



THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT MBARARA
LABOUR DISPUTE CLAIM NO. 005 OF 2023
(Arising from Labour Claim No. 01 of 2023)

1. MUHUMUZA VINCENT FREDCLAIMANTS
2. MUBANGIZI SAVINO

VERSUS

1. BUHWEJU DISTRICT LOCAL GOVERNMENT..... RESPONDENTS
2. ATUCHARIRE DEOGRAZIUS

Before:

The Hon. Mr. Justice Anthony Wabwire Musana,

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

Representation:

1. Mr. Ronald Kwikiriza of Messrs Kaganzi & Co Advocates for the Claimants
2. The Attorney General's Chambers, Mbarara Branch, for the 1st Respondent.

Case Summary:

Employment Law: Public Service Appointments in Local Government: Two machine operators sued their employer for salary discrepancies, alleging they were wrongly paid under a lower salary scale (U8) than their appointment letters indicated (U7). The employer argued the U7 designation was an error and that the correct scale was U8. The court ultimately ruled in favour of the employer on the salary scale issue, determining the U8 scale was appropriate. The court declined to award damages or costs to either party.

AWARD

Introduction

- [1]** The Claimants were employed as machine operators with the 1st Respondent appointed on transfer on the 9th day of March 2021. The Claimants were each earning UGX 316,393/=

per month under scale U-7. They allege that the 2nd Respondent continued to pay their salaries under U8-UP 2-2 contrary to their appointments. They also allege that the 2nd Respondent had promised in public fora to cause their dismissal. They were sent on forced leave on the 11th of July 2023. They lodged a complaint with the Labour Officer who served the Respondent's Chief Administrative Officer with a notification. The CAO advised the Claimants to resume work and when they attempted to do so, they were told they had no further assignments. In this claim, they sought a declaration of constructive dismissal, payment of salary arrears and allowances, general damages of UGX 200,000,000/=, severance pay from 2017 to date, punitive damages of UGX 100,000,000/=, an order or reinstatement, costs of the claim and interest on the monetary awards at 20% from the date of judgment until payment in full.

- [2] In its reply, the 1st Respondent contested the claim and contended that the Claimants had been sent on forced leave to allow for investigations. It was also contended that their claim for unlawful/illegal termination was misplaced, and they were not entitled to salary arrears or severance pay since they had not been terminated.
- [3] The parties filed a joint scheduling memorandum framing two issues for determination namely;
- (i) Whether the Claimants were unlawfully dismissed by the Respondents from their employment? and
 - (ii) What remedies are available to the parties?
- [4] When the matter was called before us on the 19th of December 2023, Ms. Kalembe appearing for the 1st Respondent, informed us that a partial consent had been reached by which it was agreed that the Applicants resume work immediately. Mr. Kwikiriza confirmed this position. Under Order 25 Rule 6 of the Civil Procedure Rules S.I 71-1, we recorded a partial resolution of the dispute by which order the Claimants were permitted to return to work with the 1st Respondent in the positions of machine operators with immediate effect. By this order, it was also agreed that the outstanding issues of salary scale, damages and costs be subjected to trial.

The Trial

- [5] The following issues were framed for determination:
- (i) Whether the Claimants are entitled to salary scale U7 or U8?

(ii) What remedies are available to the parties?

- [6] The documents in the Claimant's trial bundle filed in Court on the 20th of November 2023 were admitted in evidence and marked CEX1 to CEX15 while the documents in the Respondent's Trial Bundle filed in Court on the 18th of December 2023, were admitted in evidence and marked REX1 to REX3.

The Claimant's evidence

- [7] By his witness statement adopted as his evidence in Chief, the 1st Claimant testified that he was first appointed on the U8 scale earning a net salary of UGX 289,361/= as a mechanic. When he was promoted on transfer he was offered an appointment as a machine operator on a U7 Scale earning UGX 316,393/=. He said that due to the influence of the 2nd Respondent, the 1st Respondent has been paying him UGX 289,361/= on a U8 Scale instead of UGX 316, 393/= on a U8 scale. He told us that in the 45 months leading to his witness statement, he had lost UGX 1,637,685/=. He also told us that he had complained and engaged the 2nd Respondent to no avail. He also told us that the 2nd Respondent started harassing him, defaming him and forcing the CAO to send him on leave. He also said that he was losing night and field allowances and that he had suffered psychological, mental, economic and physical damages for which he sought general and punitive damages.
- [8] Under cross-examination, he told us that when he applied for the job, he was interviewed by the District Service Commission on the 9th of March 2021. He also told us that he holds a Uganda Certificate of Education. He said he had never been paid UGX 316, 393/=. He said he complained to Human Resources, the CAO and the Local Council 5 Chairperson. He told this Court that he had never seen a document that showed his salary structure beyond the initial appointment letter.
- [9] In reexamination, he said that he was getting a salary of U8 when his appointment was under scale U7.
- [10] The 2nd Claimant also testified that he was first appointed on the U8 scale earning a net salary of UGX 213,832/= as a driver. On his promotion on transfer, he was offered an appointment as a machine operator on a U7 Scale earning UGX 316,393/=. He also said that due to the influence of the 2nd Respondent, the 1st Respondent has been paying him UGX 213, 832/= on the U8 Scale instead of UGX 316, 393/= on the U7 scale. He also said that in the 45 months leading to his witness statement, he had lost UGX 4,615,245/=. Just like the 1st Claimant, he told us that he had complained and engaged the 2nd Respondent to no avail. He also told us that the 2nd Respondent started harassing him, defaming him and

forcing the CAO to send him on leave. He also said that he was losing night and field allowances and that he had suffered psychological, mental, economic and physical damages for which he sought general and punitive damages.

[11] Under cross-examination, he told us that when he applied for the job, he was interviewed by the District Service Commission on the 9th of March 2021. He also told us that he holds a Uganda Certificate of Education. He said he had never been paid UGX 316, 393/=. He said he complained to Human Resources, the CAO and the Local Council 5 Chairperson. He told this Court that he had never seen a document that showed his salary structure beyond the initial appointment letter.

[12] In reexamination, he confirmed that he had never seen any document with a salary scale except his appointment letter which showed a salary of UGX 316,393/= and he told us that he had never received this salary. He said he was appointed on 9th March 2021 and complained about two months after receiving his first salary. He also testified that the advert did not contain the salary of U8 and it was not put in the appointment letter. Finally, he told us that the advert did not contain any money but the salary scale.

The Respondent's evidence

[13] In his witness statement, NDYAHEBWA KYOMUKAMA EZRA, the Deputy Chief Administrative Officer of the 1st Respondent, confirmed the Claimants' employment as Machine Operators on a salary scale U8. He told us that according to the Approved and Costed Establishment for the 1st Respondent in 2017, the salary scale of a machine operator was set at U8. He also said the Claimants were being paid according to the approved salary structure for Public Service as guided by the Ministry of Public Service(*from now MOPS*). It was his testimony that the 1st Respondent's Service Commission erroneously indicated that the claimants were under U7 and when that error was noticed, it was rectified. It was his evidence that the Claimants were being paid their rightful salaries and were not entitled to any salary arrears. The Claimants were sent on leave in accordance with the Uganda Public Service Standing Orders. He denied any indebtedness by the 1st Respondent to the Claimants.

[14] In cross-examination, he said the claimants were appointed under U7 in error but he did not recall the date on which the error was discovered. He told us that there was no evidence that the Claimants were appointed under U7. He said the 1st Respondents' Service Commission disowned the appointment at scale U7. He indicated that the Claimants were not given any document to clarify this error. He also told this Court that the MOPS gives a lifespan of 5 years for approved and costed staff structure. He said U8 was for support staff

and U7 was for analogous staff without additional training. He also told us that support staff were not promotable or did not have a promotion ladder. He said the appointment letters CEX7, were under contention.

- [15] In re-examination, he told this Court that there was no position known as support staff but that machine operators fell under support staff. He said that the 1st Respondent's District Service Commission had disowned the minute in the appointment letter.
- [16] After Ms. Kalembe had closed the 1st Respondent's case, in the exercise of the provisions of Section 8(3) of the Labour Disputes (Arbitration and Settlement) Act Cap 227, we directed the Respondent to furnish this Court with a copy of the response to REX1. We also issued filing directions and are grateful to Counsel for their succinct arguments which have been summarised and considered in rendering this award.

Determination

Issue 1: Whether the Claimants are entitled to receive salaries under the U8 or U7 scale.

Claimants' submissions

- [17] It was submitted for the Claimants that according to CEX1 and CEX 12, they were entitled to salaries under U7 and that RW1, confirmed these letters and did not produce a clarification by the 1st Respondent's Service Commission. According to Counsel, REX3 indicated entry level for analogous cadre at UGX 316,393/= which was the same as Claimant's salary and not as indicated in REX2. We were asked to find that the claimants were entitled to salary at U7 and not U8.

1st Respondent's submissions in reply

- [18] For the 1st Respondent, it was submitted that the Claimants responded to an advert for machine operators containing a salary scale of U8 and that RW1 had testified to an error in the appointment letters indicating U7. It was submitted that the approved salary structure for the 1st Respondent placed Machine Operators at U8 and that the MOPS approved salary structure indicated that support staff with UCE and additional requirements fall under U8. For the correction of the error in their appointments, Ms. Kalembe cited *Iragena v National Curriculum Development*¹ for the proposition that a salary reduction is valid where

¹ [2015] UGHCCD 21

payments were made irregularly. It was submitted that the 1st Respondent's Service Commission was appointing authority under Section 55 of the Local Governments Act, Cap 243 "LGA"(now Cap. 168) and had disowned Minute 28/DSC/2021(II). It was also submitted that the Claimant's appointments were subject to the Public Service Act and regulations thereunder, the Government Standing Orders and Administrative Instruments issued from time to time. Section 61(1) LGA provides that the terms and conditions of Local Government staff shall conform to those prescribed by the PSC. Therefore the 1st Respondent could only effect a salary structure approved by MOPS. Any payments to the Claimants under U7 would therefore be erroneous and attract audit queries. We were asked to find that the Claimants were entitled to payment under U8.

Decision

- [19] Under Section 2 of the Employment Act Cap. 226, wages are defined as a means of remuneration or earnings, however, designated or calculated, capable of being expressed in terms of money and fixed by mutual agreement or by national laws or regulations which are payable under an oral or written contract of service for work done or to be done, or for services rendered or to be rendered but excluding any contributions made or to be made by the employer in respect of his or her employee's insurance, medical care, welfare, education, training, invalidity, retirement, pension, post service gratuity or severance allowance.
- [20] In the matter before us, the Claimants were appointed into the service of the 1st Respondent, a Local Government. Under PART VI LGA and Section 59LGA, the District Service Commission(DSC) and its functions including overseeing the Public Service function of local governments, appointments and disciplinary control of any person in service of a district. Section 67 LGA also provides for the terms and conditions of service of local government staff which shall conform to the Public Service terms generally. The salaries and allowances of local government staff are therefore governed in accordance with the rules of Public Finance. Therefore, in line with the definition of wages in Section 2EA, salaries and allowances of staff of local governments are governed by the LGA which carries out the public service function of local governments. This means that salaries in local government are statutorily established and managed.
- [21] The Claimants plead that they were appointed on promotion under Minute No. Min 28/DSC/2021(ii) under Scale U7. According to the Claimants, they are paid under U8. Counsel for the 1st Respondent submitted that this was an error and attached to the final submissions, a letter from the 1st Respondent's DSC Acting Secretary by which the said Minute was disowned. This would be consistent with RW1's testimony that there was an

error in the Claimants' appointment and this had been rectified. In our view, the Claimant's appointments, as is the case with any other public service appointment, were subject to the Constitution of the Republic of Uganda, the Public Service Act and Regulations, the Government Standing Orders and Administrative Instructions and the Pensions Act. Therefore, the appointments including their salaries and allowances are statutorily managed. The statutory function of the DSC under the auspices and direction of the MOPS is to provide a salary structure for public servants in Local Government.

- [22] The 1st Respondent produced the Approved and Costed Staff Establishment for 3rd July 2017 by which machine operators were at scale U8 earning UGX 2,663,844/= per annum or UGX 221,987/= per month. In the public service staff structure for the financial year 2023/2024, the MOPS Circular Standing Instruction(CSI) No. 3 of 2023 listed support staff with UCE as U8(upper) for additional requirements and U8(Lower) for those without additional requirements. In our view, the Claimants' salaries and allowances are set by these standing instructions. In other words, they are publicly governed and if any correction is made by the public authority charged with such adjustment, the public body would not be faulted for such rectification. The Uganda Public Service Standing Orders 2010 Sub-Section B-a 5 provides that the salary structure of the public service shall be determined in accordance with the pay policy of the Public Service. It follows that any determination of salaries was in the purview of the 1st Respondent's Service Commission following any directions from MOPS and was legally correctable. In *Byekwaso v Attorney General*² the Industrial Court was confronted with a claim where the Claimant had been downgraded from U3 to U4 and held that the Public Service Commission was entitled to make a correction under Section 41 of Public Service Regulations. This was the position in *Iragena* cited by Ms. Kalembe. In that case, the Plaintiff was promoted and paid at a higher salary scale. When an error was discovered, it was corrected. In an action to recover salary arrears, it was held that the Defendant's Director in her capacity had the duty and power to correct the error upon submission to the council. Bamwine J. took a similar stance in *Namyalo Josephine v National Curriculum Development Centre*³.

- [23] From the authorities cited above, a correction of a Public Service appointment in error is therefore legally tenable. We accept the 1st Respondent's hypothesis that the placement of the Claimants in U7 was an error as clearly the approved and costed structure as of March 2021, places the Claimants in U8 and not U7.

² [2021] UGIC 98
³ [2010] UGHC 28

- [24] The other question would be the job grading. Both Claimants testified that they held UCE certificates. According to Table 2 of Sub-section B-b of the Standing Orders, the basic salary for support staff with UCE Certificates is U8 and this would be consistent with RW1's testimony to the effect that the Claimants were support staff at U8 and not U7. Indeed REX1 raised the question as to why a letter under the approved and costed structure of 2017 which put a machine operator at U8 should have stated a starting salary of U7. In his final argument, Mr. Kwikiriza suggests that REX 2 puts the Claimants at Entry Level Analogous Cadre Salary at UGX 316,393/=. The difficulty is that this document relates to the financial year 2023/2024 while the Claimants were appointed in March 2021, two years before the approved costed structure would place them in U7. In our judgment, we would not be satisfied that the claimants have sufficiently established that Machine Operators appointed in 2021 would be at salary scale U7 as the approved and costed structure would be U8. Therefore, in our estimation, at their appointment the Claimants were at entry level U8 and as such any correction to their salaries as of the date of appointment was valid. In any event, both Claimants admitted to not having been paid any salary under U7 and as such there would not be any unilateral variation in their pay. No benefit has been taken from them, yet.
- [25] In our judgment and answer to issue number one, the Claimants are entitled to salary under U8 as per the costed and approved structure subsisting at their appointment.

Issue II

What remedies are available to the parties

Salary arrears and allowances

- [26] The 1st Claimant sought UGX 1,637,685/= in salary arrears while the 2nd Claimant sought UGX 4,615,245/= as salary arrears. For the Respondent, and on the authority of *Namyalo*, it was submitted that an error was corrected and the Claimants were receiving their rightful salaries and therefore the arrears were not recoverable as special damages.
- [27] Considering that we have found that the Claimants were at salary scale U8, they would not be entitled to any salary arrears or allowances. We therefore decline to grant any salary arrears. We do not think there is a need to comment on the allowances because they were not quantified in the claim.

Damages

- [28] Concerning general damages, Mr. Kwikiriza sought UGX 200,000,000/= for the mistreatment, harassment at work and illegal termination. Counsel referred to a passage by Lord Donovan but did not indicate the source of the extract. Counsel also referred to Article 126(2)(c) of the 1995 Constitution and the cases of *Omuniyokol v Attorney General*⁴ and *Mbiika Dennis v Centenary Bank*⁵ in support of the claim for general damages.
- [29] For the Respondent, it was contended that the 1st Respondent did not terminate or dismiss the Claimants and therefore their claim was misconceived. Further, on the authority of *Oketha v Attorney General*⁶ it was suggested that the claim for general damages should be substantiated by proof of actual loss or damage. We were asked to reject the claim for general damages.
- [30] In the employment and labour sphere, it is now settled that general damages 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.⁷
- [31] In the present case, the Claimants were sent on accumulated leave on the 7th of July 2023. They lodged a complaint with the labour officer on the 17th of July 2023. On the 19th of December 2023, the 1st Respondent agreed to their return to work. The Respondent has been clear that it has neither terminated nor dismissed the Claimants and indeed their return to work was premised on a partial consent entered between the parties and this consent excluded the question of dismissal.
- [32] Therefore, in keeping with the dicta in *Mukadisi* which suggests that general damages for dismissal are awarded in addition to other statutory remedies such as notice or payment in lieu of notice, there is neither a dismissal nor a termination in the present case for which general damages should be awarded. We decline to award any general damages and are fortified by the dicta in the oft-cited case of *Stroms v Hutchinson*⁸ in that the law is that general damages are those damages such as the law will presume to be the direct natural consequence of the action complained of. There is no consequence in the present case that would warrant any award.

⁴ [2015] UGSC 4

⁵ LDC No. 023/2014

⁶ [2017] UGHCCD 135

⁷ *Uganda Post Limited v Mukadisi* [2023] UGSC 58

⁸ [1950] A.C 515

[33] On punitive damages, on the authority of *El Termewy v Awdi & Ors*⁹, Counsel for the Claimants sought UGX 100,000,000/= for malicious termination and portraying the Claimants as thieves. For the Respondent, it was contended that there was no vindictiveness and malice to warrant an award of punitive damages.

[34] In *Nabaterega v KCB Bank Uganda Limited*¹⁰ this Court observed that punitive damages are an exception to the rule that damages are to compensate the injured person. These are awardable to punish, deter, and express outrage of court at the defendant's egregious, highhanded, malicious, vindictive, oppressive, and malicious conduct. They are also awardable for the improper interference by public officials with the rights of ordinary subjects. We cited *DFCU Bank Limited v Donna Kamuli*¹¹ where it was held that punitive damages are awardable in employment disputes with restraint as punishment should be confined to criminal law and not the law of tort or contract.

[35] In the case before us, we are not satisfied on the balance of probabilities that the 1st Respondent should be condemned in punitive damages for egregious, highhanded, malicious, vindictive, oppressive, and malicious conduct. In *El Termewy* the Plaintiff was found to have been trafficked and for this reason, Musoke J. (*as she then was*) awarded punitive damages to deter people from recruiting others from foreign countries and subjecting them to inhuman and callous treatment once they reached Uganda. These are not similar circumstances in the present case and we are not persuaded to award any punitive damages.

Interest and costs

[36] As there is no monetary award, there shall be no grant of any interest.

[37] In the present case, the Claimants did not succeed in proving unfair dismissal or termination. As a losing party, we do not think that they should be burdened with the costs of the claim in keeping with the need to expand access to labour justice. There is to be no order as to costs.

[38] In the final analysis, the claim is dismissed with no order as to costs.

⁹ UY 00001 UCHCC014

¹⁰ UY 00001 UCHCC014

¹¹ UY 00001 UCHCC014

It is so ordered.

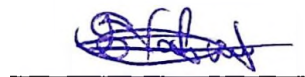
Dated, signed and delivered at Mbarara this 21st day of January 2025


Anthony Wabwire Musana,
Judge, Industrial Court of Uganda

The Panelists Agree:

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







21st January 2025

10:30 am

Appearances

1. For the Claimants:
2. For the 1st Respondent:

Mr. Ronald Kwikiriza

Ms. Fiona Bamanya Assimwe holding brief
for **Ms. Rita Kalembe** for the 1st Respondent.

Court Clerk:

Mr. Samuel Mukiza.

Mr. Kwikiriza:

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

Court:

Award delivered in open Court.

10:50 am

Anthony Wabwire Musana,
Judge, Industrial Court