



THE REPUBLIC OF UGANDA  
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA  
LABOUR DISPUTE REFERENCE NO. 247 OF 2018  
(Arising From Labour Complaint No. LBD/D/011/2018)

SENTONGO GERALD .....CLAIMANT

v

UMEME LIMITED ..... RESPONDENT

**Before:**

The Hon. Head Judge, Linda Lillian Tumusiime Mugisha.

**Panelists:**

1. Hon. Charles Wacha Angulo,
2. Hon. Beatrice Aciro Okeny &
3. Hon. Rose Gidongo.

**Representation:**

1. Mr. Apollo Kwesiga of M/s. Lukwago & Co. Advocates for the Claimant.
2. Mr. Ferdinand Musimenta of M/s. S & L Advocates for the Respondent.

**AWARD**

**Introduction**

- [1] On 30<sup>th</sup>/05/2019, the Claimant filed in this court a Memorandum of Claim for unfair and unlawful breach of his Employment Contract by Umeme Limited, the Respondent herein and sought for; three (3) months' pay in lieu of notice, Severance allowance, Pay for 55 leave days not taken between 2015 to 2016,

General damages for inconvenience caused to him, torture, mistreatment and mental anguish caused by the dismissal, Exemplary damages and punitive damages and Costs.

By Memorandum in Reply filed in this court on the 18/06/2019, the Respondent Company denied the facts in the Claim and alleged that the dismissal was carried out in accordance with the provisions of section 66 now 65 & 69 now 68 of the Employment Act 2006. After the District Manager Bombo Byron Beine discovered an illegal 3 phase direct supply to a maize mill in Waakatayi belonging to Richard Ssekidde. The dismissal was carried out after investigations were conducted and the Claimant was found culpable.

### **Facts of the Case**

- [2] On 21/11/2006, the Claimant Gerald Ssentongo, was appointed as a Meter Reader with effect from 1/12/2006, at a salary of Ugx.508,570/= per month. He rose through the ranks and was appointed to the position of lines man in charge of Luwero Region. According to him, because of his good performance, his salary was increased from time to time and at this time of his dismissal, his salary stood at Ugx.1,466,300/- per month. His services were terminated on 7/12/2016, on allegations that he obtained money by false pretences to end a power line. Disciplinary proceedings were instituted against him and he was found culpable. Being dissatisfied with the process, he lodged a labour complaint before the labour office in Luweero District. After mediation failed, the Labour officer referred the matter to this Court for resolution, hence this suit.

### **Issues**

- 1. Whether the Claimant was wrongfully dismissed?**
- 2. What remedies are available to the parties?**

### **Evidence adduced by the Claimant.**

- [3] The Claimant testified by witness statement and stated that he was an employee of the Respondent Company from 21/11/2006, initially as a meter reader and by the time of his dismissal on 7/12/2016 he was a lines man, earning Ugx. 1,466,300/=. He contends that in April 2016, he sustained a workplace injury resulting from an electric pole that rolled back, and fractured his left forearm's ulna and radius, requiring surgery. He had to stay at home for 7 months for treatment.

He was, however, denied compensation until he filed a high court civil suit which was resolved out of court.

Regarding the matter before this court he contended that he was summoned for a disciplinary hearing while still on sick leave, therefore he was not given sufficient time to prepare, he was denied access to witness statements of his accusers, and he was not allowed to cross-examine any witnesses and no witnesses were called to testify against him during the hearing. He contends further that the infractions levelled against him of obtaining money by false pretences and aiding the construction of an illegal power line are not listed under the UMEME Human resource Manual as infractions that attract a penalty of dismissal.

#### **Evidence Adduced by the Respondent**

- [4] The Respondent called two witnesses, Angelo Michael Walusimbi (RW1) and Isaac Katewanga (RW2). RW1, Angelo Michael Walusimbi testified in chief that, he interviewed and recorded statements from Mr. Ssekidde Richard the mill owner, Mr. Yiga George William a businessman, Mr. Kayongo Abdul Hakim, the Cable Sult Surveyor and from the suspect, the Claimant, after which he prepared a report in which he established that the Claimant received payment from Mr. Sekidde Richard for installing the illegal power line. He further testified that Claimant met Mr. Sekidde physically at a petrol station in Gayaza on Ziobwe road, and advised him to contract with a company that charges lower fees for power connections than Umeme. He told him that the Company would charge him Ugx. 6,100,000/= compared to Ugx. 8,000,000/= from UMEME. The two agreed and the cost of construction was to be paid in instalments. The first instalment of Ugx. 2,500,000 was paid in person to the Claimant at Benzina Petrol Station Kawempe in the presence of a one Yiga George William. This was after the Claimant delivered the pole to the Maize mill. He further testified that Ssekidde stated that he paid the Claimant an unreceipted sum of Ugx. 5,600,000/- in cash and an additional Ugx.150,000/- on 30/06/2016, via his mobile phone number 0772848501 as consideration for the work done in respect of the illegal transaction. He stated that although the Claimant denied receiving physical cash from Mr. Ssekidde during cross-examination, he confirmed having received mobile money from the said customer. That the Claimant was compelled to connect power later in June 2016, but he advised Mr. Ssekidde to go to MUTTICO offices in Lugogo to obtain a meter box and circuit breakers which he did. On 14/7/2016, when the district Manager



and a one Christine Opoka visited the Maize mill, they informed Sekidde that the connection was illegal and went ahead to disconnect it. Sekidde lodged a formal complaint with the District Manager.

He also established that, whereas the Claimant testified that during the disciplinary hearing, he sent Ugx. 800,000 to Abdul Kayongo, for the purpose of buying a vehicle, during the disciplinary hearing, Abdul Kayongo testified that the Claimant sent him Ugx. 800,000/- his other known number. 0700070001, for him to go to Wakatayi to help him do work for a customer. According to him, the evidence he gathered during the investigation left no doubt in his mind that the customer contacted the claimant to build the illegal powerline, which the claimant constructed and only attempted to cover it up by contracting one Abdul Kayongo to legalize the connection. Based on this evidence he was convinced that it was correct to subject the claimant to disciplinary action for violating Clauses 8.5.13 (xxiii), 8.5.13.4 (ix) and 8.13.4(xvi).

- [5] During cross-examination, he said that he carried out the investigations into the illegal connection, and he attached the report of the findings on the record, as Rex 1, which was an unsigned report. According to him, it was not signed because it was electronic. He also testified that in the report, he stated that the illegal powerline was discovered in July 2016, by staff who went to the field, and the customer. But he commenced the investigation in June 2016. He said he verified the illegal powerline by interviewing witnesses and going to the site, and he found that the customer had no meter box on the site. It was also his testimony that in June 2016, the Claimant sent a gentleman to Ssekidde chard maize mill to connect the mill to power which the gentleman did and thereafter the claimant advised Ssekidde to go to multiple offices in Lugogo and obtain a meter box, circuit breakers a which he did and was later connected. However, he was not aware whether the customer was penalised for operating on an illegal connection, or whether he was billed for the same. He also testified that the Claimant received Ugx. 150.000/- electronically and the Claimant sent Ugx.700,000/ to other clients. He stated that the Claimant received 4m, but he could not prove it. He said it was a conflict of interest for the employees of UMEME to deal with pre-qualified contractors. Any by receiving Ugx. 150,000/- the Claimant had breached the Respondent's code of conduct.



According to RW2 Isaac Katewanga, testified that on 14/07/2016, the Bombo District Team, led by Byron Beine, discovered an illegal three-phase direct supply connection to a maize mill in Wakatayi belonging to Mr. Ssekidde Richard which was immediately disconnected. Investigations into the matter commenced, which established that indeed the line construction was illegally facilitated by the Claimant who was the Respondent's employee based in Bombo. He chaired the disciplinary hearing, but the claimant was not given the investigation report. The minutes stated that the report was not applicable because the Claimant already knew why he was invited for the hearing. According to him, the allegation that the claimant had "aided the construction of an illegal line" and "construction of an illegal line" were the same thing, under section 8.6.23.4, which reads as "Participating or aiding illegal electricity connection as part of gross misconduct. ...." He also said the claimant violated section 8.6.23.410 which reads as "failure to report to top management and mal...." He further testified that Mr. Ssekidde, who is alleged to have given the claimant money, was not called as a witness. However, a one Kayongo Abdul testified that he was to aid the regularisation of the illegal connection, because the claimant sent him money to do so on 26/07/2016. He said the other witnesses were not recorded in the minutes. The hearing took place after 4/11/2016 when the line was commissioned. It was also his testimony that "by the time any member of staff is subjected to raising an explanation, they attach an investigation report to say these are allegations against you, please provide feedback. He said the committee highlighted the allegations to him as per the report. He said "... our intention and intent was to hear from the horse's mouth whether there is any other submission, so we shared what was on the record and gave him an opportunity ...." It was further his testimony that although the allegation was construction of an illegal line, what was established was aiding an illegal electricity construction ... he said the investigation started on 14/07/2016. According to him, the district manager was on site on 14/07/2016 and discovered the illegal connection. On 26/07/2016, money was wired by the claimant to Kayongo's mobile phone, on 28/07/2016, the Cable Sult Company brought an application for the same illegal connection which was discovered on 14/07/2016.

He further argued that Kayongo constructed a powerline which was commissioned by the Respondent and he was called to testify before the disciplinary committee via speaker phone which disabled the Claimant from rebutting his evidence. He cited on *Federal University of Technology, Yola v. Maiwwya* (2013) ALL FWLR Pt. (677) 753 at 764-765, where court held that an employee is entitled to formal notice of their wrongdoing and a fair hearing on the specific charges against them, but in this case, the Claimant was a witch hunted because he filed a suit against the



Respondent for compensation for the injuries he suffered from the work-related accident. Therefore, Court should make a finding that the infractions levelled against the Claimant and his subsequent dismissal were unlawful and unfair.

- [6] In reply, Counsel for the Respondent submitted that the evidence adduced during the disciplinary hearing was sufficient to warrant the claimant's dismissal, because it was established that he flouted the Electricity connection procedures, which posed a danger to the Respondent's business and the general public. Therefore, the dismissal was the most reasonable and logical outcome. According to him, the Claimant's summary dismissal was lawful under Section 68(now 67) of the Employment Act, 2006, which entitles an employer to summarily dismiss an employee for gross misconduct. He argued that the question whether the Claimant's dismissal from employment was fair or unlawful could only be determined by establishing that Sections 65 and 67 of the Employment Act were complied with. Therefore, the Court has to resolve:

- whether the Respondent had a justifiable reason to dismiss the Claimant and
- whether in dismissing the Claimant, the Respondent followed the due process.

He also cited the definition of dismissal under Section 2 of the Employment Act defines dismissal and suggested that the standard of proof in employment matters does not require proof beyond reasonable doubt but rather a reasonable belief that the misconduct occurred, as was held in *Bwengye Herbert v. Eco Bank* (2017) UGIC 26 that: *"The employer need not prove the case against the employee beyond reasonable doubt. It is enough for the employer based on the facts of the case to show that he/she was convinced that the employee committed wrong."*

He argued that the Respondent established the following material facts during the disciplinary hearing:

- a. That an illegal line was constructed at Mr. Ssekidde's premises and its discovery predated the application for its construction.
- b. That the evidence showed that the claimant received money from the said Ssekidde for purposes of constructing the impugned powerline.
- c. That all the witnesses confirmed that the claimant sent money to Mr. Abdul Kayongo of Cable Sult Limited in order to rectify the connection.

He argued that the evidence from the investigations and testimonies overwhelmingly pointed to gross misconduct, justifying the dismissal of the Claimant.

- [7] Counsel further submitted that, in accordance with Section 66(1) now(65) of the Employment Act which requires an employer before dismissing an employee for misconduct or poor performance, to explain the reason for considering dismissal and to give the employee opportunity to respond, in line with *Ebiju vs Umeme Ltd(supra)*, that laid down the tenets of a fair hearing in a disciplinary hearing (supra), the Claimant was issued with a letter on 17/11/2016 requiring him to explain the allegations brought against him, which he did, but he provided no substantive defence (Exhibit R4 and R5 of the Respondent's Trial Bundle). On 24/11/2016, he was invited for a disciplinary hearing and informed about his right to call witnesses, the right to be represented, the right to challenge evidence against him and the right to appeal the decision. He relied on *Catherine Karisa v Hima Cement HCCS No.84 of 2102*, which cited *General Medical Council v Spackman* (1943) ALLER 627, where court held that "the situation of demanding strict adherence to the procedures applied in the court of law cannot be envisaged in the employment disciplinary body."

On 2/12/2016, the Claimant attended the disciplinary hearing, accompanied by Ms. Ruth Mwanga, a union representative. During the hearing, the charges were read to him and he was given an opportunity to give a verbal explanation in addition to his written response, which he did. He further submitted that RW2 testified that the disciplinary committee even called a witness, a one Abdul Kayongo, who confirmed the Claimant's guilt. In the circumstances, the Claimant was given an opportunity to present his case before an impartial disciplinary committee that considered his side against the investigative report. He cited *Benon Kanyongoga and others v Bank of Uganda* LDR No 80 of 2014, and *DFCU Bank Ltd V Donna Kamuli*, CA No. 121 of 2016, for the legal proposition that the disciplinary hearing envisaged under section 66(now 65) did not require the employer to hold a mini court and the hearing could be conducted either by correspondences or by face to face hearings and in this case, the Claimant was given opportunity to defend himself both in writing and orally. Therefore, he was given a fair hearing.

## **Decision of Court**

### **1. Whether the Claimant was wrongfully/unfairly terminated?**

- [8] It is not in dispute that the Claimant was employed by the Respondent and he was summarily dismissed on grounds of gross misconduct and he was summarily dismissed on 7/12/2016. Section 65 (1) and (2) of the Employment Act is to the



effect that an employee shall not be terminated or dismissed from Employment, unless it is for a valid reason connected with the performance or conduct of the employee and after giving the employee a fair hearing. Therefore, the onus of proving the existence, validity and fairness of the dismissal lies with the employer. (see Section 67 and 69 (6) of the Employment Act). This court in *Bwengye Robert v Ecobank (U) Ltd (supra)*, held that the employer need not prove a case against the employee beyond reasonable doubt and it was enough to justify the reason based on the facts of the case. Therefore, in order to determine whether an employee was unlawfully or unfairly dismissed, court must establish the existence and validity of the reason for dismissal and whether the procedure for dismissal was fair (see *Nassuna v Equity Bank Ltd*) and as provided under Section 67 of the Employment Act that requires the employer to genuinely believe that reason for dismissal exists and the employee in issue is culpable.

The Claimant in the labour dispute before this Court contends that his summary dismissal was unfair and unlawful because the legal tenets of a fair hearing were not complied with and there was no proof of the allegations levelled against him. After carefully analysing the record, we established that he was accused of committing the following offences:

1. Obtaining money by false pretences from one Ssekidde Richard around January 2016.
2. Construction of an illegal line at the premises of one Ssekidde in Wakatayi.

- [9] He was invited for a disciplinary hearing on 24/11/2016 and subsequently summarily dismissed on 7/12/2016. The dismissal letter stated the reasons for the summary dismissal as; "obtaining money by false pretence from one Ssekidde Richard around January 2016 and aiding the construction of an illegal line at the premises of one Ssekidde in Wakatayi."

It was the Respondent's evidence that preliminary investigations were conducted before the Claimant was charged, he was given an opportunity to respond in writing and orally before a disciplinary committee. Evidence was also led in court to show that the Respondent had a justifiable reason for dismissing the Claimant. It was the evidence of RW1 that he investigated the allegations levelled against the Claimant and presented a report marked Rex1 on the respondent's trial bundle. He established that the Claimant aided the construction of an illegal 3 phase power line after receiving Ugx. 5,600,000/- from one Ssekidde Richard. He also established that the Sentongo, the Claimant was introduced to a one Ssekidde Richard by a one Tadeo around January 2016, who required power at his maize



mill in Wakatayi. Around the end of January, the Claimant contacted Ssekide via his telephone number 0772 848501, to confirm his request for power connection to his mill and upon confirmation, the 2 agreed to meet physically. 2 days later they met at a petrol station in Gayaza and agreed that the Claimant would connect power at Ssekide's maize mill at a fee of Ugx. 6,100,000/- which was supposedly cheaper than the official fee the Respondent would have charged of Ugx. 8,000,000/-. The report made reference to attachments marked W1 and W2 and Appendix 1 which we presumed was evidence to substantiate the findings of the investigation, but the attachments were not placed before the court for our inspection and analysis. In the absence of the attachment, the report was unsubstantiated and its authenticity was questionable. Although we are minded of the fact that the standard of proof in employment matters need not be beyond reasonable doubt and what is required is that on the preponderance of evidence to establish that it is probable that the particular state of affairs existed, where the allegation is so serious, a higher standard of proof would be required. In the case before us, the Respondent alleged that the Claimant obtained money by false pretences from a one Ssekide and constructed an illegal power line at Ssekide's maize mill in Wakatayi. These charges are of a criminal nature, therefore requiring a higher standard of proof. We are fortified by the remarks of Lord Denning in *Bater v Bater*, 1950 2 ALLER,<sup>1</sup> cited in Principles of evidence, which illustrate this as follows:

" it is of course true that by our law a higher standard of proof is required in criminal than in civil cases. In criminal cases, the charge must be proved beyond reasonable doubt, but there must a degree of proof within that standard... so also in civil cases the case must be proved by a preponderance of the probability within that standard. The degree depends on the subject matter. A civil court, when considering a charge of fraud, will naturally require for itself a higher degree of probability than that which it would require when asking if negligence is established. It does not adopt so high a degree as a criminal court, even when it is considering a charge of a criminal nature; but it requires a degree of probability which is commensurate with the occasion."

- [10] As already discussed, the onus is on the Respondent to prove on a balance of probabilities but in this case the allegations levelled against the claimant that; he obtained money by false pretences and constructed an illegal powerline at Ssekide Richard's maize mill in Wakatayi, is so serious that the standard of proof required of the Respondent is more than preponderance of probabilities. The Respondent

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<sup>1</sup> Principles of Evidence; Schwikkard, Van Der Merwe, 2002 2<sup>nd</sup> Edition.

is therefore expected to adduce cogent evidence. We carefully analysed the report on which the investigation report, the minutes of the disciplinary meeting and the evidence adduced in court and established that for instance, the allegation that money was wired on the Claimant telephone number was not substantiated with evidence of the electronic transaction in form of phone print outs, the witnesses who supposedly saw the claimant and Ssekide meeting were not called during the disciplinary hearing or before the court to substantiate the report, we were not convinced by the assertion that the Claimant sent Ugx. 800,000/- to Kayongo Abdul an employee of Cable Sult for purposes of the regularising the illegal powerline which was supposedly disconnected by the Respondent on 14/07/2016 for being and an illegal line on a direct supply and because the Respondent granted Cable Sult authorisation for its construction on 28/07/2016 and commissioned the same line on the 4/11/2016 before it resolved issue regarding its illegal construction by the Claimant. It was hard to believe RW1 that he was not aware of the application and the commissioning of the line, and it could not have been commissioned because it was illegal. We also found it peculiar that the investigation commenced in June before the discovery of the illegal connection on 12/07/2016. Both of the Respondent's witnesses testified that the investigations began in June 2016, and that the District Manager and his team discovered the illegal powerline on 14/07/2016, and they disconnected the power. They both contradicted themselves when they stated that the investigation commenced in June 2016. It was also peculiar that Claimant was only invited to respond to the allegations on 24/11/2016 and appeared on 2/12/ 2016 after the application by Cable Sult was approved on 28/07/2016 and the line was commissioned on 4/11/2016. The minutes of the disciplinary committee did not show that the Claimant was given an opportunity to call any witness or to cross-examine any. Even the evidence of Abdul Kayongo, who is said to have confirmed the Claimants' guilt, was not recorded. RW2 stated that there were more witnesses but their evidence was not recorded. In addition, a scrutiny of the remarks made by each of the members of the disciplinary committee revealed that the Gerald Sentongo, the Claimant, made inconsistent submissions during the hearings, but none of them described the actual inconsistency and how the claimant was inconsistent.

In light of this analysis, we are not convinced that the Respondent has demonstrated that it had reasonable and sufficient grounds to link the Claimant to the allegations levelled against him.



- [11] The Claimant also contended that the Respondent violated the principles of natural justice because he was charged for construction of an illegal powerline to Ssekide's maize mill in Wakatayi, but he was dismissed for aiding the construction of an illegal power line, yet the invitation to attend disciplinary hearing that was issued to the Claimant on the 24/11/2016, indicated the charge as "construction of an illegal line at the premises of one Ssekide Richard in Wakatayi". The Respondent argued that the 2 charges meant the same thing within the meaning of Section 8.6 .23.4 ix of the Human Resources Manual. The section provides as follows:

"Gross misconduct includes any violation of the company's rules and regulations of such a degree that continued employment of the employee is intolerable. The following are examples of some scenarios that amount to gross misconduct warranting an employee's summary dismissal provides that in all cases it shall be after a disciplinary hearing....  
ix. participating in or aiding illegal electricity connections..."

- [12] Section 65(1) and (2) is explicit on the requirement for the employer to give the employee in issue the reasons or allegations levelled against him or her in a language the employee understands. This is to enable the employee to prepare his or her response or defence. Therefore, the employer is not at liberty to change the charges at the hearing stage. By doing so, the employer would be violating the tenets of natural justice as laid down under section 65 and *Ebiju James v Umeme* (supra). The Employer would be denying the employee a right to exculpate him or herself. We are persuaded and fortified by the Kenyan case of *John Karui Torongei v National cereals & Produce Board* Industrial Cause No. 6 of 2013 where Ongaya J stated that, while considering a disciplinary case, the employer is not at liberty at the hearing stage to deviate from allegations of misconduct or poor performance or ill health as may have been alleged in the notice delivered to the employee before the hearing stage. It is not open for the employer to wander away in a drift from the legitimate inquiry as has been commenced in the suspension letter...". The Respondent in the instant case "wandered away in a drift", requiring the Claimant to answer to the charge of aiding the construction of an illegal powerline yet the notice for the hearing dated 24/11/2016, indicated the charge as "Construction of an illegal line at the premises of one Ssekide in Wakatayi." This was confirmed by RW2 when he testified that the investigation and the disciplinary hearing established that the Claimant had not constructed the illegal powerline but rather aided its construction. To compound it all, the Respondent did not adduce sufficient evidence to prove the aiding of the construction. The Claimant also contended that he was summoned while he was still on sick leave therefore, he did not have sufficient time to prepare and he was denied an opportunity to cross-examine key



witnesses, including Sekidde Richard the impugned customer and the disciplinary process was rushed, and lacked procedural fairness which contravened the principles of natural Justice.

Although the employer retains the prerogative to manage its internal affairs, including its disciplinary mechanisms, it is expected to do so fairly. Even if the Claimant did not deny that he attended the hearing, it was not disputed that he was still on sick leave. It does not matter that he did not protest, it is clear that he was still on sick leave following the injuries he sustained during the course of his duties. The evidence on his trial bundle indicates that he sustained injuries in April 2016, he sought compensation which was denied. Consequently, on 19/08/2016, he filed a suit in the High Court vide HCCS No. 555 of 2016, which was settled out of court on 13/10/2017. We established that the claimant sustained was invited for a disciplinary hearing, and even if he was still on sick leave, he was not able to attend the hearing. It was his own evidence that he sustained his injuries in April 2016, and he was treated at home for a period of 7 months, and the Respondent did not controvert this evidence. Although the claimant attended the hearing, the Respondent acted unfairly when it summoned him during his sick leave.

Was the hearing a fair hearing?

- [13] The Court's role is to ensure that the disciplinary process is conducted in accordance with the law and not to descend into the arena of the disciplinary proceedings. We had already established that the claimant was invited while he was still on sick leave, an analysis of the minutes of the disciplinary hearing does not indicate that he was given an opportunity to call any witnesses or to cross-examine any. Save for Kayongo Abdul, the minutes do not show that any other witness testified against the Claimant. The evidence glaring shows that, even if the Claimant attended the hearing, he was not given the liberty to exercise the rights that were read to him at the beginning of the hearing. It is clear from the minutes that the Respondent, did not demonstrate that he was given an opportunity to do so and most importantly, the Respondent deviated from the charges stated in the notice for the hearing from "construction of an illegal line" to aiding the construction of an illegal line," this denied the Claimant an opportunity to prepare his defence on the new charge and was in complete violation the principles laid down under section 65(1) and (2) and *Ebiju James Vs Umeme Limited* HCCS 0133/2012, which amounted to procedural impropriety. This was compounded by not giving him the investigative report prior to the hearing, yet the Respondent heavily relied



on it to find him culpable. In any case, the report was not signed, and the authenticity and veracity remain questionable.

We respectfully do not agree with the assertion by RW1 that the report was not signed because it was an electronic version. Most if not all documents are prepared electronically, but once printed they must be authenticated by the author, by signing it (See *Omega Bank v OBC*). The veracity of the report was further brought in doubt because both of the Respondent's witnesses testified that the investigation commenced in June, yet the illegal connection was discovered on 14/07/2016. All the allegations regarding his obtaining money by false pretences and construction of an illegal powerline for Ssekidde's maize mill at Wakatayi, were not substantiated. In any case, it is on record that Cable Sult applied for the construction of the powerline on 21/07/2016 and the respondent approved on 28/07/2016. It further commissioned the line on 4/11/2016 and called the claimant to respond to the charges on 24/11/2016.

- [13] We respectfully do not believe the evidence of the RW1 who stated that the applications for the line were an afterthought intended to rectify the illegal connection, because the alleged connection was subject of an investigation, for which disciplinary action had not commenced since the invitation for a hearing was issued on 24/11/2016. It is an absurdity that the institution that was condemning an illegality was the same institution involved in regularising the same illegality when it accepted an application for the construction of the line during the pendency of disciplinary proceedings in respect of an illegal construction of the same line. The circumstances of this case made it plausible to believe the assertion by Counsel for the claimant that his dismissal was orchestrated by his demand for compensation for the injuries he sustained at work and his insistence when he filed a suit against the Respondent for the same. We are inclined to believe the argument that the disciplinary process was only intended to legitimise the Respondent's pre-determined decision to dismiss the Claimant for his insistence on being compensated.

In conclusion, the Respondent failed to demonstrate with credible evidence that the Claimant committed the offences stated in the invitation for a hearing of:

1. Obtaining money by false pretences from one Ssekide Richard around January 2016.
2. Construction of an illegal line at the premises of one Ssekidde in Wakatayi.

The Respondent did not establish the existence and validity of the reasons for the claimants and having invited him during the subsistence of his sick leave, and

having deviated from the allegations stated in the notice for the hearing at the hearing stage, it is our finding that the dismissal was substantively unlawful, and procedurally unfair.

## **Issue 2**

### **What remedies are available to the Parties?**

- [14] The Claimant prayed for declaratory orders that his dismissal by the Respondent was unfair, unlawful, and a breach of his employment Contract. We have established that indeed the Claimant's dismissal was substantively unlawful and procedurally unfair.

#### **a) General damages**

The Claimant prayed for general damages of Ugx. 150,000,000/-.

It is trite that General damages are compensatory in nature. They are intended to return the injured party to the position he or she was in before the injury occasioned by the Respondent occurred. (Resitutio in integrum) Counsel for the Claimant argued that having established that the Claimant's dismissal was substantively unlawful and procedurally unfair, he is entitled to an award of general damages. He worked for the Respondent for 10 years until his summary dismissal and by the time of his dismissal he was earning Ugx. 1,466,300/= per month. We had an opportunity to scrutinize annexure "J" at page 24 of the claimant's trial bundle, one of his pay slips, and have no doubt in our minds that he was earning gross salary of Ugx. 1,466,000/-. In the circumstances, we think that an award of **Ugx. 45,000,000/=** is sufficient general damages for unfair and unlawful termination.

#### **b) Punitive and Exemplary damages**

The claimant prayed that when damages are at large, the court, when making a general award, may take into account factors such as malice, humiliation, and distress, which exacerbated the claimant's distress. It was submitted that the Respondent's actions amounted to high-handedness and intentional strategic means of pushing him out of employment, on baseless serious allegations of obtaining money by false presence and aiding the construction of an illegal powerline.

The Court *Rookes v Bernard (1964) I ALLER367*, cited by counsel for the Respondent stated that, punitive damages are awardable to punish, deter,

express outrage of the court at a defendant for high-handed, malicious, vindictive, oppressive conduct.

We strongly believe that the conduct of the respondent in the instant case was malicious, high-handed and oppressive. Therefore, the Claimant deserves to be awarded punitive damages to punish the Respondent and deter it from committing similar acts against any other employee who may wish to exercise their rights during the subsistence of their employment.

We believe that an award of **Ugx.10,000,000/-** as punitive damages is sufficient.

**c) Payment in lieu of notice**

Section 57 requires that an employer must give notice to an employee before dismissing or terminating him or her except where the dismissal is a summary dismissal as envisaged under section 68 of the Employment Act. Section 57(3) in particular, provides for notice periods of notice depending on the period the employee has served. The Claimant in the instant case, worked for the Respondent for a period of 10 years before he was unlawfully summarily dismissed, therefore in accordance with subsection 3 (d) of section 57, which provides that:

*(3) The notice required to be given by an employer or employee under this section shall be-...*

*(d) not less than 3 months where service is 10 years or more;... ”*

The Claimant having served for 10 years is entitled to an award of 3 months' notice. The claimant wishes to be paid in lieu of notice. Counsel for Respondent conceded to the Claimant being awarded payment in lieu of notice but stated his salary as Ugx. 1,000,000/-. We have established that by the time of his dismissal, the Claimant was earning a gross salary of Ugx. 1,466,000/- per month. Therefore, having worked for the Respondent for 10 years, he is entitled to 3 months' notice. His claim for payment of 3 months' salary in lieu of notice is therefore granted in the sum of **Ugx. 4,398,900/=**.

**d) Severance Allowance**

The claimant prayed for severance allowance in accordance with Section 86 of the Employment Act, which provides for the payment of severance allowance to an employee who has worked for an employer continuously for more than 6 months. He also cited **Donna Kamuli v DFCU Bank LDC No. 002/2015** where

this court held that where the parties did not negotiate a formula for calculating severance pay it would be calculated at the rate of 1 month for every year served. This was upheld by the court of Appeal in ***Dr. Peter Kityaba Waswa v African Epidemiology Network (AFNET)***.

The Respondents conceded to the payment of severance pay although they insisted on Ugx 1000,000/- being reckoned as the monthly salary.

We found nothing on the record to indicate that the parties negotiated a formula for paying severance pay. Therefore, the formula in Donna Kamuli(supra) is applicable. The Claimant having served the Respondent for 10 years is entitled to severance pay of Ugx. 1,466,300/= per month x 10 months for the 10 years he worked, amounting to **Ugx.14,663,000/=**.

**e) Untaken Leave Days.**

Section 53 provides that:

1) *Subject to the provisions of this section*

*(a) "An employee shall once in every calendar year be entitled to a holiday with full pay at the rate of 7 days in respect of each period of a continuous four months of service to be taken at such time during such calendar year as may be agreed between the parties. (Our emphasis).*

*(b) An employee shall be entitled to a day's holiday with full pay on every public holiday during his or her employment or, where he or she works for his or her employer on a public holiday, to a day's holiday with full pay at the expense of the employer on some other day that would otherwise be a day of work.*

*2) where an employee who works on a public holiday receives, in respect of work, pay at not less than double the rate payable for work on a day that is not a public holiday, that employee shall not be entitled to a day's holiday with full pay or payment in lieu of the public holiday.*

*3) Subject to subsection (2), any agreement to relinquish the right to the minimum annual holidays as prescribed in this section, or to forgo such a holiday, for compensation or otherwise, shall be null and void.*

*4) This Section shall only to employees*

*a) Who have performed continuous service for their employer for a minimum period of six months*

*b) Who normally work under a contract of service for sixteen hours*



a week or more.

*(5) An employee is entitled to receive, upon termination of employment, a holiday with pay proportionate to the length of service for which he or she has not received such a holiday, or compensation in lieu of the holiday.*

It is our interpretation that although section 53 entitles an employee to leave as of right, he or she cannot exercise this absolutely. The employer reserves the prerogative of managing his or her organisation, therefore he or she has the mandate to determine when an employee should take leave. It is therefore the responsibility of the employee to apply for leave as an indication of his or her agreement with the leave schedule proposed by the employer, and the only way to confirm this is in writing. We are therefore persuaded by the decision in *Mugisha Abrahm & Another v G4s Security Services (U) Ltd* HCCS No. 138 of 2008, cited by the Respondent where court stated that a mere statement that leave was not take is not sufficient and it is upon denial of taking leave that an employee is entitled to payment in lieu of leave. We have not found any evidence indicating that the claimant applied for leave and it was denied, in the circumstances, this claim cannot stand. It is denied.

**f) Certificate of Service**

The Claimant sought a certificate of service in accordance with Section 60 of the Employment Act, the Claimant shall be entitled to a certificate of service.

**g) Costs of the suit**

Counsel for the Claimant relied on Section 26(2) of the Civil Procedure Act, costs of any action, cause or matter follow the event unless Court for good cause orders otherwise. Whereas Counsel may be correct in circumstances where the Claimant succeeds, the story is different where the same claimant is required to pay the Respondent costs. We maintain that costs in Labour disputes are granted in exceptional circumstances. This is because of the unequal contract between the employer and the employee. Whereas the employer is the holder of capital and therefore he or she can afford to incur the costs of litigation, the employee who has lost the means of earning is not in the position to pay costs. Therefore, to award costs against an employee who has lost his or her job would amount to condemning him or her to destitution. In



order to ensure equality in justice, however, this principle applies to the employer as well.

In the circumstances no order as to costs is made.

**Final Orders.**

1. It is so declared that the Claimant's termination was substantively unlawful and procedurally unfair.
2. The Claimant is awarded general damages of a sum of Ugx. 45,000,000/= for unfair and unlawful dismissal.
3. Is granted punitive damages of Ugx. 10,000,000/=.
4. Is granted payment in lieu of notice of Ugx. 4,398,900/=.
5. Is granted severance allowance of Ugx. 14,663,000/=.
6. Is denied the untaken leave days.
7. The Respondent is directed to offer the Claimant a certificate of service.
8. No orders as to cost is made.

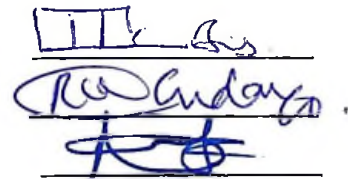
Signed in Chambers at Kampala this 5<sup>th</sup> day of March 2025.



Hon. Justice Linda Lillian Tumusiime Mugisha,  
**Head Judge**

**The Panelists Agree:**

1. Hon. Charles Wacha Angulo,
2. Hon. Rose Gidongo &
3. Hon. Beatrice Aciro Okeny.



**5<sup>th</sup> March 2025**

**2:30 pm**