



**THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT MBARARA
LABOUR DISPUTE REFERENCE NO. 002 of 2021**

TITURYEBWA JULIUS ::::::::::::::::::::::::::::::::::::::CLAIMANT

VERSUS

SINO MINERALS INVESTMENTS COMPANY LTD::::::::::::::::::::RESPONDENT

Before:

The Hon. Mr. Justice Anthony Wabwire Musana,

Panelists:

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

Representation:

1. Mr. Phillip Mwesigwa of JByamukama Advocates for the Claimant.
2. Mr. Wycliff Mwesigwa of M/S Lawtons Advocates for the Respondent.

Case summary

Employment Law: Unfair and unlawful dismissal: Strict Procedure: The Claimant lodged an unfair dismissal case against a mineral company. He sought compensation for unpaid wages, social security contributions, and damages. The Respondent argued that the Claimant unqualified and insubordinate. The Court found in favour of the Claimant determining the dismissal was unlawful due to a lack of procedural fairness. It awarded the Claimant compensation including statutory penalties and damages for unfair dismissal. The judgment emphasized the employer's obligation to follow proper procedures even in cases of employee misconduct.

AWARD

Introduction

- [1] On the 29th of August 2018, the Respondent, a mineral company, employed the Claimant as a Community Liaison Officer(*from now CLO*) at a gross monthly salary of UGX 1,500,000/=. On the 26th of March 2020, the Respondent ended its engagement with the Claimant on the ground that he had not attended a crucial briefing. The letter of termination

indicated that this was insubordination and placed other personnel at high risk. Aggrieved, the Claimant brought this claim seeking a declaration of wrongful dismissal and unlawful termination, an order for payment of unpaid social security contributions, severance allowance equivalent to monies he would have earned until retirement, general and aggravated damages for unlawful termination, interest thereof and costs of the claim.

- [2] In its memorandum in reply, the Respondent opposed the claim contending that it rightly ended its engagements and dealings with the Claimant. The Respondent contested the monthly salary arguing that the Claimant was first employed as a casual labourer and then later as Administrator at the request of the Kabale District Chairperson, Patrick Keihwa. Upon the recommendation, the Respondent asked the Claimant to submit his academic qualifications which included a Bachelor's Degree in Social Work and Social Administration. The Respondent contends that the Claimant did not do so despite various reminders. The Respondent concluded that the Claimant was unqualified. The Respondent also argued that there were several complaints of mistreatment of its employees by the Claimant who had usurped management powers and crowned himself owner and sole manager of the Respondent's Buhara site. On the 19th of March 2020, the Respondent invited all staff for an extraordinary meeting to discuss serious issue relating to COVID 19. The Claimant did not attend and the Respondent resolved to end its engagements with him. When he did not submit his academic documents, the Respondent ended its engagements with him on the 26th of March 2020. The Respondent sought general damages from the Claimant for spreading malicious rumours that he was terminated on political grounds. It also asked for an injunction restraining the claimant from making statements and publications which injure the operations and good name of the Respondent. We were also asked to dismiss the claim, with costs.

The issues

- [3] The parties filed a joint scheduling memorandum which was adopted with the following issues for determination.
- (i) *Whether the Claimant was unlawfully and unfairly terminated from employment?*
 - (ii) *What remedies are available to the parties?*

The Evidence

The Claimant's evidence

- [4] The Claimant testified that his employment commenced with an oral three-month probationary contract on 29th August 2018 in Buhara sub-county in Kabale District where he served the Respondent as a Community Liaison Officer. His gross salary was UGX 1,500,000/=. He told this Court that his net salary of UGX 1,000,000/= was remitted onto his account No. 1045100983114 at Equity Bank (U) Ltd in cash by different employees of the Respondent. He said that on successful probation, he was not given a formal contract but continued to serve as CLO maintaining the relationship between the Respondent and the community, taking injured workers to the hospital and ensuring compliance with Government regulations. He said the Respondent had promised to formalize his employment. He also told this Court that he never received correspondence asking him to submit his academic documents. He testified that there had been a strike in 2020 and he attempted to settle the workers. Because of some violence he contacted the Respondents management and security team and some workers were arrested. He told us that in March 2020, the operations Manager, Brian Munanura, informed him that the Respondent's Executive Director, Kong Dongsheng was scheduled to visit the mining site on 21st March 2020 and on that date he interacted with Mr. Dongsheng. He told us that after that interaction, he received the dismissal letter. He thought the grounds of termination false. And he had not violated any COVID-19 restrictions or been given an opportunity to defend himself. He prayed for remittances of social security contributions in the sum of UGX 2,512,389/= for the period September 2018 to March 2020. He asked for UGX 50,000,000/= in general damages, UGX 100,000,000/= in aggravated damages as it would be difficult for him to get alternative employment, UGX 216,000,000/= being unpaid salary until normal retirement age, severance pay of UGX 10,000,000/= interest at 36% per annum and cost of the claim.
- [5] Under cross-examination, he told us that he held a Uganda Advanced Level Certificate of Education and that he did not apply for a job with the Respondent. He said he was not asked to submit any documents for the job of CLO and conceded that he did not have any formal document designating him as CLO. He said he did not know what statutory deductions were made to his salary. He said he was confirmed orally and he did not know why he was never given a written contract. He told us that some of the Respondent's workers were arrested on his instructions. He said he did not attend the meeting called by the Respondent's Management and was unaware of its purpose.
- [6] In re-examination, he said Mr. Dongsheng employed him and introduced him to Munanura and Zhang Fa who was his supervisor. He said his gross pay as submitted to NSSF was UGX 618,462/=. He told us that he failed to attend the meeting because there was a heavy downpour and he was unable to reach the site in time. After this, Mr. Phillip Mwesigwa closed the Claimant's case.

The Respondent's evidence

- [7] Brian Munanura (RW1) testified next. By his witness statement, he told this Court that he was the Claimant's supervisor. He told the Court that the Claimant was employed as a casual labourer and introduced by the late Patrick Keihwa. He told us that the Claimant then worked as a foreman. When there was an opening for the position of Administrator, the Claimant was tasked to submit his documents for regularization. He said Mr. Keihwa had promised that the Claimant would submit his Degree and other professional qualifications including a certificate in administrative law but the Claimant did not do so for over 14 months. He said the Claimant usurped management powers at Buhara and dismissed some workers causing the Managing Director to schedule the meeting of the 21st of March 2020, which the Claimant did not attend. He said the Claimant was seen in Kabale town later that day. Because the Claimant had failed to submit his documents and was never formally employed, it was decided that his engagements be terminated. He said the no contract of employment was terminated because the Claimant had failed to submit his documents and be formalized. He also told us that the Claimant's NSSF remittance was based on his gross pay of UGX 1,000,000/=. He also told this Court that unpaid NSSF contributions could only be claimed by NSSF. He said the Claimant was culpable for impersonations since he did not have the qualifications he said he had.
- [8] In cross-examination, he told us that he was aware of the Claimants position and worked with him for about two years. He said the Claimant supervised casual labourers but did not have any document to prove this. He also told us that he did not have any correspondence to prove that the Claimant was asked to produce academic documents. He said he deposited UGX 1,000,000/= on the Claimant's account on the 6th of March 2019 and 13 of August 2019. He said he did not have proof that UGX 1,000,000 was the gross pay. He also said that it was the Respondent's duty to remit NSSF. He conceded that the second part of paragraph 16 of his witness statement was false. He also conceded that the Claimant was not invited for a disciplinary hearing in respect of the complaints against him. He also conceded that he did not have proof of the reasons for termination. He told us that the meeting of 21st March 2020 was for all employees. Finally, he conceded that it was not normal for the Respondent to pay salary to a person who was not an employee. He conceded that the Claimant was an employee of the Respondent.
- [9] In re-examination, he told us that when he first met the Claimant, the Claimant was given the position of supervisor but wanted to become CLO. He said he kept asking the Claimant to submit his academic documents. He said that he had two meetings with the Claimant where he tasked him to explain dismissals and advised him that the Managing Director was

coming from Kampala to mediate between the Claimant and the workers. He said the Claimant did not attend the meeting. He said later video clips surfaced showing the Claimant attending a funeral.

- [10] Issa Mayanja, RW2 and the Respondent's Head of Human Resources testified next. He confirmed that the Claimant was recruited as supervisor of casual workers and that when the position of Administrator opened, he asked RW1 to get the Claimant's academic documents. He confirmed that the Claimant did not submit the documents for 14 months. He confirmed that Claimant's mal-treatment of workers and the scheduling of a meeting to discuss these issues. He testified that he notified the Claimant of the meeting but he disappeared. He also said that because the Claimant had not submitted his academic documents, his contract of employment was not terminated
- [11] Under cross-examination, he told us that he had been head of human resources for over 20 years. He said the remittances to the Claimant contained allowances but that he did not have documentation to prove this. He said he did not interact with the Claimant on a daily basis. He said the allegations against the Claimant were not brought to him and that he did not have minutes of a disciplinary hearing and that he did not have proof summoning the Claimant to a disciplinary hearing. He said the Executive Director had the authority to terminate employees and the Claimant did not.
- [12] In re-examination, he confirmed calling the Claimant to attend the meeting and submit his academic documents, but he did not turn up.
- [13] The Respondent's final witness, Thomas Oriokot(RW3) testified that he was head of the Respondent's security at Buhara and knew that the Claimant was head of casual labourers. He said the Claimant used to connive with other workers to sell the Respondent's fuel and attempted to compromise him. He said he reported these incidents to the Project Manager.
- [14] In cross-examination, he told us that he did not put ten reports of fuel theft in writing and that he was not aware that the Respondent did not have a fuel pump during the period of the Claimant's employment. He also said he had no documentary proof of the riots. In re-examination, he told us as head of security, he got the first information and communicated to management by phone.
- [15] After RW3 testimony, Mr. Wycliff Mwesigwa dispensed with the last two witness and closed the Respondents case.

- [16] We invited Counsel to file written submission for which we are grateful and have summarised and considered in rendering this award.

Determination.

Issue I Whether the Claimant was unlawfully and unfairly terminated from employment?

- [17] Citing Sections 66(1) and 73(1) of the Employment Act 2006 and the case of *Kemba v Mount Meru Millers (U) Limited*¹, it was submitted for the Claimant that he was never allowed to defend himself to answer the allegations for which he was terminated. In short, the Respondent violated the Claimant's right to a fair hearing.
- [18] In reply, for the Respondent it was submitted that he was not unfairly or unlawfully terminated because he did not submit his academic documents in accordance with the Respondent's Human Resource Manual which under Clause 2.4(h) gave the Respondent the right to terminate an employee who forged or lacks the requisite qualifications. It was suggested that the failure to submit the documents was the basis upon which the Respondent declined to issue the formal employment contract. It was suggested that in the absence of academic qualifications, there was no need for a hearing which is confined to misconduct and poor performance. It was submitted that Section 69(3) justified a summary termination because failure to submit documents constituted a fundamental breach of the contract of employment. It was suggested that the Claimant did not come to Court with clean hands and because he was not qualified, it was fair to summarily dismiss him.
- [19] Alternatively, it was submitted that since he was still under probation, the Claimant's engagement was rightly ended.
- [20] The final argument was that the Claimant's conduct was wanting. He disrespected his supervisors, engaged in acts which were injurious to the Respondent and was insubordinate in not attending a meeting organized by the Respondent. Citing *Hilda Musunguzi Vs Stanbic Bank (U) Ltd*² Counsel suggested that an employer cannot be forced to keep an employee who is guilty of gross and verifiable misconduct. Counsel also cited *Uganda v Kibuuka & 4 Others*³ for the proposition that reasons for termination need not be provided where notice is given or paid. It was suggested that the Claimant was summoned and refused to appear

¹ [2023] UGIC 56

² SCCA 05/2016

³ [2021] UGCA 33

and thus waived his right to be heard. We were asked to resolve the issue one in the negative.

Rejoinder

- [21] In rejoinder on the authority of *Kimbugwe v Kiboko Enterprises Limited*⁴, it was submitted that the burden of proving a dismissal rests on the employee while the burden of justifying the dismissal rests on the employer and the Claimant had failed to discharge this burden.
- [22] On the lack of academic documents, it was submitted that this was an afterthought because the claimant worked for 19 months until his abrupt termination. The failure to submit documents was not listed in the reasons for termination and were invited to disregard this argument.
- [23] In regard to probation, it was submitted that the Claimant was not on probation on the date of his termination having been deemed confirmed. It was submitted that the maximum period of probation is six months and extended only with the agreement of the employee.
- [24] Finally, on gross misconduct, we were invited to consider this as a case of unlawful termination and not dismissal.

Decision

- [25] It is trite that the employer has an unfettered right to terminate or dismiss an employee, provided that procedure is followed⁵. In *Musinguzi, Mwangushya JSC(as he then was)* held;
- “... the right of the employer to terminate a contract cannot be fettered by the Court so long as the procedure for termination is followed to ensure that no employees contract is terminated at the whims of the employer and if it were to happen the employee would be entitled to compensation...”*
- [26] The central thesis of *Musinguzi* is that an employer must follow procedure when it decides to terminate or dismiss an employee. Therefore, the right to dismiss or terminate is not absolute or automatic. The exercise of this right must follow procedure.
- [27] In our view and on the evidence before us, in suggesting that because the Claimant did not submit his academic documents or was unqualified for the job, the Respondent was entitled to dismiss him summarily, Counsel for the Respondent misses the legal prescript by a wide

⁴ [2022] UGIC 5

⁵ *Ibid*

berth. Under our jurisprudence, there is no such thing as a termination or dismissal without procedure as we shall explain in this award. Counsel for the Respondent did not benefit from clearly reading the dicta in *Musinguzi*.

- [28] First, it is not in dispute that the Claimant was introduced to the Respondent by one Patrick Keihwa and the Respondent's Executive Director, Donsheng Kong appointed him supervisor of casual labourers. All the Respondents' witnesses were consistent in this narrative. Each of the Respondents' witnesses testified that the Claimant was in charge of casual labourers with RW1, the Claimants supervisor and RW3, the Security Officer testified that for over two years, the Claimant was incharge of casual workers. It is not disputable that the Claimant was earning a salary and according to CEXH3, the Respondent was paying the Claimant's social security benefits regularly. The evidence of RW3 was that it would not be normal to pay salary to a person who was not an employee.
- [29] Section 24 of the Employment Act Cap. 226(*from now EA*) recognises both written and oral contracts of employment. What was disputed was whether the Claimant was appointed as CLO. Under Section 58EA an employee is entitled to receive written particulars from his or her employers which particulars indicate the names and addresses of the parties to the contract of service, the date of commencement, the title of the job, the place of work, the wages and deductions thereto, the rate of overtime, work hours, annual leave, terms and conditions of incapacity, length of notice and this notice is to be given within twelve weeks after the date on which the employment commences. The employer is required to keep a copy of these written particulars. In the present case, it is not in dispute that the Claimant became supervisor of the Respondent's causal labourers in the year 2018. On the evidence before us, we are unable to accept the Respondent's argument that the Claimant was engaged otherwise than as an employee. This finding has implications on the termination as we shall demonstrate shortly in our determination of the lawfulness of termination below.
- [30] The second indisputable fact is that the Respondent opted as Mr. Wycliff Mwesigwa, delicately puts it, to end its engagements with the Claimant because he failed to submit his academic documents. We have some considerable difficulty in accepting this argument. This is so because we have already found that the Claimant was an employee of the Respondent. Secondly, the letter ending these engagements was admitted in evidence and marked CEXH2. It was titled "Termination of engagement" and listed being away from a crucial briefing, insubordination and placing other personnel at risk as being the reasons for ending the engagement immediately.
- [31] This Court has been emphatic that a contract of employment ends in one of two ways; it is either termination or dismissal. Termination is at no fault of the employee and includes a

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.

- [32] On the other hand, dismissal is about poor performance and misconduct. For this, under Section 65(1)EA, the employer must hold a hearing.⁶
- [33] The reasons for termination as listed in CEXH2 were insubordination and being away from a crucial meeting. The Respondent's Human Resource Manual(REXH3) lists as serious misconduct at Clause 9.38, absence from duty and insubordination. Therefore, by the Respondent's own Human Resources Manual, it chose to "end its engagement" with the Claimant on grounds listed as serious misconduct.
- [34] In our judgment, the Claimant was an employee of the Respondent serving as a supervisor of casual labourers when on the 26th of March 2020, he was dismissed for insubordination and absence. It is our finding that the Claimant was dismissed and not terminated. Therefore and pursuant to Order 15 Rule 5 of the Civil Procedure Rules S.I 71-1, the question that this Court is confronted with, is whether the dismissal of the Claimant was lawful?
- [35] The position of the Industrial Court on dismissal is now clear and well settled. First Section 65(1)EA requires an employer considering dismissal to explain to the employee the reasons for which the employer is considering dismissal and the employer is required under Section 65(2) EA to hear and consider the employee's representations to the grounds of misconduct or poor performance. This is what constitutes the right to a fair hearing in employment jurisprudence and which has now been explained in the case of *Ebiju James v Umeme Ltd*⁷. In that case, 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 was done.

- 1) Notice of Allegations against the plaintiff was served on him, and sufficient time allowed for the plaintiff to prepare a defence.*
- 2) The notice should set out clearly what the allegations against the plaintiff and his rights at the hearing where such rights would include the right to respond to the allegations against him orally and or in writing, the right to be accompanied to the hearing and the right to cross-examine the defendant's witness or call witnesses of his own.*

⁶ See *Ashaba v Mutoni Construction Uganda Limited* [2025] UGIC 1 (16 January 2025)

⁷ H.C.C.S No. 0133 of 2012

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."*

- [36] Absent a notification in writing or an invitation to show cause why disciplinary proceedings should not be taken against an employee alleged to have committed misconduct or performed poorly, and absent of a hearing at which the employee's representations are considered, the Court would not find such a dismissal to be fair, lawful and justified. This is what is known as procedural fairness.⁸
- [37] In the matter before us, RW2, who was in charge of the Human Resource Function of The Respondent conceded under cross-examination, to no invitation or a disciplinary hearing in respect of the allegations made against the Respondent. Absent any evidence of a hearing, it is impossible to say that the Claimant's dismissal was lawful, fair and justified. And for good measure, this Court applying the case of *Kibuuka*, in *Kamegero v Marie Stopes Uganda Limited*⁹, has held that by holding a hearing, the employer is able to prove substantive fairness. Section 67(2) EA provides that reasons for dismissal must be matters which the employer **genuinely believed** to exist as the basis for dismissal. In *Kibuuka* the Court of Appeal holds 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 provable to a reasonable standard. We derive from this a meaning that a hearing must be held to prove the existence of the grounds that the employer genuinely believes to exist. In other words, a hearing is mandatory.
- [38] Therefore, because the Respondent did not invite the Claimant to answer the allegations of insubordination and absence and did not hold a hearing, we are unable to accept the arguments of Mr. Wycliff Mwesigwa that the dismissal was justified. It was not. Perhaps what explains how critical the right to a fair hearing is, is the biblical analogy applied by the Constitutional Court in *Carolyn Turyatamba & 4 Ors v Attorney General & Anor*¹⁰ holding the right to be as old as creation itself, for even in the Garden of Eden, the Lord first afforded a hearing to Adam and Eve, as to why they had eaten the forbidden fruit, before he pronounced them guilty. God did not condemn Adam and Eve unheard even when the evidence of their having tasted of the forbidden fruit was overwhelming. According to Genesis 3 verse 13, even after Adam had pointed a finger at Eve as having told him to eat

⁸ See *Mugisa v Equity Bank*.

⁹ [2023] UGIC 52

¹⁰ [2011] UGCA 6

the forbidden fruit, God asked of Eve "What is this you have done?". This means that it is also impossible to say because the Claimant was unqualified and did not produce his academic documents or that he was guilty of impersonation, his dismissal without a hearing was justified. The position of the law is that no matter how grave the misconduct, the employer must follow procedure if it wishes to dismiss its employees. There is no legal ingenuity around this stricture. It has to be followed. Even a most fundamental breach of the employment contract is still subject to procedural requirements of a hearing.

- [39] And indeed, based on the reasoning above, we cannot accept the view that because the Claimant was on probation he was not entitled to a hearing. In resolving a similar question in *Ben Rhaeim Aimen v Granada Hotels (U) Limited*¹¹ we concluded that an employee on probation facing a misconduct or poor performance question, was entitled to the constitutional right to a fair hearing.
- [40] Finally, it has also been held that where an employer does not follow its own procedure, it cannot be said that the dismissal was lawful.¹² In the present case Clause 9.41 of the Respondent HRMS' required it to conduct a hearing with an elaborate procedure for summons, representation, introduction, laying of the charge, presentment of the defence and for post-disciplinary hearing processes. Having flouted its own rules, the Respondent cannot now suggest the dismissal was fair, lawful and justified.
- [41] Therefore, applying the law to the facts before us, we must conclude, as we hereby do, that the Claimant was unfairly and unlawfully dismissed from employment by the Respondent. Issue one is answered in the affirmative.

Issue II. What remedies are available to the parties?

- [42] Having found as we have, the Claimant will be entitled to remedies the first of which is a declaration that he was unfairly and unlawfully dismissed from employment with the Claimant.

Statutory penalty

- [43] Under Section 65(4) EA, it is provided that irrespective of whether any dismissal which is a summary dismissal is justified, or whether the dismissal of the employee is fair, an employer who fails to comply with the requirement for hearing is liable to pay the employee

¹¹ [2023] UGIC 97

¹² See persuasive dicta of Employment and Labour Relations Court of Kenya in *Charles Ochieng Opiyo v Lake Basin Development Authority* [2021] eKLR

four weeks' pay. We, therefore, award the Claimant four weeks net pay for **UGX 1,000,000/=**.

Unpaid NSSF Contribution

[44] Mr. Wycliff Mwesigwa was of the view that right to recover social security contributions is vested in the National Social Security Fund. That is statutorily correct. The jurisprudence of this Court¹³ is that the Court is entitled to declare an entitlement to social security contributions. Matters of enforcement and recovery are not within this Court's purview.

[45] Mr. Philip Mwesigwa argued that the Claimant was entitled to UGX 2,512,359/= as unpaid NSSF Contributions between September 2018 and March 2020. CEXH 3 shows a wage value of UGX 618,462 and getting a deduction of UGX 92,769/= representing 15 % of his salary. At an earning of UGX 1,000,000/= per month, the deduction would be UGX 150,000/= per month. It is our judgment and declaration that the Claimant is entitled to UGX 1,087,389/= in unpaid NSSF contributions. This sum represents the difference between what was remitted and what should have been deducted and remitted at a monthly salary of UGX 1,000,000/=

Severance Pay

[46] Under Section 86(a) EA, an unfairly dismissed employee is entitled to severance allowance. Having found that the Claimant was unfairly dismissed, he would be entitled to severance pay. This Court's reasoning in *Donna Kamuli v DFCU Bank Ltd*¹⁴ is that the employee's calculation of severance shall be at the rate of his monthly pay for each year worked. This would leave no foundation or basis for the claim for UGX 10,000,000/= in severance pay.

[47] The Claimant was employed on 29th of August 2018 and dismissed on 26th of March 2020. This was a period of one year and seven months. Based on his earnings, we award the sum of UGX 1,700,000/= as severance allowance.

Claim for forgone salaries totaling UGX 216,000,000/=

[48] To support this claim, Counsel for the Claimant cited *Omunyokol v Attorney General*¹⁵ where salary over the 26 years in which the Appellant would have served as a public officer were awarded to him. Counsel also suggested that the Court of Appeal adopted the *Omunyokol*

¹³ See *Ayiri v SBI International Holdings AG Uganda* (Labour Dispute Claim 208 of 2021) [2023] UGIC 77 (31 August 2023)

¹⁴ See also *DFCU Bank Ltd vs Donna Kamuli* C.A.C.A No 121 of 2016.

¹⁵ [2015] UGSC 4

approach in Uganda Development Bank v Mufumba¹⁶. We think this argument is not entirely correct.

- [49] First, in *Omunyokol* the Supreme Court was clear that the law applicable was the Employment Act Cap. 219 and not the Employment Act Cap. 226 (then Employment Act, 2006). Secondly, the Appellant in that case was a government employee.
- [50] Labour and employment jurisprudence under Section 41 of the Employment Act Cap. 226 now holds that an employee is entitled to only that salary which he or she has worked for. Any future earnings are speculative.¹⁷ We therefore decline to award this sum.

General damages

- [51] On general damages, the Respondent took the view that the Claimant was not entitled to any damages since he was lawfully terminated and did not qualify for the job of CLO. For the Claimant, it was submitted that the Supreme Court in *Uganda Post Limited v Mukadisi*¹⁸ had upheld an award of UGX 150,000,000/= as general damages to compensate for suffering.
- [52] Indeed *Mukadisi* sets the principle considerations for an award of general damages in employment disputes in that general damages can be awarded in addition to the payment in lieu of notice given to an employee who has been unlawfully dismissed from employment. General damages are awarded in addition to payment in lieu of notice and are not tied to specific financial losses. General damages are assessed by the court and are not restricted to the salary or pecuniary benefit stipulated in the employment contract. They are awarded to compensate the employee for non-economic harm and distress caused by the wrongful dismissal. These damages include compensation for emotional distress, mental anguish, damage to reputation, and any other non-monetary harm suffered due to the dismissal.
- [53] In the circumstances that we have found that the Claimant was unlawfully dismissed, he is entitled to general damages. In terms of quantum, in *Kasasira v Yalelo Uganda Limited*¹⁹ an unlawfully terminated claimant who had worked for about two years and was earning a monthly salary of UGX 37,545,000/=, was awarded Claimant UGX 56,317,500/= in general damages representing about one and a half months salary. In that case, we applied the considerations on quantum, in *Stanbic Bank (U) Ltd v Constant Okou*²⁰ Madrama, JA (*as he then was*) held employability or prospects of employment, age, and manner of

¹⁶ [2020] UGCA 2051

¹⁷ See *Stanbic Bank v Kiyemba Mutale* S.C.C.A No. 10 of 2010 cited in *Kamegero*

¹⁸ [2023] UGSC 58

¹⁹ [2017] UGIC 24

²⁰ Civil Appeal No. 60 of 2020

termination as considerations for the quantum of general damages. *Mukadisi* also holds the value of the subject matter or the salary to be a consideration.

- [54] In the present case, the Claimant was earning UGX1,000,000/= per month and had worked for seventeen months. He suggests that he is no longer employable but did not quite persuade us why he thinks so. There were no applications for alternative employment that showed he had been rejected on account of his age. In all circumstances, we consider the sum of UGX 6,000,000/= in general damages to be sufficient and we so award it.

Aggravated damages

- [55] Citing *Uganda Development Bank v Mufumba*²¹ it was submitted that Respondent's had refused to give the Claimant a written contract, unlawfully terminated him and therefore, he should be entitled to UGX 100,000,000/= in aggravated damages.
- [56] In *Bank of Uganda v Betty Tinkamanyire*²² it was observed that aggravating circumstances include illegalities and wrongs in the termination compounded by the Respondent's lack of compassion, callousness and indifference. The Respondent's conduct must be degrading to the employee. We do not think that aggravating circumstances have been made out and we therefore decline to award any aggravated damages.

Interest

- [57] An award of interest is at the discretion of the Court. See *Ahmed Bholim v Car and General Ltd*²³ and Section 26 of the Civil Procedure Act Cap. 282. We consider interest at the rate of 14% per annum on the monetary awards from the date of this award until payment in full to be appropriate in this case.

Costs

- [58] Costs in employment disputes is the exception on account of the employment relationship except where the losing party has been guilty of some misconduct.²⁴ In the present case, we are persuaded to award the Claimant the costs of the claim as the Respondent was both procedurally and substantively unfair in its decision to terminate the Claimant's and compounded these violations by misconducting itself in violating its own internal procedure.

²¹ [2017] UGIC 24

²² [2008] UGSC 21

²³ [2004] UGSC 8

²⁴ See *Kalulu v Deutsche Gesellschaft Fuer Internationale Zusammenarbeit (GIZ) GmbH* [2023] UGIC 69

Final orders

[59] In the final analysis, it is our finding that the Claimant was unfairly and unlawfully dismissed. We make the following declarations and orders:

- (i) It is hereby declared that the Claimant was unfairly and unlawfully dismissed from employment by the Respondent.
- (ii) It is also declared that the Claimant is entitled to UGX 1,087,389/= in unpaid NSSF contributions.
- (iii) We order the Respondent to pay the Claimant the following sums:
 - (a) UGX 1,000,000/= in statutory compensation for failure to hold a hearing.
 - (b) UGX 1,700,000/= as severance allowance and
 - (c) UGX 6,000,000/= in general damages
- (iv) The Claimant shall have costs of the claim.

It is so ordered.

Signed, sealed and delivered at Mbarara this 20 day of January 2025

Anthony Wabwire Musana,
Judge, Industrial Court

The Panelists Agree

1. Hon. Adrine Namara,

2. Hon. Susan Nabirye &

3. Hon. Michael Matovu.

20th January 2025

10:47 am

Appearances

1. **For the Claimant:** Ms. Joan Nansubuga holding brief for Mr. Phillip Mwesigwa for the Claimant.

2. **For the Respondent:** None.

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

Ms. Nansubuga : Matter for award, and we are ready to receive it.

Court: Award delivered in open Court.

11:18 am

Anthony Wabwire Musana,
Judge, Industrial Court of Uganda.