THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT MBARARA
LABOUR DISPUTE CLAIM NO 05 of 2022
(Arising from Mbarara Labour Dispute Complaint No.CB/102/31/08/2021)

KARANZI NAFUTARI::CLAIMANT

VERSUS

KAMPALA INTERNATIONAL UNIVERSITY::RESPONDENT

Before:

The Hon. Mr. Justice Anthony Wabwire Musana

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

Representation:

1. Ms. Gloria Abaruhanga of Ms. Ahimbisiwe & Agaba Advocates for the Claimant.
2. Mr. Swabur Marzuq of Ms. Lwere & Lwanyaga Advocates for the Respondent.

Case Summary

The claimant *alleged unfair dismissal, lack of due process, and unpaid benefits, including a salary loan.* ***The respondent university*** *argued the dismissal was justified due to the lecturer's misconduct and failure to follow internal procedures. The court found the dismissal* ***procedurally and substantively unfair****, awarding the claimant severance pay, unpaid salary during suspension, general damages, interest, and costs. The court rejected the claim for the salary loan. The decision hinges on the university's failure to provide a fair hearing and sufficient evidence of the lecturer's misconduct.*

Award date: 30th January 2025 at The High Court, Mbarara.

AWARD

Introduction

[1] On the 15th of November 2016, the Respondent, a private university, employed the Claimant on a three-year contract as an Assistant Lecturer in the Department of Humanities at its campus in Western Uganda. His monthly salary was UGX 1,500,000/= (shillings one million five hundred thousand). On the 20th of July 2018, the Respondent suspended the Claimant on allegations of continued failure to adhere to verbal and warning letters about unprofessional handling of students. On the 9th of November, 2018, he was dismissed by the Respondent Staff Disciplinary Committees (SDC), finding him guilty of unprofessional and gross misconduct in handling student affairs.

[2] His complaint to the Mbarara District Local Government Labour Department was not resolved. On the 1st of June 2022, the Labour Officer referred the matter to this Court.

[3] The Claimant brought this action for wrongful dismissal and/or unfair termination, unpaid contractual terminal benefits, an order that the Respondent remits National Social Security Fund Benefits, UGX 8,000,000/= shillings (eight million) being a loan balance, general, aggravated and punitive damages and costs of the claim and interest at Court rate from the date the cause of action arose until payment in full. He contended that when he went to check on the status of his prolonged suspension, he was served with a dismissal letter.

[4] The Respondent opposed the claim, contending first that the claim was premature and incompetent because the Respondent's Charter and Statutes provided the remedy of appeal from decisions of SDC. It was also claimed that several complaints had been raised against the Claimant, and he was warned. He did not take heed and was suspended. The Claimant was invited to and attended a disciplinary hearing on the 15th of August, 2018. The SDC found the claimant guilty of unprofessional and gross misconduct and was summarily dismissed. The Respondent denied liability for the salary loan and all the other reliefs sought.

[5] In rejoinder, the Claimant reiterated his claim. He contended that he had been ambushed into a hearing when he had returned student research reports. The purported hearing was in the presence of students.

The Trial

[6] The parties filed a joint scheduling memorandum(JSM) on the 7th of December, 2023. At the scheduling conference on the 18th of December 2023, the JSM was adopted with the following issues framed and agreed upon:

(i) Whether the Claimant was unfairly and unlawfully dismissed from employment?

(ii) What remedies are available to the parties?

[7] The documents in the Claimant's trial bundle dated 22nd November 2023 were admitted in evidence and marked CEX1 to CEX10. The documents in the Respondent's trial bundle filed in Court on the 8th of December 2023 were admitted in evidence and marked REX1 to REX 14. A signed copy of the letter of undertaking addressed to Centenary Rural Development Bank was admitted as CEX11.

The Claimant's evidence

[8] The Claimant's witness statement made on 21st November 2023 was adopted as his evidence in chief. He testified that on the 13th of June 2022, he had been invited to the office of the Dean of the Faculty of Education, where he was informed that an accusation of sexual harassment had been made against him. On the 14th of June 2018, he received two warning letters alleging extortion of money from students. On the 20th of July 2018, he was suspended indefinitely on half pay for failure to adhere to verbal and written warnings about the unprofessional handling of students in terms of acceptable academic standards. He told us the Respondent had recommended his salary loan from Centenary Bank. He said that on the 15th of August 2018, when he returned some research papers and inquired about the status of investigations into the allegations leading up to his suspension, he was invited into a student's disciplinary committee, asked questions and told to leave the room. He was not provided with a copy of the investigation report. He also did not know who made complaints against him. When he followed up on the 12th of November 2018, he was served with a dismissal letter. He said he could not continue servicing his loan and asked for special damages. He said he did not receive severance pay and asked for judgment in the terms laid out in his memorandum of claim, including a claim for aggravated and exemplary damages for defamation.

[9] In cross-examination, the Claimant could not recall the core values stipulated in his appointment letter but recalled teaching and supervising students. He said he was required to be professional and of high moral integrity. He was directed to clause 7 of his appointment letter and said he was not given the Human Resource Manual. He told us that the terms and conditions bound him. He acknowledged receipt of the warning letters on unprofessional conduct. He told us that he did not respond to REX4. He also told us that he had not appeared before a staff disciplinary committee but a student disciplinary committee. He said he could not distinguish between the two. He said the period between his suspension and appearance before the committee was 25 days. He was shown CEX11 and read out the last paragraph. He told us that his loan guarantors were MWIJUKA JULIUS and MWESIGA DICK and that the Respondent was not a guarantor. He told us that he did not appeal the dismissal.

[10] In reexamination, he said he was not given the terms and conditions of employment. He also was not allowed to respond to the warning letters. He said he was suspended

on 20th July 2018 and dismissed on 13th November 2018. He said he attended a student's disciplinary meeting to which he had not been invited. He said that his employment contract had expired by the time of his dismissal. He said he did not appeal against suspension because the Respondent delayed responding until dismissal.

The Respondent's evidence

[11] The Respondent called one witness. TUSHABE ADRINE, alias TUSHABE HADIJAH, is the deputy director of human resources of the Respondent Western Campus. She told us that her department was charged with all employment-related matters, including disciplinary proceedings. She told us that the Claimant was bound by the Respondent Academic Rules (Revised January 2013), which prohibited sexual harassment. She told us that on the 13th of April 2018, Nasuuna Annet, a student, complained about the Claimant extorting money and neglecting to attend to students, for which he was warned. She also told us that he received another warning on the 11th of June 2018 for failing to heed his supervisor's oral warning, after which he was suspended. She said on the 14th of August 2018; he was invited to attend a disciplinary hearing on charges of professional misconduct and academic dishonesty. She said the Respondent had received several complaints against the Claimant. She told us the Claimant appeared before a duly constituted SDC on the 15th of August 2018, which was heard from the Complainants and the Claimant. After the hearing, the SDC decided to terminate the Claimant. By letter dated the 9th of November 2018, the Respondent terminated the Claimant for unprofessional and gross misconduct. She said the termination was lawful, and the Respondent was not liable for the Claimant's loan or the remedies sought.

[12] Under cross-examination, she told us she joined the Respondent in 2021, and the Claimant was dismissed in 2018. She said she did not take part in his disciplinary proceedings. She said the Claimant received the invitation to attend the hearing, but there was no signature acknowledging receipt. She said the Claimant was given one day's notice. Regarding REX 9, she said these were handwritten complaints dated 15th August 2018 and that he was already on suspension when the Claimant appeared before the SDC. She told us that she did not have audio recordings of the complaints against the claimant. She also told us that the minutes did not contain the claimant's signature. She said on page 16 of REX 11 that the word "Student" had been crossed out and replaced with "Staff". She told us that the complaint was on suspension for about five months. She confirmed CEX5(the undertaking) was on the Respondent's letterhead but was unsure if the Respondent had informed the bank of the Claimant's termination or paid his terminal benefits to the Bank. She said she did not see the loan documents in the file. She did not know if the Respondent had paid the claimant in lieu of notice or any money after his dismissal.

[13] In re-examination, she said she was not the right person to testify because she was not there at the time of the Claimant's dismissal and had gathered information from the file in the HR office. She said the crossing of the word "Student" was an error. She told us

the SDC comprised the Assistant Deputy Vice Chancellors, Director of Academic Affairs and panelists. She said the letters from the students showed that the Claimant was disciplined. She told us that the minutes were prepared by the DDHR, the SDC's secretary, and confirmed by the Dean or Associate Dean and Chairperson of the Committee. She told us that the Respondent did not sign CEX 5. She also told us that if a staff member is dismissed, they are entitled to payment in lieu of notice.

[14] At the close of the Respondent's case, we invited the parties to file written submissions, for which we thank Counsel and have summarised and considered in rendering this award.

Analysis and Decision of the Court.

Issue 1. Whether the Claimant's dismissal was unfairly and unlawfully dismissed from employment?

The Claimant's submissions

[15] It was submitted that the Claimant was unfairly and unlawfully dismissed. He was not accorded a fair hearing under Sections 66 of the Employment Act, 2006 **(the EA)**[1], he appeared before a Students Disciplinary Hearing, was given only one day's notice, and his notice of invitation fell short of what was required. It was submitted that there was no evidence that the notice was served on the Claimant. It was also submitted that his suspension was beyond the statutory duration, contrary to Section 63EA. Counsel relied on *Wabwire v Experta General Supplies Limited*[2] and *Ebiju v Umeme Ltd*[3] for the proposition that a dismissal must be procedurally and substantively fair for it to be lawful.

Submissions of the Respondent

[16] For the Respondent, it was submitted that the Claimant had been given several warnings and failed to exhibit a high moral character contrary to the Respondent HRM 2010. Counsel relied on Sections 66 and 69(3) EA and Ebiju for the proposition that the warranted dismissal is substantively and procedurally fair and lawful. Counsel cited *DFCU Bank Limited v Donna Kamuli*[4] where it was held that a hearing need not be a mini-court and could be held via correspondence.

[17] It was also submitted that the disciplinary hearing was held within four weeks of the suspension, which the Claimant attended, and the SDC read out the charges. He defended himself and was informed of the outcome. Because he did not appeal, it was

[1] This is now Section 65EA Cap. 226
[2] [2023] UGIC 75
[3] [2015] UGHCCD 15
[4] [2019] UGCA 2068

submitted that he was satisfied with the decision of the SDC. Counsel invited us to find that the Claimant's dismissal and/or termination was fair and lawful because the Claimant fundamentally breached his employment contract.

Determination.

[18] In a claim for unlawful or unfair dismissal, as it now stands, the Court will be concerned with two questions: whether the dismissal was procedurally and substantively fair. This was our dicta in *Mugisha v Equity Bank Ltd*[5]. According to Black's Law Dictionary[6] Fairness is the quality of treating people equally or in a reasonable way. It has the qualities of impartiality and honesty. In terms of what constitutes fairness in employment disputes, in the case of *Tushemereirwe Oginia v Bushenyi District Local Government*[7] we referred to the International Labour Organisation(ILO) procedural and substantive fairness standards 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. Therefore, the threshold for fairness is an impartial process and reasonable outcome.

Procedural fairness

[19] 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 it 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,*[8] 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
(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.

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[5] [2019] UGIC 210
[6] 11th Edn by Bryan Garner at page 742
[7] LDR 07 of 2022 Industrial Court Mbarara 28.01.2025
[8] [2015] UGHCCD 15

[20] In the matter before us, the notice in writing contained REX8, a letter dated the 14th of August 2018 inviting the Claimant to appear before a staff disciplinary committee on the 15th of August 2018. For a fuller appreciation of this letter, we think it necessary to employ its full text:

> *" Office of the Deputy Director Human Resource*
>
> *14th August, 2018*
> *Mr. Karanzi Nafutari*
> *Assistant Lecturer*
> *Faculty of Education*
> *KIU-Western Campus*
>
> *Dear Mr. Karanzi*
>
> *RE: APPEARANCE BEFORE THE STAFF DISCIPLINARY COMMITTEE*
>
> *This letter is to inform you that you are required to appear before the above-mentioned committee to answer charges of professional misconduct and academic dishonesty on Wednesday, 15th August, 2018 at 09.00 a.m. in the University Board Room.*
>
> *Yours sincerely*
>
> *Ms. Auno Stella Hope*
> *DEPUTY DIRECTOR HUMAN RESOURCE*
> *KIU-WESTERN CAMPUS*
>
> *Cc: Deputy Vice-Chancellor*
> *Assistant Deputy Vice-Chancellor*
> *Director Academic Affairs*
> *Dean Faculty of Education*
> *Director Finance*
> *Legal Officer KIU:"*

[21] There was a contestation as to whether the Claimant received this letter. The Respondent's witness testified that the Claimant might have forgotten to sign the letter. For his part, the Claimant maintained that he was not notified of the hearing. Ms. Tushabe's evidence does not fit the pattern regarding the letters served on the Claimant. He signed REX 4, a warning letter dated 6th of June 2018. He also signed REX 6 dated the 13th of June 2018 on the 14th of June 2018. He also acknowledges receipt of the

suspension letter REX7 on the 20th of July 2018. The Claimant acknowledged receipt of two warning letters and a suspension letter, each of which made provision for him to acknowledge receipt at the bottom of the pages. It is only the invitation letter that he did not sign. In our estimation, it is more likely than not that he did not receive this letter. In other words, on the balance of probabilities, we would find that the Respondent does not make a believable case of serving the notification for hearing letter on the Claimant.

[22] Had REX8 been served on the Claimant, it would not have passed the test of sufficient time. The letter was dated the 14th of August 2018, and the Claimant was invited to appear before SDC on the 15th of August 2018, one day later. We do not find this time sufficient and would not pass the *Ebiju* test. We are fortified in this finding by *Kalengutsa v Bugoye Hydro Ltd*[9], where the Claimant was notified on the evening of the 4th of November 2015 to attend a disciplinary hearing on the 5th of November 2015. The Industrial Court found this to be insufficient time to prepare his defence. In our view, the Claimant was not given sufficient or reasonable time to prepare his defence. We would hold that the Respondent had been unfair.

[23] Did the letter set out the allegations against the Claimant? We think it did not. In *Ebiju,* the Court held that the notice should set out clearly what the allegations against the plaintiff were. In the present case, the notice stated professional misconduct and academic dishonesty. In our view, there were insufficient particulars of professional misconduct and academic dishonesty to enable the Claimant to prepare a defence. For this reason, the notification would not pass the *Ebiju* test.

[24] Further, the notification did not explain to the Claimant his rights at the hearing, the right to respond, be accompanied by a person of his choice, to cross-examine witnesses and produce witnesses of his choice. All these are tenets of the right to a fair hearing, and as Musoke J., as she then was put in *Ebiju*, a defendant will have complied with the right to be heard if he or she has complied with matters listed above. It is our judgment that REX8 did not meet the threshold of notification.

[25] The other difficulty that the Respondent find itself in is that it did not follow its own internal disciplinary procedure. Its Human Resource Manual REX14 provided for a detailed inquiry into any disciplinary action that could lead to dismissal. We were not shown the extent of any detailed investigations. Clause 16.6.4(2)(b) required that the employee be fully advised of the charges against them after the inquiry. We have already found the notification deficient and unserved. Clause 16.6.4(2)(d) provided for an employee representative, and there was none. It has been held that an employer failing to comply with its internal disciplinary process amounts to unfair *termination or dismissal.*[10] For this reason, we hold that the Respondent was procedurally unfair.

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[9] *Labour Dispute Reference 138 of 2016*

[10] See Charles Ochieng Opiyo v Lake Basin Development Authority [2021] KEELRC 1874 (KLR)

[26] The other procedural question in this litigation is the prolonged suspension. Under Section 62(2)EA, an employer may suspend an employee for purposes of carrying out an investigation, provided the duration of suspension does not exceed four weeks. It is now settled law that a suspension under Section 62EA does not constitute a disciplinary penalty. (See *Achiro v Uganda Land Alliance*[11]).

[27] The indisputable evidence before us is that the Claimant was served with a suspension letter on the 20th of July 2018. He is said to have attended a disciplinary hearing on the 15th of August 2018, some 25 days later, as he conceded under cross-examination. While he may have grievances about the hearing, it is impossible to say that he was suspended beyond the statutory period. We now hold as we held in *Ofwono Alexander v Marie Stopes Ltd*[12]that a suspension followed by disciplinary proceedings would not be unlawful. We do not find that the Claimant was unlawfully suspended.

[28] In conclusion, on the evidence before us, we are unable to find that the Respondent was procedurally fair and lawful.

Substantive fairness

[29] 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* ,[13] 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.[14] Mr. Marzuq cited the dicta of Bashiraki JA in *Kamuli* to the effect that a hearing need not be a mini-court. In *Kamuli*, the Court dealt with performance appraisals, which formed the basis for the termination of the Respondent. The Court also referred to a decision by the Employment and Labour Relations Court of Kenya in *Isaiah Gituku Gitimu v Menengai Oil Refineries Ltd* [15] for the proposition of hearing by correspondence. It appears that the Court of Appeal of Kenya overturned the position in *Gitimu.* In *Postal Corporation of Kenya v Andrew K. Tanui,*[16] the Court of Appeal of Kenya held that a case-by-case basis determination of whether to hold an oral hearing or not was not good law in respect of a hearing before termination as envisaged under ***Section 41*** of the Act. In *Tanui,* the trial judge had held that;

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[11] [2024] UGIC 22
[12] LDR 001 of 2023 Industrial Court at Mbarara 29th January 2025
[13] [2020] UGCA 86
[14] See also *Odongo & Another v Save the Children International* LDR 322 of 2015.
[15] [2015] KEELRC 954 (KLR)
[16] [2019] KECA 489 (KLR)

" This procedure was flawed. It does not show that the Claimant was advised of his right to be accompanied to the Board hearing. No significant hearing took place. An Employer should not merely recite the grounds listed in a letter to show cause and then ask the Employee if there is anything to add or subtract; the Employer must make an effort to explain the charges to the Employee at the hearing, call evidence in showing the truthfulness of those allegations, and if there are Witnesses, allow the Claimant the opportunity to question the Employers' Witnesses. Evidence contained in documents must be produced..... Conversely, the Employee must be allowed the opportunity to adduce evidence and call Witnesses. The hearing process is different from the letter to show cause. If these were the same processes, there would be no need of a formal hearing. The hearing itself is not a mere technical appearance before a Disciplinary Panel; the opportunity to be heard means much more than being asked to add, or subtract, any answers that may have been given in responding to the letter to show cause. The Respondent failed the procedural test on these grounds."

[30] It appears to us that a hearing, not necessarily with the strictures of a judicial hearing, would still be required. In *Kigula*, which the Court of Appeal also decided, the Respondents had been dismissed over charges of fraudulent practices, and Kasule JA (as he then was) held the requirement of substantive fairness to be akin to a judicial process where liability would have to be established against the employee by taking evidence against him or her. Indeed, in *Hot Loaf Bakery Ltd v Ndungutse and 28 Others* [17] *(which was decided on the 17th of March 2023)*, Musota JA*(as he then was)*, with Bamugemereire JA*(as she then was)* and Butera DCJ concurring, held, in respect of Section 66EA(*now section 65*), that the Employment Act requires the employer to hear and consider any representations made by workers. This means that nothing should be done to prejudice an employee without giving him or her an opportunity to defend himself or herself.

[31] In our view, the allegations against the Claimant were professional misconduct and academic dishonesty. Could elements of these infractions be proven over correspondence? We think not. The Respondent submitted that a hearing was held on the 15th of August 2018. On his part, the Claimant suggests that he was ambushed. The Respondent adduced minutes of the disciplinary hearing(REX11), which showed a 10-member committee. The minutes also show that there was a written statement of allegations of solicitation of money by the Claimant. A committee member is reported to have briefed the committee about the allegation that the Claimant had acted unprofessionally when he refused to follow the academic rules and regulations guiding the supervision of students on school practice. It was also alleged that he had extorted money. In his defence, the Claimant told the Committee that he had found the students

[17] [2023] UGCA 9

in one place and supervised them there because of facilitation challenges. One student, Mugisha Alex, told the committee that the Claimant had asked him and two others to facilitate his transport. The Committee observed that the Claimant had been careless, reckless, and insubordinate and did not comply with established procedures. Having earned earlier warnings, he was recommended for dismissal from the Respondent University.

[32] In our view, the minutes that represented the hearing raised some doubt about the proof of the allegations of professional misconduct and academic dishonesty. First, the word "Student" was crossed out and replaced with "Staff" on the attendance sheet. It was not countersigned. Secondly, what allegations was the Committee member briefing the Committee about? In keeping with the persuasive dicta in *Tanui,* the Committee member would have read out the charges to the Claimant, who should have been asked to answer. That is what would be considered reasonable. While it is a procedural point it establishes a substantive justification for the reasons for dismissal, we do not find that present in this litigation.

[33] The Respondent also adduced its Human Resource Manual REX14, which listed its disciplinary procedure and the offences. We have already found that the procedure therein was not followed, and no evidence of extortion was proven to a reasonable standard. The middleman alleged to have collected the money on behalf of the Claimant was not named. The minutes do not speak to evidence of insubordination or incompetence. It is not reported what instructions the Claimant refused to implement or in what manner he had failed at his job. Mr. Marzuq argued emphatically that the Claimant was unprofessional and did not exhibit the high moral values expected of him. That may be true, but the meeting minutes at which these matters should have been proven against the Claimant do not reasonably support Learned Counsel's hypothesis. Disciplinary hearing minutes are the mirror of substantive fairness. They look into the process, the charge, the defence, the evidence and the conclusion. In a challenge on fairness, minutes shift the contest from word of the employer versus word of the employee. The written or other form of record, including audio and video recordings, reflects the character of fairness or unfairness. In our view, the minutes in the present context did not justify a finding that the Claimant had misconducted himself.

[34] Therefore, while the Respondent may have genuinely believed that the reasons for the Claimant's dismissal existed, we have shown that these reasons could be justified. As such, we cannot find that the Respondent was substantively fair.

Conclusion

[35] Having found that the dismissal was procedurally and substantively unfair and not justified, this Court, in keeping with *Hilda Musinguzi Vs Stanbic Bank*[18], will fetter the

[18] SCCA 5 of 2016

employer's right to dismiss the Claimant's employment because the Respondent did not follow procedure. The Claimant is entitled to a declaration, and we hereby declare that he was unfairly and unlawfully dismissed. Issue one is answered in the affirmative.

Issue II. What remedies are available to the parties?

[36] Having found as we have, the Claimant is entitled to remedies.

Statutory compensation

[37] Ms. Abaruhanga sought payment of four weeks net pay for failure to hold a hearing under Section 65(4)EA. Mr. Marzuq denied the compensatory order. The deficiencies of the hearing notwithstanding, the Respondent held a hearing, and we decline to grant the Claimant four weeks net pay.

Severance pay

[38] The Claimant sought UGX 3,000,000/= (shillings three million) as severance pay. Under Section 86EA, severance pay is payable when an employee is unlawfully dismissed. Having found as we have, he is entitled to severance pay. In *Kamuli v DFCU Bank*[19] it was held that severance calculation shall be at the monthly pay rate for each year worked. As the Claimant was earning a gross salary of UGX 1,500,000/= per month and had worked from the 15th of November 2016 until his dismissal on the 9th of November 2018 being 2 years, and he is entitled to UGX 3,000,000/= (shillings three million) in severance pay which we hereby award.

Unpaid Salary

[39] The Claimant sought his unpaid salary during his suspension in the sum of UGX 3,750,000/= (shillings three million seven hundred fifty thousand) representing half salary for 5 months. Under Section 62(1)EA, a suspension is with half pay. If the Respondent has not proved that the Claimant was paid this salary, we award the Claimant the sum of UGX 3,750,000/= (shillings three million seven hundred fifty thousand) as his outstanding half-pay during the suspension.

Damages

General Damages

[40] Citing *Kasingye Tuhirirwe Genevieve v Housing Finance Bank Limited*[20] we were asked to grant UGX 150,000,000/= (shillings one hundred fifty million) in general damages for

[19] [2015] UGIC 10
[20] LDR No 115

mental anguish, malice, arrogance, long suspension, torture, humiliation and distress. It was submitted that the Claimant was still unemployed to date. The Supreme Court in Uganda Post Limited v Mukadisi set the principles governing an award of general damages in employment disputes.[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 unlawful, it is our judgment that the Claimant would be entitled to general damages.

[41] As to quantum, in *Kasasira v Yalelo Uganda Limited*[22], 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/= (shillings fifty six million three hundred seventeen thousand five hundred) 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*[23] Madrama, JA (*as he then was*) held employability or employment prospects, age, and manner of termination as considerations for the quantum of general damages. *Mukadisi* also holds the value of the subject matter, and salary would also be a consideration.

[42] In the present context, the Claimant earned UGX 1,500,000/= (shillings one million five hundred thousand) per month and worked for about 2 years. In *Tituryebwa Julius v Sino Mineral Investment Co. Ltd*[24] we awarded a Claimant who was earning UGX 1,000,000/= (shillings one million) per month and had worked for 17 months a sum of UGX 6,000,000/= (shillings six million). Considering all factors, we would award the Claimant UGX 10,000,000/= (shillings ten million) in general damages.

Aggravated Damages

[43] Ms. Abaruhanga was contending for UGX 200,000,000/= (shillings two hundred million) in aggravated damages. The Supreme Court ruled in *Bank of Uganda v Betty Tinkamanyire*[25] that the basis of an award of aggravated damages was a post-dismissal evaluation of the employee's stellar performance and the Respondent's callous indifference. We have not found any evidence of aggravating circumstances in the case before us to warrant an award of aggravated damages.

[44] While the Claimant sought aggravated damages for defamation, he did not plead and prove actual particulars of defamation. There is to be no award of aggravated damages in these circumstances.

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[21] [2023] UGSC 58
[22] Labour Dispute Reference 296 of 2022
[23] Civil Appeal No. 60 of 2020
[24] LDR 02/2021Industrial Court at Mbarara 20th January 2025.
[25] [2008] UGSC 21

Salary loan

[45] Citing *Obonyo v Mtn (U) Ltd, we were asked to order the Respondent to pay the* salary loan of UGX 78,000,000/= (shillings seventy eight million). Ms. Abaruhanga anchored this on CEX5. Mr. Marzuq believed the Respondent was not privy to the loan agreement and should not be held liable. We agree.

[46] By the recommendation letter, CEX 11, the Respondent confirmed the Claimant's employment details and emoluments. The Respondent undertook to advise the Bank in the event of the Claimant's termination and pay the Claimant's terminal benefits into the bank account to offset the loan. The letter was specific that the Claimant would be responsible for the loan. Under cross-examination, the Claimant told us that his guarantors were Mwijuka Julius and Mwesigwa Dick. In *Stanbic Bank (U) Limited v Okou*[26] the Court of Appeal observed that there can be no blanket conclusion or finding that loans can be given out solely on salary and each case should be considered on its facts.

[47] From a review of CEX11, we cannot conclude that the respondent was obligated to Centenary Bank for the Claimant's entire loan except to inform the bank in the event of his termination and pay his benefits to the bank to offset the loan. We, therefore, decline to order the Respondent to pay UGX 78,000,000/= (shillings seventy eight million) to repay the loan.

Interest and costs

[48] Under Section 26 of the Civil Procedure Act Cap. 282 we grant the Claimant interest on all monetary awards at 17% per annum from the date of this award until payment in full.

[49] In keeping with our dicta on costs in employment disputes, we are inclined to the view that the Respondent misconducted itself procedurally and substantively. In the circumstances, the Claimant shall have costs of the claim.

Conclusion and final orders

[50] In the final analysis, we find that the Claimant was unlawfully and unfairly dismissed and:

(i) It is hereby declared that the Respondent unlawfully and unfairly dismissed the Claimant.

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[26] [2023] UGCA 100

(ii) We order the Respondent to pay the Claimant the following sums:

(a) UGX 3,000,000/= (shillings three million) in severance pay
(b) UGX 3,750,000/= (shillings three million seven hundred fifty thousand) as half pay for the period of suspension and
(c) UGX 10,000,000/= (shillings ten million in general damages.
(d) The above sums shall attract interest at 17% per annum from the date of this award until payment in full.

(iii) The Claimant shall have costs of the claim.

It is so ordered.

Dated, delivered and signed at Mbarara this 30th 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. _____

30th January 2025

11:02 a.m.

Appearances

Claimant in Court

Court Clerk: Mr. Samuel Mukiza.

Court: Award delivered in open Court.

11: 38 **a.m.**
Anthony Wabwire Musana,
Judge, Industrial Court