



**THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT MBARARA
LABOUR DISPUTE CLAIM NO 001 of 2023
(Arising from Labour Complaint No.05 of 2022)**

OFWONO ALEXANDER:.....CLAIMANT

VERSUS

1. MARIE STOPES UGANDA:.....RESPONDENT
2. MARIE STOPES LTD

Before:

The Hon. Mr. Justice Anthony Wabwire Musana

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

Representation:

1. Mr. Wilbrod Osinde of Ms. Ahimbisiwe & Agaba Advocates for the Claimant.
2. Mr. James Samuel Zeere of Ms. S & L Advocates for the Respondent.

Case Summary

Employment law- Summary dismissal- procedure for imposition of disciplinary sanction--procedural and substantive fairness- where the employer genuinely believes that a reason to dismiss an employee exists.

Distinction between termination and dismissal under Sections 64 and 65 of the Employment Act.

Suspension not a disciplinary penalty.

In a claim for wrongful dismissal claim of a Clinical Officer against his employer, a reproductive healthcare provider, the Claimant was summarily dismissed following an investigation into alleged misconduct, including financial improprieties and non-compliance with clinical guidelines. The court examined the procedural and substantive fairness of the dismissal, considering evidence from both parties and relevant legal precedents. The court ruled the dismissal lawful, rejecting the claims for compensation, except for a conceded amount of half-pay during his suspension, which was awarded with interest.

Award date: 29th January 2025 at the High Court, Mbarara.

AWARD

Introduction

- [1] The common facts gathered from the parties' pleadings are that on the 19th of May 2016, the 2nd Respondent, a reproductive healthcare provider, employed the Claimant as a Clinical Officer at its Hoima Centre. His monthly salary was UGX 1,148,941/= (shillings one million one hundred forty eight thousand nine hundred forty one only). On the 13th of January 2022, while serving at the 2nd Respondent's Mbarara Centre, the Claimant was placed on investigative suspension. By letter dated the 23rd of March 2022, the investigative suspension was extended to the 15th of April 2022. By letter dated the 28th of March 2022, the 2nd Respondent invited the Claimant to attend a disciplinary hearing on the 5th of April 2022 to answer infractions of non-compliance with the 2nd Respondent's clinical guidelines and falsification of patient clinical records, overriding internal controls and misappropriation of assets, non-compliance with the 2nd Respondent's Code of Conduct and AFB guidelines, mismanagement of centre stock and causing financial loss to the Respondent from unpaid for services. The Claimant was advised that these breaches were gross misconduct and could lead to summary dismissal. He was also required to provide a written explanation by 4th April 2022, which he did. He attended the disciplinary hearing on the 5th of April 2022. The Committee recommended his dismissal, and on the 13th of April 2022, he was summarily dismissed. He appealed against the decision, and on the 9th of May 2022, the 2nd Respondent's board of Directors disallowed the appeal and confirmed his summary dismissal.
- [2] Aggrieved, he complained to the Mbarara District Local Government Labour Department. The Labour Officer's efforts to mediate the dispute were unsuccessful, and on the 8th of June 2022, he referred the matter to this Court.
- [3] By his amended memorandum of claim, the Claimant sought a declaration that his dismissal was wrongful and or unlawful, an order for payment of UGX 200,000,000/= (shillings two hundred million) as compensation for unlawful termination, salary allowances and terminal benefits from the date of dismissal until the expiry of his contract, breach of contract, special, general, aggravated and punitive damages and costs of the claim.
- [4] The 2nd Respondent opposed the claim, contending that the Claimant was summarily dismissed on justified grounds after a fair and impartial hearing and that the 2nd Respondent was not in breach of the employment contract in any manner whatsoever. We were asked to dismiss the claim with costs.

The Trial

[5] The parties filed a joint scheduling memorandum(JSM). At the scheduling conference on the 23rd of November 2023, the JSM was adopted with the following issues framed and agreed upon:

- (i) *Whether the Claimant's dismissal was lawful?*
- (ii) *What remedies are available to the parties?*

[6] The documents in the Claimant's trial bundle filed in court on the 9th of November 2023 were admitted in evidence and marked CEX1 to CEX9. The documents in the Respondent's trial bundle filed in Court on the 11th of December 2023 were admitted in evidence and marked REX1 to REX 20.

The Claimant's testimony

[7] The Claimant testified that by 2022, he had been promoted and was earning UGX 3,211,957/=(shillings three million two hundred eleven thousand nine hundred fifty seven) per month as head of the 2nd Respondent's Mbarara District Health Clinic. He told us that he received an indefinite suspension letter on the 12 of January 2022, and the suspension was extended on the 15th of April 2022. He said he submitted a written explanation of the allegations before the hearing, but it was ignored. He said he was invited to a disciplinary hearing but was not allowed to be heard, and the 2nd Respondent read out a resolution of its decision. He was not permitted to call witnesses or listen to the Respondent's witnesses; he was not shown any document supporting the allegations against him or given an opportunity to cross-examine members of the DC. In short, the hearing was not fair. He told us that after the hearing, he was dismissed. He said the charges against him were amended after he was summoned, and he had been suspended on different charges. He told us his terminal benefits were unlawfully withheld, his social security contributions were not remitted, the 1st respondent had shared confidential information with the 2nd Respondent, and he had obtained a salary loan of UGX 20,000,000/= (shillings twenty million) on the back of the Respondent's assurance. He told us that he had lost income of UGX 9,635,925/=(shillings nine million six hundred thirty five thousand nine hundred twenty five) in lieu of notice, UGX 30,000,000/= (shillings thirty million) as severance package, UGX 15,000,000/= (shillings fifteen million) as severance allowance, UGX 20,000,000/= (shillings twenty million) as the bank loan, and the Respondent had refused to issue his certificate of service. He listed the rest of his prayers.

[8] In cross-examination, the Claimant confirmed that at termination, his contract had a term of eight months to expiry. He told us that he was suspended for breaching safeguarding policy and remained on suspension on half pay until his appeal. He said he did not complete the clearance form. He confirmed receipt of an invitation to attend a disciplinary hearing. When shown REX15, he said it did not contain allegations against

him. He confirmed making a written statement as asked in the invitation. He said he was not given the investigation report. He was referred to paragraph 1 of CEX5, his written statement and said it was wrong because he first saw the investigation report on the 11th of December 2023. He was referred to CEX7 and said it referred to the investigation report of other staff and confirmed that he saw REX1 before submitting his appeal but did not complain about this in his appeal. He said he was not asked any questions but was given a charge sheet and then got a summary dismissal. He said the reference to the report in his appeal CEX7 was false. When shown CEX6, he confirmed that he was summoned to the DC for the same reasons for which he was suspended but was not questioned about them during the hearing. When shown his statement CEX7, he said he made some responses to the allegations, such as the unauthorised admission of overnight patients. He was shown REX 2 and admitted to conducting a procedure on one Alice Bonabana on the 21st of May, 2021. He denied performing other procedures and said he did not contact the sonographer to exonerate him. He said the procedure book was forged but did not ask for the genuine book. He first told us that he did not know of any allegation regarding Virtual Medical Center and that the calls to that clinic were referrals he was reminding the clinic to send. He said the allegations of taking the centre attery were false. He said he left the clinic intact and made a handover report but did not think it necessary to request for a copy. On allegations of procurement, he admitted to renewing a memorandum of understanding with Dr. Mugenyi and Divine Mercy Hospital. He said he got authorisation from the Line Manager but did not have access to his emails to prove this. He said he asked to call witnesses in his appeal but did not go to the hearing with a representative or a witness. He also did not have proof that he consulted about his social security contributions.

- [9] In re-examination, he told us he was dismissed during the investigative process. He said the investigator did not sign the report, which was not given to him before dismissal. He said he did not sign the disciplinary hearing minutes, and when he attended the hearing, he was greeted and told that the members would get back to him. He said he could renew the memorandums of understanding with service providers. He said the dealings with medical facilities were part of his KPIs. He said he had not received any communication on the investigation to date. He denied carrying out any procedure on Ms. Bonabana. He said that he responded to the allegations in the summons, not the investigation report, and did not respond to the amended charge sheet. He said from his suspension, his contract had 12 months to go and 8 months on half pay. He said he was still waiting for the Respondent to call him to answer the breach of policy. He told us that the Respondent gave him a letter of undertaking for a loan.

The Respondent's evidence

- [10] The Respondent called two witnesses. RONNIE KAWERE(RW) told us he was the Respondent's Senior Human Resource Manager. He confirmed the Claimant's employment terms. He told us that the Claimant was dismissed on 13th of April 2022 when he was implicated for non-compliance with clinical guidelines, overriding internal

controls, non-compliance with the code of conduct, neglect of duty and causing financial loss. He told us the disciplinary process was fair and lawful. He was given an opportunity to respond to the allegations, suspended on half-pay during and after investigations, invited to attend a hearing, respond to the allegations in writing and informed of his right to be accompanied by a representative of his choice. He received a copy of the investigation report, and his written response did not justify his innocence. He appeared before an impartial and fair DC and was given an opportunity to address the allegations. He told us that the DC was unsatisfied with the explanation and recommended his dismissal. He was dismissed, and his appeal against dismissal was unsuccessful. He also told us that the Claimant had been complicit in earlier fraud.

- [11] Under cross-examination, he confirmed that the Claimant was summoned for a hearing on 28th March 2022. When he was shown CEX4, he said the investigation was extended to 15th April 2022, and the Claimant was dismissed on 13th April 2022. He said he took minutes of the disciplinary hearing. He said that the hearing took place after an investigation, and a copy of the report was shared with the Claimant when the summons were issued. When he was referred to paragraph (d) of REX10 on page 190 of the RTB, he said he did not give the Claimant a warning or reprimand. About paragraph 11.10.1 he said the Claimant was investigated before dismissal. He said he did not have a recording of the disciplinary hearing. He said he read the investigation report, but it was not signed, and there was no indication that the Claimant was interviewed. He confirmed that bribery and fraud were prosecutable offences. He said he recorded the minutes, and they were transcribed, but the Claimant did not sign them.
- [12] In re-examination, he told us there is no provision or requirement for the Claimant to sign minutes because he was not a panel member but only signed an attendance sheet. He said the minutes were sent by email. He said the HRM did not require the accused person to be taken to courts of law. He said it is an allegation that a whistleblower makes it, it is made to audit the Line Manager or Country Director, and the investigator is not allowed to reveal the whistleblower's identity. He said he did not conduct the investigations, and the Claimant was not subjected to disciplinary suspension. He said he did not know when the investigations were concluded.
- [13] CHRIS KISUKI(RW1) testified as Director of Internal Audit at the Respondent. He told us that in January 2022, while conducting investigations at the Mbarara Centre, a whistleblower made several allegations, which he investigated and reported his findings showing that the Claimant had provided obstetric services to a client knowing that the centre is not registered to offer such services¹. The Claimant admitted clients and locked them in the facility without any attendants overnight, pilfered and failed to manage stock at the centre, was unable to disclose conflict of interest, misappropriated the centre's generator battery and contracted vendors, and referred doctors and hospitals without authorisation. He told us that the Claimant was found to have overcharged clients and

¹ The client is said to have developed complications and was Mbarara Regional Referral Hospital

concealed their names, skimmed from clients and not entered their names in the system, stolen drugs, bribed the Uganda Police and offered services without billing. The Claimant was exonerated on allegations of a sexual relationship with a client and a service provider, unfairly terminating a locum radiographer and laboratory technician and retaliating against whistleblowers.

- [14] Under cross-examination, he told us that the investigation report was in the Respondent's trial bundle but was not signed. He said it was copied to the Country Director, DC and Human Resources. He told us that his name was on the first page of the distribution list, and when he concluded the report, he did not give a copy to the Claimant but interviewed him, and his responses were on page 18 of the report. He said he did not know when the Claimant was dismissed. He said the report aimed to confirm whether the allegations were true. He said his colleague Isaac Besigye attended the disciplinary hearing to confirm the report. He told us that he was not part of the dismissal process. He said the Claimant admitted using the centre battery. He said he was familiar with the Claimant's handwriting and complied with the Respondent's procedure in the investigation. He said he was not authorised to share the report with the Claimant, but the Country Director would decide what to do with the report. He said, at a minimum, the report should have been shared with the Claimant.
- [15] In re-examination, he said under 12.2, he complied with the procedure of sending the report to the decision committee. He said a whistleblower forwarded the email on page 34 of the RTB, and he sent it to management. He said he scanned the procedure book in order to reconstruct events. He said that after investigations, the report goes to the investigation committee and that he sent the report to the Country Director on 11th March 2022. He did not attach interview notes to maintain confidentiality and anonymity.
- [16] At the close of the Respondent's case, we invited the parties to file written submissions, which we have summarised and considered in rendering this ruling. We thank Counsel for their industry, research, and authorities supplied.

Analysis and Decision of the Court.

Issue 1. *Whether the Claimant's dismissal was lawful?*

Submissions of the Claimant

- [17] It was submitted that the Claimant was wrongfully terminated and/or dismissed by the Respondent. He was not accorded a fair hearing pursuant to Sections 66 of the Employment Act, 2006 (**the EA**)²; because when he appeared before the DC, he was handed the amended charge. He was placed on indefinite investigative suspension contrary to Section 63EA. It was also submitted that the Respondent did not follow its

² This is now Section 65EA Cap. 226

investigative procedure under Clause 11.10 of its HRM, and the Claimant was not given a copy of the investigation report. Learned Counsel submitted that the Claimant was expected to attend a hearing after the 15th of April 2022 after completion of the investigation. On the authority of *Kannyoga v Lively Minds* it was submitted that the Claimant was dismissed before the investigation was complete.

- [18] In terms of unfair termination and or wrongful/unlawful dismissal, it was submitted that the right to be heard is a fundamental aspect of due process, and the C; aim was not consulted throughout the investigation, he was not given a copy of the investigation report and was prematurely dismissed. Therefore, he did not attend the exit interview and was unfairly, wrongfully and unlawfully terminated and/or dismissed by the Respondent. We were asked to so find.

Submissions of the Respondent

- [19] For the Respondent, it was submitted that the Claimant's dismissal is substantively and procedurally fair and lawful. Counsel cited *Mugisha v Equity Bank Ltd*³ for the proposition that the Court will investigate the reason for dismissal and the process and procedure leading up to the termination. Regarding a fair hearing, it was submitted that the Respondent complied with Section 66EA and the standard in *Ebiju*. Summons for the disciplinary hearing clearly indicate the allegations, an investigation report accompanied the summons and the Claimant was given 7 days to prepare his defence. He was informed of his right to attend with a representative of his choice and to present his responses.
- [20] Regarding the amended charge, it was submitted that there was no amended charge except that the summons had more charges than the investigative suspension letter.
- [21] Regarding the failure to provide a copy of the investigative report, our attention was drawn to CEX5, where the Claimant referred to the investigation report in his statement in response to the allegations. It was submitted that under cross-examination, the Claimant falsely suggested he got a copy of the report from a colleague.
- [22] On dismissal before the conclusion of the investigations, it was submitted that the Claimant was on the wrong premise that the investigation had not been concluded. It was submitted that the testimony of RW1 and RW2 was consistent with the conclusion of investigations before the dismissal.
- [23] On the extended investigative hearing, it was submitted that, whereas the Claimant was placed on suspension beyond four weeks, it did not have any bearing on any of the tenets of the right to a fair hearing. We were referred to *Ebiju* for the proposition that the Claimant suffered no prejudice. We were referred to *Mudoma Charles v Kenfreight*

³ [2019] UGIC 210

*(U) Ltd*⁴ and *Mudusi v Robuda Luuka Sacco*⁵ for the proposition where an employee is on suspension beyond four weeks; it becomes a termination if the employee is not informed of the status of investigations and subsequently subjected to a disciplinary process. We were asked to reject the Claimant's contention on this point.

- [24] In terms of justifiable reasons for dismissal, we were referred to Section 68EA and the case of *Robert Mukembo v Ecolab East Africa (U) Ltd*⁶ for the proposition that summary dismissal is justified where the employee has fundamentally broken their obligations under the contract of service, which the employer genuinely believed to exist. It was submitted that the Claimant was dismissed on various grounds of misconduct, including non-compliance with clinical guidelines, overriding internal controls, non-compliance with the code of conduct and neglect of duty, causing financial loss to the Respondent. It was submitted that the Claimant's responses to these allegations were non-satisfactory. He partly admitted some of them and was accorded a fair hearing. Therefore, the Respondent was justified in dismissing him.

Submissions in rejoinder

- [25] In rejoinder, the Counsel for the Claimant reiterated the earlier submissions and prayers. He agreed with the dicta in *Mugisa* and repeated the premature dismissal during the investigation and the indefinite investigative suspension. He also suggested that Counsel for the Respondent had conceded to an unlawful suspension. It was submitted that RW2 had conceded that he did not give the Claimant a copy of the investigation report.
- [26] Counsel also resubmitted the centrality of natural justice in employment disputes, the forgery of the minutes, the termination of one Martin Agaba in August 2022, long after the Claimant's dismissal and the lack of an exit interview. We were asked to find that the Claimant was unfairly, wrongfully and unlawfully terminated and/or dismissed by the Respondent.

Decision

- [27] Counsel for the Claimant approached issue one widely by asking this Court to find that the Claimant had been unfairly, wrongfully and unlawfully terminated and/or dismissed by the Respondent. This approach is a conflation of issues. We have been emphatic in treating actions founded on termination or dismissal, guiding that these are distinct actions, carrying with them distinct thresholds. As recently as *Tituryebwa Julius v Sino Mineral Investment Co. Ltd*⁷ we held that a contract of employment ends in one of two ways: termination or dismissal. Termination is at no fault of the employee. It includes a

⁴ [2019] UGIC 26

⁵ [2022] UGIC 41

⁶ [2019] UGHC 126

⁷ LDR 02/2021 Industrial Court at Mbarara 20th January 2025.

termination by notice or payment in lieu of notice, expiry of a fixed term, constructive dismissal or resignation by an employee, or termination by an employee serving notice. These are provided for under Section 64(1)EA. And on the other hand, dismissal is about poor performance and misconduct. Under Section 65(1), the employer must hold a hearing. To repeat, our dicta in *Ashaba v Mutoni Construction Uganda Limited*⁸ termination and dismissal should not be treated as regular bedfellows; they are more like two sides of a coin, both speaking to the discharge of the employment relationship but facing opposite sides, one speaking to a no-fault and the other looking termination to fault, misconduct and poor performance. Litigants need to frame the action precisely. There is no benefit in casting a wide net as the law under Sections 64 and 65 EA is specific. (See also *Nakanwagi v Opportunity Bank Uganda Limited*⁹ (Labour Dispute Reference 152 of 2021) [2024] UGIC 77 (20 December 2024))

[28] In the present case, it is common that the Respondent issued CEX6 a letter summarily dismissing the Claimant for a series of infractions amounting to gross misconduct. Therefore, this question of dismissal prompted the framing of issue number 1 in the manner that it was. This Court is, thus, confronted with the lawfulness of the Claimant's dismissal.

[29] In terms of threshold, Counsel agreed on the dicta in *Mugisa*. This Court holds the threshold for the lawfulness of dismissal as procedural and substantive fairness, and we will determine the issue against that threshold.

Procedural fairness

[30] Procedural fairness relates to the process and procedure leading to dismissal or termination and is rooted in the rules of natural justice. It requires observance of the right to a fair hearing. In section 65EA, it is provided that before deciding to dismiss an employee on the grounds of misconduct, the employer must explain to the employee why the employer is considering dismissal, and the employee is entitled to have another person of their choice present during this explanation. The employer must allow the employee to present their defence and give the employee a reasonable time to prepare a defence. The golden standard on the right to a fair hearing was set in the case of *Ebiju v Umeme Ltd*,¹⁰ where Musoke J.(as she then was) listed the following essential elements of procedural fairness or a fair hearing:

- (i) There must be a notice in writing,
- (ii) It should allow for sufficient time to prepare a defence,
- (iii) It should set out the allegations levelled against the employee and

⁸ *Ashaba v Mutoni Construction Uganda Limited* [2025] UGIC 1 (16 January 2025) See also

⁹ [2024] UGIC 77

¹⁰ [2015] UGHCCD 15

- (iv) It should explain his rights at the hearing, the right to respond, be accompanied, cross-examine, produce witnesses, and present their case before an impartial committee.

- [31] What is the procedural history of the Claimant's dismissal? What is common is that on the 12th day of January 2022, the Claimant was placed on investigative suspension with half pay with effect from the 13th of January 2022. In CEX3, the Respondent advised the Claimant of the possibility of summary dismissal should he be found culpable. He was asked to hand over his charge. The investigative suspension was extended on the 23rd of March, 2022. Mr. Osinde suggests that this extension was unlawful as it contravenes the four-week duration of a suspension under Section 62(2)EA. Mr. Zeere, on the authorities of *Mudoma* and *Mudusi*, contends that an extension followed by information on the status of the investigation and a subsequent disciplinary hearing negates the stricture in Section 62(2)EA. We agree. In *Mudoma*, the Claimant was suspended, and after four weeks, no action was taken. The Industrial Court found this to be unfair. *Mudusi* followed *Mudoma*, where Tumusiime Mugisha H.J held that once the suspension of an employee pending investigation exceeds 4 weeks and no communication is given to the employee about the status of investigations or whether the employee would be subjected to disciplinary proceedings as provided under sections 66(1) and (2)(now Section 65(1)&(2)), such a suspension is illegal and it amounts to termination.
- [32] The case of *Achiro v Uganda Land Alliance*¹¹ is more illustrative because, in that case, we established that suspension is not an end and is not a punishment in itself. We referred to *Black's Law Dictionary 11th Edn*¹², where suspension is the act of temporarily delaying, interrupting or terminating something. It is the temporary withdrawal from employment, as distinguished from permanent severance. Put differently, suspension is time-bound. We cited *Paul Mwaura Mbugua v Kagwe Tea Factory and Another*¹³ Ndolo J. observes that suspension is an interim measure and is not an end in itself. Suspension itself is not a form of termination; further action must be taken upon investigation completion. We also cited the Indian case of *Dipendra Keshavlal Mehta v State of Gujarat*¹⁴ where the High Court of Gujarat held suspension not to be a punishment, highlighting the importance of a speedy trial and that suspension should not be unduly prolonged.
- [33] The effect of these dicta is that an employee on interdiction or suspension expects that there will be either disciplinary proceedings resulting in a sanction, which may include dismissal or termination, or that they would be exonerated of whatever charges have been laid against them. Therefore, because the Respondent subjected the Claimant to

¹¹ [2024] UGIC 22

¹² Edited by Bryan Garner Page 1748

¹³ Industrial Cause No. 28 of 2011[2011]LLR 243

¹⁴ Per Kureshi J. (2005)2GLR1798

disciplinary proceedings, albeit after a prolonged suspension, we are unable to find that it renders the dismissal unlawful. There is to be nominal sanction as shall be discussed in the remedies, but it does not render the disciplinary proceedings unlawful in totality.

[34] Now, we must return to *Ebiju* for a fair hearing. The invitation to the disciplinary hearing was admitted in evidence and marked REX15. It read as follows:

"March 28th 2022

Our Ref: MSUG/HRM/03/2022

*Mr. Alexander Ofwono
MSU/128/05/2016
Centre Manager
Mbarara Centre*

Dear Alexander

RE: SUMMONS TO A DISCIPLINARY HEARING

Following investigations by management, you are hereby summoned to attend a disciplinary hearing on 5th April 2022 at 10:00 am at Support Office to answer to the infraction of:

- Non-compliance with MSUG Clinical Guidelines and Falsification of Patient Clinical Records*
- Override of Internal controls and Misappropriation of asserts*
- Non-compliance with the MSUG code of Conduct and AFB guidelines.*
- Mismanagement of Centre Stock*
- Causing Financial Loss to MSUG from Unpaid for services*

The action above, if verified, would amount to a fundamental breach of your contract of Employment with MSUG and also be categorized as gross misconduct attracting summary dismissal as per your terms of service.

You are therefore required to provide a written explanation stating reasons why disciplinary action should not be taken against you for the aforesaid allegation before 5.00 pm on 4th April 2022

You are further reminded of your right to attend the hearing with a personal representative of your choice who may make representations on your behalf but shall not be permitted to respond to questions directed to you.

In the event that you do not attend the above disciplinary hearing, the committee shall proceed to hear and determine the above matter in your absence based on the information so far received.

Please acknowledge receipt of this letter by signing in the space provided below

Yours faithfully

Halima Namatovu
Director Human Resource & Administration

I, Alexander Ofwono, hereby acknowledge receipt of the above summons

*Signature*_____ *Date*_____

cc: Personnel File

[35] The letter advised the Claimant that he had been invited to a disciplinary hearing seven clear days before the hearing. Precedent holds that this is a sufficient time. The letter also clearly advised the Claimant of the allegations against him and invited him to prepare and submit a written explanation within six days from the date of the letter. It informed the Claimant of his rights to attend with a person of his choice. To this extent, it complied with *Ebiju* and Section 65EA, which also stipulated the possibility of dismissal if the Claimant were found to be in breach of his employment contract. The letter stipulated offences classified as gross misconduct. It essentially passes the *Ebiju* test.

[36] There was extensive contestation on whether the investigation report accompanied this letter. The Claimant argues that he had no knowledge of the report at this time and only saw the same during the trial. Mr. Zeere contends this narrative is false because the Claimant refers to the report in his written statement REX16. We have reviewed the statement. It was the Claimant's answer to the allegations. In paragraph 1 on page 2 of his response, the Claimant wrote;

" Later, a summon letter and investigation report was Issued to him to submit his Defense by 4th April 2022 at 5:00 PM and report for hearing on 5th April 2022."

In paragraph 5 on the same page, he wrote.

" To add, sandwiched within the shared investigation report is the following cardinal underlined Points;

The Claimant then listed what he regarded as circumstantial evidence. In paragraph 6 on page 3, he said the investigation report did not have substantial evidence pointing to

breaching the MSUG safeguarding policy alleged by the whistleblower. At bullet point 2 on page 4 of his statement, he wrote, "As you note on the investigation report, neither the client..." He referred to the report in bullet points 3 and 4, and on page 5, he suggested that the investigation report clearly brought out malicious blackmail. He also said that the Investigator's report did not show that Dan Nabaasa was behind an arrest. He also said in closing that the investigator's report shared was baseless and the findings should be shredded.

[37] The Claimant's written response had over seven references to the investigation report. His vehement denials under cross-examination and re-examination are not believable, given obvious references to the report and the Claimant's attack on the report's credibility. Given how he canvassed the report, we cannot accept Mr. Osinde's spirited arguments that the report was not provided. We accept RW1's version of events and Mr. Zeere's submission that the report was shared. The inescapable conclusion from the references is that the Respondent shared the investigation report with the Claimant and the letter inviting him to the disciplinary hearing. The Claimant had ample access to the report and an opportunity to study it in detail before responding. Therefore, we find as a fact, that the investigation report was shared with the Claimant on the 28th day of March 2022.

[38] The effect of that finding would be to reject the hypothesis that the Respondent was procedurally unfair. This finding dispels the foundation of Mr. Osinde's argument that the investigation had not been concluded, that the Claimant received an amended charge or that his hearing was unfair. In our estimation, procedurally, the Claimant had an obvious understanding of the allegations against him. His detailed written response was premised on the investigation report. We are therefore unable to conclude that the Respondent did not meet the procedural threshold. We hold that the notification for the hearing meets the Ebiju test and is fair.

Substantive fairness

[39] Substantive fairness relates to the reason for dismissal and proof of the reason for dismissal. Under Section 67EA, an employer must prove the reason or reasons for dismissal and as matters that the employer genuinely believed to exist and which caused him or her to dismiss the employee. *Uganda Breweries Ltd v Kigula*,¹⁵ the Court of Appeal held 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. Mere allegations do not suffice. The allegations must be proven to a reasonable standard, and such proof requires a hearing.¹⁶

¹⁵ [2020] UGCA 88

¹⁶ See also *Odongo & Another v Save the Children International* LDR 322 of 2015. In the case of *Tushemereirwe Oginia v Bushenyi District Local Government* LDR 07 of 2022 Industrial Court Mbarara 28.01.2025 we made reference to the International Labour Organisation (ILO), standards on procedural and substantive fairness in employment decisions. They are fundamental to promoting decent work and protecting workers' rights. The ILO stresses procedural fairness (the process being fair and impartial) and substantive fairness (the decision's outcome being just and reasonable) as the guide to all aspects of the employment relationship.

- [40] In the matter before us, it was common cause that the Respondent conducted an investigation into allegations of infractions at its Mbarara Centre. Following these investigations, an investigation report was issued. The report was admitted as REX1. From the report and its findings, the Respondent invited the Claimant to answer infractions on Non-Compliance with MSUG Clinical Guidelines and Falsification of Patient Clinical Records, Overriding of Internal controls and Misappropriation of 'asserts', Non-Compliance with MSUG code of Conduct and AFB guidelines, Mismanagement of Centre Stock, Causing Financial Loss to MSUG from Unpaid for services. He was invited to submit a written explanation, which he did, and to attend a disciplinary hearing. It was his evidence that he was only handed an amended charge sheet at the hearing, and he was greeted and advised that he would be informed of the outcome.
- [41] The Respondent adduced minutes of the disciplinary hearing on the 5th of April 2022. The Claimant suggests that these minutes were forged. The bar for forgery is high. It must be proven that the document speaks of a falsehood. The minutes indicated the attendance and detailed the proceedings where each of the charges were laid out to the Claimant, and he gave an explanation. The panel concluded that his answers were not conclusive and recommended his termination. We were also presented Respondent's code of conduct REX9, Human Resources Manual(REX10), Anti Fraud and Bribery Policy(RE19) and Conflict of Interest Policy(REX 20). Each document provided for one or more infractions the Claimant was alleged to have committed. When an offence is written down in a human resource policy, it is clearly an infraction that goes against an employer's values. In this Court's estimation, the existence of these offences in the manuals is the first step in establishing a reason or reasons for dismissal.
- [42] In the present context, regarding non-compliance with clinical guidelines, Mr. Zeere drew our attention to Clause 16.3.2, which the Claimant had undertaken to abide by Clinical Guidelines. The evidence of the infraction was contained in the investigation report. RW2 scanned the procedures book and reconstructed the events. In our estimation, there was ample evidence to prove the existence of this reason for dismissal. Regarding non-compliance with the code of conduct of overcharging patients, the Respondent Code of Conduct (REX9) prohibited such conduct. Compounding the difficulty arising from the investigation report, particularly on 14th December 2021, the Claimant partially admitted accountability. Therefore, the Respondent genuinely believed that there was non-compliance with the code of conduct by overcharging patients. On his part, the Claimant did not explain these events except to deny the investigation report and the hearing. From the evidence above, there was a basis for the Respondent to believe that the Claimant had reached its policies and procedures.
- [43] We are persuaded that the Respondent genuinely believed the reasons for the Claimant's dismissal existed, and an investigation was conducted, followed by a hearing.

In all circumstances, the Claimant's dismissal was substantively fair and justified. Lord Evershed observed in *Laws v London Chronicle Ltd*¹⁷;

It follows that the question must be – if summary dismissal is claimed to be justified – whether the conduct complained of is such as to show the servant to have disregarded the essential conditions of the contract of service. Therefore, one act of disobedience or conduct can justify dismissal only if it is of the nature which goes to show that the servant has repudiated the contract or one of the essential conditions and for the reason therefore, I think what one finds in the passages which I have read that the disobedience must at least have a quality that is willful. In other words, it connotes the flouting of the essential contractual terms.

- [44] This Court is persuaded that there were infractions by the Claimant that the Respondent genuinely believed to exist and were in breach of its policies and procedures. The evidence contained in the investigation report overwhelmingly implicated the Claimant in practices contrary to the Respondent's established procedure. For these reasons, the Respondent was entitled to dismiss the Claimant summarily.

Conclusion

- [45] Having found that dismissal is procedurally and substantively fair and justified, this Court, in keeping with *Hilda Musinguzi Vs Stanbic Bank*¹⁸, will not fetter the employer's right to dismiss the Claimant's employment because the Respondent followed procedure.
- [46] We conclude that the Claimant was fairly and lawfully dismissed. Issue one is answered in the negative.

Issue II. What remedies are available to the parties?

- [47] Having found as we have, the Claimant would not be entitled to many of the remedies claimed in the memorandum of claim. But for completeness, we will address the specific remedies.
- [48] The Claimant sought his salary for the remainder of his contract term. The Respondent opposed this claim as employees are entitled to only what they have worked for. Section 40EA entitles employees to only what they have worked for, and any claim for future salaries is speculative.¹⁹ Had we found that the Claimant was unlawfully dismissed, he would not be entitled to this claim.

¹⁷ [1959] 2 All ER 285

¹⁸ SCCA 5 of 2016

¹⁹ See *Olweny v Equity Bank (U) Limited (Labour Dispute Claim 225 of 2019)* [2021] UGIC 45 (17 November 2021)

- [49] The Respondent conceded to payment of UGX 3,211,957/= (shillings three million two hundred eleven thousand nine hundred fifty seven) as half-pay for the suspension period. As there is a concession, the Claimant is awarded the sum of UGX 3,211,957/= (shillings three million two hundred eleven thousand nine hundred fifty seven). We indicated a nominal sanction in paragraph [34] of this award. Because this sum has been outstanding until the concession by the Respondent, under Section 8(3)(d) of the Labour Disputes(Arbitration and Settlement) Act Cap.227, and as a nominal sanction, the same sum shall attract interest at Court rate from the 13th of April 2022 until payment in full.
- [50] Regarding payment in lieu of notice of termination, Mr. Zeere submitted that Section 69EA does not provide for notice of summary dismissal. We agree. Section 68(2) EA(formerly Section 69EA) provides that an employer does not have a right to terminate a contract of service without notice or with less notice than that which is statutorily provided. The exception to this provision is Section 68(3)EA, which entitles an employer to dismiss summarily where the employee has fundamentally broken his or her obligations under the contract. In the present case, the Claimant's summary dismissal was procedurally and substantively fair and justified, and he is not entitled to any notice as his summary dismissal was justified.
- [51] Section 87(1)(a)EA prohibits the payment of severance allowance where an employee is summarily dismissed with justification. From our conclusion on issue one above, the Claimant would not be entitled to a severance allowance.
- [52] To establish an employer's liability for a salary loan, there are essentially two conditions: First, the employee must have been found to be unlawfully dismissed, and secondly, as held in *Namakula v Scooby-Doo- Daycare and Nursery School*²⁰, the loan documents must speak to the employer's liability. None of these conditions is met here, and we decline to find the Respondent liable for the salary loan.
- [53] There was no evidence of non-remission for the unremitted National Social Security Fund contribution. This Court has held that an employee must provide a statement for the Fund showing non-remission. We, therefore, decline to grant this prayer.
- [54] Concerning general damages, the principles governing an award of general damages in employment disputes were set by the Supreme Court in *Uganda Post Limited v Mukadis*²¹. The court held that general damages are awarded to compensate the employee for non-economic harm and distress caused by the wrongful dismissal and include compensation for emotional distress, mental anguish, damage to reputation, and any other non-monetary harm suffered due to the unlawful dismissal. Having found that the dismissal was lawful, it is our judgment that the Claimant would not be entitled to general damages.

²⁰ [2022] UGIC 83

²¹ [2023] UGSC 58

- [55] By a similar token, we are not satisfied that the Claimant has established any basis for an award of aggravated damages because, in *Bank of Uganda v Betty Tinkamanyire*²² the basis of the award of aggravated damages was a post-dismissal evaluation of the employee's stellar performance and the Respondent's callous indifference. These are not present to warrant an award of aggravated damages.

Conclusion and final orders

- [56] In the final analysis, we find that the Claimant was lawfully and fairly dismissed. Because the Respondent concedes to have a half salary during the suspension, the Respondent is ordered to pay the Claimant the sum of UGX 3,211,957/= (shillings three million two hundred eleven thousand nine hundred fifty seven) within 14 days from the date of this award with interest at 6% per annum from the 13th of April 2022 until payment in full. The rest of the Claimant's claim fails. As this Court is enjoined to promote labour justice, the Claimant shall not be condemned in costs.

It is so ordered.

Dated, delivered and signed at Mbarara this 29th day of January 2025

Anthony Wabwire Musana,
Judge, Industrial Court of Uganda

The Panelists Agree:

1. Hon. Adrine Namara,

2. Hon. Susan Nabirye &

3. Hon. Michael Matovu.

²² [2008] UGSC 21

29th January 2025

10:50 am

Appearances

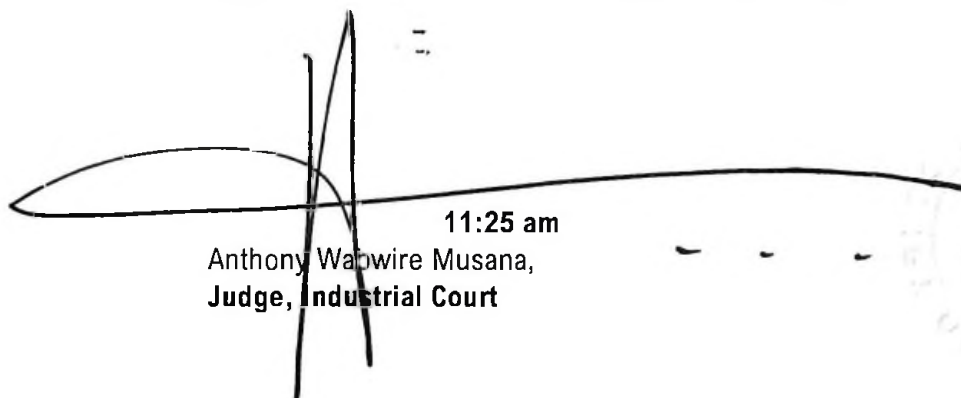
1. For the Claimant: Mr. Barnabas Nkasimirwa H/B for Mr. Wilbrod Osinde.
2. For the Respondent: Mr. James Samuel Zeere

Claimant in Court

Court Clerk: Mr. Samuel Mukiza.

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

Court: Award delivered in open Court.



11:25 am

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