THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE NO. 33 OF 2017
(Arising from KCCA/CEN/LC/69/2016)

1. **ODORA SUSAN**
2. **APWATUM CHARLES**
3. **KAYABULA MARY LUCY ::CLAIMANTS**

V

STANBIC BANK (U) LIMITED::: RESPONDENT

Before:
Hon. Head Judge, Linda Lillian Tumusiime Mugisha.

Panelists:
1. Hon. Harriet Mugambwa Nganzi,
2. Hon. Fx. Mubuuke &
3. Hon. Fidel Ebyau.

Representation:
1. Mr. Aloysius Onyait of M/s. Boab & Co. Advocates for the Claimant.
2. Mr. Ferdinand Musimenta of M/s. S & L Advocates for the Respondent.

AWARD

Background

[1] The Claimant was employed by the Respondent between 26/06/1983 and 13/10/2014 in various positions. By the time she ceased to be employed, she was holding the position of Manager CV projects and Acting Manager Payments.

According to her, by 20/11/2001, the Respondent had entered into a Collective Bargaining Agreement as a member of the Uganda Bankers Employers' Association with the National Union of Clerical Commercial Professional and Technical Employees (NUCCPTE) for the period 2000-2002. The collective agreement provided for the terms and conditions of service for clerical and non-clerical workers including payment of severance allowance 3 months' salary for every year worked in respect of severance allowance. It is her case that her employment having been terminated on account of permanent incapacity assessed at 40%, she was entitled to the following:

a) A declaration that she is entitled to severance pay on account of permanent incapacity assessed at 40% due to work-related back pain, computed in accordance with the collective Bargaining Agreement (CBA),
b) repatriation Allowance at the rate of Ugx. 7,916.66 per kilometer,
c) salary arrears for every January and February for 12 years,
d) payment of funds deducted from her account to clear her outstanding loan,
e) 2% of her consolidated salary between 2010 and 2014, unremitted contribution to the pension fund,
f) wages for October 2014,
g) special, aggravated/punitive and general damages for mental pain, anguish, suffering, humiliation caused by the Respondent.

Facts of the Case

[2] The Claimant was an employee of the Respondent Bank between 1996 and 2008, she worked as an Officer trainee clearing, her work involved sitting for long hours before a desktop computer. Between 2001 and 2008, she was responsible for payment operations processing, which included scrutinizing all cheques, requiring sitting for long hours. This resulted in low back pain, which subsided only when she was appointed Manager Procedures, in 2007. The pain returned when she was posted back to the officer as Acting Manager Payments. She was examined by a qualified medical practitioner at Mulago hospital, who gave her 3 options as follows: to do lighter work, undergo corrective surgery, or retire on medical grounds. She opted to stop working on medical grounds. After an independent exit medical examination by a medical practitioner of the Respondent's choice, she was allowed to retire on medical grounds. She was however not privy to the findings of another evaluation and independent medical examination which would have entitled her to

compensation under the Respondent's Personal Accident Policy and to severance pay as provided under its Severance Policy and the Employment Act 2006.

[3] After her exit, she was not paid severance and repatriation as provided in the Respondent's respective policies on severance and repatriation. She filed a complaint before the KCCA Labour Officer who mediated the matter and computed her benefits in the sum of Ugx. 760,703, 976/-. When the Respondent did not respond, the labour officer referred her claim to this court for final determination. She also contends that her terminal benefits computed at Ugx. 41, 773,179/- were held as a lien in respect of an outstanding loan she held with the Respondent Bank, having denied her the opportunity to reschedule the loan and denied her access to insurance cover for the unpaid loan on account of her permanent physical incapacity resulting from the work-related back pain, yet she was paying long term insurance premium. She contends that the Respondent treated her unfairly, causing her suffering and embarrassment; therefore, it should pay all her entitlements and be condemned in general, as well as aggravated damages and costs of the suit.
The Respondents denied all her claims.

Issues for resolution

The parties framed 1 issue for resolution which we reframed as follows:

1. **Whether the claimant is entitled to terminal benefits or any other remedies claimed?**

a) Claim for severance pay

[4] It was the Claimant's oral testimony that on her own volition, she applied to retire in 2014, on medical grounds. She stated that "I made a decision to retire. I did not see any option to stay and work. It was her testimony that her treating doctor, Dr. Nyati Milton from Mulago referral Hospital, recommended that she stop all activities that require her to sit for long periods at work and in the alternative, she should retire in the interest of her health. She chose to retire in the interest of her health. It was also her testimony that she also had the option to undergo corrective surgery, and she could have worked for another 5 years, or to be given lighter work. It was further her evidence that based on the Respondent's severance policy, she was entitled to severance pay. It was also her evidence that on 23/09/1999, "...I was given a managerial position and according to the bank by becoming a manager I ceased to

qualify to be considered unionized." She also testified that she was recruited from Kampala.

The Respondent refuted her claim on the grounds that the Medical report did not find that she was permanently incapacitated and she had options that could have enabled her to continue working but she elected to retire early instead. In any case, she prematurely tendered her application for early retirement before the Independent medical evaluation report was issued, therefore she did not qualify for severance pay as provided under the Respondent's Severance Policy.

Decision of Court

[5] It is not in dispute that the Claimant served the Respondent in various positions from 26/06/1983 to 13/10/2014 when he was allowed to retire early. It is further not in dispute that she applied for early retirement on medical grounds, following a diagnosis that she had a degenerative back disease, which required her to either undergo corrective surgery, be given lighter work, or be allowed to stop work in the interest of her health and chose to retire early. The expectation was that the Claimant would serve until the stipulated retirement age of 58, which was her contractual retirement age, but she retired early due to her ill health. The evidence on the record indicates that, after the Respondent received the medical report that was issued by her personal doctor, indicating her medical problem as degenerative disease-causing severe back pain, the Respondent went further to seek an independent evaluation of her medical condition which it received on the 11/09/2014, from Mulago referral hospital, signed by a one Dr. Nyati Mallon an orthopedic surgeon, marked "SO3" on her trial bundle. The Respondent requested an additional medical report/assessment from the Medical Arbitration Board. We believe that by seeking further verification of the claimant's medical condition, the Respondent was intended to inform themselves of her true medical condition, which was in order. However, given the circumstances of the case, this evaluation ought to have been done within a reasonable time for a decision to be taken based on the report. This was not the case because the independent report was only issued in 2 years after the claimant had been diagnosed and given the 3 options already discussed before.

[6] The Respondent contended the Claimant's incapacity as assessed was not what was envisaged under Section 86 of the Employment Act, because she was not declared unfit to work. We respectfully disagree, because if this was the case, the

Respondent should not have accepted her application to retire on medical grounds, without giving her alternative light work as an option. We also do not accept the assertion that she applied prematurely before the issuance of the medical report from the Medical Arbitration Board (the independent report) cannot be attributed to her because she was not the one who requested this evaluation. The Respondent, having intended to rely on an independent report, should not have allowed her to retire on the basis of the medical report from Mulago referral hospital.

In any case, no evidence was placed before us to indicate that the Respondent was willing to and did give the Claimant alternative lighter work and she failed and or refused to undertake it. We are fortified by the fact that the independent report, the respondent insists should have been in place before her application to retire early, only issued almost 2 years after she was allowed to retire.

We therefore, respectfully do not associate ourselves with the assertion, that her request to retire before the independent medical report was issued precluded her from receiving severance pay as provided under the Respondent's severance policy and the Employment Act 2006. This is especially true in the absence of any evidence that she was given lighter work equivalent to her role as Acting Manager Procedures, and she refused to do it. On the contrary, by accepting her application for early retirement, based on the medical report from Mulago, the Respondent had elected to ignore the findings of the independent report and having not suggested to her the alternative light work she could undertake, it had voluntarily allowed her to retire early on medical grounds. It can therefore not turn around now to disassociate itself from the early retirement as a basis to deny her, her entitlement to severance pay. Clause 1 of its own Severance pay policy obligates it to pay an employee severance allowance where among other circumstances, the employee terminates his or her contract because of physical incapacity not occasioned by his or her own willful misconduct. This clause resonates with Section 86 (c) of the Employment Act which entitles an employee who terminates his or her contract because of physical incapacity not occasioned by his or her own serious and willful misconduct to payment of severance allowance. We are satisfied that the Claimant's physical incapacity was not occasioned by her own serious and willful misconduct and her application for early retirement was based on medical reasons resulting from severe back pain.

[7] Even if RW1 testified that the Claimant could have undertaken a teller's work, which could be carried out while standing, she did not adduce any evidence to demonstrate that the teller work was given to the claimant and she refused to do it and most importantly that the teller work envisaged was at the same level as the role of Acting Manager Procedure that she was holding at the time. It is therefore our finding that the Claimant in the circumstances was entitled to payment of severance allowance as provided for under clause 1 of the Respondent's policy and section 86 (c) of the Employment Act 2006.

We are inclined to agree with Mr. Anyait Counsel for the Claimant that, the Respondent's reliance on the independent medical report, was only intended to deny the Claimant her entitlement to severance pay, that she qualified to be paid under clause 1 of the Bank's severance Policy and section 86(c) of the Employment Act 2006.

[8] Regarding the computation of the severance pay, the claimant prayed that it is computed based on the Collective Bargaining Agreement (CBA), which covered clerical and non-clerical workers. However, it was her testimony that she ceased to be unionized, when she was promoted to a Managerial position, therefore the CBA did not apply to her. For avoidance of doubt, we had an opportunity to analyze the CBA and established that it provided that the severance allowance was to be paid to employees who are rendered redundant. The Claimant in the instant case, applied to retire early.

Section 88 of the Employment Act provides that the calculation of severance pay shall be negotiable between the employer and the workers or the labour union that represents the workers. We also scrutinized the Respondent's Severance Policy and did not find any provision regarding the formula for calculating severance pay. In the circumstances, we shall apply the formula proposed by this court in *Donna Kamuli vs DFCU Bank Ltd,* LDC No.2 of 2015, which was upheld by the Court of Appeal in *African Field Epidemiology Network vs Peter Kityaba,* CA No.124 of 2017, of 1 month's salary for every year served. The Claimant served the Respondent from 26/06/1983 to 14/10/2014, a period of 31 years. By the time of her early retirement, she was earning gross Ugx. 7,923,973.083/- as at March 2013, therefore she would be entitled to Ugx. **7,923,973.083/-** x 31 months amounting to **Ugx. 245,643,165.6/-.**

b) Penalty for not paying severance.

[9] It is the Claimant's case that, the Respondent having not paid her severance allowance when it fell due, on 14/10/2015, when her application for early retirement was accepted, the Respondent should be penalized in accordance with section 92(2) now 9 1(2). She argued that having been assessed at 40% permanent incapacity, she ought to have been paid immediately. Section 86 provides that an employee who terminates his or her employment on grounds of physical incapacity is entitled to be paid severance allowance, and where it is not paid, Section 91 provides that such an Employer will be penalized by paying a fine calculated at two times the amount of severance allowance payable.

It is the correct position that, the payment of severance allowance must be done after the circumstances provided under section 86 of the Employment Act have been ascertained and it is an offence for an employer not to pay severance allowance willfully and without good cause and in the manner and within the time provided under the Act. Subsection 2 of Section 91 imposes a fine on an employer who commits the offence, and the fine is calculated at two times the amount of severance allowance payable.
At law, the imposition of a fine for an offence, requires the institution of criminal proceedings which result in a conviction. In the circumstances, this claim falls within the purview of the Office of the Director of Public Prosecutions.

c) Unremitted contribution to the Pension Fund

[10] The Claimant contends that whereas the Respondent/employer undertook to contribute 7% and the Claimant/employee, 2.5% into the pension Fund, the Respondent unilaterally changed the terms to 5% and 2.5% respectively and 2% for management of the Fund. Counsel cited *Hobbs vs TDI Canada Ltd 2004; Can II 44783(ON CA) cited in Mrs. Pamela Sozi v The Public Procurement and Disposal of Public Assets Authority Hccs No. 063 of 2012,* for the legal proposition that an employer cannot unilaterally amend a significant term of an employment contract without the employee's consent and without furnishing the employee with consideration for the said amendment *and Francis v Canadian Imperial Bank of Commerce 1994 Can II 1578(ON CA)* for the same legal proposition. Counsel asserted that the Claimant's consent ought to have been sought before the

Respondent began remitting 5%instead of 7%, which was contrary to the terms and conditions of her contract.

In reply, Counsel Musimenta argued that RW1 testified that the Respondent remitted the 7% but it did not have control over the management of the fund. It was also RW1's testimony that the manager of the fund informed her that, although the Respondent remitted 7% to the Fund, it applied 2% towards the administrative costs of the fund, leaving 5% which was remitted for the benefit of the Claimant, and this applied to all employees. Therefore, the Respondent cannot be faulted for this.

Decision of Court

[11] It is not in dispute that the Respondent established a contributory pension fund in which the Respondent undertook to contribute 7% and the employee 2.5% of the Employee's salary respectively, totaling to 9.5% of the employee's salary monthly. However, the Claimant contends that the salary slips attached under annexure SO11 and SO12, indicate that the Respondent only deposited 5%, into her pension account. We had an opportunity to carefully peruse annexures SO11 and SO12 and established that the Respondent deposited only 5 % into the Claimants' Account. We also scrutinized SO9, dated 19/11/2001, titled changes to the pension fund, and members of the fund were informed of changes in the management of the fund and asked to express their desire to join in light of the changes, which included the following:

1. The new fund will operate similar to a savings account, with an opening balance at the beginning of the year, contributions paid in during the year, and an addition of interest and a closing balance at the end of the year.
2. Your contributions will be expressed at 2.5% of your consolidated salary, which is very similar to your present contribution of 5% of pensionable salary.
3. The bank's contribution will be much higher than yours at 7% of consolidated salary.

[12] On 31/12/2001, the Claimant confirmed her wish to transfer the amount due to her from the old pension fund as described, to the new pension fund. On 9/12/2003, a Trust Deed was executed between nominees of the Bank and members of the Fund. According to the trust deed marked CTB 12, at page 97 of the Claimants trial bundle, the Respondent bank vested and settled the assets of the fund upon the

trustees who were nominees of both the Bank and members of the fund and under clause 7 gave them exclusive responsibility of managing the fund, including keeping records of the payment of contributions to the fund, the members of the fund and the benefits accruing and payable under it. Clause 17 of the Deed provides that:

> "The fund shall pay all charges and expenses incurred by the trustees in connection with the administration of the fund.

No evidence was laid on the table to indicate that the members of the fund, including the Claimant, were not in agreement with this provision. We had an opportunity to also scrutinize CTB 11, which was an update issued by the Board of Trustees Chairperson, in respect of the application of 2% of the Respondent's contribution towards the Fund's administrative costs. According to CTB11 the Respondent undertook to pay 5% into the employees' accounts and remit 2% towards the fund's expenses. This notice was issued on the 8/10/2012. No evidence was placed on the record to indicate that the Claimant or any other staff protested this arrangement. From our analysis of the evidence regarding the Respondent's 7% contributions, it was clear that annexture SO11 and SO12, was sufficient to make an inference that the Respondent did contribute 7% of the Claimant's salary to the fund 5% of which was banked directly into her account and 2% remitted towards the administrative costs of the Fund. Therefore, even if the Claimant testified that CTB11 was a response to complaints raised about the management of the pension fund, and she was not satisfied with the explanation rendered therein, no other evidence was placed on the record to indicate that the 2% was not remitted for the purpose of administering the Fund. We found it logical to believe that Respondent contributed 7% and deposited 5% into the claimant's account after deducting the 2%, for administrative expenses, otherwise had it contributed only 5%, it would have deposited 3% instead of 5% into the Account after deducting the 2% for administrative expenses. In any case, after the execution of the Trust Deed on 9/12/2003, the Respondent Bank ceased to be directly responsible for the management of the Fund. In the circumstances, the Claimant ought to have raised her complaint about the application of the 2% with the Board of trustees of the fund and not the Respondent Bank. In conclusion, this claim cannot stand. It is dismissed.

d) Salary for October 2014.

[13] The Claimant contends that having served the Respondent for over 10 years, she had an obligation to give 3 months' notice before taking early retirement. She retired as she did. However, after serving 1 month's notice, the Respondent released her and indicated that her last day of employment was 14/10/2014. She contended that she ought to have been paid the entire month of October because the Respondent unilaterally varied her notice period.

The Respondent contends that the Claimant could only be paid for the 13 days she worked in October. Counsel for the Respondent contended that to allow this claim would be to assume that she worked for the entire month, whereas not.

Section 57 of the Employment Act provides for notice periods as follows:

"57. Notice periods

a) A contract of service shall not be terminated by an employer unless he or she gives notice to the employee, except-

(a) where the contract of employment is terminated summarily in accordance with section 68; or (b) where the reason for termination is attainment of retirement age.

(2) The notice referred to in this section shall be in writing and shall be in a form and language that the employee to whom it relates can reasonably be expected to understand.

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

(a) not less than 2 weeks, where the employee has been employed for a period of more than six months but less than one year;

(b) not less than one month, where the employee has been employed for a period of more than twelve months, but less than five years;

(c) not less than two months, where the employee has been employed for period of five, but less than ten years; and

(d) not less than three months where the service is ten years or more.

(4) Where the pay period by reference to which the employee is paid his or her wages is longer than the period of notice to which the employee would be entitled under subsection (3), the employee is entitled to notice equivalent to that pay period.

(5) Any agreement between the parties to exclude the operation of this section shall be of no effect, but this shall not prevent an employee accepting payment in lieu of notice.

(6) Any outstanding period of annual leave to which an employee is entitled on the termination of the employee's employment shall not be included in any period of notice which the employee is entitled to under this section.

(7) During the notice period provided for in subsection (3), the employee shall be given at least one half day off per week for the purpose of seeking new employment."

Decision of Court

[14] We have already established that the Claimant applied for early retirement on medical grounds and the respondent allowed her to retire early. It is also not in dispute that the claimant undertook to serve a 3 month notice as was required, but the Respondent stated her last day of employment as the 14/10/2014, when it accepted her early retirement. It is also not in dispute that this was a no-fault termination of employment having been based on medical grounds arising out of back pain that disabled the Claimant from carrying out her duties. Section 57(3) also provides for an employee to give notice. According to SO13 at page 105 of her trial bundle, she acknowledged receipt of payment of 2 months' salary in lieu of notice. She also acknowledged that she ceased to work on the 14th of October 2014. Whereas it is the correct position that the claimant was entitled to a monthly salary, this salary is usually paid after every month served, that is, for the work done per month. It is therefore not correct for her to assume that salary would automatically accrue whether she had worked or not.

We have no doubt that she intended to serve her 3 months' notice as stated in her request for early retirement dated 12/09/2024. By the time the Respondent accepted her request, she had served 1 month and 14 days of her notice period. She therefore had 1 month, and 16 days left. As already discussed, she acknowledges that she received 2 months' salary in lieu of notice. Which was more than the remaining period of notice. An employee is entitled to payment for the services rendered. Where no services have been rendered, no payment accrues. Therefore, where the contract terminates before the expiry of a fixed term contract or before attainment of the agreed retirement age, an employee cannot claim future earnings, except where he or she can prove that the employer compromised his future earning capacity or ability that he or she will not be able to undertake any other income generating activity such as permanent physical or incapacity or injury to reputation. This was not the situation in the instant case. The claimant had the option to engage in light work but she opted to retire early instead. The Respondent having accepted her early retirement paid her in lieu of notice as is required under section 57 of the Employment Act 2006.

[15] The Claimant ceased to work on 14/10/2014, and having acknowledged payment in lieu of notice on 14/10/2014, she cannot turn around now to claim for the salary for remaining period of October 2014, yet she did not render any services to the

bank. The permission to serve her notice period in our considered view remained, with the Respondent who had management prerogative over the management of the Bank. In any case, having opted to retire early on medical grounds, and having not taken lighter work as an option, there was no basis upon which she could serve a notice period because she had no work to do during the notice period. We therefore, find no fault in the Respondent's decision to pay her in lieu of notice and as already discussed, she was paid more than the remaining period of notice and she accepted the payment.

In the circumstances, her claim that she was entitled to payment of salary for the remaining part of October 2014 on grounds that her notice period had been unilaterally varied is baseless. This claim fails.

e) Salary loan

[16] It was the evidence of the Claimant that she had undertaken a salary loan which was secured, but she was unable to secure the insurance to cover the same in vain. She contended that she had been assessed at 40% disability and her disability having been occasioned by a work-related disease, contracted while at work, she is not obligated to pay back her loan facility.

The Respondent, on the other hand, insisted that she chose to take early retirement, yet she was aware she had loan obligations and she refused to take steps to reschedule her loan as advised by the insurer and to undergo confirmatory tests. As a result, she was not able to take advantage of invoking her insurance claim. The Respondent insisted that having refused to undertake confirmatory tests, she cannot shift the burden to it.

Decision of Court

[17] The Court of Appeal in *Stanbic Bank v Constance Okou,* CA 60 of 2020, held that, before shifting the liability of repayment of a salary loan to the employer courts must first interrogate the terms of the loan agreement. Whereas no evidence was placed before us regarding the loan agreement, it was not in dispute that the claimant was granted a salary loan facility. It is also not in dispute that by the time she applied for early retirement, she had not completed its repayment. It is further not in dispute that she was allowed to retire before the independent report regarding her illness was issued by the Medical Arbitration Board. That notwithstanding, the medical

evaluation report which was relied on as a basis to grant her request for early to retirement, reads in part as follows:

> "... from the above investigative report, the patient is suffering from degenerative lumbar disc disease with L4/L5 disc prolapse and facet arthropathy without significant nerve compression. These findings are responsible for her current back pain that worsens with sitting, the radiation to the hips but normal straight leg raising test (SLRT).
> In fact, the degenerative process is expected to worsen and may need surgical fusion and decompression in future..."

- ... stops all activities that require her to sit for long periods at work or otherwise
- If the foregoing recommendation is not applicable, then she is recommended to retire from service in the interest of her health,
- Continues to undergo regular specialist reviews.

[18] It is glaringly clear from this report that the disease was degenerative (progressive) and it had caused her 40% incapacity. However, nothing in the report stated that the disease was caused by her work, but rather that sitting for long hours at work would worsen it. The report's conclusion gave 3 options to wit; to do light work, undergo surgery, or retire in the interest of her health. Which, in our considered view, confirmed that she was not permanently incapacitated and warranted shifting liability for her loan repayment to the Respondent.

In the circumstances, the assertion that she was not obligated to pay her loan after she retired on medical grounds does not hold water. Her claim to shift liability to the employer therefore fails. Given that the loan was premised on her loan and the claimant had to retire in the interest of her health, the Bank is directed to reschedule the loan repayment so that she can continue servicing it at the rate she negotiated with the Bank and not at a commercial rate.

f) Repatriation allowance

[19] It was not in dispute that the Claimant, having worked for the Respondent for 18 years, was entitled to automatic repatriation as provided under section 38 of the Employment Act 2006.
The Respondent contends that the Claimant's repatriation should not be computed based on her hometown because her records indicate that she was recruited from Kampala. However, Section 38(3) of the Employment Act, provides that :

(1)"....
(2) ....

(3) Where an employee has been in employment for at least ten years, he or she shall be repatriated at the expense of the employer, irrespective of his or her place of recruitment.

Given this provision, the Respondent's contention has no legal basis. The Claimant is entitled to automatic payment of repatriation irrespective of where she was recruited. We are of the considered opinion that having served the Respondent for 31 years without blemish, she deserved to be repatriated back to her home in Arua with honors.

Both parties proposed rates, which Court should apply as a basis for calculating repatriation allowance, as follows: the claimant proposed Ugx. 8000/- per Kilometer, while the Respondent proposed Ugx. 2000/- per kilometer. However, none of them provided the basis upon which these rates were premised. We also found nothing on the record to support either proposition. In accordance with section 8(3)(d) of the Labour Disputes (Arbitration and Settlement) Act, which empowers this court to make orders as to costs and other reliefs as it may deem fit, the Claimant is awarded Ugx. 5,000,000/- as repatriation from Kampala to Arua, which according to Google Maps ID 450.1 kilometers from Kampala.

g) Salary arrears

[20] The Claimant contended that whereas the Respondent's reward system (salary increment and bonuses) was based on performance reviews that were carried out on a quarterly basis and consolidated annually, and according to her every December, leading to the effecting of her salary increment in January, from 2003 to 2014, the respondent breached her contract because it effected the increase every 1st of March thus leaving January and February unpaid. According to her, these arrears accumulated and amount to Ugx.12,498,704/-, which the respondent should be ordered to pay.

In reply, the Respondent refuted this allegation on the grounds that the Claimant was paid all her salary during the pendency of her employment. It admitted that indeed the reward system was based on performance appraisals and up to January 2004, the Claimant was paid in arrears, since her increment commenced in January 2002. However, from 2005 to 2014, the increment took effect on 1st March and the same were communicated in writing on a 12-month interval, which the Claimant did not deny.. RW1 cited pages 37-50 of the Respondent's trial bundle.

Decision of Court

[21] We had an opportunity to analyse the correspondences on pages 37 to 50 which appear on pages 215 to 247 of the Claimant's bule bundle, regarding the Claimants appraisal and attendant increase in salary and payment of bonuses, and established that between 2002 to 2004 that is pages 37-40(RTB) and 215 to 225 (CTB), the increments were reckoned effective 1st January every year and from page 41-50 (RTB) and 225 to 247(CTB), the increments and bonuses to effect on every 1/03/2005, on a 12 month basis. We found nothing on the record to indicate that the Claimant at any point during this period made any complaint regarding the alleged non-payment of her salary for the months of January and February for every year during the period 2005 to 2014. She did not adduce any evidence in respect of the said arrears during the hearing in court. The correspondences clearly indicate that the increments were effected on a 12 month basis effective 1st of March every year. It is unbelievable that she could claim for salary for the remaining 16 days of the month of October 2014 and sit on a claim for arrears for over 10 years amounting to Ugx. 12,498,704/- without any complaint. We respectfully do not believe that the Claimant, who was holding a Managerial position, could have sat on her rights for over 10 years without lodging a complaint regarding nonpayment of her salary. This claim is baseless. It is denied.

h) General Damages

[22] It is the Claimant's claim that she is entitled to an award of general damages for the inconvenience and embarrassment caused by the Respondent. According to Mr. Onyait, the Respondent treated her callously and disregarded her loyalty. He cited *Bank of Uganda v Tinkamanyire* SCCA No. 12 2007, where a senior officer was terminated, and the Supreme Court awarded her Ugx. 100,000,000/-.

The Respondent is refuting the claim for general damages on the ground that they are awarded under the doctrine of *"restitutio in integram"* which is supported by Article 126(2) (c) of the Constitution.
It is trite that General Damages are awarded to return the injured person to as near as possible in monetary terms to the position he or she was before the injury occasioned by the Respondent. The claimant in the instant case chose to retire early in the interest of her health. We established that this notwithstanding she was entitled to be paid severance pay which we have ordered the Respondent to pay

her. In the circumstances, she would be entitled to nominal damages for the inconvenience suffered in recovering her severance and repatriation allowances. Her claim for Ugx. 200,000,000/- is however excessive. We think an award of **Ugx.7,000,000/-** is sufficient as General damages.

i) Aggravated damages

[23] The claimant did not adduce any evidence to support her claim for Aggravated damages. We found none on the record. This claim is denied.

j) Interest and costs

[24] The Claimant prayed that all monetary awards should be buttressed with interest at commercial rate from the time they fell due until payment in full.
This court in *FX Mubuuke vs the Uganda National Association of Building and Civil Engineering Contractors* Ltd LDR No. 086 of 2016, "...agrees with the principle that interest is given to cushion an amount awarded from depreciation of money value by inflation or as compensation for keeping the Claimant out of his or her money..."
Although the Claimant's severance pay and repatriation allowance were withheld by the Respondent as in Mubuuke's case, the amount withheld was not determined at the time, therefore an interest of 12% per annum from the date of this award is sufficient.

Costs
No order as to costs is made.

Signed in Chambers at Kampala this **24th** day of **February 2025**.

Hon. Justice Linda Lillian Tumusiime Mugisha,
Head Judge

The Panelists Agree:
1. Hon. Harriet Mugambwa,
2. Hon. Frankie Xavier Mubuuke &
3. Hon. Ebyau Fidel.

24TH February 2025
9:30 am