incentive was part of his contract. He said he received commendations for revenue growth from 2017 to 2018 and contributed 70% of the Respondent's income. He said he travelled to Kenya to follow up on the bonus. His evidence was that the Respondent either compute the bonus based on the 2015 formula or pay him UGX 8,900,000,000/= (shillings eight billion nine hundred thousand) as bonus arrears.

[9] Regarding the process leading to his termination, the Claimant told us that on 23rd June 2017, he received a notification of a disciplinary hearing and on 6th July 2017, he was found guilty of breaching the CRR, which led to the Respondent being fined UGX 10,037,862/= (shillings ten million thirty seven thousand eight hundred sixty two), a sum that was deducted from his salary.

[10] Under cross-examination, he stated that he was offered the position of Chief Dealer in Treasury. I signed an appointment. "EXH 11". I did not sign any other appointment. The position was designated as Manager. When referring to Clause 11, he stated that he could be assigned different roles occasionally. He received a Job Description (JD) for the Country

Head of Treasury (CHOT) position. He said he did not sign any CHOT appointment or decline to carry out or protest the duties in the new JD. He spoke of a verbal record/contract. He told us he sent some emails to the MD. When shown an email he had sent, he conceded that it did not specifically request additional pay due to the JD of CHOT, which differed significantly from CD. He informed us that the Treasury is part of Exco, serving as both Head of Dealing Room and Chief Dealer. CHOT was an oversight role as a Senior Manager.

[11] He also told us that the Regulator approves all Senior Management positions. The Board of Governors does a fit and proper test. There are protocols. He stated that he had undergone the fit and proper test and was unaware that he had failed this assessment. He was directed to page 47 of the RTB and informed us that, according to the Board of Governors, he was not suitable for and had never been confirmed as CHOT. He said he started doing the job and had a verbal appointment following the Board's approval. He told us that he did not have a confirmation as CHOT. He was acting CHOT. He said he was familiar with the bank's organizational chart and had no position for acting HOT. He told us he wanted to be paid for the position, not in the Organogram. He also conceded that he did not have proof that the substantive HOT earned UGX 28,000,000 (shillings twenty-eight million) per month. He said he was unaware that the Bank of Uganda had approved this position. He stated that he was promised bonuses before the appointment was executed, but conceded that Clause 4 of the "CEX V" did not mention bonuses as a result of meeting targets, but rather at the discretion of the Bank. He said he was unaware that discretion is up to a person to decide.

[12] He also told this Court that a virtual contribution meant he contributed 70% of the bank's income from interest. The income streams under "CEXH 8" fell under the Treasury Department and would have been the contribution of the whole Treasury Department. He conceded he was not the only person in the Department, and from these numbers, one cannot tell which individual contributed what amount. He told us that deposits are funds brought into the Bank by customers and are not mobilized by the Treasury. When directed to "REXH 5", he told us he did not have written proof disputing that email. He told us the terms of the bonus plan are not written in the Contract of Human Resource Manual. He stated that he was unaware that no one in the bank received a bonus between 2017 and 2019. He told us that he had gone to see the Regional CEO and Regional Human Resource Manager, but did not have proof that he had been permitted to do so. He also did not have written proof of authorisation to expend personal money. He admitted to conducting transactions without sufficient funds, in breach of Bank of Uganda Regulations, which led to the Respondent being fined UGX 10,000,000 (shillings ten million) by the Bank of Uganda. He also conceded that his appointment did not say he would be compensated for training juniors.

[13] He told us that on the 10th of October 2019, he received a notice of a Disciplinary meeting scheduled for the 14th of October 2019. He was to answer the charges: authorization of Trial Bonds without the approval of HOT, issuance of dealer tickets, financial loss, and acknowledgement of no approval. He stated that he was given notice of the hearing and had the right to bring a person of his choice or a representative. He said he attended the hearing

and that if he had done the deals, he would have known if there was authorization, and he would have had tickets. At the disciplinary hearing, he stated that he was asked questions and provided answers. He told us that the HRMP required an investigation report to be shared with the employee.

He also said that the conclusions from the disciplinary hearing differed from the accusations in the notice. He told us that he was found guilty following the hearing and advised to resign. The HRMP had recommended advising him to resign, but he declined. He said the Respondent was entitled to terminate an employee who refused to resign. He told us his appeal was declined, and the Respondent terminated his services. He also stated that there was no evidence to suggest he was terminated for demanding a bonus.

[14] In re-examination, he told us that the response he received regarding working hours was that working outside official hours is not new. He stated that he did not sign the disciplinary hearing minutes, and the answers he was alleged to have given at the hearing were fabricated. He confirmed that there was no written appointment appointing him CHOT. He clarified that by the time he left the bank, he had been confirmed as a CD, having been confirmed in 2019. He said he was asking for a salary as HOT because when he was appointed, he was CD and Ag. HOT pending approval of the Central Bank. He told us he needed to be paid because I was doing the work of HOT, and the bank referred to me as Ag. HOT in writing. He clarified that the incomes in the F.T. fall under the jurisdiction of the Treasury Department. He said the Bank recognised his contribution as an individual, and there were figures to support that. In the institution, there is UGX 7,633,472/= (shillings seven million six hundred thirty-three thousand four hundred seven two in the report MOMKT to UGX 7,633,472,000/= (shillings seven billion six hundred thirty-three million four hundred seven two thousand). The report refers to the people who captured it and those who authorised it, but his name is not there.

The Respondent's evidence

[15] The Respondent led evidence through Kevin Nandase Wagubi, whose witness statement dated the 25th of October 2021, was adopted as his evidence in chief. He testified as Head of Human Capital Management (HR) and confirmed the Claimant's appointment as TCD, which required approval of the Central Bank. As he awaited approval, the Claimant served as acting HOT and was issued the JD. He was not issued an appointment letter. The Respondent's organogram did not include an acting HOT position, and the Claimant was required to serve in any capacity as the Respondent deemed necessary. He said that persons in acting positions do not earn the salaries of substantive officers. He also informed us that HOT and TCD fall within the same salary band as Managers, and the Claimant was a manager, whereas the HOT position carried the rank of Senior Manager. He said HOT is a statutory position, and there cannot be an implied HOT. He told us that the BOU declined to approve the Claimant. He was unsuitable for the position of HOT. He also informed us that the claim for legitimate expectation did not apply to the Respondent, and the bonus policy was purely discretionary, to be shared. He doubted the Claimant's claim of contributing 70% of the Respondent's income and said the treasury was not a one-person

department. He also thought the figure of UGX 8,900,000,000/= (eight billion nine hundred thousand) was farfetched. He told us that the treasury did not generate deposits on which interest would be generated. Thus, the figures for 2017 were fabrications. He told us that no other person earned a bonus in 2017-2019. He said the travel to Nairobi was not authorised.

[16] Concerning the termination process, RW1 testified that the Claimant had admitted to a breach of the CRR for which the Respondent was fined and a refund of UGX 10,037,862/= (shillings ten million thirty-seven thousand eight hundred sixty-two) sanction was imposed on the Claimant. RW1 informed us that an investigation report revealed that between July 2019 and September 2019, the Treasury Department dealt with treasury bonds without authorization. The same was approved by the CD, a layman, as a CD without involving the HOT despite prior warnings. Trade operations did not review the bond purchases and were not booked into the Respondent's core banking system; as a result, the bank earned less than it would have had the purchases been booked. Against the report's findings, on the 10th of October 2019, the Claimant was invited to attend a disciplinary hearing on the 14th of October 2019 on charges of authorising treasury bonds with no dealer tickets and without involving HOT and not booking the bonds in the Bank's Books. The notice summarised the contents of the investigation report and advised the Claimant that these actions contravened the Respondent's Treasury bond purchase processes and procedures. The Claimant was also informed of his right to bring a person of his choice.

[17] At the hearing, the Claimant did not complain of short notice to prepare his defence. RW1 told us there was no mandatory requirement for a written response to allegations. At the hearing, the Claimant acknowledged the lapses, confirmed that he had authorised the transactions and conceded that selling treasury bonds without documentation was outside policy. It was RW1's testimony that the Claimant admitted wrongdoing. He was found guilty of a transaction without customer instruction and lack of deal tickets, approving the purchase of securities contrary to trading limits where he was the deal initiator or originator and not approver, debiting the bank account in favour of a customer without proper documentation or customer instruction and advised to resign as this would be a dignified exit. When he declined to resign, he was terminated. His appeal was not considered because he failed to follow the proper procedure. RW1 informed us that the allegations against the Claimant were substantiated, and the termination process was fair and proper. Regarding the overtime claim, RW1 told us there were no express instructions to entitle him to overtime payment. Regarding the salary loan, RW1 testified that the Respondent recommended but did not guarantee the Claimant's loan with DFCU Bank.

[18] Under cross-examination, RW1 told us that the Claimant did not sign the minutes of the disciplinary hearings. She said the attendees signed the minutes on all pages. He conceded that only two signatures were on page 4 of the minutes. She could not confirm whether the report (REXH 8) was shared with the Claimant before the hearing. He said he did not see any signature on it. She told us that in the CSD system, the Capturer, Authorizer and Chief Seconding Officer. The system displays the various roles played by other individuals. Mr.

Alex Mugaga was the Capturer, Mr. John Tebandeke was the Authorizer, Ms. Patricia Mutongi was the Authorizer, and Mr. Martin Ogola was Chief Security Officer. He stated that the Claimant was not indicated when booking the deals, as per the system. She read out paragraph 3.0(e) of REX8 and noted that the Claimant was not one of the authorizers of these transactions. She conceded that no documents signed by the Claimant show he authorised the transactions. She informed us that Mr. Faisal Bukenya, who was present at the time of these investigations, was appointed as the substantive Head of the Office (HOT) and explained the bonds that were the subject of the investigation. When these bonds were sold off, the Bank lost UGX 17,767,906 (seventeen million seven hundred sixty-seven thousand nine hundred six). She conceded that the statement in paragraph 3.0 (j) of REXH8 was speculative. The documentation on loss is only in the investigation report. He said he did not have the figure of the actual loss. She also told us that nothing happened to the HOT who voluntarily resigned around the same time after these allegations. She told us that the HOT was earning a salary of UGX 28,000,000 (shillings twenty-eight million) before confirmation by the Bank of Uganda.

[19] Regarding overtime, she stated that the Claimant did not work overtime on any occasion. She said, "CEXH 29" (a printout of the clock in the system) did not indicate that the Claimant worked overtime, whereas the summary extract "CEXH 30" showed extra hours. She told us that overtime is working with approval beyond ordinary working hours. She stated that he did not participate in the hiring process for the Claimant. She told us that the Claimant served as Ag. HOT and received the salary of the Chief Dealer. The HOT earned more money than the Chief Dealer. She confirmed that the Claimant was commended for his good work. He was the only one from the Treasury Department. He achieved his targets. Bonus payments were expressly provided as part of the Claimants' appointment. Despite beating his targets, no bonus was ever paid to the Claimant. She told us that the pictures on pages 226-228 of the CTB depicted a factual event in Nigeria, but no financial rewards were associated with performing such a function.

[20] In re-examination, she said the Claimant approved the transactions as a Chief Dealer. She said she did not know the details of the CSD. She stated that the transaction did not occur at the expected time. The money was redundant. The loss is UGX 17,000,000/= (shillings seventeen million). She confirmed Mr. Faisal Bukenya's appointment as HOT. She informed us that the overtime work required approval from the Managing Director. She described the organogram and stated that the job grades were categorized as Deputy Manager to Senior Manager, in accordance with the bank's policy. She said a person can be hired as a Deputy Manager, Manager, or Senior Manager. She said she could not tell how much the Claimant contributed to the Bank. Her understanding is that the bonus is based on the bank's overall performance. The bank did not meet the overall performance to warrant a bonus. Bonus is at the discretion of the Bank.

[21] At the close of the Respondent's case, we invited Counsel to address the Court by way of written submissions. The Court thanked Counsel for their industry, research, and the authorities produced.

Analysis and Decision of the Court.

Issue 1. Whether the Claimant was wrongfully and unlawfully terminated from employment?

Submissions of the Claimant

[22] Mr. Mugalula made three points regarding procedural irregularities. First, the Claimant did not sign the Respondent's disciplinary hearing minutes, and the six people appearing at the meeting did not sign every page. Therefore, the minutes were flawed and fabricated, rendering the termination process a nullity. Secondly, Counsel faulted the Respondent for not sharing the investigation report before the hearing and failing to give reasonable time to enable him to prepare his defence. Counsel cited *Akugizibwe v Barclays Bank (U) Ltd*[1], *Kalika v Umeme Ltd*[2] *and Losio Lemuresuk Chaplin v Bugoye Hydro Ltd*[3] in support of his propositions. Finally, it was argued that the Respondent flouted its internal procedure by not permitting the Claimant to write his response to the allegations. We were referred to the Respondent's guiding principles and philosophy on the definition of fairness.

[23] On substantive invalidity, it was submitted that the Respondent did not produce its Treasury bond Purchase and Procedure Policy that was alleged to have been violated and that RW1's testimony did not justify the Claimant's dismissal under Section 70(6) EA. RW1 also testified that one Faisal Bukenya, HOT, took responsibility for the Treasury bond transactions and resigned.

Submissions of the Respondent

[24] For the Respondent, Mr. Kalule submitted that its decision to terminate the Claimant was lawful because, first, the Claimant acknowledged receipt of the notice to attend a disciplinary hearing, attended the hearing, did not dispute the minutes of the hearing and had not proven fabrication of the minutes.

[25] Regarding the failure to share the investigation report, on the authority of *DFCU Bank Limited v Donna Kamuli*[4] it was suggested that a hearing could be conducted via correspondence or a face-to-face hearing, and the letter of invitation CEX12 sufficiently summarised the contents of the investigation report. It was submitted that in his cross-examination, the Claimant ably answered questions put to him and did not object to the hearing or ask for more time. Counsel suggested that *Akugizibwe*, which proposes at least 7 days' notice, was not binding on this Court. Citing *Seruwu v Swangz Avenue Limited*[5] it

[1] [2020] UGIC 32
[2] LD No. 188 of 2015
[3] LD No. 139 of 2016
[4] [2019] UGCA 2088
[5] HCCA No. 39 of 2021

was submitted that the internal procedures were merely directory and not mandatory. Therefore, there were no procedural irregularities.

[26] On proof of allegations, the Respondent submitted that there was sufficient evidence and relied on REXH8, the investigation report citing the impugned 4th September 2019 Centenary Bank Transaction that the Claimant admitted to having executed. It was submitted that the findings in the report were consistent with the Claimant's oral responses before the disciplinary hearing. We were also directed to the minutes of the hearing in REX9. Counsel for the Respondent also referred to the Claimant's antecedents, where the Central Bank imposed a fine. We were also reminded of the dire consequences of infractions by employees of financial institutions.

Submissions in rejoinder

[27] In rejoinder, it was submitted that the minutes did not indicate that he was allowed to attend the proceedings with a person of his choice, that he was permitted to cross-examine witnesses, or that he was provided with documents of evidence against him. It was suggested that the Claimant's admission of attendance at the meeting did not take away the probability of the Respondent conducting a separate meeting in his absence. The Claimant questioned the attendance lists. Counsel distinguished *Kamuli,* suggesting that the hearing was not conducted by correspondence in the present case.

[28] It was also submitted that the invitation notice and the investigation report differed. While the notice suggested unauthorized transactions of UGX 2,083,660,000/= (shillings two billion eight three million six hundred sixty thousand) and UGX 991,740,000/= (shillings nine hundred ninety one million seven hundred forty thousand) for Centenary Bank and Housing Finance Bank, the reporter was said not to list the Claimant as an authoriser.

[29] Counsel for the Claimant reiterated the argument that the investigation report should be shared with the employee, as this is a demand of the right to a fair hearing. Counsel relied on *Akugizibwe* to support the proposition that the report should have been given to the Claimant at least seven days before the hearing. It was submitted that the Claimant received the notice on 11th October 2019, while en route to Nigeria on the Respondent's official business. He returned on 14th October 2019 to attend the disciplinary hearing. Thus, the notice period and time for the defence preparation were insufficient.

[30] On the internal guide on fairness, Counsel for the Claimant reiterated his earlier argument on the mandatory provision for fairness. Counsel criticized the Respondent for attaching an abridged extract of the report to their written submissions. This attachment was labelled a bar statement, an afterthought that contradicted the Respondent's evidence, and we were asked to expunge that from the record.

Determination

[31] The issue for determination in this matter was framed upon the lawfulness of the Claimant's termination. This Court has previously observed the interchangeable use of termination and dismissal in the Employment Act Cap. 226*(from now EA)*. For purposes of clarity within the EA, in *Stanbic Bank (Uganda) Limited v Nassanga*[6] the Court of Appeal holds termination to be distinct from dismissal because under Section 2EA, dismissal from employment means the discharge of an employee from employment at the initiative of his or her employer when the said employee has committed verifiable misconduct or for poor performance. In contrast, termination of employment refers to the discharge of an employee from their employment at the employer's initiative for justifiable reasons other than misconduct, such as the expiry of the contract, attainment of retirement age, or the circumstances outlined in Section 64EA. Because the two are distinct, the EA sets different parameters for proof of an unlawful or unfair termination or dismissal. In other words, a determination of unlawful dismissal will not be the same as that for unlawful termination.

[32] In brief, the key facts in the present matter are that on 10 October 2019, the Claimant was invited by email to attend a disciplinary hearing on 14 October 2019. The invitation letter was attached to an email authored by RW1. It contained allegations that he authorised Treasury bond transactions of UGX 2,083,660,000/= (shillings two billion eighty three million six hundred sixty thousand) and UGX 991,740,000/= (shillings nine hundred ninety one million seven hundred forty thousand) for Centenary Bank and Housing Finance Bank on the 11th September 2019 and UGX 7,633,472/= (shillings seven million six hundred thirty three thousand four hundred seventy two) with Bank of Africa on the 18th of September 2019 with no dealer tickets and without informing the HOT. He attended the disciplinary hearing on the 14th of October 2019. On the 20th of November 2019, he was found guilty of gross misconduct after debiting the Respondent's Account of an aggregate sum of UGX 7,918,720,000/= (shillings seven million nine hundred eighteen thousand seven hundred twenty thousand) without proper documentation, no customer instructions and no appropriate transaction approvals as per policy, and the funds remained unsettled for 14 days. He was advised to resign. He declined to do so, and on the 27th of November 2019, he preferred an appeal to the Respondent's Managing Director. On the 29th of November 2019, the disciplinary committee's decision was upheld. On the 9th of December 2019, the Claimant was terminated in line with Section 15.3.10 of the Respondent's Policy.

[33] Therefore, as we understand it, the Claimant's employment contract was ended for reasons related to his conduct and breach of the Respondent's policy. That places the matter squarely under Section 65EA, as it constitutes a dismissal. And because of this, the question for determination is not whether the Claimant's termination was lawful. Under Order 15 Rule 5 of the Civil Procedure Rules S.I. 71-1, this Court is empowered to reframe the issues for determination. In our view and because of the analysis in paragraph [32] above, the question

[6] [2023] UGCA 342

that this Court is confronted with is whether the Claimant's dismissal[7] from employment was lawful.

[34] What is the threshold for a lawful dismissal? In *Mugisa v Equity Bank Uganda Limited*[8] this Court held that a lawful dismissal consists of both procedural and substantive fairness. Procedural fairness[9] tests whether the process leading up to the dismissal was procedurally compliant, while substantive fairness[10] tests the justification of the reason for dismissal. We will, therefore, test the Claimant and Respondent's respective hypotheses against this threshold, but first, we will make some brief comments about the burden and standard of proof in employment disputes.

Burden of proof

[35] In *Ashaba v Mutoni Construction Uganda Limited* [11] we observed that in employment disputes, the onus probandi shifts. Citing *Kimbugwe v Kiboko Enterprises Limited*[12] we noted that the burden of proof is specific and keeps shifting. Under Section 69(6) EA, for any complaint of unfair dismissal, the burden of proving that a dismissal has occurred rests on the employee. The burden of justifying the grounds for the dismissal rests on the employer. This is a significant Responsibility that the employer must bear.

Standard of proof

[36] Section 67(2)EA provides that the reason or reasons for dismissal shall be matters that the employer genuinely believed existed at the time of the dismissal. The words' genuinely believe 'are not statutorily defined. However, in Nalule Gloria v Centenary Rural Development Bank Limited Ruhinda-Ntengye, Ruhinda-Ntengye J held that the standard of proof for a wrong committed by an employee is lower than in ordinary civil cases. However, it is on the balance of probabilities. In our view, this means that the employer is required to provide evidence that tends to demonstrate it is more likely than not that the employee committed the infraction alleged. In other words, the employer must demonstrate that they had reasonable grounds for believing that the employee committed the offence. This standard of proof is significant in employment disputes as it ensures that the employer's belief in the employee's misconduct is not arbitrary or unfounded. (See *Bwengye Herbert v Ecobank (U) Ltd*[13] and *Kabagambe v Post Bank Uganda Limited*[14]). This is coupled with the guidance by the Court of Appeal in *Uganda Breweries Ltd v Kigula*[15], where it was observed that the employer had to show that the employee had repudiated the contract or any of its essential conditions to warrant summary dismissal.

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[7] As opposed to termination, which applies where there is no misconduct or poor performance.
[8] [2023] UGIC 62
[9] This is governed by Section 65EA
[10] This is provided for under Section 67EA.
[11] [2025] UGIC 1
[12] [2022] UGIC 5
[13] [2017] UGIC 26
[14] [2023] UGIC 50
[15] [2020] UGCA 88

[37] Therefore, the Court's inquiry into a claim for unlawful and unfair dismissal would establish if the employer had a reasonable basis for believing its employee is culpable for some misconduct for which the sanction of dismissal is warranted. There must be a genuine belief of complicity in an employment offence (See Nabaterega v KCB Bank Uganda Limited). The employer's belief in the reason for termination or dismissal must be genuine and not merely a pretext.

Procedural fairness

[38] Procedural fairness is concerned with the failure to follow the proper termination procedure. The employer's right to terminate an employee is not fettered if the employer follows proper procedure.[16] Section 65EA requires that before dismissing an employee for misconduct, the employer shall explain to the employee why dismissal is being considered. The employee is entitled to have another person of their choice present during this explanation. The employer must also allow the employee to present their defence and provide the employee with a reasonable amount of time to prepare a defence. In *Ebiju v Umeme Ltd*[17] Musoke J(*as she then was*) held:

> *" On the right to be heard, it is now trite that the defendant would have complied if the following had been 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 are 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."*

[39] We have referred to the invitation letter CEX 12[3]. The full text of this invitation letter reads as follows:

> *"UBA/HCM/DC/08102019*

[16] Per Mwangushya J.S.C in *Hilda Musinguzi Vs Stanbic Bank (U) Ltd SCCA NO. 5 of 2016*
[17] [2015] UGHCCD 15

Date: 08th October 2019

Iga Kasozi Isaac
Chief Dealer,
Treasury Department,

Dear Isaac,

Re: INVITATION FOR DISCIPLINARY HEARING

Reference is made to the Internal Central Investigation report, where it is alleged that you authorized treasury bonds equivalent to UGX 2,063,660,000/= /= and UGX 991,740,000/= from Centenary Bank and Housing Finance Bank on 11th September 2019 and UGX 7,633,472 to Bank of Africa on 18th September 2019 with no dealer tickets and without informing the head of treasury.

The T-Bonds purchased using bank funds were not recognized in the Bank's Books, and it is also alleged that the Bank made a financial loss on the above transactions.

Further reference is made to your email response on 03rd October 2019 during the investigation, where you acknowledged authorizing the transactions with no approval from the Head of Treasury.

.....the above actions contravened with the bank's treasury bond purchase processes and procedures.

This is, therefore, to notify and invite you to a disciplinary hearing, which will be scheduled for Monday 14th, October 2019, in the 3rd-floor Board room at 3:00 PM.

You are entitled to come along with a person of your choice for the hearing.

Please acknowledge receipt and confirm attendance by signing and returning a copy of this invitation to the undersigned before the date of the scheduled hearing.

Please be informed that should you fail to appear before the disciplinary committee on that date; the committee will proceed with the hearing in your absence.

Yours sincerely,

Kevin Nandese Wagubi
Head HCM

Johnson Agoreyo
Managing Director/CEO

Employees signature……."

[40] The Claimant's complaints regarding this letter and the disciplinary hearing, in general, were in terms of insufficient time, the failure to attach the investigation report, the fabrication of the minutes, the failure to afford him an opportunity to cross-examine witnesses and the flouting of the Respondent's internal fairness policy. The Respondent contends that it followed procedure.

Insufficient time

[41] Regarding the dicta in *Ebiju,* the allegations were made to the Claimant. But was the time sufficient? The uncontested evidence is that the letter was dated the 8th of October 2019. RW1 also told us that she sent the letter as an attachment to her email to the Claimant dated the 10th of October 2019 at 11:15 AM. As the hearing was set for the 14th of October 2019 at 3:00 PM, the Claimant had 4 days, 3 hours and 45 minutes to prepare his defence. The Claimant told us that he only saw RW1's email on the 11th of October 2019, as he was travelling to Nigeria on the Respondent's business. He attached a copy of his passport visa pages as proof of travel, which showed that he entered the Federal Republic of Nigeria on the 11th of October 2019 and exited on the 13th of October 2019. He entered the Republic of Uganda on the 14th of October 2019. Counsel for the Respondent submitted that the 4 days were sufficient because the nature of the enquiry was whether the transactions were authorised. We disagree. The evidence demonstrates that the Claimant was travelling to Nigeria when the email was sent and returned on the day of the hearing. We think there is merit in the view that the Claimant did not have sufficient time.

[42] In *Akuguzibwe,* the Industrial Court ruled that the claimant was not aware of the investigation report's findings until he appeared before the disciplinary committee. The Court held that although there was no mandatory legal requirement to provide an employee with a written investigation before the disciplinary hearing, where the allegations against an employee were a result of the findings of an investigation, they must be put to the said employee within a reasonable time before the hearing, at least 7 days before, to enable him or her prepare a response to them. The Court observed that the right to a fair hearing is non-derogable, and even if the standards of a disciplinary hearing are lower than those of a court of law, this right must never be violated, and the principles of natural justice must be upheld. The employer must put the infractions against the employee to him or her and allow the employee reasonable time to respond to them, accompanied by a person of his or her own choice. We think this dictum apt.

[43] Counsel for the Respondent suggested that *Akuguzibwe* was not binding in this Court. That is an argument we cannot accept, because the doctrine of stare decisis requires this Court to "stand by things decided." This Court is called upon to follow established precedents when making decisions in new cases, thereby promoting consistency and stability in the law by ensuring that similar cases are treated similarly, unless there is a compelling reason to overturn a precedent. Precedents of sufficient time to prepare a defence abound in industrial jurisprudence. First, Section 65(3) EA requires an employer to provide an employee with a reasonable amount of time to prepare any representations concerning allegations of misconduct. The section does not stipulate the number of days considered reasonable. In *Ofwono v Marie Stopes Uganda and Another*[18] we held six days to be sufficient time. In *Nakanwagi v Opportunity Bank Uganda Limited*[19] we held two days to be insufficient time, as did this Court in *Namyalo v Stanbic Bank*[20].

[44] The Claimant adduced evidence in the form of CEX 28. By this letter, RW1 and the Respondents' MD/CEO introduced the Claimant to the Nigerian High Commissioner in Uganda, indicating that the Claimant was set to travel to Nigeria for the Respondent's business on the 10th of October 2019 and return to Uganda on the 13th of October 2019. In our estimation, taking into account the travel time and the Claimant's itinerary, which the Respondent was aware of, we do not think that by issuing the Claimant with an invitation letter while he was en route to Nigeria on official business, the Respondent acted fairly, with justice and equity. The Claimant did not have sufficient time to respond first to the allegations because there was no invitation to explain his position, nor did he have sufficient time to prepare his defence or enlist the support of a colleague or Legal Counsel. Here, we hold that the Respondent was procedurally unfair.

Failure to furnish the Investigation Report

[45] The other complaint relates to the failure to share the investigation report. Again, *stare decisis* is helpful. Industrial jurisprudence, including Kalika, Chaplin, Akuguzibwe, Nakanwagi, Kamegero v Marie Stopes Uganda Limited, and Nabaterega v KCB Bank Uganda Limited, all hold that the failure to provide the employee with a copy of the investigation report is not a fair labour practice. It renders the proceedings procedurally unfair. In the present case, he was indicted for unauthorised treasury bond transactions in the amount of UGX 3,083,033,472 (shillings three billion eighty-three million thirty-three thousand four hundred seventy-two), but the investigation report was not shared with him before the hearing. The Respondent suggested that the Claimant knew about these transactions.

[46] In his re-examination evidence, the Claimant testified that the Investigation Report, admitted as REX8, did not list him as the capturer, authoriser, or Chief Security Officer. The Respondent's Internal Control Officer's report was from 1st July 2019 to 20th September 2019. The objective of the investigation was to assess the functionality of the Treasury Bond

[18] [2025] UGIC 3
[19] [2024] UGIC 77
[20] [2018] UGIC 36

processing in the CSD (Central Securities Depository) system and to determine whether the treasury bonds were processed in accordance with Bank Policy. Despite not listing him as either a capturer, authoriser, or Chief Security Officer, paragraph 4.0(f) of the findings named the Claimant as having cleared the transactions without the authority of the Chief Treasurer. In our view, adverse statements ought to have been shared with the Claimant. That is the essence of fair hearing. For failure to share the investigation report, we would hold the dismissal procedurally unfair.

[47] We think the Respondent has not given us a compelling reason to depart from the dicta in the above cases that the investigation report should have been shared with the Claimant before the hearing.

The "fabricated" minutes

[48] The other procedural complaint relates to the minutes of the disciplinary hearing. In this, the Claimant suggests that the minutes are a fabrication. The Respondent counters that the Claimant has not discharged the burden of proving the minutes to be fabricated. We agree. Similarly to civil proceedings, this Court holds the standard of proof for falsities and fabrications, as suggested by the Claimant in the present case, to be higher than the balance of probabilities. In *Ofwono,* this Court held that the bar for forgery is high. In *Aporo v Mercy Corps Uganda*[21] we observed that fraud was a conclusion of law. We referred to *Shaban and Another v Lamba Enterprises Limited and Another*[22] where Nakachwa J. *(as she then was)* held that fraud allegations are serious and must be specifically pleaded and strictly proven on a balance higher than that of probabilities.

[49] We have not been told how the disciplinary hearing minutes were fabricated in the present context. The Claimant says he did not sign these minutes. We do not think it customary for employees ordinarily the subject matter of disciplinary proceedings to sign or even accept the contents of minutes, especially where the outcome is adverse to the employee's interests. We were not shown that the signatures of the attendees, excluding the Claimant, were false or misleading or that the approval of Namanya Nicholas, Senior Legal Officer or Johnson Agoreyo, Managing Director and CEO, was procured falsely. In our estimation, there is no evidence of falsification of the minutes, so we cannot consider them untrue. Our judgment is that the minutes accurately reflect the disciplinary meeting of the 14th of October 2019, at which the Claimant was found to have committed several employment offences and advised to resign from employment with the Respondent. We are unable to fault the Respondent on this front.

[50] We are fortified in taking this view by the persuasive dictum of the then Industrial Court of Kenya[23] in *Anthony Mkala Chitavi v Malindi Water & Sewerage Company Ltd*[24]. The Court

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[21] [2024] UGIC 23
[22] [2023] UGHCCD 127
[23] The Industrial Court of Kenya became the Employment and Labour Relations Court (ELRC) in 2011, following the enactment of the Employment and Labour Relations Court Act No. 20 of 2011, which operationalised the court established under Article 162 (2) (a) of the Constitution of Kenya 2010.
[24] [2013] KEELRC 920 (KLR)

observed that a prudent employer is best advised to keep records/minutes. The charges should preferably be in writing, with notices sent and signed by the employee, or where he refuses to acknowledge them, a minute kept. In our view, the preservative evidential power of minutes aids in determining the question of lawful dismissals. In the present case, the minutes have not been sufficiently assailed for us to declare them unreliable.

Failure to follow internal disciplinary procedures

[51] The Claimant complained that the Respondent failed to adhere to the requirement for fairness as outlined in its disciplinary process. The Respondent argues that the internal disciplinary procedures were directory and not mandatory. For this proposition, we were referred to *Seruwu*. In *Seruwu,* which was an *ex-tempore*[25] judgment, Mubiru J. was considering the meaning and effect of the word "shall" under Order 11A Rule 6 of the Civil Procedure (Amendment) Rules, 2019. His Lordship found that the word' shall' is not always obligatory, imperative, or mandatory. His Lordship was of the view that it is the function of the Court to ascertain the real intention of the drafters by careful examination of the whole scope of the rules and the consequences that would follow from constructing the rule one way or another. The Court should ascertain the legislative intent.

[52] In the present context, if we were to apply *Seruwu* directly to the facts before us, we do not think we would reach the conclusion that Counsel for the Respondent did. Their view was that the rule was not mandatory. We disagree.

[53] Under the Respondent's Disciplinary Process and Sanctions Policy, Policy Number. UBUGHRG: 001 Dated January 2015(REX7), the Guiding Principles and Philosophy is worded thus:

> " ***Fairness***
>
> *Sanctions shall not be imposed on an employee without a formal query and reasonable time for response. The employee's response to the query shall, as much as possible, be in writing and shall be signed by the employee.*
>
> *Every employee appearing before a disciplinary committee shall be given the opportunity of a fair*

[25] See Black's Law Dictionary 11th Edn by Byran Garner at page 728- ex tempore means without preparation, extemporaneously

hearing, except where the employee declines an invitation."

[54] In our view, placing fairness alongside justice and equity as guiding principles in the Respondent's disciplinary process is a progressive labour practice. Guiding principles are core values and beliefs that shape decisions, behaviours, and actions. They act as a compass, helping individuals, teams, or organizations stay aligned with their purpose and goals. According to Chambers' 21st Century Dictionary, philosophy means any particular system or set of beliefs or principles that serves as a basis for making judgments and decisions. Therefore, fairness stands out in all disciplinary matters at the Respondent, like a large neon sign or a billboard guiding disciplinary decisions. In our view, we would hold that the requirement for an employee to put their responses in writing and sign them is to ensure fairness in the process. The invitation letter CEX12[3] did not invite the Claimant to provide a written explanation of the allegations, and we think this would not be fair within the dictates of the Respondent's guiding principles. In our view, the dicta of *Seruwu* would support the construction of mandatory written queries and responses to avoid the unfairness associated with ambiguity or the absence of a written record.

[55] We also take further guidance from persuasive Kenyan Employment and Labour jurisprudence. In *Charles Ochieng Opiyo v Lake Basin Development Authority*[26] the employer's failure to comply with its own internal disciplinary process amounted to an unfair termination of employment. In the matter before us, we would hold that the Respondent's failure to adhere to the guiding principle and philosophy of fairness regarding the query and response was an unfair labour practice and rendered the Claimant's dismissal procedurally unfair. The other breach of internal disciplinary procedure is also a procedural irregularity.

[56] Therefore, in terms of procedural fairness, we conclude that the failure to give the Claimant sufficient time to respond to the allegations or infractions, the failure to give him a copy of the investigation report, the failure to adhere to internal disciplinary guiding principles were procedural irregularities that render the Claimant's dismissal procedurally unfair. In keeping with *Musinguzi,* the failure to follow procedure renders the dismissal unfair and unlawful.

Substantive fairness

[57] Substantive fairness is about the employer's proof of the reason or reasons for the dismissal. The Court is concerned with the employer justifying an act of misconduct or disobedience by the employee. In *Kigula*, the Court of Appeal of Uganda observed that substantive fairness requires the employer to show that the employee had repudiated the contract or any of its essential conditions to warrant summary dismissal. Gross and fundamental misconduct must be verified for summary dismissal. Section 67(1) of the EA requires an employer to prove the reason for dismissal, and where the employer fails to do

[26] [2021]eKLR

so, the dismissal is considered unfair. In other words, the absence of reason or failure to prove the reason for dismissal means that the dismissal is automatically unfair.

[58] The yardstick is under Section 68(2) EA, which provides that a reason for dismissal shall be matters that the employer genuinely believed existed and caused the employer to dismiss the employee.

[59] In the matter before us, the common facts are that after finding the Claimant guilty of several infractions, the Respondent offered him the opportunity of a "dignified exit," according to RW1, which was to resign. When he declined to do so, he was terminated. The reasons for his termination were stated in the termination letter CEX 18, which indicated that the Respondent had found the Claimant guilty of gross misconduct in which the Respondent's account was debited UGX 7,918,720,000/= (shillings seven billion nine hundred eighteen million seven hundred twenty thousand) without proper documentation as there were no customer instructions to the Bank and appropriate transactions approvals in place.

[60] In support of its case, the Respondent adduced the Investigation Report REX8, the disciplinary hearing minutes REX9 and a copy of an email proving that there were no deal tickets approving the issuance of treasury bonds by the Claimant to Centenary and Housing Finance Bank. Are these documents sufficient to prove that the Respondent genuinely believed there was reason to dismiss the Claimant?

[61] To this Court, the burden of justifying the reason or reasons for dismissal is on the employer to prove that he or she genuinely believed reasons for dismissal to exist on the balance of probabilities. As already established, the yardstick for substantive fairness is for the employer to demonstrate, on a balance of probabilities, that the employee has repudiated the employment contract or any of its essential conditions. In assessing the reason or reasons for dismissal, this Court's inquiry is not a challenge to the reason for dismissal, but the Court is concerned with substantive fairness. In other words, did the reason or grounds of misconduct exist within the employer's manuals, and were there reasonable grounds for the employer to impose the sanction of dismissal? Are the reasons valid and fair?[27]

[62] The Claimant was first employed as a Chief Dealer in the matter before us. There is some controversy over whether he served as HOT, which is a matter we will address in determining issue two. For substantive fairness, the Respondent investigated the impugned Treasury bond transactions from 1st July 2019 to 20th September 2019. In paragraph 4.0 (f) of the findings, the investigation report (REX8) named the Claimant as having cleared the transactions without the authority of the Chief Treasurer. He was then invited to attend a disciplinary hearing on the 14th of October 2019.

[63] At this hearing, according to the minutes, the Claimant was asked if the policy permitted the purchase of TBs for a customer with an unfunded account, and he said it did not. He was

[27] See Musmenta v United Bank of Africa (Labour Dispute Reference 210 of 2020) [2024] UGIC 41 (11 October 2024)

asked to provide documentation debiting the bank's account on behalf of Sanlam, and he said it was done based on trust. He was also asked why he was before the DC, and he explained that it was due to a process lapse with Sanlam. He was asked if selling TBs without documentation was outside policy, and he said it was an oversight and error on his part. He stated that there were tickets for the UGX 7,918,720,000 (shillings seven billion nine hundred eighteen million seven hundred twenty thousand) transaction with Alex Muganga, but he did not provide them. The Claimant's Counsel contested the charges for failure by the Respondent to provide the policy allegedly infringed upon. REX18, the termination letter, referred to gross misconduct. Under Clause 15.3 of the Disciplinary Process and Sanctions Policy, gross misconduct has a reasonably broad scope, as does Clause 17.3, which provides a non-exhaustive list of examples of gross misconduct. On the evidence available, the DC found that the Claimant's action amounted to the unauthorised financial commitment of the bank with external parties or customers contrary to clause 15.4.9, for which it advised the Claimant to resign. He did not and was terminated.

[64] In our view, after conducting an investigation and hearing, the Respondent genuinely believed the Claimant to have made financial commitments without authorisation, which breached the Respondent's policy. In our estimation and judgment, the Respondent was substantively justified in dismissing the Claimant for the reasons in the final disengagement letter. We are fortified in taking this view, as we did in *Nabaterega*, because employees in the financial sector are held to a very high degree of accountability and ethical responsibility. In *Barclays Bank of Uganda v Godfrey Mubiru* [28]the Supreme Court of Uganda observed that managers in the banking business were required to be particularly careful and exercise a duty of care more diligently than managers in other businesses because they managed depositors' money. Any careless act or omission could result in significant losses for a bank and its customers.[29] The dicta of the Supreme Court bind us. It is our conclusion that the Respondent was substantively fair.

Conclusion

[65] In *Nabaterega*, this Court held that dismissal will be unlawful due to either procedural unfairness, substantive unfairness, or both. In the present context, we have found the Respondent culpable for procedural unfairness and mistakes but substantively justified in dismissing the Claimant. As with *Nabaterega*, we find that the Claimant's dismissal was unlawful due to procedural unfairness.

Issue II Whether the Claimant was appointed acting Head of Treasury of the Respondent?

[66] For the Claimant, it was submitted that RW1 had, in paragraph 4 of her witness statement, admitted that the Claimant served as HOT in an acting capacity. Our attention was drawn to

[28] [1999] UGSC 22
[29] See Ekemu Jimmy v Stanbic Bank Ltd and Akello Beatrice v Tropical Bank Ltd.

CEX5, a caution letter from the Respondent addressed to the Claimant and referred to him as Acting HOT.

[67] For the Respondent, it was submitted that the Claimant was appointed as Chief Dealer (CEX1), and his appointment as HOT was subject to his satisfactory performance and the Central Bank's fit and proper no objection approval. Because the Central Bank declined to approve him, it was argued that the Claimant was never employed as acting HOT except for a limited time.

Decision

[68] It is beyond dispute that on the 12th of January 2017, the Respondent appointed the Claimant as Treasury Chief Dealer at a gross annual basic salary of UGX 109,695,288/= (shillings one hundred and nine million six hundred ninety five thousand two hundred eight eight), with an annual leave provision of 12% of his basic salary, a 13th cheque, a car allowance, medical scheme for self, spouse and four children, performance incentive bonus scheme and provident fund contribution. The Respondent tendered REX1, an internal memo detailing the recommendation for the Claimant's appointment as Treasury Chief Dealer. RW1 addressed the request to the Respondents Managing Director and the Regional CEO for Anglophone Africa. The memo dated 12th January 2017 detailed the Claimant's CV.

[69] RW1 testified that the Claimant's name was forwarded to the Central Bank as a nominee for the position of HOT. While awaiting approval, the Claimant served as acting HOT. Therefore, from RW1's evidence, the issue would be answered in the affirmative. It is an admission. The law of admissions dispenses with the need for proof of a fact, which means that a party has conceded to the truth of an alleged fact.[30] The admission must be unambiguous[31]. In our view, RW1's admission is plain and clear. While the Respondent was awaiting the Bank of Uganda's clearance, the Claimant served as acting HOT. The issue would be answered in the affirmative.

[70] Barring the admission, the Respondent tendered in evidence REX4, a letter from the Bank of Uganda dated the 12th of December 2017, declining to approve the Claimant as HOT for the Respondent. Mr. Godfrey Yiga Massajja, the Acting Director of Commercial Banking at BOU, advised the Respondent to identify a more suitable person. In *John Okumu v Equity Bank Uganda*[32] we considered the provisions of the Financial Institutions Act Cap. 57(FIA) concerning vetted employees in financial institutions in Uganda. We observed that the 3rd Schedule of the FIA tests the moral and professional suitability of a person who seeks to control or manage a financial institution. A banker is held to a high standard and whose conduct and sound judgment are of utmost importance. The fitness tests carried out by the Central Bank determine a senior Manager's suitability. Serving in any Executive Manager

[30] See Matovu Luke & ORS vs. Attorney General, HC Misc. Appl. No. 143 of 2003.

[31] See Mwebeiha Amatos vs A.G [2015] UGHCLD 49 Per Bashaija J. *"It would appear clearly that where the admission of facts is clear and unambiguous, the court ceases to have the discretion whether to enter a judgment or not. It must do so"*

[32] LDR 072 of 2020

position or as Director of a financial institution in the Republic of Uganda is subject to statutory approval. These positions of "vetted" employees are regulatory. For illustration purposes, under Schedule 3 FIA, persons whose names have been forwarded for Central Bank approval are called nominees and, when appointed in a substantive capacity, are deemed public officers under Section 131FIA. Therefore, because the Central Bank rejected the Claimant's proposed appointment as HOT, it would be impossible to find that the Claimant served as substantive HOT.

[71] This conclusion will have implications for our resolution of the question of unpaid salary for the position of HOT, to which we shall return later in this award.

Issue III - What remedies are available to the parties?

[72] Having found that the Claimant's dismissal was substantively justifiable but procedurally unfair and unlawful because the Respondent failed to meet the procedural threshold, the Claimant would be entitled to some remedies.

[73] For starters, it is hereby declared that the Claimant was unlawfully dismissed.

Severance pay

[74] Under Section 86(a) EA, an unfairly dismissed employee is entitled to severance pay. Having found as we have in respect of Issue one, the Claimant is entitled to severance pay. He was employed on the 12th of January 2017 and terminated on the 9th of December 2019. The aggregate period of employment was 2 years 11 months and 11 days. Mr. Mugalula sought UGX 37,949,998.7 as severance allowance over a period of 3 years. He computed the Claimant's consolidated remuneration at UGX 151,799,995/= as at 13th September 2017 according to CEX 4. Counsel cited *Betty Luiga v Bugema University*[33] in support of the claim. Mr. Kalule, for the Respondent, was of the view that the Claimant was not entitled to severance pay as he had been paid all his benefits. We were referred to CEX 18.

[75] The termination letter, in paragraph 3, indicates that HCM was required to compute and pay the Claimant his benefits less statutory deductions and any indebtedness. We were not presented with the computation or proof of payment. In the circumstances that we have found that the Claimant was unlawfully dismissed, we are of the opinion that severance pay would be computed on his last basic pay as opposed to the consolidated remuneration package. Therefore, at the Claimant's monthly pay of UGX 12,358,619/= per CEX 25, we award him the sum of **UGX 36,423,603/=** as severance pay for the period of 2 years, 11 months and 11 days served.

Bonus

[33] LDR 174 of 2014

[76] Mr. Mugalula, on the authority of *Kenny v Weatherhaven Global Resources Ltd*[34] argued that once a bonus clause is made part of the contract, it cannot remain inconsequential. He also argued that under the contra referendum rule, when an employer drafted a contract in any ambiguous language, it was to be construed against the employer. Counsel cited *RKO Radio Pictures v Sheridan*[35] in support of that proposition. We were asked to order a payment of a bonus for the period 2017 to 2019 on the same terms as the Respondent paid bonus in 2016.

[77] For the Respondent, it was argued that the performance incentive bonus was based on annual performance operated at the discretion of the Respondent. It was submitted that RW1 had testified that no bonuses were paid over the claim period. It was also submitted that the Claimant had not pleaded bonus and legitimate expectation and could not be expected to depart from his pleadings. We were referred to *Interfreight Forwarders(U) Limited v East African Development Bank*[36] and *Bank of Uganda v Joseph Kibuuka and Others*[37]

[78] In rejoinder, Mr. Mugalula directed this Court's attention to paragraphs 4(g) and (h) of the MOC, which clearly impleaded the issue of unpaid bonuses. We have reviewed the said paragraphs and find that the Respondent's contention of departure from pleadings is misplaced. The point merits no further comment, therefore.

[79] In the rest of his rejoinder, Counsel for the Claimant suggested that discretion must be exercised honestly and in good faith, for the purposes for which it is conferred and must not be exercised arbitrarily, capriciously or unreasonably. For this proposition we were referred to *Abu Dhabi National Tanker Co. v Product Star Shipping*[38] and *Clark v Nomura*[39]

Decision

[80] In our jurisdiction, bonus pay has been treated as discretionary because Section 89(1) EA, only provides for the deduction of any gratuity, bonus or pay other than what is provided for the EA. See *Ndaula and Another v PostBank Uganda Limited* [40]

[81] In this matter, the subject clause of REX1 reads as follows:

> *"Consideration for a Performance Incentive Bonus will be made annually based on performance. Please note that this bonus scheme is operated at the discretion of the Bank"*

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[34] 2017 BCSC 1335
[35] 195 F.2d 167
[36] [1993] UGSC 16
[37] C.A.C.A No. 281 of 2016
[38] [1993] 1 Lloyds Rep 397
[39] (2000) IRLR 766
[40] [2025] UGIC 2

From the evidence, there was considerable disagreement on whether the Claimant was entitled to a bonus. In his testimony, he said Mr. Agoreyo had promised him an annual bonus if he met his targets. He told us that the Respondent spent UGX 501,996,000 in performance bonuses for the year 2016 and UGX 109,235,000/= in performance bonuses for 2015. He attached the financial statements for each of those respective years. He also attached his letter of commendation dated the 20th of June 2018, where he was commended for making a significant contribution to the treasury department towards the growth of the Bank's revenue for the year 2017. In the words of the Respondent's Management, the Claimant had "distinguished" himself as a "true Lion". This begs the question of why this "true lion" was denied its prized prey.

[82] For its part, the Respondent argued that payment of bonus was an exercise of discretion. There was evidence of an exchange of emails regarding bonuses. In an email dated 7th May 2018, the Claimant asked about a bonus, indicating that his team had raised 70% of the Respondent's income for 2017. Mr. Oliver Alawuba, Executive Director, was happy with this performance. The Claimant pressed on for bonus. By an email dated the 7th of June 2019, Mathias Ninga, a Regional Manager of the Respondent, acknowledged that the Claimant's department had achieved 105% of its annual target of 2018 and contributed 64% of the Respondent's total revenue. He suggested that the Bank's overall performance for 2018 had not been met to consider payment of departmental bonus. In our estimation, there is sufficient evidence on the record to demonstrate that the Claimant's department had made a considerable contribution to the Respondent's income in the claim period which would entitle the Claimant, by virtue of clause 4 of the employment contract to seek the performance incentive bonus which he did.

[83] However, we are not satisfied that the Respondent exercised its discretion to decline payment of bonus in an honest and open manner. In her evidence, RW1 told us that the bonus policy was purely discretionary and determined by the shareholders once the Respondent met its group targets. In our view, that is not what clause 4 suggested. There is no provision for group performance. Plainly, consideration for a performance incentive bonus was to be made annually based on performance at the discretion of the bank. The Clause does not resonate with RW1's testimony. RW1 conceded that there was no written policy with clear terms and conditions for an award of bonus. In this way, the dicta of the British Columbia Supreme Court in *Kenny*, which is cited by the Employment and Labour Relations Court of Kenya in *Mutonyi-Sakuda v Board of Governors, St Andrew's School Turi*[41] becomes quite persuasive on the effect of a bonus clause in a contract. In the Canadian case, the Court granted the employee a significant bonus upon finding that a clause invoked by the employer, as having given discretion to the employer in determining if the bonus was payable, was ambiguous. Rika J. restated the principles of interpretation of an employment contract thus:

[41] [2024] KEELRC 2672 (KLR)

(a) The goal of a contract of employment is to determine the mutual intention of the parties.

(b) The Court will consider the plain language and ordinary meaning of the words used, having regard to the context of the contract as a whole.

(c) Where it is of assistance, the Court may examine the circumstances, whether the parties knew, or ought to have known, at the time the contract was formed, the objective meaning of the words they used in the contract.

(d) Every clause should be given a meaning, and a contract will not be interpreted in such a way, as to make one or more of its provisions ineffective.

(e) Any ambiguity should be resolved so as to achieve a result consistent with commercial efficacy and good sense, as informed by the consideration of reasonableness and fairness. This may include the protection of vulnerable Employees, in their dealings with their Employers.

(f) If a contract remains ambiguous after review of the above principles, the Court may apply the doctrine of contra proferentem, and resolve the ambiguity in favour of the Employee.

[84] The last of these principles is in tandem with Industrial Jurisprudence. In *Tumushabe v Normandy Company*[42] we observed the applicability of the maxim *'in dubio pro operario"* which translates to when a court is in doubt, it ought to rule in favour of the worker. It is a form of protection of employees and was applied by the United States Supreme Court in *Tennessee Coal Co. v. Muscoda Local No. 123* [43] when Mr. Justice Murphy gave a statute a wider meaning considering its remedial and humanitarian nature, and by the French Supreme Court applied the principle in *Castanié v. Widow Hurtado*[44] to give wider benefit to a widow than afforded by statute.

[85] For the reasons above, in the context of clause 4 of the employment contract, we are satisfied that the Claimant was entitled to a bonus for the years 2017 to 2019 when he served the Respondent. The only question is, what was the quantum? In paragraph 9.3 of his witness statement, the Claimant asked for UGX 8,900,000,000/= (Eight Billion Nine Hundred Million Shillings Only) as his bonus. RW1 countered that this sum was not based on any known metric, but rather a figure plucked out of thin air. We agree, not that the air out of which the figure was plucked was thin but that the basis of the claim was not with good foundation. The financial statements for 2017 and 2018 were attached as CEX 8. There were representations of income from the treasury consisting of interest on deposits and placements, interest on government securities, and foreign exchange income. These sums totaled some UGX 29,528,169,138/= (shillings twenty nine billion five hundred twenty eight million one hundred sixty nine thousand one hundred thirty eight). The claim for UGX 8,900,000,000/= (shillings eight billion nine hundred million) would represent more than 30% of income to be attributed to the treasury.

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[42] [2025] UGIC 14

[43] 321 U.S. 590 (1944)

[44] https://compendium.itcilo.org/en/compendium-decisions/supreme-court-201ccour-de-cassation201d-castanie-v.-widow-hurtado-request-of-27-february-1934 last accessed 17.02.2025 10.07 a.m

[86] The more telling numbers in these financial statements are the profit after tax, which for 2017 was UGX1,047,348,000/= (shillings one billion forty seven million three hundred forty eight thousand) and UGX4,908,454,000/= (shillings four billion nine hundred eight million four hundred fifty four thousand) for 2018. The statement of comprehensive income for 2019 was not included in the Claimant's trial bundle. What this analysis means is that what the Claimant seeks as a bonus for the two years combined exceeds the entire bank's profit after tax for the years combined. In our estimation, the Claimant does not make an appreciable claim. We have already found that there was no written bonus policy and no evidence of the mode of computation of bonus payments was tendered. And while we find that the Claimant is entitled to a bonus, we cannot accept his claim of UGX 8,900,000,000/=. Given the analysis of the financial statements, and because it exceeds the Respondent's profit before and after tax, it is unsupported, unrealistic and does not make business sense. It borders on an irrationality. We are therefore unable to grant the bonus claim.

Overtime pay

[87] On overtime, Counsel for the Claimant sought UGX 113,103,933/= in overtime. He anchored this claim on CEX22, an email he sent to the Respondent's Managing Director, explaining his time of entry and exit from work. He suggested that the logs would back his claim and attached CEX 29 and CEX30 as Clock IN Clock Out system printouts from January 2017 to October 2019. Citing Section 53(8) EA, now Section 52(8) EA, we were asked to grant overtime pay.

[88] The Respondent countered that the Claimant's working hours were 8:00 a.m. to 5:00 a.m. Monday to Friday per CEX 1 unless there were instructions from the Managing Director. We were referred to CEX 23, an email from the Managing Director indicating that the Claimant was entitled to competitive remuneration and that if he needed to work outside official hours, it was a matter of time management. We were referred to the Kenyan case of *Sheila Wikashei Wikama & another v Super Broom Services Limited*[45] for the proposition of failure to prove overtime hours worked.

[89] In rejoinder, it was contended that in *Wikama*, the claim was dismissed because the Claimant did not prove the entitlement to overtime, but in the present case, the Claimant had proven that he had worked overtime. There was no policy document that supported the approval of overtime by the Managing Director.

Decision

[90] If we understand the parties correctly, the contention is that overtime must be authorised before it is earned.

[45] [2022] KEELRC 828 (KLR)

[91] Under Section 52(1), the EA provides a maximum of forty-eight working hours per week. Under Section 52(2) EA, the employer and employee may agree to a maximum number of hours of not less than forty-eight hours. Under Section 52(3), parties to an employment contract may agree to normal working hours beyond forty-eight hours, while under subsection (4), hours of work shall not exceed ten hours per day of fifty-six hours per week. And Section 52(8) provides a formula for payment of overtime at one and a half times the normal hourly rate if overtime is on a normal day and two times the hourly rate on gazetted public holidays.

[92] The common thread in the provisions expanding the working week beyond the maximum forty-eight hours is an agreement between the parties to the employment contract. The EA employs the expression "may agree". Therefore, the key to overtime in terms of engaging beyond the maximum weekly hours and payment for overtime is an agreement between the employer and employee. This was partly the ratio in *Okot Omwoya Brain & Others v Crown Beverages Ltd*[46] the Industrial Court examined a human resource manual that expressly prohibited overtime before concluding that the Claimants did not prove their entitlement to overtime payment. Similarly, in *Mugerere & 3 Ors v Kampala City Council Authority,*[47] the Industrial Court found that the Claimants had not booked overtime in accordance with policy. While they produced the clock in and out book, the Court was not satisfied that the Claimants booked over time, and the claim was denied.

[93] The evidence before us does not show any agreement in respect of overtime. Under the employment contract, working hours were 8:00 am-5:00 pm, with an hour for a lunch break. The Staff handbook also maintained the same work hours. The email exchanges between the Claimant and Mr. Agoreyo, CEX22 and CEX23, did not reflect an agreement for overtime. In his email, the Claimant indicated that the entry and exit logs showed that he worked long hours, being the first to enter the bank and last to leave. In his reply, Mr. Agoreyo made it clear that the Claimant was paid a competitive salary, and if he had to work outside official hours, he needed to manage his time. In our estimation, this was not an agreement on overtime. Given the provisions of Section 52EA, we cannot conclude that the Claimant would be entitled to overtime pay simply because there was no agreement for him to work overtime.

[94] Had we found that the Claimant and Respondent had agreed to overtime, the next step would be proving overtime. In *Amolo and 20 Others v Makerere University Business School*[48] we held that that working hours and overtime computation are mathematical and, therefore, computed precisely, which is claimed as special damages. The evidentiary approach in *Amolo* mirrors *Wikama.* The Claimant adduced printouts of clock-in and clock-out data and an analysis of his work hours over the entire term of service. This would have

[46] LDR 274 of 2016
[47] [2016] UGIC 20
[48] [2024] UGIC 74

been useful in establishing overtime payment had he been entitled to it by policy or agreement with the Respondent. Like *Mugerere*, while the Claimant showed his entry and exit, he cannot demonstrate an agreement, entitling him to overtime. As a result, the claim is denied.

Unlawful deduction of salary

[95] The Claimant submitted that UGX 10,037,862/= (shillings ten million thirty seven thousand eight hundred sixty two) was unlawfully deducted from his salary to cover a CRR breach, which Section 45(2) EA barred. The Respondent argued that Clause 16.2 of its disciplinary process and sanctions policy permitted such a deduction.

[96] Section 44EA explicitly prohibits deductions of salary except as permitted under Section 45EA, which reads as follows:

> ***" 44. Prohibition on certain deductions***
>
> *(1)Except as otherwise permitted by this Act or any other law, remuneration earned or payable to an employee shall be paid directly to the employee.*
>
> *(2)No deduction shall be made from the wages of an employee with a view to ensuring a direct or indirect payment to his or her employer or the employer's representative or to any intermediary for the purpose of obtaining or retaining employment.*
>
> *(3)All employers shall be required to provide employees with the equipment, tools and material necessary for that employee to perform his or her duties, and shall not require that employee to pay the employer, or any other person, for the equipment, tools or material.*
>
> ***45. Permitted deductions***
>
> *(1)The following deductions from remuneration due to an employee are permitted—*
>
> *(a)an amount in respect of any tax, rate, subscription or contribution imposed by law;*
>
> *(b)where the employee has previously given his or her written consent to a deduction being made, the deduction being in respect of any amount representing a contribution to any provident or pension fund or scheme established or maintained by the employer or some other person;*

(c)deduction by way of reasonable rent or other reasonable charge for accommodation provided by the employer for the employee, or the employee's family, where the employee has agreed to the deduction; and

(d)union dues, deducted in accordance with section 48.

(2)Notwithstanding the provisions of any other law, an employer shall not deduct from the wages of an employee the cost of any protective gear or tools of trade which are provided by the employer.(3)The attachment of wages by operation of law shall be permitted, but any such attachment shall not be more than two-thirds of all remuneration due in respect of that pay period."

The law restricts deductions for taxes, rates, subscriptions or contributions imposed by law, where an employee consents to a deduction for contribution to a pension or provident fund or scheme, rent deductions for the employee's family and union dues. The impugned Clause 16.2 of the Respondent's disciplinary process and sanctions policy reads as follows;

*" **Sanction for self-declared teller and other operational losses less than or equal to UGX 150,000 may include refund of lost sum by the affected officer(s)"*

From a reading of the permitted deductions under Section 45(1) EA, we do not think that a sanction for losses is permitted or was envisaged under the EA. To this extent, we agree with Mr. Mugalula that the deduction was unlawful because it is not legally permitted. Indeed, Article 8 of the ILO Convention on Protection of Wages, 1949 (No. 95), which Uganda ratified on the 4th of June 1963, provides that deductions from wages shall be permitted only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreement or arbitration award. This means that for permissible deductions, recourse must be had to national law.

[97] The above stance places Mr. Kalule's argument that the Respondent's policy permitted this sanction outside the parameters of the law. This Court has held that the EA set irreducible minimums[49] below which the employment contract and all other policies governing the employment relationship should not fall. If the EA prohibits and permits only certain deductions, the Respondent's sanctions policy cannot be said to override the statutory provision. The argument that the sanctions policy permitted the deduction would not hold.

[98] But more importantly, the deduction of emoluments as a penalty is not expressly permissible under the EA, as is the case in other jurisdictions. Comparatively, in Kenya, under Section 19(2)(b) of the Employment Act Cap. 226,(KEA) an employer may deduct a

[45] See Akankwasa v Muhavura Extractions Limited (Labour Dispute Reference 272 of 2018) [2023] UGIC 43 (27 October 2023)

reasonable amount for any damage done to, or loss of, any property lawfully in the possession or custody of the employer occasioned by the willful default of the employee. Further, under Section 19(2)(d)KEA, an employer may deduct an amount equal to the amount of any shortage of money arising through the negligence or dishonesty of the employee whose contract of service provides specifically or his being entrusted with the receipt, custody and payment of money. According to John Grogan in "Workplace Law",[50] South African labour laws permit salary deductions to reimburse the employer for losses caused by the fault of an employee, but only after the latter has been given a fair hearing. What can be discerned from the provisions above is that the practice of deduction for loss caused by an employee is permissible by statute. In the Republic of South Africa, it is permissible only after a hearing.

[99] In the case of Uganda, there is no such provision within the EA that we should find the practice of deduction of salary as a penalty or, indeed, the impugned clause 16.2 of the Respondent's disciplinary and sanctions policy permissible. It is quite true that the employment relationship is built on a contract that assumes trust and confidence but that on its own does not permit deductions of wages under the EA, which takes precedence over the sanctions policy under Section 26EA. To this extent, Clause 16.2 of the Respondents' discipline and sanctions policy is void and of no effect because it excludes the provisions of Section 45EA.

[100] In sum, cascading from the ILO Convention level, the question of salary deductions for employee loss and negligence is left to national legislation, and in our jurisdiction, the EA does not list loss and negligence as permissible deductions.

[101] Returning to the deduction of UGX 10,037,862/= (shillings ten million thirty seven thousand eight hundred sixty two) from the Claimant's salary, on the 23rd of June 2017, the Respondent invited the Claimant to a disciplinary hearing for the regulatory infraction. On the 6th of July 2017, the Respondent found the Claimant guilty of the regulatory infractions and tasked him to refund the sum of UGX 10,037,862/=, which had been imposed as a fine by BOU. On the 12th of July 2017, Charity Nyabura advised the Claimant that 15% of his salary would be deducted monthly to meet the BOU fines per the impugned Clause 16.2. In our view, after the disciplinary hearing but before the deduction of the penalty, Section 11EA permits the settlement of grievances before a labour officer, and an employer seeking to impose a sanction such as deduction of wages would do well to have that sanction endorsed by a labour officer under the EA. That approach would be consistent with fair labour practices.

[102] As a result, we hold that the Respondent wrongfully deducted the sum of **UGX 10,037,862/=** (shillings ten million thirty seven thousand eight hundred sixty two). The Claimant is entitled to a refund.

[50] Workplace Law by John Grogan 3rd Edn Juta & Co, Ltd 1998 at page 37

Salary loan liability

[103] Citing *Byanju v Board of Governors St. Augustine College Wakiso*[51] it was contended for the Claimant that the law is settled that where an employer unlawfully terminates an employee, causing him or her to default on a salary loan whose repayment is based solely on salary, the employee would be liable to pay the loan balances. We were asked to find the Respondent liable for the Claimant's loan with DFCU Bank. Our attention was directed to CEX25, a letter of undertaking by the Respondent to DFCU Bank.

[104] For the Respondent, it was submitted that the Claimant had been lawfully terminated and that CEX 25 did not constitute a guarantee.

[105] *Byanju* was decided in 2017. In a more recent precedent, *Stanbic Bank (U) Limited v Okou* [52] Madrama JA (as he then was) was considering a decision of the Industrial Court ordering an employer to meet the liability of a salary loan. His Lordship held

> *"I accept the submission 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 the loans are payable by salary deductions. It follows that the Industrial Court erred to make a blanket finding that the loans were given on the understanding that they would be solely serviced through the salaries earned by the respondent from the appellant. It therefore required evidence on the subject matter of the outstanding loan amounts"*

From this dicta, the Court must consider the evidence of the loan. In the present case, the Claimant presented CEX25. It read as follows;

> *" The Manager, Credit Approvals*
> *DFCU Bank,*
> *P.O. Box 70,*
> *Kampala, Uganda*
>
> *29th March, 2019*
>
> *Dear Sir/ Madam*
>
> ***RE: LETTER OF UNDERTAKING FOR MR. ISAAC IGA KASOZI***
>
> *1. We refer to the application from **MR. ISAAC IGA KASOZI** to **DFCU Bank** for a loan of UGX 146,000,000 repayable over **60** months.*

[51] [2017] UGIC 20
[52] [2023] UGCA 100

2. We recommend that the loan can be afforded.

*3. We confirm that the prospective borrower is employed by **United Bank for Africa Uganda Ltd** as a Chief Dealer and his gross monthly salary is currently **UGX 12,358,619** per month. His net monthly salary presently amounts to **UGX 7,369,617**. We commit that his loan instalment will continue to be deducted and remitted to **"Los Intersystems, Account 01013015225109"** at DFCU Bank on confirmation that the loan is approved.*

*4. We confirm that his date of birth is **27/07/1984***

***5.** We confirm that his residential address as being **Muyenga-Zzimwe Road**.*

*6. We confirm that Isaac Iga Kasozi is employed on a **permanent** basis.*

7. We undertake to advise the Credit Collections Manager, DFCU, within 10 working days should his employment with us be terminated for any reason.

8. Should the borrower fail to meet any loan repayment or interest for any reason, we shall provide the Collection Manager , DFCU with all reasonable assistance to recover the outstanding balance of the loan and interest.

*9. In the event that he separates with the Bank, the applicant's Terminal Benefits will be sent to **"Los Intersystems, Account 01013015225109"** with DFCU unless a separate arrangement is made between your bank and him and is communicated to us.*

10. Please note that this letter does not constitute a guarantee from the employer."

[106] In keeping with *Okou*, by this letter, the Respondent's commitments on the Claimant's loan with DFCU were limited to remitting the instalments for the duration of the Claimant's employment, advising DFCU Bank if the Claimant was terminated, assisting with the recovery of the loan and depositing the Claimant's terminal benefits with the DFCU Bank. The Respondent did not guarantee the loan. The Claimant did not furnish us with any other documents except a copy of the loan agreement. The only other loan document available was the personal loan facility. The body of this letter which was tendered as part of CEX24, does not attach to the Respondent in any manner whatsoever. Without other loan

documents and on the construction of CEX25, we cannot conclude that the Respondent is liable for the Claimant's loan. In our view, it would be impossible to construe CEX25 as a salary loan for which we should hold the Respondent liable. This was a letter of undertaking and in keeping with our dicta in *Namakula v Scooby-Doo- Daycare and Nursery School*[53] where we followed Okou and observed that 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.

General damages

[107] For the Claimant, it was submitted that he suffered extreme loss, inconvenience, mental anguish and embarrassment that shuttered his flourishing banking career, and he sought UGX 3,000,000,000/= (shillings three billion) in general damages.

[108] Counsel for the Respondent submitted that general damages flow from the wrongful act, and there was no such wrongful act. Counsel regarded the claim for UGX 3,000,000,000/= (shillings three billion) as laughable and without justification. We were referred to *DFCU Bank Limited v Donna Kamuli*[54].

[109] The Supreme Court of Uganda has now clarified on the award of general damages in employment disputes. in *Uganda Post Limited v Mukadisi*[55] general damages are awardable for breach of the employment contract and for the non-economic harm and distress caused by the wrongful dismissal, including compensation for emotional distress, mental anguish, damage to reputation, and any other non-monetary harm suffered due to the dismissal. We have found that the Claimant was unlawfully dismissed, and therefore, he is entitled to general damages.

[110] In *Okou*, Madrama, JA *(as he then was)* held that general damages should be assessed based on the prospect of the employee getting alternative employment or employability, how the services were terminated, and the inconvenience and uncertainty of future employment prospects. In his witness statement, the Claimant testified about extreme loss, inconvenience, mental anguish and embarrassment that shuttered his flourishing banking career. He was of the view that he had lost a career in the banking industry and would not be able to work in it again despite his investment in various banking skills. We did not have evidence of denials of employment in the banking industry, but we note that job loss carries difficulties, as expressed by the Supreme Court in *Mukadisi.* In *Kamuli v DFCU Bank*[56] the Industrial Court considered the earnings of the Claimant, age, position of responsibility, and contract duration to determine the damages awardable. In *Ndaula and Another v PostBank*

[53] [2022] UGIC 83
[54] [2019] UGCA 2088
[55] [2023] UGSC 58
[56] [2015] UGIC 10

Uganda Limited[57] the 2nd Claimant earned UGX 10,933,532/= at the time of his termination. He had worked for about 3 years. We considered that he had been paid UGX 95,066,850/= in terminal benefits and awarded him the sum of UGX 32,800,596/= in general damages.

[111] In the present case, the Claimant was earning a gross salary of UGX 12,358,619/= as of March 2019. He was about 35 years old at the time of his dismissal. Where there is a substantive justification for his dismissal, but the Employer is culpable for procedural unfairness, we have held that general damages will be diminished.[58] However, in the present case, we think such diminution pales because the Claimant would have also been entitled to a bonus had he a formula and overtime, had there been an agreement interparties. In the circumstances and considering all factors, we think the sum of **UGX 86,510,333/=** would be an appropriate award of general damages and we so award it.

Aggravated damages

[112] Mr. Mugalula contended for aggravated damages because the Claimant had defaulted on a salary loan, had a negative credit rating, and had prematurely ended his banking career. For the Respondent, it was argued that there were no aggravating factors.

[113] In *Bank of Uganda v Betty Tinkamanyire*[59] aggravating circumstances were taken to include illegalities and wrongs in the termination compounded by the Respondent's lack of compassion, callousness and indifference. Kanyeihamba JSC observed that the Respondent's conduct must be degrading to the employee. In that case, the Court considered the employer's post-termination review, which showed a stellar regard for the Respondent and also considered the callousness and indifference of the Appellant's employees.

[114] In the present context, there was no evidence of the post-dismissal evaluation of the Claimant, and he did not show the callous and indifferent treatment alluded to in *Tinkamanyire*. We cannot find any aggravating circumstances that warrant an award of aggravated damages.

Unpaid salary as Head of Treasury

[115] The Claimant was contending for UGX 28,000,000/= (shillings twenty eight million) per month for his time as Acting HOT. The Respondent contended that persons in acting capacity keep earning their previous salaries until confirmation in the new position. Because he was not confirmed, he was not entitled to such a salary. We were directed to Clause 2.4 of the Respondent's handbook, REX3.

[116] Clause 2.4 provides that an employee shall receive the salary of the new grade on the effective date of promotion. We agree that the Claimant was entitled to the salary set by the

[57] [2025] UGIC 2
[58] See Kabagambe(Supra)
[59] [2008] UGSC 21

Respondent. He did not serve the Claimant as substantive HOT. He was, at the time, a nominee pending approval by the BOU. The employer's policy sets matters of salary and allowances unless it were a complaint about salary discrimination, which this is not; it is the view of this Court that the Claimant would only be entitled to the salary as set in the employer's scale. In *Ndaula*, this Court was confronted with a similar question and held the human resource manual prevalent. In that case, we declined, as we now do, to grant an order of back pay for acting in a senior position.

Interest and costs of the Claim

[117] The Claimant sought interest at 24% per annum on any award of this Court. The Respondent was of the view that the Claimant had failed to prove his case.

[118] Under Section 27 of the Civil Procedure Act, Cap. 282, the Court has the discretion to grant interests, and we determine that the Respondent shall pay interest at 15% per annum on all monetary awards from the date of the award until payment in full.

[119] We have held that in employment disputes, the grant of costs to the successful party is an exception on account of the nature of the employment relationship except where it is established that the unsuccessful party has filed a frivolous action or is culpable of some form of misconduct.[60] We do not think the Respondent's defence was frivolous because there was a justifiable reason for the Claimant's dismissal. But for the procedural irregularities, the Claimant shall be entitled to half of the taxed costs of the claim.

Final Orders

[120] Given the foregoing findings and conclusions, the Claimant case succeeds in terms of the following declarations and orders:

(i) It is hereby declared that the Claimant was unfairly and unlawfully dismissed from the Respondent's service.

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

(a) **UGX 36,423,603/=** (shillings thirty six million four hundred twenty three thousand six hundred three) as severance pay.

(b) **UGX 10,037,862/=** (shillings ten million thirty seven thousand eight hundred sixty two) as a refund of the unlawfully or wrongfully deducted salary and;

(c) **UGX 86,510,333/=** (eighty six million five hundred ten thousand three hundred thirty three) as general damages.

[60] Kalule v Deustche Gesellschaft Fuer Internationale Zuzammenarbeit (GIZ) GMBH (Labour Dispute Reference 109 of 2020) [2023] UGIC 8 (6 February 2023)

(d) The above sums shall attract interest at 15% per annum from the date of this award until payment in full.

(iii) The claims for overtime, unpaid salary for acting capacity, bonus payments, salary loan liability, and aggravated damages are denied.

(iv) The Claimant is entitled to half of his taxed costs.

It is so ordered.

Signed, sealed and delivered at Kampala this 21st **day of March 2025**

Anthony Wabwire Musana,
Judge, Industrial Court of Uganda

THE PANELISTS AGREE:

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

21st March 2025
10.00 a.m.

Appearances

1. **For the Respondent:** Wasswa Emmanuel
2. **For the Respondent:** Mr. Brandon Muwanga holding brief for Mr. John Mugalula
   Parties absent

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

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

Court : Award delivered in open Court.

11:30 a.m

Anthony Wabwire Musana,

Judge, Industrial Court of Uganda