

UGANDA / JUDGMENT

Lubega v Tropical Bank Limited (Labour Dispute Reference 354 of 2019) [2024] UGIC 39 (6 September 2024) [2024] UGIC 39

COURT

Industrial Court of Uganda

BEFORE

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

CASE / FILE NUMBER

Labour Dispute Reference 354 of 2019

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THE REPUBLIC OF UGANDA IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA LABOUR DISPUTE REFERENCE NO. 354 OF 2019

(Arising from Labour Dispute No. MGLSD/LC/128/2018)

CLAIMANT LUBEGA MARTIN**VERSUS****RESPONDENT TROPICAL BANK LTD****Before:**

Anthony Wabwire Musana. J

Panelists: Hon. Adrine Namara, Hon. Suzan Nabirye & Hon. Michael Matovu***Representation:***

- *1. Mr. Peter Wanda and Ms. Diana Naluyange of Wanda, Sakwa & Co. Advocates for the Claimant.*
- 2. *Mr. Asuman Bamweyana & Mr. Martin Gidong of the Respondent's Legal and Compliance Department for the Respondent.*

Case Summary-**r**

Employment law- Constructive dismissal- meaning and effect of constructive dismissal- occurs when an employee terminates the employment contract on account of unreasonable behaviour of the employer -contractual and unreasonableness tests-threshold of unreasonable behaviour of the employer. The Claimant was asked to apply for a new position after restructuring the former position. Failure to apply would be deemed as disinterest. The Claimant applied and was told he was unsuccessful. He was redeployed and suffered a salary reduction. Claimant resigned. Court found that the element of consent was absent in the unilateral variation of the contract of employment. The Claimant was constructively dismissed.

Remedies -for employees who are constructively dismissed. The claimant was awarded general damages, severance pay, payment in lieu of notice and unpaid leave.

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AWARD**Introduction**

[1] The Respondent is a financial institution regulated under the Financial Institutions Act Cap.57. On the 15th of September 2015, the Respondent employed the Claimant as a Credit Officer. In July 2018, the Claimant was invited to apply for the position of Relationship Officer and was considered unsuccessful. He was temporarily transferred to the sales department. On the 12th of September 2018, the Claimant resigned because he believed that the Respondent's conduct in compelling him to apply for the position of relationship officer was unreasonable, and he was forced to resign. On the 15th of October 2018, he filed a complaint with the Ministry of Gender, Labour and Social Development. The matter was set for arbitration. According to the Commissioner of Labour, Industrial Relations and Productivity, the Claimant did not pursue the complaint and asked to be referred to this Court. On the 17th of October 2023, it was referred to the Registrar of this Court on the question of unfair termination.

The Pleadings

- [2] In his memorandum of claim, the Claimant sought a declaration that he was constructively dismissed, payment of compensatory awards for breach of the Employment Act, UGX 500,000,000/= in general damages, an order of forfeiture of the outstanding loan sum of UGX 14,000,000/=, four weeks net pay as statutory damages, punitive damages, severance allowance, payment in lieu of notices, severance allowance, Social Security benefits, four per centum interest and costs of the claim.

- [3] In its defence, the Respondent contended that the Claimant did not have a cause of action against it. The Respondent also claimed that in July 2018, a decision was made to change its business structure, and the credit officer position was replaced with relationship management, which required more tasks. The Claimant failed the interview and was temporarily transferred to the sales unit pending re-designation to another unit. Under the sales unit, the Claimant earned a commission plus a monthly salary of UGX 400,000/=. The Claimant resigned and was directed to handover. He has not completed the exit process to get his benefits. On 6th August 2019, he instructed the Respondent's head of recovery to utilize his gratuity and other entitlements to settle his outstanding loan obligations. A loan sum of UGX 4,959,670/= is still outstanding and continues to attract interest. The Claimant's failure to get alternative employment was denied.

The Proceedings and evidence

- [4] The parties filed a joint scheduling memorandum. However, on the 9th of November 2022, the Claimant attended Court, and the Respondent did not. We granted leave for the Claimant to proceed **exparte**. The following issues were framed for determination;
 - **Whether the Claimant was constructively dismissed? (i)**
 - **What remedies are available to the parties? (*)**
- [5] The Claimant's trial bundle filed in Court on 31 October 2021, containing four documents, was admitted with the documents marked "CEXH1" to "CEXH4". The Respondent's^s trial bundle dated 21st March 2022 was also admitted with the documents marked "REXH1" to "REXH5".

The Claimant's evidence

- [6] In his witness statement adopted as his evidence in chief, the Claimant testified that when he was employed as a Credit Officer, his monthly salary was UGX 1,500,000/=:, and he acquired a loan of UGX 14,000,000/= from his employer. In early 2018, when the Respondent got a new executive director(ED), the ED persistently threatened to sack him. In July 2018, he was compelled to apply for the post of relationship officer, failure of which he would face consequences. He told us that on the 27th of August 2018, he was demoted to the post of sales officer and his salary was reduced to UGX 400,000/= per month, which was to be paid after meeting set targets. He was not given a reason for the demotion. He could not meet his loan repayments, which created an intolerable working environment that compelled him to resign on the 12th of September 2018. After his resignation, he was under undue duress to authorise the Respondent to apply his terminal benefits to settle the loan. He said that as his family's breadwinner, he suffered financial constraints as he could no longer cater for his family.

- [7] Mr. Bashir Kakooza(CW2), whose witness statement made on 8th October 2021 was admitted in evidence, testified that he was a former employee of the Respondent. With the coming of a new ED, the number of exiting staff increased. He told us that on the 25th day of June 2018, the Respondent's Human Resource Manager had sent an email to all staff requiring credit officers to reapply for the post of relationship officer. In July 2018, he was interviewed with the Claimant and trained as a credit and sales officer for two weeks. In September 2018, successful candidates were issued new appointment letters. He told us that the Claimant and other unsuccessful candidates were asked to meet the ED, who gave them new appointment letters as Sales Officers earning UGX 400,000/=. He said he thought these new contracts were unfair.

The Respondent's evidence

- [8] The Respondent had filed a witness statement for Mr. Kassim Kasawuli, but this witness did not appear in court. Under Order 18 rule 5A(2) CPR, witness statements are formally tendered as evidence in chief of the witness after the witness has appeared in Court and taken oath. Under Rule 5A(5)CPR, except with the parties' consent, a witness who does not appear to tender in the witness statement and be cross-examined shall have his or her witness statement expunged from the court record. At the close of the Claimant's case, Ms. Naluyange did not offer any consent to the admission of Mr. Kasawuli's witness statement.

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As a result, Mr. Kasawuli's witness statement on the 21st of May 2022, filed in Court on the same day, is hereby expunged from the record.

At the close of the Claimant's, we invited the parties to file written submissions. [9]

Analysis and Decision of the Court.

Issue 1. *Whether the Claimant's was constructively dismissed?*

Submissions of the Claimant

- [10] Relying on Section 65(1)(c) of the Employment Act, 2006(the EA) and *Nyakabwa JAbwooli v Security 2000 Ltd,²* It was argued that the scrapping of the position of credit officer, the persistent threats, and the demotion to salesman were illegal and injurious, which made it impossible for the Claimant to continue working as a credit officer and compelled him to resign. According to Counsel, this was a serious breach of the service contract; thus, the Claimant's resignation was not voluntary. We were invited to find that he was constructively dismissed.

Submissions of the Respondent

[11] For the Respondent, reading from *Abwooli*, it was argued the change in the Respondent's business model by scrapping the position of credit officer role did not affect the Claimant alone. Upon transfer to the sales unit, the Claimant decided to resign. According to Counsel for the Respondent, this strategic business decision was not illegal or unreasonable to amount to constructive dismissal. It was argued that the allegations of threats by the ED were baseless and had nothing to do with the strategic decision. We were asked to find that the Claimant had not satisfied the conditions for constructive dismissal.

Determination

[12] The Industrial Court's approach to what amounts to constructive dismissal has been consistent. During this determination, we have examined a few cases and laid out the elements of constructive dismissal. But first, Counsel agreed in their written submissions that the statutory premise for constructive dismissal is Section 64(1)(c) EA, which provides that

¹ This is now Section 64(1)(c) of the Employment Act Cap. 226 Laws of Uganda 7th Revised Edition

² LDC 108 of 2014

"*(1) Termination shall be deemed to take place in the following instances:*

*(c) where the contract of service is ended by the employee with or without notice, as a consequence of unreasonable conduct on the part of the employer towards the employee;....."

This provision spells out an essential element of termination by an employee because of the unreasonable conduct of the employer. Still, it does not define constructive dismissal, nor does any other EA provision. For ^a definitive understating of this notion, recourse must be had to case law.

Understanding constructive dismissal

[13] In *Olango v Hands of Love SSS Kabaga*,³ we cited *Western Excavations (ECO) Ltd v Sharp*⁴ where Lord Denning M. R defined constructive dismissal thus:

> If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment; or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract; then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed. The employee is entitled in those circumstances to leave at the instant without giving any notice at all or alternatively, he may give notice and say that he is leaving at the end of the notice. But the conduct must be sufficiently serious to entitle him to leave at once.

- [14] What emerges from this definition is that the employer must conduct himself to show that he does not wish to be bound further. In other words, there must be a fundamental or significant breach of the employment contract. Secondly, it must be shown that the employer does not wish to be bound by the employment contract. Thirdly, the employee must be entitled to treat himself as discharged, which has, in a broad range of decisions, included resignation. This means that the discharge or resignation is connected to the employer's unreasonable behaviour, meaning there is a causal relationship between the resignation and the unreasonable behaviour. What, then, is unreasonable behaviour?
- [15] In *George Wimpey Ltd v Cooped*⁵ it was suggested that unreasonable conduct is of the kind which, by good industrial relations practice, no employee could reasonably be expected to accept. In *Abwooli*⁶, which was relied on by both Counsel, the Court observed that such
- ³ [2023] UGIC 71

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⁴ [1978] QB 761 or [1978] IRLR27CA

s 1977(IRLR] 205

conduct must be illegal, injurious to the employee, and make it impossible for the employee to continue working. It must be a serious breach and not a minor trivial incident, and the employee must act in a reasonable time in response to such breach and not for any other unconnected reason. In that case, the employer assigned his duties to someone else without giving the employee alternative work. The Industrial Court found this to be unreasonable and amounting to constructive dismissal, as did this Court in *Edotun v Okra Beverages Limited*⁶. In *Olango*, we found that failure to pay salaries for eight months amounted to unreasonable conduct on the part of the employee, entitling him to a declaration of constructive dismissal.

[16] Therefore, constructive dismissal is about the termination of an employment contract by an employee because of the unreasonable behaviour of an employer.

The threshold for constructive dismissal

- [17] In *Achiro v Uganda Land Alliance*,⁷ we cited *Susan Njeri Warui v Postal Corporation of Kenya*,⁸ where Gakeri J. suggested two tests where an employee leaves employment without notice because of the employer's conduct. The Court proscribed the unreasonable and the contractual test. In the unreasonable test, the Court held that the employer's behaviour must be so unreasonable that the employee could not be expected to stay. In the contractual test, the employer's conduct was grave enough to constitute a repudiatory breach of the employment contract.

- Cited in **Warui**, a handy summary of the principles relevant to constructive dismissal from [18] the provision of law and cases mentioned above is to be found in the Kenya Court of Appeal case of *Coca-Cola East & Central Africa v Maria Kagai Ligaga*⁹ which decision we found persuasive. The principles were summed as follows:
- What are the fundamental or essential terms of the contract of a. employment
- Is there a repudiatory breach of the fundamental terms of the b. contract through the conduct of the employer,
- The conduct of the employer must be a fundamental or significant c. breach going to the root of the contract of employment or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract.
- An objective test is to be applied in evaluating the employer's d. conduct.

⁶ [2023] UGIC 48 ⁷ [2024] UGIC 22

⁸ [2022]eKLR

⁹ [2015]eKLR

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- e. There must be a causal link between the employer's conduct and the reason for employee terminating the contract i.e. causation must be proved.
- f. An employee may leave with or without notice so long as the employer's conduct is the effective reason for termination.
- g-The employee must not have accepted, waived, acquiesced or conducted himself to be estopped from asserting the repudiatory breach; the employee must within a reasonable time terminate the employment relationship pursuant to the breach.
- h. The burden to prove a repudiatory breach or constructive dismissal is on the employee.
- Facts giving rise to repudiatory breach or constructive dismissal are varied.
- [19] These principles fall into the two broad categories in **Warui**. In our view, a, b,c, and g fall within the contractual test, while d,e,f,h and ⁱ fall within the reasonableness test and we propose to test the Claimant's hypothesis and evidence against these standards.

The contractual test

- [20] The indisputable fact is that the Respondent restructured and reorganised its business by scrapping the position of credit officer and requiring its employees holding that position to reapply for the position of relationship officer. The question for this Court would be whether this restructuring was unreasonable in compelling the Claimant to resign.

- [21] According to CEX1, the Claimant's evidence was that he was appointed Credit Officer effective the 15th of September 2015. His basic salary was UGX 1,500,000/= per month. He was also entitled to transport, responsibility and lunch allowance, each at 5% of basic salary. His other entitlements included enrolment in the Bank's medical and welfare fund schemes. His employment contract was terminable by two weeks' notice during his probation period and thereafter, as set out in the Respondent's Human Resource Manual. According to CEXH 2, on the 18th of July 2016, he was confirmed in service. All his terms of employment were retained. By email dated 25th June 2018(REX1), the Respondent advised its staff that it was seeking to recruit officers in various positions, including thirteen Relationship Officers. The email required the Credit Officers to apply for the position of Relationship Officer. The failure to apply would be construed as a lack of interest.
- [22] It is here that the Respondent finds itself in some considerable difficulty. First, the position of credit officer to which the Claimant had been appointed was unilaterally abolished. This abolition had, in our view, the effect of significantly altering the fundamental terms of the contract, resulting in a breach of the employment contract, and we would so find. We find the view adopted by the Kenya Court of Appeal in **Kenya Airways Limited & Others vAviation**

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andAllied Workers Union ¹⁰ a fortifying illustration of reasonableness. In that case, the Court was not satisfied that the Appellant had exercised its managerial prerogative in declaring a redundancy in good faith. In the matter before us, the Respondent unilaterally and without notice abolished the position of credit officers and has not before this Court led any evidence to prove good faith and reasonableness in that decision.

- [23] The Respondent's evidence is that the Claimant unsuccessfully applied for the credit officer position. The Respondent then temporarily transferred the Claimant to the position of sales officer. The Claimant testified that in this role, his salary structure changed by a reduction of over 75%. On the 12th of September 2018, the claimant resigned. In his letter, he said he apologised for the abrupt timing of his resignation but indicated that he had resigned "due to constructive circumstances". Was the resignation voluntary? We do not think so because, in his evidence, the Claimant told us that he had been demoted to the sales officer position. For this reason, the Claimant would be entitled to leave employment without notice. The letter of resignation read, "Abrupt timing". We, therefore, do not accept the Respondent's ^s argument that the Claimant willingly terminated his contract because he did not. In our view, the Respondent had created an intolerable work condition, which reads into the unreasonableness test: a significant salary reduction and a pending loan obligation for an intolerable workplace. We are grounded in taking this view by the **Coca-Cola** case, where the employee indicated in her letter that she had been "forced" to resign. The Court found this resignation to have been involuntary. In a particularly apt dicta, the Court held that involuntariness need not be through conduct that is physical, coercive,

duress or undue influence. Involuntariness can be deduced from the context and circumstances surrounding the case.

- [24] The Respondent required the Claimant to apply for the credit officer position or be deemed as having no interest. The element of choice had been removed from the employment contract. It was unilateral. In our view, this reflects the relative bargaining power of an employer-employee relationship where the employer wields substantially more control over the employee. For this reason, employment, labour and industrial relations courts have a bounden duty to balance the employment relationship, which entails considering the principles of fair industrial and workplace relations. In this lies the procedural requirement for fairness. Had the Respondent given the Claimant notice of abolition of office, that would have been regarded as a fair labour practice. Because it did not, we would be inclined to a finding that the Claimant was unfair.
- [25] Further, between August 2018 and the 12th of September 2018, about one month, and we consider this a reasonable time between constructive dismissal and resignation. This above conclusion means that the Claimant did not act in a manner that would be deemed to be acceptance, waiver, acquiescence or estopping him from asserting the repudiatory breach.

¹⁰ [2014] eKLR

According to Chitty on Contracts,¹¹ a repudiatory breach occurs where one party so acts or expresses himself as to show that he does not mean to accept the obligations of the contract any further than this may, depending on the circumstances, amount to ^a repudiatory breach of contract. Where there is ^a breach of a condition of the contract, then there will be a repudiatory breach entitling the innocent party, on acceptance of the repudiation, to treat the contract as at an end. The act of repudiation may consist of an apparent unqualified refusal but will more probably involve some other breach that goes to the root of the contract, or may be such as indicating an intention no longer to be bound by the contract.

- [26] Thus, after objectively considering the evidence and applying the contractual test set in **Coca-Cola**, we find that by unilaterally scrapping the position of credit officer and without notice to the Claimant, there was a drastic change to the Claimant's initial position as Credit Officer. The temporary appointment in a sales position resulted in a significant salary reduction from UGX 1,500,000/= per month to a commission-based UGX 400,000/=. It cannot be said that this was an ordinary change in all the case circumstances. Indeed, Section 40EA generally protects the entitlement to wages as do Articles 13 and 15 of the International Labour Organisation Protection of Wages Convention, 1949 (No. 95). In the present case, we find this reduction of wages and unilateral abolition of office to have been ^a repudiatory breach in that it created intolerable working conditions for the Claimant and entitled him to resign from work. We are fortified by the persuasive decision in **Mungal v Slopes Media House**¹² where the Court held that purporting to reduce salary unilaterally amounted to a breach of an employment contract.

The unreasonableness test

- [27] The next question is whether there was a causal link between the demotion and the Claimant's resignation. The evidence before this Court is that the Claimant experienced difficulties servicing his loan, standing at about UGX 14,000,000/= when he resigned. He told us that he could not continue to provide for his family and service his loan simultaneously. We think that in the circumstances that the employer was fully abreast of the Claimant's loan obligation to it and minded that the Claimant was servicing the loan from his salary, it was unfair for the Respondent to place the Claimant in a position that made it difficult for him to service his loan. By reducing his emoluments by more than two-thirds while expecting the Claimant to meet his loan obligations to it, we find that the Respondent acted unreasonably.
- [28] The other question relates to how the Respondent's action was carried out. In ordinary redundancies under Sections 80 and 81EA, the Court recognises the employer's right to restructure but requires the employer to carry out the process fairly and transparently. By this, an employer must have a fair selection criterion and notify the employees, the trade

1128* Edition Vol. 2 at page 598

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¹² [2021] eKLR

union and the Commissioner for Labour Industrial Relations and Productivity.¹³ In cases where the Court found that the employer has not adhered to the procedure, the termination may be deemed unfair and unlawful for procedural unfairness. By procedural affinity, in the instant case, the Respondent unilaterally declared the abolition of the Credit officer's position and, by email(REX2), required the Claimant to apply for the relationship manager position. He was advised that he would be deemed uninterested if he did not apply. We have already found that the element of choice had been removed from this employment relationship. Compounding this difficulty further was the lack of notice of the intention and decision to restructure the Respondent's business. In our view, this was not done through fair labour practices. The restructuring decision was unilateral and not transparent and did not conform to the principles of fairness and the filial procedure. We find that it did not meet the reasonableness test.

Conclusion

- [29] While recognizing that the employer's right to reorganise its structure to meet its business goals is immutable, we note it is not for the Court to determine how an employer or business owner wishes to organise and structure their business. This would be an imposition of a Court's abstract view on how the business should be organised. The Respondent had ^a right to restructure the business by scrapping the position of Credit Officer but did not do this fairly and transparently. In other words, the Respondent

did not respect the rights of the Claimant, its employee. It did not act procedurally, fairly and substantively reasonably. The Respondent did not notify the Claimant of reordering its business functions. For this reason, we find that in unilaterally abolishing the position of credit officer, the Respondent acted unreasonably and is guilty of a repudiatory breach of the employment contract.

- [30] We are satisfied with the circumstances of a reduction in his salary while the Respondent was cognisant of his loan obligations towards it; the Claimant's only reasonable course of action was to resign. The resignation was due to the Respondent's unreasonable conduct. The element of choice and consent had been removed from the employment contract. The Claimant was, therefore, constructively dismissed and is entitled to a declaration to the effect. For these reasons, we answer issue ¹ in the affirmative.

Issue II. What remedies are available to the parties?

Damages

- [31] Citing **Mufumba v Uganda Development Bank¹⁴** Counsel for the Claimant sought UGX 500 000,000/= in general and aggravated damages. It was argued that the Claimant had not secured alternative employment since his resignation because the Respondent refused to clear him or give him a good recommendation.

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nk'imu and 2 Others v Shreeji Stationers 2009 Uganda Limited [2023] UGICJO

LDC 138/2014 ¹³ See 14

- [32] It was the Respondent's case that the Claimant is not entitled to any damages, and his failure to obtain alternative employment could not be attributed to the Respondent. The Respondent argued that Equity Bank now employed the Claimant.
- [33] The principle considerations regarding general damages in employment disputes are now settled following the Supreme Court's decision in **Uganda Post Limited v Mukadisi¹⁵** where the Court held that general damages are awardable for breach of the employment contract and for the non-economic harm and distress caused by the wrongful dismissal, including compensation for emotional distress, mental anguish, damage to reputation, and any other non-monetary harm suffered due to the dismissal.
- [34] In the case before us, we have found that the Respondent constructively dismissed the Claimant. His evidence was that he had suffered financial constraints as a breadwinner as he could no longer cater for his family. We have already found that the manner of his termination was unfair. We are of the persuasion that the Claimant suffered distress from job loss. His letter of resignation indicates his regret and distress at resigning from his job. For these reasons, we are inclined to award the Claimant general damages.

- [35] We note that he said the Respondent's recommendation to Equity Bank was bad. However, no evidence was produced to show how this bad recommendation was worded. In our view, REX 5, which the Respondent produced as a staff movement status report addressed to Equity Bank, did not contain any statement that would be deemed malicious. It stated the reason for leaving the Respondent as resignation. In **Aporo v Mercy Corps Uganda*¹⁶, we have ruled that an employer has a duty of care to exercise a reasonable standard of care to ensure that the reference is accurate, true and fair. We are not persuaded that the Respondent is culpable for a malicious or bad reference in the present case.
- [36] The next question is what the quantum of general damages should be. In **Mukadisi, the** Supreme Court cited **Stroms v Hutchinson*¹⁷ in that general damages are based on **restituto in integrum**, and the Court is guided by factors such as the value of the subject matter. In **Stanbic Bank (U) Limited v Okou**¹⁸ Madrama, Jafas **he then was** held that general damages should be assessed on the prospects of the employee getting alternative employment or employability, how the services were terminated, and the inconvenience and uncertainty of future employment prospects. The Industrial Court has held that general damages are assessed depending on the circumstances of a given case and at the Court's discretion.¹⁹ In determining an appropriate quantum of damages in an employment dispute, the Industrial Court considered the earnings of the Claimant, the age, the position of responsibility, and the duration of the contract.²⁰ In **Serungoji, we** held the Court may consider the salary

¹⁵ [2023] UGSC 58

¹⁶ [2024] UGIC 23

¹⁷ [1905] A. C 515

¹³ [2023] UGCA 100

¹⁹ Dr. Omona Kizito v Marie Stopes Uganda LDC No.33 of 2015

²⁰ Donna Kamuli v DFCU Bank Ltd[2015] UGIC 10

earned and foregone and the economic inconvenience that a party may have been put through.

- [37] Applying these considerations in the present matter, the Claimant was earning UGX 1,500,000/= per month before his appointment as a relationship officer. At the time of his resignation, he was earning UGX 400,000/= per month. He had worked for the Respondent for just under three years at the time of his resignation, but now he has been constructively dismissed. In **Olweny* v *Equity Bank (U) Limited,** where the Claimant was earning UGX 850,000/= as a credit officer and had worked for about one and a half years, he was awarded UGX 15,000,000/= in general damages. In **Matovu and 4 Others v Stanbic Bank Uganda*²² the Claimant was earning UGX 930,000/=, had worked for one year, and was awarded UGX 10,000,000 in damages. In the present case, considering all

circumstances, we determine that based on his monthly salary, the sum of UGX 18,000,000/= as general damages will suffice, and we so award it.

Loan Balance

- [38] Because of the unlawful termination, it was submitted that the payment of the outstanding loan was premised on the employment contract. Therefore, the Respondent ought to pay the loan. Ms. Naluyange relied on **Kamuli v DFCU Bank Ltd** and **Mufumba.**
- [39] Counsel for the Respondent argued that the Claimant had, by email, authorised the Respondent to utilise his terminal benefits to settle the outstanding loan. It was claimed that the Claimant is now estopped from denying knowledge of the outstanding amount nor his obligation to pay. It was also argued that the employment contract and the loan agreement were mutually exclusive.
- [40] In **Namakula v Scooby-Doo- Daycare and Nursery School*²³ guided by the dicta in **Okou,** we observed that the Court must scrutinise the loan documents before holding the Respondent liable for paying the outstanding loan. The terms of the Claimant's loan were not presented before this Court to enable us to apportion liability. We, therefore, decline to grant this prayer.

Severance Allowance

- [41] We were invited to grant severance pay for the entire period of the Claimant's employment based on the provisions of Section 86(a)EA. Under this provision, an unlawfully dismissed employee is entitled to severance pay. The Court in **Kamuli** held that where there is no agreement on the amount of severance pay, it shall be computed as the month's salary for each year of service. Considering an earning of UGX 1,500,000/= per month, we award the Claimant UGX 4,500,000/= in severance pay.

²¹ [2021] UGIC45

²² [20221 UGIC 2

²³ [20²²¹ UGIC 83

Payment in lieu of notice

- [42] Under Section 57(3)(b)EA, Counsel prayed for one month's payment in lieu of notice for the Claimant's three-year service. The provision of the law states that an employee who has served for more than twelve months but less than five years is entitled to notice or payment in lieu of notice of not less than one month. In the circumstances, we award the Claimant UGX 1,500,000/= as payment in lieu of notice.

Unpaid leave

[43] On the strength of the provisions of Section 53(1)(a)EA, we were asked to grant unpaid leave for the period 2017-2018. The jurisprudence of the Industrial Court has been that an employee must prove that he applied for leave, and it was denied.²⁴ The Claimant has not proven that he applied for leave in 2017, but it was denied. However, in **Serumaga v Defence for Hire Security*²⁵ we observed that the EA sets a statutory minimum of 21 days of annual leave. We have also observed that an employee would be entitled to untaken leave for the year of termination. The Claimant was constructively dismissed in September 2018. Under Section 53(1)(a)EA, the Claimant would be entitled to a statutory minimum of 21 days leave. Since he had served until September of 2018, we award him unpaid leave for the calendar year 2018. This would be 14 days of earned leave. As he was earning UGX 1,500,000/= per month, we award the Claimant UGX 700,000/= in unpaid leave for 2018.

Four weeks' net pay

[44] Under Section 65(4)EA, the Claimant sought four weeks of net pay for termination. This provision relates to the lack of a hearing for summary dismissal. It reads;

> Irrespective of whether any dismissal which is a summary dismissal is justified, or whether the dismissal of the employee is fair, an employer who fails to comply with this section is liable to pay the employee a sum equivalent to four weeks' net pay.

In the present matter, we have found that the Claimant was constructively dismissed, and we are unpersuaded that this provision is applicable to a case of constructive dismissal. We therefore decline to grant this remedy.

Certificate of service

²⁴ See **Kyamukama v Makerere University Business School (Labour Dispute Reference No, 147of 2019) [2020] UGIC 36 (24 April 2020)** ²⁵ [2023] UGIC 73

- [45] Finally, we were asked to order the Respondent to provide a certificate of service under Section 60EA. The Respondent argued that the Claimant had never asked for the certificate of service.
- [46] The provision of Section 60EA is straightforward. It provides that on the termination of a contract of service, an employer shall provide the employee with ^a certificate if requested by the employee. We hold the view that by originating this action, the Claimant has sought a certificate of service, and we order the Respondent to issue the same within 30 days of this award.

Findings and conclusion

- [47] In the final analysis, the Respondent acted unreasonably in unilaterally abolishing the Claimant's office and subjecting him to interviews and a subsequent contract variation. The Respondent was in breach of the employment contract, and the Claimant was entitled to treat the employment contract as repudiated.
- [48] We conclude that because of the matters in paragraph [47] above, the Claimant was constructively dismissed by the Respondent, for which the Claimant is entitled to the remedies below.
- [49] A declaration that the Respondent constructively dismissed the Claimant is hereby issued. The Respondent is ordered to pay the Claimant the following sums:
 - UGX 18,000,000/= as general damages. (i)
 - UGX 4,500,000/= in severance pay. (ii)
 - UGX 1,500,000/= as payment in lieu of notice and (iii)
 - UGX 700,000/= as unpaid leave. (iv)
- [50] We also order the Respondent to issue the Claimant with a certificate of service within 30 days of this award.

Signed, dated and delivered at Kampala this 6th day of September 2024.

Anthony Wabwire Musana, Judge, Industrial Court

THE PANELISTS AGREE:

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

6th of September 2024

10:49 am

Appearances

- 1. For the Claimant:
- 2. Respondent absent.

Ms. Naluyange

Industrial Court Anthony Wabwire Musana, "Industrial Court"

V

Ms. Diana Mary Naluyange

Court Clerk: Mr. Samuel Mukiza.

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

Court: Award delivered in open Court.

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Prepared on 14 October 2026 · Esheria