

UGANDA / JUDGMENT

Kavuma v National Social Security Fund (LABOUR DISPUTE CLAIM NO 171 of 2021) [2025] UGIC 31 (1 April 2025) [2025] UGIC 31

COURT

Industrial Court of Uganda

BEFORE

Wabwire Musana, J, Namara, Panel Member,
Nabirye, Matovu

CASE / FILE NUMBER

LABOUR DISPUTE CLAIM NO 171 of 2021

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THE REPUBLIC OF UGANDA IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA LABOUR DISPUTE CLAIM NO 171 of 2021

(Arising from Labour Dispute No. MGLSD/LC/358/2020)

KAVUMA DIANAH:.....CLAIMANT**VERSUS****NATIONAL SOCIAL SECURITY FUND RESPONDENT****Before:** The Hon. Mr. Justice Anthony Wabwire Musana**Panelists:** Hon. Adrine Namara, Hon. Susan Nabirye & Hon. Michael Matovu.***Representation:***

- *1. Mr. John Matovu S. C. and Ms. Victoria Babirye of Ms. Matovu & Matovu Advocates for the Claimant.*
- *2. Mr. Augustine Idoot of Ms. Kampala Associated Advocates for the Respondent.*

Case Summary

Employment law- Sections 67 and 69EA Summary dismissal- test of substantive fairness- where the employer genuinely believes that a reason to dismiss an employee exists. Determination of negligence in the workplace.

In this dispute between a former relationship manager (the Claimant) and a social security fund (the Respondent), the Claimant challenged her dismissal on allegations of gross misconduct, leading to her suspension and dismissal, and the subsequent disciplinary and appeal processes. She argued that her dismissal was wrongful because the reason was unproven and unjustified. The Respondent's counter-arguments asserted due process and justified dismissal because the Claimant had committed acts of gross misconduct. The Court found procedural and substantive fairness and dismissed the claim with no order as to costs.

Award date: 1st of April 2025

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AWARD**Introduction**

- [1] In August 2015, the Respondent, a social security fund established under Section 2 of the National Social Security Fund Act Cap. 230, employed the Claimant as a relationship manager on terms and conditions stipulated in the employment contract, subject to the Employer's Staff Handbook. Part of her work entailed processing claim forms as the customer service officer. On the 30th of October 2019, the Claimant was suspended from employment on half pay pending investigations into allegations of gross misconduct. On the 6th of November 2019, the Claimant was invited to attend a disciplinary hearing scheduled for the 13th of November 2019. She was given a charge sheet containing six counts of infractions attached. She was also asked to file ^a written response by the 11th of November 2019, which she did. The Disciplinary hearing was conducted, and on the 25th day of November 2019, the Disciplinary Committee (DC) recommended her dismissal from employment. On the 28th of November 2019, the Respondent dismissed the Claimant from employment on grounds of fundamental breach of contract, willful and or negligent disregard of the Respondent's policies and procedures, deliberate conduct undermining the Respondent's core values, gross negligence and deliberate involvement in activities that brought the Respondent's name to disrepute.
- [2] On the 2nd of December 2019, the Claimant appealed against the dismissal. The Respondent's then Managing Director, Mr. Richard Byarugaba, constituted an Appeals Committee (AC) chaired by Mr. Kenneth Owera. The AC considered the Claimant's appeal. On the 7th of February 2020, it confirmed the DC's findings and conclusion. On the 13th of February 2020, the Claimant was advised of the AC's decision.

- [3] Aggrieved, the Claimant lodged ^a complaint of unfair dismissal with the Commissioner of Labour, Industrial Relations and Productivity. Mediation meetings were unsuccessful. On the 21st of October 2020, the Claimant sought a referral to this Court. On the 5th day of November 2020, Mr. Apollo Onzoma forwarded the matter to this Court.

The Claim

- [4] By her memorandum of claim (MOC), the Claimant sought a declaration that her dismissal was unfair and unlawful, a declaration of breach of her employment contract, orders for payment of salary arrears in the sum of UGX 90,000,000/= (shillings ninety million), general, special, exemplary and aggravated damages, severance allowance, interest and costs of the claim. She claimed that she had been terminated without notice, denied a fair hearing at both the disciplinary hearing and the appeal, and summarily dismissed without regard to procedures at the Respondent.

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The Response

- [5] The Respondent opposed the claim, contending that the Claimant received an age benefit and processed it without following the procedure. She was placed on investigative suspension, invited for a hearing and informed of the charges against her. She responded in writing, attended the hearing in the company of her friend Benjamin Mulondo and was found to be in breach of the Respondent's policies. Therefore, she was dismissed after due process and was not entitled to notice. She was also accorded an appeal, and the AC upheld her dismissal. We were asked to dismiss the claim.

The Trial

- [6] The parties filed a joint scheduling memorandum (JSM). At the scheduling conference, the JSM was adopted with the following issues framed and agreed upon:
 - *(i) Whether the Claimant was wrongfully dismissed from employment?*
 - *(ii) Whether the Claimant was entitled to any remedies?*
- [7] The documents in the Claimant's trial bundle filed in court on the 8th of November 2022 were admitted in evidence and marked CEX1 to CEX5 with CEX2 to CEXH5 bearing serial numbers (a), (b), and (c). The documents in the Respondent's trial bundle, filed in Court on the same day, were admitted into evidence and marked REX1 to REX11. The document in the Respondent's supplementary trial bundle, filed in Court on 2nd June 2023, was also admitted in evidence and marked REX 14 and REX 15, respectively.
- [8] Because there was ^a significant challenge to the reasons for dismissal, which informs this Court's decision on the substantive fairness of the dismissal, the testimony of each of the witnesses has been reproduced below in some considerable detail.

The Claimant's testimony

[9] The Claimant testified that six charges related to failure to verify a claim form for one Wanjiru Veronica were laid against her. She told us that during the hearing, she took the DC through the entire verification process and said the claim was first handled by Joseph Sooka, who was the assistant relationship manager. Her part was to ensure that all relevant documents were attached to the claim form and submitted into the system for her supervisor's authorization to process. She stated that Mr. Sooka conducted the initial due diligence, received the claim, and signed Wanjiru's national identity card. Before submitting the claim to the data processing

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department, she verified this against the system information, and it corresponded. She said she was not the final person to process the claim form. She told us verification began with the customer service officer and relationship manager and was then sent to the supervisor for authorization and processing. She informed us that she had submitted a claim for UGX 749,208/= (shillings seven hundred forty nine thousand two hundred eight) but, upon verification, discovered that UGX 2,439,825/= (shillings two million four hundred thirty nine thousand eight hundred twenty five) was authorized for release. She informed us that she was terminated without notice or payment in lieu thereof in an unlawful and discriminatory manner, and she sought UGX 300,000,000/= (shillings three hundred million) in general damages for the resulting inconvenience. She also sought UGX 200,000,000/= (shillings two hundred million) in exemplary damages, aggravated damages for humiliation, interest at 25% per annum, and costs of the claim.

- [10] In cross-examination, she stated that she had come to court for unlawful dismissal and was not challenging the dismissal procedure, but rather the existence of the grounds for dismissal. She confirmed being served with a disciplinary invitation letter, being given seven days to prepare a defence, being shown the claim form, and being presented with all the evidence before the hearing. She stated that she was permitted to attend the hearing with a companion and confirmed that there was no allegation of a lack of ^a fair hearing in her witness statement and memorandum of claim. Her challenge was against the wrong conclusion in the respondent's decision. She stated that she was not provided with the minutes of the DC before the appeal. She was shown CEX4 (f) containing the six counts of gross misconduct offences. She said she had about the operations procedure manual, which was binding on her as part of my work. It served as a guide to the receipt and processing of claims. She was shown REX 5, which she identified as Wanjiru's claim form. She explained the purpose of the fund, which is for people who save with the fund to claim the benefits. She said she did not see Wanjiru's original identification. While she saw the attached bank statement, she did not notice the variance in the address between the ID and the bank statement. She told us that she received a verification report on the thumbprint. She also told us that her signature was at the bottom of the form, confirming the

thumbprints and photographs on the form belonged to Wanjiru. She told us that she did not witness Wanjiru append her thumbprints and that she did not have the power to verify the authenticity of the ID. She said she did not interact with Wanjiru. She informed us that the form was handled by an NSSF officer, and her actions were to be relied upon by the Respondent. She conceded that any omission or falsity or genuine mistake would be relied upon by others. She stated that a verification report would be retrieved from the system. She would use the NSSF number and would not use the national ID or verify it.

- [11] The Claimant was shown "REX ²" She read out clause ¹² on Good Faith. She told us she exercised good faith in this case. She was not expected to interact with the Claimant, and she did not see the Claimant append her thumbprint. She told us that she did not carelessly confirm

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Wanjiru's particulars but instead compared and confirmed the hard copies against the system. In carrying out this duty, she said she was required to identify the witness. She informed us that the sum in paragraphs 15 and 16 of her witness statement was not reflected in the MOC. She was shown CEX 4 (f) and told us that the DC found her guilty of 5 of the six counts relating to the processing of Wanjiru's claim. She read out the DC's findings and stated that she did not agree that these findings were the basis of her dismissal. She told us that a member of the Respondent who is making a claim produces original documents which are compared with the copies. She told us she did not see the originals.

- [12] In re-examination, she told us that the reason she signed the form was that it was her duty as CSO to ensure that the forms were completed before processing the claim. She had to verify that the information presented by a colleague tally with the system. The colleague also witnessed the national ID and thumbprints. They named this colleague Joseph Sooka. She informed us that the manual allows any officer of the Respondent to witness the ID and thumbprint and present it to a CSO. She read out paragraphs 13 and 14 of her witness statement. She told us she was supposed to initiate the claims, and before scanning them into the system, her supervisor would verify the hard copies and approve payment. She said her supervisor would have to make sure that the attachments tally. After that, the form would be returned to her and then sent back to the supervisor. She told us that she did not make the payments.

The Respondent's evidence

- [13] The Respondent called two witnesses. **PAUL SAM BWAYO (RW1)** testified in his capacity as a senior audit manager in the Respondent's Department of Internal Audit (IAD). He told us that on the 26th of September 2009, a case of fraudulently processed benefits in respect of one Simela Sifiso Clavin was reported to the Audit and Risk Assurance Committee. During the investigation, IAD identified six similar cases. He said he compiled a report dated 30th September 2019. He told us that the IAD team had reviewed the Respondent's existing

guidelines and procedures. He said the team had unearthed the case of Wanjiru Veronica, whose NSSF account number was 6104100062801, which was created in Mbale by Joseph Sooka under his user ID, JSOOKA, on 27th June 2017. In his report, he stated that Joseph Sooka delivered the age benefit claim to the Mbale Branch, and the Claimant (then CSO Mbale) received the claim and confirmed the thumbprints. She did not follow procedure to verify Wanjiru's original identity card, passport photo and employee fingerprints, but generated an employee verification report and signed it. She did not verify that the Mobile Telephone Number provided was registered in Wanjiru's name. Mr. Bwayo told us that he concluded that Wanjiru was not involved in fraudulent registration and age benefit scheme, the telephone number provides was not registered on the Orange Telecom Network, the passport photo's where different from Wanjiru's photos at Nkokonjeru Primary School, Wanjiru had left Uganda eight

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years before the claim was registered, the finger prints for the claim were taken after Wanjiru had left the country and the Claimant had, in breach of policies and procedure, witnessed and signed the verification form and report before identifying the member. He stated that due to the Claimant's actions, ^a fraudulent claim of UGX 2,439,825/= (shillings two million four hundred thirty nine thousand eight hundred twenty five) was paid into an account in the name of Wanjiru and subsequently transferred to Joseph Sooka and one Natasha Atulinda.

- [14] RW1 also informed us that the audit revealed a total loss of UGX 113,000,000/= (shillings one hundred thirteen million) including Wanjiru's case, where the Respondent's staff, including the Claimant, failed to follow the policy and procedure for identifying members. The Head of IAD recommended disciplinary action against the Claimant and other staff.
- [15] Under cross-examination, he stated that he prepared the report and, where necessary, conducted interviews with the individuals. He stated that he did not interview Wanjiru, did not review her passport, and did not speak with the Headmaster at the school where Wanjiru worked. He said he retrieved documents from the school. He did not meet the Head master personally. Based on his investigations and findings, he informed us that Joseph Sooka was fraudulent, and that the Respondent had prosecuted Sooka for fraud. He clarified that he did not say that the Claimant was a beneficiary. He also informed us that the Claimant served as a witness on behalf of the Respondent in the criminal case against Joseph Sooka. He told us that the thumbprint in the system matched those on the claim form. He also confirmed that no two people can have the same thumbprint. He also said that the thumbprint in the form had to be identified by an officer of the Respondent. He told us that people from abroad are identified and paid while they are abroad and do not physically come to Uganda. He described the claim process as follows: the CSO initiates a claim, which a supervisor then reviews. The manager reviews the details and determines whether to sanction or not. The Manager sends it back to the CSO before it is forwarded. He stated that the Respondent used a system, and the claimant was the entry point for the claim. The CSO

initiates the process, compares the face and passport photos with the system, and verifies the national ID against the original copies, then receives the claim. It is then reviewed by the Area Manager, who can either accept or reject the claim. The Supervisor does not interact with the customer. After the Supervisor, the last step CSO put a figure of UGX 749,000 (shillings seven hundred forty-nine thousand). He informed us that, in this case, a total of UGX 2,400,000/= (shillings two million four hundred thousand) was ultimately lost. He confirmed that the Claimant did not put in this figure. It was another person. He told us that the final payment sum can be increased or decreased. He stated that the Claimant's salary exceeded UGX 2,000,000/= (shillings two million).

- [16] RW1 told us that he was not at the disciplinary hearing. He did not make a report about the hearing. In his report, he observed that the system had gaps that were partly exploited for personal gain. He was shown the claim form (REX 5) and stated that the CSO receives the

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claim, comparing the facial appearance and current passport photo with the system photo. Any member of staff who receives a claim signs it. He said he investigated 6 cases in which Joseph Sooka featured and was also the beneficiary. He confirmed that the claimant was not a beneficiary. He told us that Barigye was his boss, and he submitted his report to him. He confirmed that he had not read Barigye's report. He said the reports should be aligned. When he was directed to paragraph 11 (a) of his witness statement, he said Wanjiru's documents were delivered to the Claimant by Joseph Sooka, who was an employee of the Respondent. He confirmed that he had interviewed Joseph Sooka, whose evidence was that he did not see Wanjiru.

- [17] In re-examination, he was shown "REX 5" and told us that the Claimant witnessed the thumbprint. He informed us that the claim form consists of three pages. On page ¹ of the Claim form, another person whom he could not identify witnessed it. He said no other person witnessed the thumbprint. He described this particular claim as an age benefit for people aged 50 years and above. He told us that an emigration grant is foreign based. He was directed to REX 14 and stated that the procedures for benefits are for CSO, not the person reviewing it. He told us that when a claim is lodged, a CSO is expected to pick up information. It is not the final claim, and another team may amend the schedules. When he was directed to paragraphs 11(d) and (e) of his witness statement, he informed us that the Claimant had not followed the procedure. He stated that an NSSF officer should witness field claims. He told us that his recommendations were based on the procedures. He clarified that the CSO serves as the front office and involves physical observation or verification of fingerprints, and that all other persons rely on the CSO's findings. He said he recommended that human resources take disciplinary action against the Claimant for witnessing a claim form without identifying the member.

- [18] MICHEAL MUGISA (RW2) testified next. It was his testimony that he served as Benefits Manager between July 2019 and July 2023. He told us that the usual process receipt verification and pay-out of age benefit claims involve receiving of a fully filled out form by CSO with relevant document and finger prints of the member the age benefit, comparison of the facial appearance of the member and the current photo with the photo in the system, comparison of the original and photocopy of the national identity card of the member and confirmation of the member's employment history and records. The CSO must sign a photocopy of the ID, confirming that they have seen, verified, and confirmed the identity of the member lodging the claim, and have also seen the original identity card. Thereafter, the CSO prints and signs the verification report of the claim form.
- [19] In cross-examination, he explained that the claims procedure is detailed. He said that a field claim is made by a customer outside the Respondent's premises and received by an officer outside the premises. He told us that the procedure is to ensure that the claim form is fully completed, including necessary documentation, identification, and thumbprints. It is given to

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the C. S. O. The officer signs the claim form, and the field officer confirms that he saw the customer. The officer captures the thumbprint. He informed us that the documents for the age benefit would include a national ID and a copy of the bank account statement. The documents include a National ID. The thumbprints are affixed to the form in the presence of the officer. The customer would not have to visit a fund office physically. He said that was partly the reason the officer signed the claim form and confirmed that thumbprints were taken in the officer's presence. He explained that the documents are brought to the CSO, who is seated at the Fund Offices. It is expected that the field officer will act in good faith. He told us that the CSO does not go into the field to look for customers. The CSO verifies the information in the system. From CSO, the form is sent to forensics, where it is scanned and then sent back to forensics to confirm that the thumbprints on the form match those of the account holder. The findings are sent back to CSO and then sent to the supervisor or Area Manager. The purpose of the Area Manager is to review which is to look for completeness review means to cross-check. He told us that it means the process of claiming can be redone. It was RW2's testimony that the Claimant was accused of negligence on a field form. The Claimant put a figure of UGX 700,000/= (shillings seven hundred thousand). By the time of payment, the figure was significantly higher than the one that the claimant had provided.

- [20] Mr. Matovu S. C. directed RW2's attention to REX 5. RW1 said the Respondent had an operations manual. He told us that he had no evidence that the thumbprints were not for customer Wanjiru. He stated that he was not fully aware of the Barigye report and that he was only familiar with the claim's procedure. He told us that he was aware of the forensic evidence in this claim. He said the claim did not go through forensics. He said he was not aware that the claim was registered on a Saturday. He was also unaware that Wanjiru had

gone to court to claim that she was not paid. He was also not aware that Wanjiru had an account with ABSA Bank or that she had given evidence against Joseph Sooka. He said that if he had known, it would have been of interest to him. Finally, he informed us that he was unaware of any complaints from ABSA Bank.

- [21] In re-examination, he clarified that REX5 was a field claim form. He stated that there were two claims: a physical claim by the customer entering the fund office, and the officer confirms having seen the claimant. In cases where a CSO does not interface with the customer, it is referred to forensics. Where the CSO does not interact, the marker inputs the thumbprints in the customer's presence. He said field claims do not have the CSO's signature, which is why they go for forensics. This claim form allowed for payment. He also told us that the Employee Verification Report is printed in the presence of the CSO.
- [22] The Respondent's final witness, **OLIVIA MIREMBE (RW3)**, testified in her capacity as Human Resources Business Partner(HRBP) and confirmed the Claimant's employment with the Respondent fund. She informed us that the Respondent's IAD initiated an investigation after the fraudulent processing and payment of Simela Sifiso Calvin's benefits. She stated that during

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the investigation, the Claimant was implicated in the case of Veronica Wanjiru. The Claimant was alleged to have received and verified Wanjiru's age benefit claim from Joseph Sooka before submitting it for processing. She stated that the Claimant was placed under investigative suspension, and following the investigation, she was invited to attend a disciplinary hearing. He noted that the Claimant was served with a charge sheet, which explained the nature of the allegations against the Claimant. She confirmed that the Claimant had an opportunity to respond to the allegations both in writing and orally at the hearing, which she attended in the company of her friend, Benjamin Mulondo. She stated that at the hearing, the Chairperson introduced all the committee members and informed the Claimant of her rights. She said that the DC compiled a report and found that the Claimant did not exercise utmost good faith when initiating Wanjiru Veronica's age benefit claim. The Claimant stated that she had verified and witnessed the claim form, yet did not meet Wanjiru in person. The DC also found that the verification of Wanjiru's fingerprints and printing of the customer verification were done without an interface with Wanjiru. The DC concluded that the Claimant had undermined the Respondent's integrity values, negligently initiated a fraudulent age benefit and not carried out necessary due diligence. As such, the fund had lost UGX 2,439,825/= (shillings two million four hundred thirty nine thousand eight hundred twenty five). She told us that the DC recommended the Claimant's dismissal, and the Claimant was dismissed on the 28,h of November 2019.

- [23] She told us that the Claimant appealed to the Respondent's Managing Director, and the AC did not determine whether it necessary to hear further evidence. The AC upheld the DC's decision, and this was communicated to the Claimant on the 13th of February 2020. She informed us that the Claimant was afforded a fair hearing and was not entitled to notice, or payment in lieu of notice at the time of her dismissal.
- [24] During cross-examination, she informed us that the investigation concerning the claimant began with Simela Sifiso Calvin. She stated that similar fraud cases had occurred at the Respondent's fund, and Joseph Sooka was involved in some of these cases. She told us that she knew Mr. Sooka was being challenged in court. She stated that she was part of the disciplinary proceedings and was aware of the report and findings of the Disciplinary Committee. She admitted that during the hearing, the Respondent did not supply a copy of the investigation report to the Claimant. The report was prepared by Barigye, who was the head of Audit. She told us that none of the audit team were invited for cross-examination. She also stated that Wanjiru was not invited to the disciplinary hearing, nor had she been invited to this Court. She told us that Wanjiru had not made a complaint to the Respondent fund. She testified that the Respondent had relied on the audit investigation report. There was no thumbprint at the disciplinary hearing. She stated that the Respondent did not find any personal gain on the part of the Claimant. It was her evidence that the Claimant did not benefit from the fraud. She stated that no one from Barclays Bank attended the disciplinary hearing. She said she was unsure whether Wanjiru had received her money or not. She said that if this information were

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presented to the Disciplinary Committee, she would be aware of it. She told us that thumbprints are unique to an individual. She said that saying thumbprints are identical means they are for the same person. She was referred to paragraph 4.30 (h) of REX 15 and stated that she did not doubt this statement. She said she was not aware of any report that those thumbprints did not belong to Wanjiru. She said she knew that Mr. Sooka collected Wanjiru's money. She told us that she did not know whether there would be an appeal hearing and that she was not involved. She said she sat on the disciplinary committee. Regarding the appeal process, she stated that the Appeal Committee would be better equipped to answer questions about the appeal, and she was unable to provide further comment.

- [25] In re-examination, she told us that she was not an expert in thumbprints. She was shown REX 14 and informed that she was not aware of the process of receiving and processing claim forms.
- [26] At the close of the Respondent's case, we issued a schedule for submissions. We thank Counsel for their industry, research, authorities supplied and written submissions, which we have, summarised and considered in rendering this ruling.

Analysis and Decision of the Court.

Issue 1. *Whether the Claimant was wrongfully dismissed from employment?*

Submissions of the Claimant

[27] Mr. John Matovu S. C, submitted that there is no clear definition of wrongful dismissal, but that Section 2 of the Employment Act Cap. 226 (the EA)[1](#page-9-0); defined dismissal. Counsel relied on *Stanbic Bank (U) Limited v Okou* [2](#page-9-1) for the definition of wrongful dismissal attributed to Halsbury's Laws of England 4th Edition Volume 16 para 302, thus;

> *"meaning of wrongful dismissal" A wrongful dismissal is a dismissal in breach of the relevant provisions in the contract of employment relating to the expiration of the term for which the employee is engaged."*

Counsel quoted the two conditions that empower an employee to sue for damages as follows: there must be a fixed period of employment that is terminable by notice, and the employee must be dismissed before the expiration of the fixed period or without notice, and the dismissal must be without sufficient cause.

¹ This is now Section 65EA Cap. 226

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² [2023] UGCA100

- [28] Counsel cited Section 69EA on summary termination and Section 71EA on unfair termination, arguing that she was summarily dismissed, and her dismissal was unjustified and wrongful because the Respondent failed in their investigations.
- [29] Counsel made the following key points in support of his hypothesis of wrongful dismissal:
 - (i) On the nature of the claim, it was submitted that there was overwhelming evidence to prove that the claim form was a field claim form, and it was Joseph Sooka who captured Wanjiru's details. Therefore, the findings of failure to exercise utmost good faith and the printing of the customer verification form did not take into account the nature of the claim.
 - (ii) On tallying thumbprints, it was argued that the evidence demonstrated that the fingerprints captured tallied with the system prints. At the same time, the Respondent faulted the Claimant for witnessing the fingerprints while forgetting that this was a field claim.
 - (iii) It was also submitted that the Claimant was not the final person in the claim process because she entered a figure of UGX 749,208/= (shillings seven hundred forty nine thousand two hundred eight) in the form, which was subsequently increased to UGX 2,439,825/=

(shillings two million four hundred thirty nine thousand eight hundred twenty five). Counsel argued that there was no audit report to demonstrate that the Respondent suffered a loss. Counsel cited **Walubi & Anor* U *Uganda*[3](#page-10-0) 4* for the proposition that the law penalizes actual, not potential, loss.

- (iv) We were also referred to **Jabi v Mbale Municipal Councillor** the dictum that ^{a/} dismissal is wrongful if it is made without justifiable cause and without reasonable notice.
- (v) On fair hearing, Counsel suggested that the Respondent was in breach of its terms and conditions of service regarding disciplinary proceedings. It was suggested that the individuals who prepared the investigation report did not appear for the hearing to undergo cross-examination. It was suggested that RW3 confirmed that she was not aware of a hearing at the appeal. We were directed to Section 101 of the Evidence Act, Cap. 8, for the proposition that the Respondent had not proven, on the balance of probabilities, that there was a hearing at the appeal.
- ³ (20161 UGCA2
- 4 (1975) HCB 191

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- [30] In sum, Counsel for the Claimant asked this Court to find that the Respondent was in breach of the employment contract when it did not grant her a fair hearing or at all on appeal and that this offended the rule of natural justice. We were referred to **Tweyambe & Another v Attorney General & Another*[5](#page-11-0) 6* and asked to find that the Claimant was wrongfully dismissed.

Respondent's submissions

- [31] Mr. Idoot, for the Respondent, made two points: the failure to accord the Claimant a fair hearing and the justification for the dismissal.
- [32] On failure to accord the Claimant a fair hearing, it was submitted that the Respondent followed due process in accordance with Section 66(4)(7) of the Employment Act (EA). It was submitted that an employer is required to inform an employee of the intended grounds and give them an opportunity to be heard. Counsel cited **Byakika v National Social Security Fund**[6](#page-11-0). It was submitted that, upon the conclusion of the investigations, the Claimant was invited to a disciplinary hearing (REX7) and served with a charge sheet that properly detailed the charges against her. She filed a response to the charges (REX9) and attended the hearing in the company of her friend, Brian Mulondo. Counsel submitted that the Claimant's evidence was taken into consideration per REX 10 and 14. It was submitted that the Claimant corroborated the evidence of a hearing and did not have any complaint of non-compliance with procedure but was challenging the grounds of dismissal. On the authority of **MS Fang*

Min v Belex Tours & Travel Ltd⁷ *vie* were asked to find that the Claimant was bound by her pleadings and testimony. On Byakika, we were asked to determine that there is no legal requirement for a party to cross-examine witnesses at a disciplinary hearing and that appeals are a courtesy. The employer is only required to ensure procedural fairness. We were referred to Clause 28.8 of the Respondent HRP(M)(REX3) on provisions for appeals at the Respondent.

- [33] Concerning justification for the summary dismissal, Counsel cited *Bank of Uganda v Betty Tinkamanyire*^s where an employer must prove that the employee has fundamentally broken his or her obligations under the contract for the dismissal to be justified. It was submitted that the Claimant was guilty of gross misconduct, violating the Respondent's values, fraud, gross negligence and willful or negligent disregard of the Respondent's policies and procedures. It was argued that as CSC, the Claimant did not follow the set procedure in processing Veronica Wanjiru's claim. She signed the verification report without forwarding the claim to the forensic experts and did not interface with Wanjiru or see the original identity. She admitted to the DC that she relied on a colleague. Regarding the proposition that she was not the final person in
- 5 [2020] UGHCCD 35

'120151 UGSC 12

⁶ 120201 UGCA 86

⁶ [2008] UGSC 21

the claim process, and the area manager relied on her verification report to process the claim. Counsel argued that the Claimant admitted that she was found culpable for five of the six counts against her.

- [34] In terms of no proof of loss, Counsel argued that this was speculative. Counsel suggested that *Walubi* was distinguishable because, in that case, the Respondent was not a financial institution. Secondly, the burden of proof in criminal cases is beyond a reasonable doubt, and in civil matters, it is on the balance of probabilities. And finally, it was reiterated that, of the six counts, the Respondent found the Claimant culpable of five, except for the sixth count, which concerned financial loss. Had the Claimant followed the policies and procedures, she would have established that Wanjiru had left Uganda eight years before the claim. It was submitted that the Claimant's actions amounted to gross misconduct and the Respondent was justified in dismissing her. We were asked to dismiss the claim.

Decision

- [35] Under Section 2EA, dismissal is a discharge of the employee at the employer's initiative on grounds of performance or misconduct. Counsel for the Claimant made ^a case for wrongful dismissal and rightly pointed out that the EA does not define wrongful dismissal. Mr. Matovu S. C. sought the benefit of a definition from *Okou*, which cited

Halsbury's Laws of England. As it stands, under Section 14(2) of the Judicature Act, Cap. 16, the hierarchy of laws in our legal system is that the Constitution which is the supreme law of the land, supersedes written, statutory law or legislation, followed by the common law and doctrines of equity, customary law or usage, rules of procedure and practice at the High Court and where no express law or rule is applicable, then the principles of justice, equity and good conscience apply. Therefore, the Employment Act holds a higher hierarchical position and supplants the common law in the event of a conflict.

- [36] Thus, the Employment Act introduces actions for unfair and unlawful termination on the one hand and unfair and unlawful dismissal on the other into our employment and labour relations sphere. By definition, termination involves reasons such as the expiry of a fixed-term contract or the attainment of retirement age, while dismissal entails reasons related to performance and misconduct. This Court attended to this distinction in *Ashaba v Mutoni Construction Uganda Limited*⁹ and *Tituryebwa Julius v Sino Mineral Investment Co. Ltd*¹⁰ (#page-12-0).*
- [37] In the matter before us, it is common cause that the Claimant was dismissed from her employment by the Respondent. Mr. Matovu S. C. argued a case of wrongful dismissal, contending that the reason for dismissal was doubtful and unproven, and submitted that notice

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³Ashaba v Mutoni Construction Uganda Limited [2025] UGIC ¹ (16 January 2025)* See also

¹⁰ LDR 02/2021Industrial Court at Mbarara 201n January 2025. .

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was absent and ^a fair hearing was lacking. In *Mugisha v Equity Bank Ltd**, this Court establishes, for ^a lawful dismissal, the twin tenets of procedural and substantive fairness. In the case of *Tushemereirwe Oginia v Bushenyi District Local Government*¹² we referred to the International Labour Organisation(ILO) standards on procedural and substantive fairness in employment decisions. They are fundamental to promoting decent work and protecting workers' rights. The ILO emphasizes procedural fairness (the process being fair and impartial) and substantive fairness (the outcome of the decision being just and reasonable) as the guiding principles for all aspects of the employment relationship.¹³

- [38] Therefore, this Court's inquiry focuses on the process and procedure of dismissal(procedural fairness), as well as the reason or reasons for dismissal(substantive fairness).

Procedural fairness

- [39] In terms of process and procedure for dismissal or procedural fairness, this Court takes valuable guidance from **Ebiju v Umeme Ltd,*¹⁴ where Musoke J.fas **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.
- [40] Schedule ¹ EA provides a disciplinary code, and Rules 1(11) and 2 thereof outline the procedures for disciplinary actions, including informing the employee of the complaints against him or her, giving sufficient time to make representations, ensuring that penalties for disciplinary proceedings are well founded, ensuring the implementation of procedures after completion of proper investigations, and the employer is required to explain in writing what is happening, along with the rights at the hearing and the right of appeal.
- [41] In the matter before us, the Claimant testified that she was not challenging the procedural aspects leading up to her dismissal. At the beginning of her cross-examination, Mr. Idoot put the following question to her;

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¹¹ [20191 UGIC210

¹² LDR 07 of 2022 Industrial Court Mbarara 28.01.2025

¹³ See *Ofwono v Mane Stopes Uganda and Another* (Labour Dispute Claim ¹ of 2023) (20251 UGIC 3 (29 January 2025)

¹⁴ [2015] UGHCCD 15

**"Mr. Idoot: Let us be clear. You are not challenging the procedure of your Dismissal?"*

**Diana Kavuma: No. I came to Court for unlawful dismissal. I have not challenged the procedure for dismissal. I am challenging the existence of the grounds of dismissal. "*

- [42] While her advocates suggested that she was not given a fair hearing at both the disciplinary hearing and the appeal, the evidence does not seem to support these submissions. First, on 30th October 2019, the Claimant was suspended from work with half salary due to allegations of gross misconduct. Section 62EA, which limits the period of suspension to four weeks, and the Claimant's suspension was consistent with this provision. On the 6th of November 2019, she was invited to attend a disciplinary hearing scheduled for

the 13th of November 2019. She had seven days to prepare for her hearing and five days to file her written response to the allegations. The invitation letter indicated that the Claimant was entitled to attend the hearing with a representative of her choice. She was also given a copy of the charge sheet detailing the alleged infractions for which she was accused. She was informed that the evidence would be presented at the hearing, and she would have the opportunity to present her evidence and submit any supporting documents. Adjudged against the *Ebiju* standard (a legal standard for evaluating procedural fairness), we find that the letter of invitation passes the procedural fairness threshold by giving the Claimant sufficient time to respond to allegations that have been reduced into a charge sheet, and that the letter informs the Claimant of her rights at the hearing. In our view, the Respondent conformed to the above procedural tenets of the disciplinary hearing, and, to this extent, we agree with Mr. Idoot that the Claimant would not challenge the procedural fairness of her dismissal.

- [43] The other complaints were a lack of a fair hearing, as she was not given an opportunity to cross-examine the witnesses at the disciplinary hearing, and there was no hearing at the appeal. First, the dicta of decided cases does not appear to support the view that procedural fairness is concerned with the disciplinary appeals process. In *Appro v Mercy Corps Uganda*⁵, citing *Byakika*, we held that ^a fair hearing under Section 66EA (which is now Section 65EA) relates to internal hearings and disciplinary processes for actions involving misconduct or poor performance as a first instance. It does not relate to the internal appeals procedure. In *Byakika*, part of the Appellant's complaint was that the Learned Judges and Honourable Panelists at the Industrial Court erred in holding that the internal appeals process was immaterial to the lawfulness of his dismissal, in that they failed to consider it. Her Lordship, the Honourable Lady Justice Elizabeth Musoke Jafas *she then was* held: 15

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¹⁵ [2024] UGIC 23

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"I will say on this point that under the Employment Act, 2006, there is no mention of the requirement to put in place an appeals mechanism in the context of a disciplinary committee's decision to propose dismissal of an employee. Therefore, the practice of internal appeals is not a statutory obligation, but it is ^a courtesy of the employer. It cannot, therefore, be said that any legal prejudice will befall an employee whose internal appeal is not handled properly, or at all"

- [44] The Court of Appeal took the view, to which we are bound by *stare decisis*, that the Industrial Court was right not to attach undue weight to the handling of an internal appeal. Instead, it would be for the Court to consider the lawfulness of the dismissal in question. In the result, the component of the Claimant's complaint in respect of the fairness of the

appeals process is not tenable as suggested, rightly by Mr. Idoot. Modern precedent indicates that the question of procedural fairness is limited to the disciplinary process, rather than any internal appeals process. We are therefore unable to accept the hypothesis that the Claimant was unfairly, unlawfully, or wrongfully dismissed because she did not attend the disciplinary appeal process. The fairness of an appeal process is not a matter for the Court to determine. In our estimation, the Respondent provided for the right of appeal in clause 28.8 of the HRP, and the Respondent's Managing Director duly constituted an AC which considered the Claimant's appeal and upheld DCs recommendation for dismissal. For the reason that the fairness of that process is not the inquiry of this Court, we do not fault the Respondent.

- [45] The final procedural complaint pertained to the right to a fair hearing because the individuals mentioned in the investigation report did not appear for cross-examination. We have previously held that one of the rights to a fair hearing includes the right to cross-examine the employer's witnesses (See *Oqwal v Kampala Pharmaceutical Industries Limited*¹⁶ and a plethora of Industrial Court decisions).^{*} However, we are mindful that the failure of witnesses to show up for cross-examination would not be ^a standalone reason to declare disciplinary proceedings unlawful or unfair. This is so because the standard of disciplinary proceedings is not that of ^a mini-court, as observed by Barishaki J. A with Owiny Dollo DCJ (as *he then was*)^{*} and Obura JA, concurring, in the oft-cited case *DFCU Bank Limited v Donna Kamuli*^[17](#page-15-0).^{*} In that case, the Court notes that all that is required of an employer is to present the allegations to the employee and ensure the right to a hearing. The right to cross-examine witnesses is but one of various rights at the disciplinary hearing, and it would not be a sole reason to declare the disciplinary hearing unlawful or unfair, thereby rendering a dismissal unlawful. In the present case, the Claimant did not ask to cross-examine any witness and the opportunity was refused. We therefore do not agree that the Claimant was not given a fair hearing and decline to make such a declaration.

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[,] [2023] UGIC 68

¹⁷ [2019] UGCA2088

- [46] In conclusion, the Court declares that the disciplinary proceedings in respect of the Claimant in this case were procedurally fair.

Substantive fairness

- [47] Substantive fairness relates to the reasons for dismissal. Under Section 67(2)EA, it is provided that the reason or reasons for dismissal shall be matters which the employer, at the time of dismissal, genuinely believed to exist and which caused him or her to dismiss the employee. How is this proven?

- [48] In *Isaac Iga Kasozi v United Bank For Africa*¹⁸ this Court observed that the words 'genuinely believed' are not statutorily defined. We also cited *Nalule Gloria v Centenary Rural Development Bank Limited*^[9]^(#page-16-0) where Ruhinda-Ntengye, J held that the standard of proof of a wrong committed by an employee to be lower than in ordinary civil cases, but on the balance of probabilities. We stated that the employer is required to provide evidence that tends to demonstrate that it is more likely than not that the employee committed the infraction alleged against them. In other words, the employer must demonstrate that they had reasonable grounds for believing that the employee committed the offence.
- [49] The guidance by the Court of Appeal in *Uganda Breweries Ltd v Kiquila*^[20]^(#page-16-1), is that the employer must show that the employee had repudiated the contract or any of its essential conditions to warrant summary dismissal. Gross and fundamental misconduct must be substantiated for summary dismissal; mere allegations are insufficient. The allegations must be proven to a reasonable standard, and such proof requires a hearing. (See also *Robert Mukembo v Ecolab East Africa (U) Ltd*^[21]^(#page-16-2).) Restating the standard of proof in employment disputes is important because Counsel for the Claimant took an approach that, in our view, raised the standard of proof beyond reasonable grounds or indeed above the balance of probabilities as shall be explained herein. The Court maintains that the standard of proof in employment disputes should not exceed reasonable grounds or the balance of probabilities.
- [50] We also think that the Disciplinary Code, as outlined in Schedule 1EA, provides a solid foundation for justifying reasons for dismissal. Under Rule ¹ (8) of the Code, it is recommended that disciplinary rules shall be made readily available to every employee and shall be expressed in clear and understandable language with penalties and consequences for infringement set out. Under Rule 3 (5), the penalty of dismissal is considered appropriate for offences such as theft or willful damage to property, willful endangerment of the safety of an employee, employees or a member of the public or physical assault and inability to perform by reason of

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[&] LDR¹⁸³ of ²⁰²⁰ Industrial Court 21.03.2025

^(#page-16-0)¹⁹ (20221 UGIC 81

^(#page-16-1)²⁰ (20201 UGCA 88

^(#page-16-2)²¹ (20091 UGHC 126

voluntary intoxication. This means that an employer is expected to establish rules that are accessible to all employees, along with penalties for violating those rules. In other words, the rule book should be transparent.

- [51] Against that background, in the matter before us, it is common that REX7, the letter of invitation, indicated that the charges against the Claimant were listed in the charge sheet that was attached. The charge sheet, REX 8, contained six counts of alleged infractions. Count one was a breach of the employee's contract, contrary to Clause 28.7(i) of the HRPM, which was admitted as REX3. Count two was willful and negligent disregard of policies and procedures, which may result in financial loss or reputational damage contrary to Clause 28.7.2(xii) HRPM. Under REX3, this clause was provided under Clause 28.7.2(xii). Count three pertained to conduct that undermined the fund values, Count four to gross negligence, Count five to abuse of office, and Count six to activities that may bring the Respondent's name into disrepute. Each of these counts were clearly spelt out in the HRPM. In our estimation and judgment, the offences or infractions the Claimant was alleged to have committed were clearly laid out in the HRPM and, as indicated in the opening line of Clause 28.7.2, were examples of some scenarios that amount to gross misconduct warranting an employee's instant/summary dismissal. It was not an exhaustive list. Therefore, we find that the offences for which the Claimant was charged were well laid out and the consequences clear as required under Schedule 1EA.
- [52] The other question is whether they were proven to a reasonable standard or on a balance of probabilities? REX10 was the disciplinary hearing minutes. In them, the Committee is reported to have explained the background to the hearing, and it was indicated that the IAD had investigated cases of fictitious registration of nonexistent members, suspense clearance and claim forms signed off by the Respondent's employees who had not met and received claim forms from the members. The investigative committee's findings were that one Joseph Sooka actively participated in the fraudulent payment of the age benefit, and that the Claimant assisted him. As CSC, she received the field claim on 25th August 2017, witnessed it, and forwarded it without sending it to the forensic expert, as per fund policy. The report also suggested that the Claimant had been negligent in the process of receiving and identifying the age benefit claim for Ms. Veronica Wanjiru.
- [53] In the proceedings of the DC, it was noted that the Committee sat at 9:00 a.m. on the 13th of November 2019. Mr. Benjamin Mulondo, a friend of the Claimant, accompanied her. The minutes indicate that the Chairperson introduced the committee members and asked if the Claimant objected to any of them; she replied that she did not. The charges were read out, and the Claimant responded that she found the charges distressing. She stated that the claim form she was alleged to have failed to verify had an attachment of a copy of Ms. Wanjiru's national ID, which was countersigned by someone else who had had contact with Ms. Wanjiru. She is reported to have told the DC that she signed and processed the claim form for payment as

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CSO. She said she did not receive any reward, nor did she exert any pressure on anyone, and that all she did was act on the basis that her colleague had furnished her with a legitimate claim.

- [54] The Committee put some questions to the Claimant. In response, she stated that she did not derive any benefit, had no personal interests, and did not wish to cause the Respondent financial loss; she also verified the actions taken by another colleague. She said she did not suspect that this was a fraudulent claim. She is said to have admitted signing the claim form with remarks indicating that the original ID was seen without interfacing with the member. She is reported to have agreed that the claim form was signed on 27th August 2017 and the verification report on 28th August 2017. She is said to have agreed to have signed the claim form without interviewing Ms. Wanjiru and relying on her colleague's word. She is said to have told the DC that she did not receive any money from Joseph Sooka and was not in touch with him. She said to be distressed and had learnt not to sign another claim form without thorough verification.
- [55] The Management set out its case in the six counts. The Claimant, in her response, stated that her actions were in accordance with her designation as CSO at the time, and she had no financial gain whatsoever. She received no financial gain and merely signed the claim, doing so without meeting Ms. Wanjiru, on the pretext that her colleague had already met with Ms. Wanjiru.
- [56] The DC, taking into account its role to determine based on the employee's representations whether there was sufficient explanation for the charges levelled against her, or whether such explanation is insufficient and make a decision on the evidence available reached the following conclusion that the Claimant was CSO, Mbale Branch at the time of the claim and acknowledged having signed the claim without meeting Ms. Wanjiru. The Claimant's conduct was negligent regarding the funds' procedures and policies. The DC found the Claimant guilty on Counts 1, 2, 3, 4, and 6 and therefore found her guilty of gross misconduct, recommending her dismissal.
- [57] Before this Court, the Claimant testified that her part was to ensure that all relevant documents were attached to the claim form and submitted into the system for her supervisor's authorization to process. Mr. Matovu S. C. submitted that the offences were not proven because there was no cross-examination of the witnesses and persons named in the investigative report. We have already found that cross-examination was not a procedural stricture. But in terms of substantive fairness, the key question would be whether the evidence before the DC should lead the Respondent DC to the conclusion that it reached. In other words, would a reasonable employer have reached the same conclusion as the Respondent did on the evidence before the DC?

- [58] We think the answer to the question is yes. In the matter before us, it is undisputed that as CSO, the Claimant was required to follow a specific procedure in processing the claim. It was suggested to us that the procedure of receiving and verifying a field claim was different from

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any other claim and that the Claimant had not been implicated in the fraudulent actions of Joseph Sooka. That may well be true, but as indicated earlier in this award, the yardstick and threshold of substantive fairness is not proof beyond a reasonable doubt as would be the case before a criminal court. Employment offences are provable on reasonable grounds. Therefore, it would still fall on the employer to demonstrate that the Claimant was in breach of the employment contract, specifically in this context, the procedure related to processing a benefit claim.

- [59] In our estimation, based on her testimony, both before the DC, as indicated in the minutes, and when she testified before us, it is clear that the Claimant understood the procedure for filing a claim, and her plea was consistent in that she did not originate the original claim but received it from Joseph Sooka. Her evidence was that her role was to ensure the claim form was complete with all relevant documents attached and to submit the claim into the system for her supervisor to authorize processing. She said that Joseph Sooka had done the due diligence. She also stated that she verified Wanjiru's information in the system and found that it matched the data stored there. Under cross-examination, she conceded that the Respondent's operations manual was binding on her. When shown REX5 (the claim form), she acknowledged that she had not seen the original identity card and that she had signed the verification report, confirming both Wanjiru's thumbprints and photographs, but that she did not interact with Wanjiru. She also acknowledged that any omission, falsity, or genuine mistake on her part would be relied upon by others. In our view, these concessions by the Claimant acknowledged her culpability.
- [60] When pressed as to whether she had exercised good faith, the Claimant stated that she was comparing the information on the form with the information in the system. She then conceded that in carrying out her duty, she was expected to identify Ms. Wanjiru. In her re-examination and Mr. Matovu's submissions, it was argued that it was Joseph Sooka who received the original claim and witnessed Wanjiru's thumbprints, and that the Claimant was not the final person in the claims process. RW1, the Investigator told us that the CSC was responsible for the process and compares the face, passport photo and national identity card before the form goes to the area manager or supervisor who could either accept or reject the claim but did not interface with the member. RW2 described the process of a field claim and said that while Joseph Sooka had originated Wanjiru's claim, the Claimant had purported to witness the completion of Wanjiru's age benefit claim. She was in breach by verifying the signed claim form and system verification form without sending it to forensics.

He said she had confirmed the fingerprints and photograph of Wanjiru, while she did not interface with her. Under cross-examination, he explained that when a CSC receives a field claim, it is verified and then forwarded to forensics. Once forensics confirms the claim, it is returned to the CSO before being sent to the Area Manager or Supervisor. He said Wanjiru's claim did not pass forensic testing. In re-examination, he told us that a field claim must go through forensics where the

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CSO does not interact with the member. RW3, the final witness, testified that of the six counts of alleged infractions, the Respondent's DC found the Claimant guilty of five and exonerated her of one count, which was Count Five on abuse of office.

[61] From the evidence above, our inference is that the Claimant, as CSO, had a duty to ensure the REX5, Wanjiru's claim form, was genuine. She signed the claim form on the 28th of August 2017 in the following words:

" I (name) DIANA K (Title) C. S. O hereby confirm that the thumb-prints and photograph attached belong to the claimant and has been identified as per documentation provided.

Signature | Date

- [62] Therefore, in her view as CSO, Wanjiru had been adequately identified. She told the DC that she relied on a colleague, Joseph Sooka, who had witnessed Wanjiru affix her thumbprints. But as it turns out, the confirmation of Wanjiru's thumbprints and identification was based on false premises. Additionally, as the CSO, the claim form did not undergo verification. The Claimant did not send the form to forensics as required by the procedure she clearly understood. The approved benefits procedures were admitted in evidence as REX 15. By them, all claim types were required to have a current passport photo, which would be compared with the facial appearance and current passport photo in the system by the CSO. The Claimant did not interact with Ms. Wanjiru. The procedures required the identification to be compared with the original by the CSO. On the evidence before the DC, the Claimant did not do so. The procedure requires that all supporting documents should be confirmed as true copies of the original. As CSO, the Claimant did not see the originals.
- [63] In our view, the argument that a field claim would be different from any other claim in that, in a field claim, the CSO does not interact with the member, does not gain much traction. A field claim would have to go to forensics, and the Claimant did not send Wanjiru's claim to forensics. Instead, she sent the verification form forward and told the DC that she had repeated the testimony before this Court, stating that she relied on Joseph Sooka. In effect, the Claimant attempted to pass the buck to Joseph Sooka, saying that it was he who was responsible.

- \$[64]\$ However, the evidence suggests otherwise. The evidence indicates that negligence occurred. In our judgment, on the evidence available before it, the Respondent's DC or indeed any reasonable employer would have come to the conclusion that the Claimant was not diligent in the exercise of her duty. It would amount to negligence, and for this reason, the Respondent was entitled to reach the conclusion that the Claimant was culpable for five of the six counts for which she was charged.

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- [65] These counts were a fundamental breach of the contract by not verifying member information, willful or negligent disregard of the NSSF policies, deliberate conduct undermining the Respondent's core values, gross negligence and involvement in activities that put the Respondent's name into disrepute. They are, in our view, offences that coalesce around negligence and dereliction of duty. In her contract of employment (REX2), the Claimant undertook to work properly and efficiently. She undertook to exercise utmost good faith towards her employer, and on the evidence before us, we consider that she did not meet these duties. We are fortified in this viewpoint by the decision of the Supreme Court of Uganda in **Barclays Bank of Uganda* v *Godfrey Mubiru*²² where the apex court observed that managers in the banking business have to be particularly careful and exercise a duty of care more diligently than managers of most businesses because banks manage and control money belonging to other people and institutions, perhaps in their thousands and therefore are in a special fiduciary relationship with their customers, whether actual or potential. The Court cited **Harmer v Cornelius*²³ where it was held that where an employee holds himself out as being skilled to do a certain type of work and is employed on that basis impliedly undertakes that he possesses and will exercise reasonable skill or competence in that work. The Court also cited **National Bank Pic* v *Morgan*²⁴ where an employee is in breach of a fundamental term of his employment or guilty of sufficient misconduct, may be dismissed summarily without notice. In our view, the duties that the Claimant undertook as CSO were fiduciary. The Respondent is a public social security fund that collects national social security contributions for employees. It would be expected that its employees, including the Claimant, will be held to a higher standard.
- [66] Mr. Matovu S. C referred to us **Walubi**. Mr. Idoot suggests that it is distinguishable on the facts. We agree with Mr. Idoot. In that case, the Court was considering a criminal appeal on a conviction for causing financial loss. We have already observed that we are dealing with different standards of proof, which is why we indicated early in this award that, in criminal law, the standard of proof is beyond a reasonable doubt. In contrast, the threshold for disciplinary proceedings concerning employees is much lower, and, as **Kigula** states, it is based on reasonable grounds or, as mentioned earlier, on the employer's genuine belief in the reasons for the action. In the matter before us, we have observed that the five counts converge on the issue of negligence. That means that **Walubi** is not helpful on this point. It involved a criminal intent to deprive the bank of its money permanently. In the present case,

the matter concerns failure to follow procedure and negligence. For ^a definition of negligence in the workplace, the decision of the Labour Court of South Africa at Port Elizabeth *in National Union of Metalworkers of South Africa (NUMSA) and Others v Commissioner for Conciliation, Mediation and Arbitration and Others*²⁵ is most persuasive. In that case, Prinsloo J. makes the following observation:

- ²² [1999] UGSC 22

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²³ [1858] (1843-60) All ER 624

²⁴ [1985] AC 686

²³ [2023] ZALCPE 6; (2023) 44 ILJ 1575 (LC)

" Negligence, in short, is the failure to comply with the standard of care that would be exercised in the circumstances by a reasonable person and in the employment context, the employee's conduct is compared with the standard of skill and care that would have been expected of a reasonable employee in the same circumstances. The reasonable employee with whom the employee is compared must have experience and skill comparable with that of the employee charged. In labour law, negligence is not applied 'in vacuo' or against the general standard of a 'reasonable person', but it is applied in the context of the particular workplace or industry, considering the performance standards and procedures set by the employer. Negligence is usually established with reference to workplace rules or procedures applicable in the workplace.

"*

- [67] What this means is that the yardstick for negligence qualifies the neighbour principle enunciated by Lord Atkin in *Donoghue v Stevenson*^[26] (page-22-0) 27.* In the present context, the Claimant would be expected to exercise her skill and care as CSO in accordance with the Respondent's benefits processes and procedures. And it is our estimation that, based on the evidence before the DC and presented to this Court, the Claimant did not exercise due diligence, care, and skill in processing Veronica Wanjiru's claim.
- [68] In all, we find that on the evidence available, the Respondent has demonstrated that it genuinely believed there existed reasons for the Claimant's dismissal and, after investigations, invited the Claimant to a hearing, heard her side of the story and concluded that she should be dismissed. In all circumstances, the Claimant's dismissal was substantively fair and justified. Indeed, Lord Evershed observed in *Laws v London Chronicle* [^] observed that one act of disobedience or misconduct would justify summary dismissal. We are persuaded that the Claimant was in breach of her employment contract. The Respondent genuinely believed that there were breaches of its policies and procedures and was therefore entitled to dismiss the Claimant summarily.

Conclusion

[69] Having found that dismissal is procedurally and substantively fair and justified, issue one is answered in the negative.

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²⁶ (1932) AC 562

²⁷ [1959] 2 All ER 285

Issue II. What remedies are available to the parties?

[70] Given our findings and conclusion in issue one, the Claimant would not be entitled to any of the remedies claimed in the memorandum of claim. As this Court is enjoined to promote access to labour justice by not barring employees seeking a determination of the lawfulness of their dismissals, the Claimant shall not be condemned in costs.

It is so ordered.

Signed, dated and delivered at KAMPALA this 1st day of April 2025

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1st April 2025

9:43 a.m.

Appearances

| 1. | For the Claimant: | Mr. Joel Israel Kidandaire H/B for
Mr. John Matovu S. C
and Mr. Emmanuel Kakenga for
the Claimant. |

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| | | Claimant in Court. |

| 2. | For the Respondent: | Ms. Mercy Makobi H/B for
Mr. Augustine Idoot for
the
Respondent. |

| | | Respondent's Legal Officer, Ms. Connie Nahwera, in
Court. |

| | | Court Clerk:
Ms. Olivia Nanseera. |

| Mr. Kidandaire: | | award and if
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Prepared on 13 October 2026 · Esheria