

UGANDA / JUDGMENT

Mugisa v Equity Bank Uganda Limited (Labour Dispute Reference 281 of 2021) [2023] UGIC 62 (19 April 2023) [2023] UGIC 62

COURT

Industrial Court of Uganda

BEFORE

Wabwire Musana, J, Musimbi, Panel Member,
Kagoye, Lapenga

CASE / FILE NUMBER

Labour Dispute Reference 281 of 2021

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**THE REPUBLIC OF UGANDA IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE NO. 281 OF 2021**

(Arising from Labour Dispute Complaint No. KCCA/GEN/LC/124/2021)

MUGISA NICHOLAS ::::::::::::::::::::::::::::::**VERSUS****EQUITY BANK UGANDA LTD::::::::::::::::::::::::::::****BEFORE:**

THE HON. MR. JUSTICE ANTHONY WABWIRE MUSANA,

PANELISTS:

- 1. HON. JIMMY MUSIMBI,
- 2. HON. ROBINAH KAGOYE &
- HON. CAN AMOS LAPENGA.

AWARD

Introduction

The Claimant served the Respondent from 21st May 2019 until 21st June 2021, when he received a notice of dismissal on allegations of soliciting, giving, or accepting bribes or commissions. The Respondent undertook to pay 1(one) month's salary in lieu of notice, accumulated leave, and any other terminal benefits subject to deductions. Aggrieved, the Claimant filed a complaint with the Kampala Capital City Authority Labour officer, who referred the matter to this Court. The Claimant seeks a declaration that he was wrongfully, unfairly, and unlawfully dismissed. He claims compensation, severance allowance, general, basic and aggravated, and exemplary damages, amongst other remedies.

- [2] The Respondent opposed the claim contending that the Claimant's action was bad in law and did not disclose a cause of action. Alternatively, it was contended that the Respondent received information from whistleblowers concerning the Claimant's indebtedness and solicitation of monies. The Claimant was issued a notice to show cause why disciplinary action should not be taken against him. He admitted the allegations and was dismissed.
- [3] At the scheduling conference held on 1st December 2022, two issues were framed for determination, namely:
 - (i) Whether the Claimant's dismissal was unlawful/wrongful and unfair?
 - (ii) What remedies are available to the parties?

The Proceedings and evidence of the parties

[4] The parties called one witness each. Counsel were invited to address Court by way of succinctly written submissions.

The Claimant's Evidence

The Claimant testified that he was headhunted from Bank of [5] Africa Uganda Ltd (from now BOA). He joined the Respondent Bank on 21st May 2019. He was posted as Regional Manager of Western Uganda despite requesting to remain in Kampala for familial reasons. He was sitting in Mbarara and in charge of ten branches. The region excelled, and he was confirmed in the position on 2nd June 2020. In May 2021, his gross salary was increased from UGX 11,000,000/= to UGX 13,000,000/=. At his previous employment, he had a running mortgage of UGX 220,064,994/= repayable over twenty years at a monthly installment of UGX \$1,900,000/= and a car loan of UGX \$20,000,000\$ = payable over three years at a monthly installment of UGX 480,000/=\$. The Respondent agreed to acquire this loan portfolio immediately upon reporting to work to enable retrieval of the certificate of title to BLOCK 331, Plot 479 Land at Namagoma, which was on the verge of being sold by BOA. The Respondent delayed doing so, leading to the

loans attracting commercial

interest rates. When the Respondent did remit the monies, they were less than required to settle the loan, and BOA declined to release the titles. The Respondent also reduced the loan repayment periods and increased the monthly installments. He requested the Respondent's management for a loan to meet the shortfalls. The Respondent did not complete his request, and he obtained credit facilities from Letshego and Opportunity Bank to clear the BOA loans.

- [6] In early 2021, he found a staff member holding another job with Rubirizi District and reported this to HR. In June 2021, having heard rumours of allegations being made against him, he approached the Respondent's Managing Director, who confirmed allegations of soliciting and obtaining bribes. He explained his financial position. Subsequently, the head of HR pressured him to resign. He asked the Respondent to put these demands in writing. On 21st June 2021, he was served with a notice of dismissal. He filed an appeal. It was ignored, and he cleared with the Respondent and was discharged. After that, he filed a complaint with the Kampala Capital City Authority, and the labour officer referred the matter to this Court. He has not been able to secure alternative employment, and his credit ratings have been affected. He asked for gross salary compensation of UGX 439,000,000/ \$=\$ with interest, a certificate of service, loans at 10% p.a., and the cost of the claim.
- In cross-examination, he confirmed that he worked from June [7] 2019 until June 2021, when he was dismissed. He was comfortable with the terms of employment in the contract, which was exhibited as "CEXH1". He also confirmed that he understood that an offence of gross misconduct could result in termination. He was on probation between June 2019 and December 2019 and was confirmed in June 2020. He did not protest the upcountry posting. On the salary increment, he testified that the Respondent's Managing Director wrote only to deserving officers, and he did not know if all Regional Managers had received increments. He acknowledged taking loans from the Respondent according to the Respondent's conditions. He also admitted that heavy indebtedness could amount to financial indiscipline. Mr. Mugisha further testified that on the 2nd day of June 2021, he had

met with Mr. Kirubi and Juliet Muheirwe at Emburara Farm Lodge in Mbarara when he requested to meet the MD privately. He explained his loans to the Managing Director and asked for additional loans. He disagreed that to Management, he had a high debt burden. He confirmed that the Respondent had sold his property, but he did not know whether they had revalued it, and he did not expect to have a loan with the Respondent.

[8] In re-examination, he clarified that he could not return to BOA when he was posted to Mbarara as he had resigned. He testified that he was not promoted during his service with the Respondent but had been promoted in his previous employment. As a result of the upcountry posting, his children had to change schools, and his poultry project suffered. He suggested that his supervisor, George Katto, had promised to move him once the western region was performing. About the loans, he clarified that it took BOA more than two months to carry out due

diligence and acquire the loans, and that is why the interest moved from 10% to 20%. The disbursement by BOA was insufficient, and he had to clear the loans himself. He also specified that the allegations of financial indiscipline were never put to him, and he did not receive any invitation to the meeting for June 2021.

The Respondent's evidence

[9] The Respondent called one witness. Juliet Muheirwe testified as Head Human Resources that during the Claimant's tenure as Regional Manager, Western, two anonymous whistleblowers had alleged unethical behavior contrary to the Respondent's policies. The email trails from the whistleblowers were exhibited as REX2 to REX4. The allegations were selective hiring and firing, heavy indebtedness, extortion, borrowing from staff, creating a hostile working environment, harassment, and taking money from customers. She appointed the Risk Manager to conduct a neutral investigation and an internal probe to test the veracity of the allegations. A clandestine call to one manager confirmed that the Claimant had taken his money. She took these allegations to the Managing Director, who invited the Claimant for a meeting on the 1st of June 2021 at Emburara Farm Lodge in Mbarara. At the

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meeting, the claimant admitted to receiving monies, and based on the admission, he was dismissed. The dismissal was lawful.

- [10] Under cross-examination, she testified that she was a highly qualified Human Resource professional, and her duty was to guide the Respondent on appropriate disciplinary procedures, which she understood sufficiently. After receiving the anonymous emails, she confirmed she did not issue a show-cause letter. She received a statement from the head of risk, which was not attached to her evidence. In her view, the way the matter progressed, there was no need to issue a notice to show cause. She agreed that in all cases of gross misconduct, an employee was supposed to be given a show-cause letter. Since this was not done, the allegations were not brought to the Claimant's attention. She confirmed that she did not have the Managing Director's call log showing that he called the Claimant. She confirmed that the meeting in Mbarara was an EXCO meeting, and the Managing Director asked other EXCO members to be present when he summoned the Claimant. She confirmed that this was not a disciplinary meeting but an EXCO meeting, and the Claimant did not sign the minutes, which were admitted as REX7. She confirmed that how she handled the dismissal was correct.

- [11] In re-examination, Ms. Muhirwe clarified that the Claimant was a senior staff member and the allegations were very sensitive and serious. She explained that she did not issue a show cause letter because the Claimant had admitted the allegations. There was no need for a disciplinary process. It was her testimony that the purpose of the hearing was to ensure that there was no bias and that there had been a fair hearing. She maintained that the Respondent Bank had been fair to the Claimant.

Analysis and Decision of the Court

Issue 1. Whether the Claimant's dismissal was unlawful/wrongful and unfair?

Submissions of the Claimant

- [12] Ms. Genevive Kampiire, appearing for the Claimant, submitted that the Claimant was dismissed without a fair hearing. Counsel

cited S.66(1) and (2) of the Employment Act (from now EA) and the cases of *Ebiju James v Umeme Ltd* C. S 0133 of 2012 and *Ogwiko Deogratus v Britannia Allied Industries Ltd* LDC 018 of 2016 in support of the proposition that the Claimant's dismissal was unlawful. Counsel also referred the Court to Sections 16.5, 16.7, 16.8, 16.10, and 16.16.1 of the Respondent's Human Resource Manual.

Submissions of the Respondent

- Mr. Patrick Mugalula, appearing for the Respondent, submitted \$[13]\$ that the Claimant's dismissal was substantively and procedurally lawful. On substantive fairness, Counsel submitted that the Claimant admitted committing gross misconduct in financial indiscipline. He took loans from other financial institutions and did not declare this to the Respondent. He was in fundamental breach of the contract of employment. Counsel cited the case of *Bureau Veritas Uganda Ltd v Dalvin Kamugisha* LDA 25/2017 for the definition of a fundamental breach of contract and the case of *Benon Kanyangoga & Ors v Bank of Uganda* LDC No. 8/2014 for the proposition that financial indiscipline is an indicator of financial embarrassment.
- [14] It was submitted that upon admission of financial indiscipline, the provisions of Section 66 EA were dispensed with. Counsel cited the case of **Kabojja International School v Godfrey Oyesigire** LDA No. 003 of 2015 and *Bureau Veritas* (supra). We were invited as Court to find that the dismissal was procedurally and substantively fair.
- [15] Learned Counsel also sought to distinguish the *Ebiju* and *Ogwiko* cases from the present case suggesting that in the *Ebiju* case, the allegations were not put to *Ebiju*. In contrast, in the present case, there had been an admission. Regarding the *Ogwiko* case, the complaint related to a lack of a hearing, while in the present case, there was an admission. Counsel asked this Court to find that the dismissal was lawful.

Submissions in rejoinder

- [16] In rejoinder, Ms. Kampiire submitted that matters relating to loan repayment to the Respondent was evidence from the Bar. She submitted that the Claimant had made no admission of any wrongdoing whatsoever. The Respondent was mandated to investigate the allegations and summon the Claimant to defend himself. The minutes, REX2, were not signed by the Claimant, who had initiated the meeting of the 2nd June 2021. Regarding the alleged admissions, the Claimant sought to confirm the rumours he heard of his financial indiscipline, and this was not an admission. The whistleblowers were never brought, and the Claimant was not allowed to defend himself.
- [17] Ms. Kampiire submitted that there was no extreme financial stress and that the Claimant had grown the Respondent's business from 6 to 9 branches. He was a high performer. He admitted to taking loans from other financial institutions to meet his obligations to BOA. It was also submitted that there were inconsistencies regarding the whistleblowers and the evidence against the Claimant.

Resolution of Issue No. 1

- [18] The thrust of the Claimant's case, as we understand it, is that he was unfairly dismissed. On its part, the Respondent submits that the dismissal was justified because the Respondent admitted to the allegations of financial indiscipline or gross misconduct. What is, therefore, common to the parties, is that the Claimant was dismissed without a hearing.
- [19] The relevant provisions of law relating to unfair dismissal are relatively well settled now. Under Section 69(1) EA, summary termination takes place where the employer terminates the employee without notice or notice below the statutory minimum. The Claimant was terminated without notice, albeit the Respondent was amenable to paying the said notice. In the recent Court of Appeal decision in **Stanbic Bank v Constant Okou**,¹ an employee must consent to notice. In the present case, neither was such consent sought nor given. The facts of the present case are,

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[<]lt;sup>1</sup> Civil Appeal No. 60 of 2020

therefore, consistent with summary termination or dismissal. It is therefore a finding of fact, that the Claimant was summarily dismissed from employment with the Respondent.

- [20] The narrow question is whether this dismissal was lawful. Under Section 69(3) EA, to ascertain whether a dismissal is lawful, the Court must test whether the employer has proven that the employee has fundamentally broken the employment contract. This would entail interrogating the reason for dismissal as well as the process and procedure leading up to the termination and whether there was compliance with the EA. In *Airtel Uganda Ltd v Peter Katongole*², this Court extracted a passage by Lord Evershed in *Laws v London Chronicle Ltd* CA 1959³, cited in Labour Dispute Reference No. 6/2018

Kanyonga Sarah v Lively Minds Uganda. The passage reads thus:

"... it follows that the question must be \$- if summary dismissal; is claimed to be justified whether the conduct complained of is such as to show the servant to have disregarded the essential conditions of the contract of service. Therefore, one act of disobedience or conduct can justify dismissal only if it is of the nature which goes to show that the servant has repudiated the contract or one of the essential conditions and for the reason therefore, I think what one finds in the passages which I have read that the disobedience must at least have a quality that is willful. In other words it connotes the flouting of the essential contractual terms."

In the case of **Ogwal Jasper v Kampala Pharmaceutical Ltd**⁴, this Court put the matter down to two tests:

- A test of procedural fairness which relates to the process and (i) procedure leading to termination and;
- A test of substantive fairness which relates to the reason for (ii) termination.

² Labour Dispute Appeal No. 13 of 2022

³ [1959] 1 WLR 698

⁴ LDR 35 of 2021

Procedural and Substantive fairness

[21] In the Ogwal case (ibid),⁵ we posited that procedural fairness is provided for under Section 66EA. Before reaching a decision to dismiss an employee on the grounds of misconduct, the employer must explain to the employee why the employer is considering dismissal, and the employee is entitled to have another person of their choice present during this explanation. The employer must allow the employee to present their defence and give the employee a reasonable time to prepare a defence. In the case of **Ebiju James v Umeme Ltd**,⁶ it was held:

" On the right to be heard, it is now trite that the defendant would have complied if the following was done.

- 1) Notice of Allegations against the plaintiff was served on him, and a sufficient time allowed for the plaintiff to *prepare a defence.*
- 2) The notice should set out clearly what the allegations against the plaintiff and his rights at the hearing where such rights would include the right to respond to the allegations against him orally and or in writing, the right to be accompanied to the hearing and the right to cross-examine the defendant's witness or call witnesses of his own.
- 3) The plaintiff should be given a chance to appear and present his case before an impartial committee in charge of disciplinary issues of the defendant."

- [22] In the case before us, the Respondent suggested that the Claimant was culpable for and admitted to financial indiscipline. Based on the admission, there was no need for the Respondent to hold disciplinary proceedings. Ms. Muheirwe testified, and Mr. Mugalula submitted on the point. This evidence and submissions cement the position that there was no disciplinary hearing at all. The Respondent sought to anchor the dismissal on the admission of culpability by the Claimant.

⁵ LDR 35 of 2021

⁶ H. C. C. S No. 0133 of 2012

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- [23] We were referred to the case of **Kabojja International School v Godfrey Oyesigire** (supra) for the proposition that once an admission is made, the Respondent need not hold a hearing. In that case, the Appellant's Head Teacher invited the Respondent to a meeting to explain certain omissions and incidents. The letter stipulated a date and time for the meeting. The Respondent replied to the invitation by admitting wrongdoing in writing. On that basis, the Industrial Court considered the admission to have vitiated the need for an oral hearing. The same position was posited in *Bureau Veritas Uganda Ltd v Dalvin Kamugisha* LDA 25/2017 (supra). In this case, the Respondent made a written statement of admission of liability.
- [24] Under Section 16 of the Evidence Act Cap.6, an admission is a statement, oral or documentary, which suggests an inference as to any fact in issue or relevant fact and which is made by any person. The law on admissions is that they dispense with the need for proof of a fact and mean that a party has conceded to the truth of an alleged fact. (See the case **Matovu Luke & ORS vs. Attorney General**, HC Misc. Appl. No. 143 of 2003). The admission must be unambiguous⁷. In this case, it is the Respondent's case that the admissions were made at a meeting between the Claimant on the one hand and the Respondent's Managing Director Mr. Samuel Kirubi (MD), the Head of Risk(HOR), and the Head of Human Resources Ms. Juliet Muheirwe (HHR) on the other hand. The Claimant admitted to having financial difficulty and having facilities due to different financial institutions. According to the Notice of Dismissal, which was admitted as CEX 15, the Claimant was dismissed for confessing to having participated in soliciting, giving, or accepting bribes or commissions. In cross-examination, he admitted to financial difficulty and borrowings but did not admit to the reasons ascribed in the notice of dismissal. In an email seeking clarification on the allegations against him, the Claimant made it clear that he had financial difficulty but distanced himself from allegations of receiving money from potential hires. At the trial, under cross-examination, the Claimant explained that he answer was not financially

⁷ Cited in Mwebelha Amatos vs A. G [2015] UGHCLD 49 Per Bashaija J. "It would appear clearly that where the admission of facts is clear and unambiguous, the court ceases to have the discretion whether to enter a judgment or not. It must do so"

indisciplined but was experiencing financial pressure. We think that the admission of wrongdoing was not equivocal and unambiguous. The admission did not relate to participation in soliciting, giving, or accepting bribes and commissions as stipulated in the notice of dismissal. We are of the persuasion that there was no admission of complicity as alleged by the Respondent.

- [25] It follows that the Respondent ought to have carried out a hearing. The HOR carried out the investigations on the instructions of HHR. The MD, HOR and HHR met with the Claimant on the sidelines of an EXCOM meeting. None of the whistleblowers or the employees from whom the Claimant is said to have extorted money was called. He did not cross-examine any witness. The Respondent's Human Resource Manual (HRM), which was admitted in evidence provides a comprehensive disciplinary procedure. This procedure exceeds the minimum standards of the Employment Act's disciplinary code in Schedule 1. The standards express the intent of the ILO standards set under various conventions including Convention 158 of 1982 which stipulates that an employee should not be terminated unless there is a valid reason. The procedure laid out in Section 16.5 of the HRM and specifically Section 16.7, in all instances of disciplinary cases, the employee is issued with a show cause letter to give a defense in writing within seven working days. The right of appeal to an appeals Committee constituting at least three EXCOM Members is reserved. Under Section 16.8.1.11, a first and final warning is issued in case of gross misconduct. And under Section 16.10, the procedure for summary dismissal stipulates a final written warning. The Manual also provides that the disciplinary panel shall listen to cases objectively and arrive at disciplinary decisions in line with the Bank's policy, Employment Laws, and the Constitution.
- [26] In the present case, the Respondent appears to have disregarded this elaborate procedure. There needed to be adherence to the Respondent's standard. At best, the meeting at Emburara Farm Lodge on the sidelines of the Respondent's EXCO meeting would be regarded as a sidebar. These were not disciplinary proceedings, and we cannot accept the Respondent's propositions of procedural fairness for the foregoing pitfalls.
- [27] It is, therefore, our determination that the Respondent was not permitted to dispense with procedural fairness. The tenets of procedural fairness sit at the heart of the non-derogable right to a fair hearing under Articles 28 of the 1995 Constitution. On account of procedural irregularities, we determine that the Claimant was unfairly dismissed.
- [28] The Court of Appeal of Uganda decision in Uganda Breweries Ltd v Robert Kigula⁸, posits that substantive fairness requires the employer to show that the employee had repudiated the contract or any of its essential conditions to warrant summary dismissal. The test establishes whether the summary dismissal is justified. The Court held

that gross and fundamental misconduct must be verified for summary dismissal. Mere allegations do not suffice. Under S68EA, the employer is required to prove the reason or reasons for the dismissal. Proof of the reason for dismissal would, in our view, require a hearing except for an admission. Substantive fairness subsists when a valid and substantive reason for dismissal exists. The reasons why the employer dismisses an employee must be good and well-grounded and not based on the suppositions or whims of the employer. In the Ogwal Jasper case (op cit), we observed that the employer must demonstrate that the employee was actually guilty of misconduct. It is not that the balance is akin to a civil trial before a court of law but on some reasonable grounds.⁹ It is our view that substantive and procedural fairness are twin tenets. To ensure substantive fairness, the employer must maintain procedural fairness and vice versa. In other words, for a summary dismissal to be justified, there must be both procedural and substantive fairness. The absence of one or the other would render the dismissal unjustified and, therefore, unlawful. For this reason and as spelt out in the Ebiju case (supra), an employee must be notified of a disciplinary hearing in sufficient time to prepare a defence. The allegations or offence must be laid out with sufficient particularity, and the employer has a right to have a person of their choice present. All these procedural safeguards ensure substantive fairness. They are not meant to fetter the employer's right to terminate but to ensure fairness. In the case before us, there was no invitation, no notice, no hearing and no witnesses

⁸ Uganda Breweries Ltd vs Robert Kigula C. A. C. A No 182 of 2016

called, and as such, from the minutes adduced, it cannot be said that the offences of soliciting and taking bribes or commissions and financial indiscipline, even if the Respondent genuinely believed them to exist, were proven against the Claimant. Therefore, we cannot agree with Mr. Mugalula that the offence had been proven either by admission or otherwise. In our view, had the Respondent conducted a procedurally fair hearing, they would have had the opportunity to demonstrate substantive fairness. As a result, we find that the dismissal of the Claimant was unfair.

[29] After reviewing the evidence and the applicable law, and the submissions advanced on behalf of the parties, we find that it was unreasonable to sanction the dismissal of Mr. Nicholas Mugisha on the unproven allegations of soliciting and taking bribes or commissions and financial indiscipline. Under Section 73(1)(b) EA, the Respondent did not act justly or equitably. Accordingly, and in all circumstances, we would find that the Claimant was unfairly dismissed from the Respondent's service. Issue number one would be answered in the affirmative

Issue II. What remedies are available to the parties?

General Damages

- [30] The Claimant sought UGX 200,000,000/= in general damages. Counsel premised this prayer on the fact that the unfair dismissal had permanently ruined the Claimant's career as a Banker. The Bank sold his collateral, and he had proven bad faith on the part of the Bank, which had forced him to obtain loans from alternative sources. He was not given any hearing.
- [31] The Respondent countered that this sum was unjustified, excessive, and unsubstantiated. Bad faith had neither been pleaded, particularized, nor proven. The Claimant admitted that the loan appraisal process caused the delay in disbursing the loan, and after disbursement of UGX 220,000,000, the Claimant applied for and obtained a further UGX 50,000,000.
- [32] The law is that general damages are those damages such as the law will presume to be the direct natural consequence of the action

complained of⁸. In the case of **Stanbic Bank (U) Ltd v Constant Okou⁹** Madrama, JJA(as he then was) held that general damages are based on the common law principle of **restituto in integrum**. Appropriate 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. A few decisions of the Industrial Court are also helpful; In the case of **Dr. Omona Kizito v Marie Stopes Uganda,¹⁰** this Court observed that damages are assessed depending on the circumstances of a given case and at the Court's discretion. In determining an appropriate quantum of damages in an employment dispute, in the case of **Donna Kamuli v DFCU¹¹** the Industrial Court considered the earnings of the Claimant, the age, the position of responsibility, and the duration of the contract.

- [33] In the present case, the Claimant has made a case for an award of general damages. In our assessment, the Claimant was earning UGX 13,000,000 per month. He had worked for the Respondent for about two years, and his appointment was on permanent terms subject to completion of probation. He was confirmed on 2nd June 2020 on account of his excellent performance. His salary was increased from UGX 11,000,000 to UGX 13,000,000 in May 2021. He was summarily dismissed one year later, on the 21st of June 2021. In the case of **Olweny v Equity Bank (U) Limited**, the Claimant was earning UGX 850,000/\$ as a credit officer and had worked for about 1.5 years. The Court awarded him UGX \$15,000,000/\$ = in general damages. In **Matovu and 4 Others v Stanbic Bank Uganda,¹²** the claimant was earning UGX 930,000/=, worked for one year, and was awarded UGX 10,000,000 in damages. Considering all circumstances and the Claimant's employability, we determine that based on his monthly salary, the sum of \$UGX\$ 52,000,000/ = as general damages will suffice.

- ⁸ Stoms v Hutchinson[1950]A. C 515
- ⁹ Civil Appeal No. 60 of 2020
- ¹⁰ LDC No.33 of 2015
- ¹¹ LDC No. 002 of 2015
- ¹² LDC No.159 of 2015

Aggravating damages

[34] Ms. Kampiire submitted that the Respondent should not go unpunished and sought UGX 150,000,000 in aggravated damages. Relying on the cases of **Blanche B. Kaira v Africa Epidemiology Network LDR No. 131 of 2010** for the proposition that aggravated damages are awardable where terminations is with malice and **Africa Epidemiology Network v Peter Wasswa Civil Appeal 124 of 2017** for the proposition that aggravating circumstances should be pleaded, Mr. Mugalula submitted that there was no aggravation to speak of. The Court of Appeal, in the Stanbic case (supra), held that the humiliating and unacceptable conduct of the Employer would be a basis for an award of aggravated damages. In the case before us, Ms. Kampiire's justification in the submissions in rejoinder was that the Claimant was dismissed during the COVID Pandemic, deliberately delayed to pay the loan in full, adamantly refused the Claimant's request for clarity, and ignored the appeal. In paragraph 3 of the memorandum of claim, the Claimant sought aggravated damages. In the column supporting the claim for aggravated damages, the Claimant pleaded embarrassment, mental anguish, and financial distress. In his evidence before the Court, he testified about the dismissal's effect on his family. We are satisfied that the Claimant has laid down aggravating circumstances to warrant an award of **UGX 26,000,000/=** which we hereby award.

Exemplary damages

[35] Ms. Kampiire contended for UGX 50,000,000 in exemplary damages. Counsel advanced the exact reasons for aggravated damages in the submissions in rejoinder. As rightly submitted by Mr. Mugalula, exemplary damages are entirely punitive. We do not find a reason to award any exemplary damages.

Severance Pay

[36] Under Section 87(a) of the Employment Act, an unfairly dismissed employee is entitled to severance allowance. Having found that the claimant was unfairly dismissed, he would be entitled to severance pay. We also adopt this Court's reasoning in **Donna**

Kamuli v DFCU Bank Ltd¹³ that the Claimant's calculation of severance shall be at the rate of his monthly pay for each year worked. The Claimant was employed on 21st May 2019 and dismissed on 21st May 2021. This was a period of 2 years. He was earning UGX 13,000,000 per month. We hereby award UGX. 26,000,000/= as a severance allowance.

Basic Compensation

[37] Under Section 66(4) EA, an employer who fails to comply with the requirement for hearing is liable to pay the employee four weeks' pay. Counsel for the Respondent contended that this would be an alternative to damages. Our reading of the present jurisprudence does not make the case for limiting damages to a dismissed employee to statutory remedies. The Claimant is awarded therefore \$UGX\$ 13,000,000/= as basic compensation.

Costs of the Claim

- [38] Under Section 8(2a)(d) of the Labour Disputes(Arbitration and Settlement) Amendment Act 2020, this Court may make orders as to costs as it deems fit. We have held that in employment disputes, the grant of costs to the successful party is an exception on account of the nature of the employment relationship except where it is established that the unsuccessful party has filed a frivolous action or is culpable of some form of misconduct.¹⁴ We do not think the Respondent's defence was frivolous, and we decline to award the Claimant's costs.
- [39] Given the foregoing findings and conclusions, we make the following orders:
- We declare that the Claimant was unfairly dismissed from (i) the Respondent's service.
- (ii) The Respondent is ordered to pay the Claimant the following sums:
- (a) UGX 52,000,000/= as general damages,
- (b) UGX 26,000,000/ \$=\$ as aggravated damages,

¹³ The Court of Appeal maintained this position in DFCU Bank Ltd vs Donna Kamuli C. A. C. A No 121 of 2016.

¹⁴ JOSEPH KALULE VS GIZ LDR 109/2020(Unreported)

- (c) UGX 26,000,000/= as severance pay,
- (d) UGX 13,000,000/= as basic compensation.
- (e) The sums above shall carry interest at 15% p.a. from the date of this award until payment in full.
- (iii) The Respondent shall issue a certificate of service within 21 days from the date hereof.

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- (iv) There shall be no order as to costs.

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

Court Clerk: Mr. Samuel Mukiza.

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