

UGANDA / JUDGMENT

Mutagamba v Eleqtra (East Africa) Limited (Labour Dispute Reference 127 of 2021) [2024] UGIC 81 (27 November 2024)

[2024] UGIC 81

COURT

Industrial Court of Uganda

BEFORE

Tumusiime-Mugisha, J, Nyachwo panel member,
Mwamula Juma - Panel Member, Bwire, Panel
Member

CASE / FILE NUMBER

Labour Dispute Reference 127 of 2021

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THE REPUBLIC OF UGANDA IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE NO. 127 OF 2021 (ARISING FROM MGLSD/
LC/555/2021)

MARIANNE IN. MUTAGAMBA CLAIMANT

VERSUS

ELEQTRA (EAST AFRICA) LIMITED RESPONDENT

Before:

The Hon. Head Judge, Linda Lillian Tumusiime Mugisha

Panelists:

- 1. Hon. Julian Nyachwo,
- 2. Hon. Mwamula Juma&
- 3. Hon. Bwire John Abraham.

Representation:

- 1. Mr. Brain Emurwon Kwame of M/s. Emurwon & Partners Advocates for the Claimant.

- 2. Mr. Ernest Wiltshire Kalibala of M/s. AF Mpanga Advocates for the Respondent.

AWARD

Introduction

- [1] The Claimant was employed by the Respondent Company in various capacities. By the time she filed this claim she was holding the position of Project Developer and Office Manager and her salary was Ugx. 10,227,000/- plus CPI (Customer Price Index) per month.

Her claim against the Respondent is for recovery of special damages, general damages, aggravated damages, interest, and costs arising from breach of contract and breach of statutory duty by failure to pay her remuneration.

Facts of the Case

[2]

The Respondent EleQtra and the Claimant Mutagamba Marriane executed an employment contract on 4/09/2014.

It was an agreed fact that the Claimant's base salary was reduced for a period of 6 months, and she was not paid her CPI for 25 months. When she filed a grievance about this breach, the Respondent paid the salary it had withheld, although it did so in monthly installments. The Respondent also paid Although the Respondent computed and paid her the outstanding CPI, she contended that the rates applied were wrong rates of 2020 and 2021, instead of the prevailing rate of 6.3%, as at May 2023, thus arriving at an incorrect sum.

The Respondent denies liability.

Issues

- 1. Whether the Respondent is liable for breach of contract?
- 2. Whether the Claimant is entitled to the payment of additional CPI and if so how much?
- 3. What remedies are available to the parties?

Evidence

- [3] It was the Claimant's evidence that she was involved in Finance and Administration, particularly as a project developer. The Respondent however denied her 50% of her salary for a period of 6 months and she was not paid CPI (customer price index) which formed part of her salary, despite verbally raising this issue with the Regional Manager. According to her, CPI was calculated based on the percentages from and added to her basis salary. She claimed the rate of 6.3% for May 2022 should have been the rate applied for the unpaid

period. However, she admitted that the rates varied. She testified about the variance in the hours she worked but contended that this did not affect her pay. She denied ever receiving communication regarding half pay resulting from Covid 19, but she verbally complained about it to John, until 15/11/2020 when she made a formal complaint and later escalated the matter to the labour office. According to her, although the Respondent paid her the half basic pay for July 2021 to April 2022, it still owed her Ugx. 9,560,337/= in unpaid CPI.

- [4] Mr. John Opilo RW1, testified that the Respondent had a right to vary work hours but such variance did not affect remuneration. It was his evidence that from May 2020, the claimant was entitled to payment of Ugx. 10, 227,000/- plus CPI. CPI was the Company's recognition of the change in prices from time to time and it was intended to keep the Claimant's salary to keep track of the changes. It was his evidence that CPI was issued by UBOS on the 3rd day of the following month, which made it cumbersome to pay. As a result, the Respondent chose to accumulate it and pay it every 12 months. He admitted that even then, the Claimant was not paid until she lodged a complaint in November 2021 and there was no agreement to postpone its payment. It was also his evidence that even though the working time was revised the remuneration did not change.
- [5] According to him the calculation of the CPI was done by the Respondent's Accountant in consultation with in-house counsel. He also admitted that there was no particular formula for calculating CPI. It was his testimony that the Respondent did not Respond to the Claimant's complaints until 15/11 /2021, because they were not in writing, but she was consulted about the changes via telephone conference. He said that the CPI varied from month to month, therefore it could one could not use one CPI to cover any period of time or to define the whole situation and in this case the Respondent applied an adjusted CPI, by considering the difference between the CPI for 1st month and the last month of each year expressed as a percentage, to cater for the whole year.

Resolution of Issues/Submissions

[6]

1. Whether the Respondent is liable for breach of contract?

Mr. Emurwon appearing for the Claimant cited **Ssempe v Kambagambire** HCCS No. 408 of 2014 which cited Black's Law Dictionary 5th Edition at page 171, for the definition of breach of contract, as a situation where one party to a contract fails to carry out a term. According to Counsel, it was RW1's testimony that the Respondent was obligated under the contract to pay the Claimant a base salary comprising a base salary and CPI at Ugx. 10,227,000/- plus CPI, payable each month. He refuted RW1's testimony that it was impractical for the Respondent to

pay monthly CPI, hence its payment on an annual basis, because there was no written agreement rescheduling its payment from a monthly to an annual basis. In any case, even though it chose to pay CPI annually, RW1 admitted that the Claimant was not paid.

[7] He also refuted the assertion that the Claimant agreed to the variation of her salary because Clause 14.0(c) of her employment Contract expressly provided that the contract could only be varied by written agreement. He relied on **Rock Advertising Ltd v MWB Business Exchange Centres Ltd** [2018], where Lord Sumption prohibited verbal variation of contracts. It was his submission that the argument that the contract was frustrated by the covid 19 pandemic which caused economic pressure, could also not hold because, Mugenyi JA in **Revolutionary Ads & Designs Ltd v Board of Trustees of Nakivubo Stadium** CACA131 of 2013, cited Halsbury's laws of England thus:

> "A contract is not discharged under the doctrine of frustration merely because it turns out to be difficult to perform or onerous.":

Therefore, the parties will not generally be released from their bargain on account of ordinary risks of business, such as rises or falls in prices depreciation of currency, or unexpected obstacles to the execution of the contract."

[8] He contested the argument that the salary reduction was based on the reduction in work hours because Clause 3 of the Claimant's employment contract gave the Respondent power to change her work hours, but this did not translate into a change in remuneration. He also refuted the assertion that the Claimant's silence amounted to consent because clause 8.0 of the contract provided that any failure or neglect by a party to insist on the compliance of the contract obligations by the other party did not constitute a waiver. Therefore, strict compliance could be demanded at any time. He argued that the mere continuation of work by the Claimant did not amount to acceptance by conduct. He relied on **Sozzi v PPDA**, HCCS No.63 of 2012, where Elisabeth Musoke J (now JSC) cited the Canadian Case of **Francis v Canadian Imperial Bank of Commerce**^, **Can LII 1578 (ONCA)* for the principle that:

> "... the law does not permit employers to present employees with changed terms of employment, threaten to fire them if they do not agree with them, and then rely on the continued employment as the consideration for the new terms.... An employer... cannot unilaterally amend a significant term of employment contract, without an employee's consent and without furnishing an employee with fresh consideration."

He contended that by withholding the Claimant's CPI for a continuous 25 months and halving her base pay for 6 months, without her consent constituted actionable breaches for which court should find the Respondent liable.

- [9] In reply, Mr. Kalibala for the Respondent argued that not every breach ought to be considered as an actionable claim, and for a breach to be actionable there ought to be a legal basis. He argued that employment relationships being human relations cannot be managed

strictly by written text or be measured with a standard of perfection. He gave examples of breaches such as coming late by a few minutes and delayed payment of salaries which are not necessarily actionable. According to him where there may be instances of failure or breaches that are remedied, such instances cannot continue to be subjects of litigation. Therefore issue ¹ was devoid of any merit. He argued that Section 67 of the Contracts Act recognizes that rights, duties, and liabilities arising under contracts can be varied by the course of dealing between the parties. Therefore, when considering claims arising out of human relations such as the workplace, consideration of the context must be emphasized.

- [10] He invited Court to consider that the alleged breaches by the Respondent to wit: Nonpayment of monthly CPI for 25 months and reduction of base pay between July 2021 and December 2021, happened during the Covid-19 pandemic which qualified as a force majeure event, which the Respondent opted to manage by reducing monthly pay, and this applied to the entire organisation and not the Claimant alone. It was his submission that the Claimant having not raised any complaint about the non-payment of the withheld salary, for 4 months after July 2021, this amount to acceptance and it was in line with section 67 of the Contracts Act. Therefore, there was no breach, however, this notwithstanding when she raised the issue, the Respondent agreed to pay the outstanding amounts but it did so in installments, owing to cash flow constraints.
- [11] Regarding the non-payment of the monthly CPI Counsel submitted that this entitlement commenced in May 2020, during the Covid-19 Pandemic, and despite preparing payrolls and receiving pay slips, the Claimant only raised a complaint about it 19 months after it ought to have been paid. According to him, it seemed that the hurried escalation of her complaint about it to the labour office, was only intended to seek unreasonable claims for damages. In any case, the fact that she delayed complaining about it, was interpreted as acquiescence or as an appreciation of the circumstances prevailing during the covid COVID-19 pandemic.

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But Court should note that when the matter was brought to the Respondents attention it promptly computed the CPI and paid it to her. According to Counsel, unlike **Revolutionary Ads & Designs Ltd v Board of Trustees of Nakivubo Stadium*, relied* on by the claimant, the COVID-19 pandemic was not an ordinary business risk. He contended that the Claimant recorded fewer working hours than was expected of her and the Sozi case was distinguishable because of the unprecedented Covid 19 pandemic. In any case, the Claimant's verbal consent was sought and obtained. Therefore, to find that there was a breach where unforeseen and unavoidable circumstances were caused by the Pandemic rather than by acts or omissions on the part of the Respondent would be absurd and unfair and to insist that in the face of the lockdown, changes ought to have been made in writing was unrealistic and irrational.

Decision of Court

[12] From the evidence adduced, it is not in dispute that, the Claimant was an employee of the Respondent as a Project Developer and Office Manager and from May 2020 to May 2022, her salary was varied by adding a monthly CPI which was supposed to be paid monthly. It is further not in dispute that half of her salary was withheld for 6 months, and the CPI was withheld for 25 months. The Claimant's contention, as we understand it is that, by withholding her monthly

CPI for 25 months and half of her salary for 6 months, without her consent amounted to a breach of her employment contract.

[13] It is trite that an employment relationship is governed by a contract of employment and Employment laws. Unlike a commercial contract, the employment contract as rightly submitted by Counsel for the Respondent is based on human relations, between an employer and employee, but the 2 are never on an equal footing. This is because the employer as the holder of capital has power over the employee who submits to render services to the employer in return for remuneration.

The Employment Act under Section 2 defines a contract of service as "...as any contract, whether oral or in writing, whether express or implied, where a person agrees in return for remuneration to work for an employer and includes a contract of apprenticeship" The contract of service creates the rights and duties of the parties. It is therefore an employer's responsibility to give work to an employee, who does the work in return for remuneration. The employer is therefore expected to give the employee the particulars of employment and for drafting the employment contract (see section 58 of the Employment Act).

- [14] Section 40 of the Employment Act entitles an employee to payment of wages which are consideration for the services rendered by an employee. Under Section 58 of the Employment Act, the particulars of employment include the job description and the terms and conditions of service. Section 58(1) (e) in provides that the employer must particularize,*"...* the wages which the employee is entitled to receive or the means by which they can be calculated and in either case, the intervals at which they will be paid and the deductions or other conditions to which they shall be subject...". It is therefore very clear that payment of remuneration is one of the essential and fundamental terms of a contract of service and this includes the period they are to be paid. In the instant case, the Claimant's contract provided that her salary would be paid every month, on the 26th day or on the last working day of every month. Therefore, the employer had to comply with this provision.
- [15] Section 58(4) of the Employment Act is emphatic on the requirement for the parties to an employment contract, to agree to changes to the particulars of employment and the employer is expected to issue notice of such changes to the employee in writing. The written particular of employment together with any notice of change shall be admissible as evidence of the existence of the terms and conditions about which there is a dispute between the employee and employer concerning the terms and conditions of employment

(see section 59 of the Employment Act).

- [16] After carefully analyzing the evidence we established that following a several amendments to the Claimant's contract, the Respondent adjusted her salary and added a monthly benefit known as the Consumer Price Index (CPI). This adjustment took effect in May 2020. However, this CPI was not paid to the Claimant for 25 months, until she raised a formal complaint about it on 15/11/2021. When she received no response about the complaint, she escalated it to the Labour Commissioner, whose intervention caused the Respondent to compute the CPI based on an annual average, which she contests and insists that it should have been computed at the rate of 6.3% which was pertaining in May 2022.

A careful analysis of the Claimant's employment contract dated 18/11/2018, indicated under Clause 6.1 of that "... the base salary will be paid monthly on the 26th of each calendar month or by the last working day of each Calendar month."

As already discussed, this clause meant that the Respondent had undertaken to pay the claimant a base salary of Ugx. 10,227,000/- plus CPI, every month on the 26th day or by the last day of each calendar each month.

- [17] It was the evidence of Mr. Opilo RW1, that, the CPI was calculated based on the rates published by the Uganda Bureau of Statistics (UBOS) and it was not a fixed rate, because prices varied every month. It was his testimony that payment of CPI together with salary was unworkable because UBOS published the monthly CPI on the 3rd day of the following month, yet salary had to be paid on the 26th day of the month. As a result, the Respondent opted to compute it based on an annual range, based on adjustment factors. He explained this based on REX 6b where the Respondent applied the adjustment factors as the difference between the CPI published for May 2019 as 107 and the one for April 2020 of 110, expressed as a percentage adjustment that was applied to the annual salary. He attributed this to the unpredictable rates published by UBOS and their publication after the payment of the base salary. He testified that, "... CPI varies sometimes from positive to negative and sometimes not. Secondly, CPI as issued by UBOS is always issued not consistent with the payroll. Our payroll states that you get paid on the 28th, or 26th depending on if we have a weekend or not but UBOS published its CPI at the earliest it would be the 3rd of the following month. So if you are to pay CPI monthly it means that you must have more than one payroll where you pay the normal ones and then after 3 days you make an adjustment for 3 days because that's when the CPI for the following will have been published...".
- [18] He also said that, one could not apply a particular CPI adjustment for a whole year and whereas salary remains constant and commodity prices fluctuate, and yet CPI was intended to cater for the loss of value in salary. He however contradicted himself when he stated that UBOS publishes the basis on which CPI can be calculated over a period of time and in the Respondent's case this was a 12-month period. We respectfully found it difficult to believe RW1 when he testified that where the CPI was negative the employee's salaries could be deducted. This is because CPI was an addition to the base salary and not part of it. We

strongly believe that where there was negative CPI, the employee would only take home her base salary. Therefore, where it was negative the Claimant would not earn any CPI, but she would be paid her base salary.

The Claimant on the other hand contends that having not paid for 25 months the Respondent ought to have calculated her CPI at the rate of 6.3% which was pertaining in May 2022.

[19] We respectfully do not agree with both parties, regarding the rate applicable, because Clause 6.1 of the Claimant's employment contract clearly provides that her monthly remuneration was her base salary plus CPI. This meant that CPI was to be calculated every month and added to the base salary. We also do not agree

with the explanation extended by RWI that the CPI was not computed because UBOS published the monthly rate on the 3rd day of the following Month. In our considered view the Respondent had the power to negotiate with the Claimant to pay her salary after the 3rd day of the following month to enable the CPI to be reckoned. We also do not subscribe to the assertion by the Respondent that the CPI had to be computed based on an adjusted rate, because the contract did not provided for any adjustments and RWI was categorical when he stated that the CPI was inflationary, that it could be positive or negative and most importantly that it was published every month albeit on the 3rd day of the following month.

- [20] We strongly believe that had it been the intention of the Respondent Company to pay CPI at adjusted rates, it would have explicitly stated so in the contract of employment or in the letters that amended the contract. The basis of the payment of CPI was the contract which was drafted by the Respondent. We are persuaded and fortified by the holding in the Kenyan case of **Mwangi Ngumo v Institute of Management Industrial Cause No. 851 of 2009 [2009] LLR 270(ICK)** to the effect that a contract of employment having been drawn by the employer and even if not drawn by the employer, it cannot be shown that the employer entered into it under duress or coercion, any ambiguities in the contract must be construed against the party who drew the contract, the employer.
- [21] We reiterate that Clause 6.1 of the Claimant's contract provided that her salary from May 2020 to May 2022, would comprise the base salary of Ugx. 10,227,000/ plus CPI to be paid monthly on the 25th of every month or on the last working day of the month. Therefore, CPI was supposed to be calculated every month at the rates published by UBOS. In the circumstances, given that the rates varied every month, the claim that the outstanding CPI should have been based on a fixed rate of 6.3% as at May 2022, cannot hold.

It is glaringly clear from the evidence on the record that the CPI varied per month and what remained constant was the base salary. Therefore, the Respondent had the responsibility of computing CPI on a monthly basis, even if UBOS published the rate on the 3rd day of the following month.

[22] The Respondent did not adduce any evidence to show that the option to pay an annual CPI and at an adjusted rate formula was agreed upon by the Claimant. In any case, they did not adduce any evidence to indicate that CPI was paid before the claimant lodged her complaint. The argument that the Claimant kept silent did

not vitiate their obligation to pay her a monthly CPI which was a part of her remuneration. Although she took benefit of the Ugx. 6,785,626/-, which was computed and paid to her based on adjusted rates, her claim that it was not calculated based on the correct rates is legitimate. However as already discussed the correct rate is the monthly rates published by UBOS and not the 6.3% she claims was the correct rate.

- [23] Section 58(1) (e) (supra) is emphatic on the requirement to state the means by which an employee's wages are calculated and the intervals at which they will be paid. Clause 6.1 of the Claimant's contract of employment states that the salary would be paid monthly. In the circumstances, the Respondent had no basis to pay the CPI annually based on adjusted rates, moreover without seeking the consent of the Claimant. By doing so it had breached a fundamental term of the Claimant's contract of employment. The Respondent only adduced evidence of adjusted CPI rates as published by UBOS for the period May 2020 to May 2022. This did not give a clear picture of the actual publications made by UBOS, yet these are publications documents that can be easily accessed by the Respondent.
- [24] Therefore, given that it was the responsibility of the Respondent to compute monthly the CPI, based on the monthly rates published by UBOS, and given that the CPI was supposed to be paid every month, pursuant to section 8(3) (d) of the Labour Disputes (Arbitration and Settlement) Act Cap 227, which gives this Court discretion to make orders as to reliefs it may deem fit, the Respondent is directed to compute the Claimants CPI based on the monthly rates published by UBOS for the period May 2020 to May 2022, less what has already been paid to her and pay the Claimant. A report of the payment shall be made to the Registrar of this Court within 14 days from the date of this award.

b) Claim for Half Salary

[25] Regarding payment of half salary for 6 months, it is undisputed that the Respondent settled the said claim out of court, albeit in installments and the Claimant took benefit of the payment. In the circumstances, she cannot approbate and reprobate. This notwithstanding, for completeness, we shall discuss the assertion by Counsel for the Respondent that a verbal consent is sufficient to vary the terms of an employment contract. As already discussed, Section 58(4) requires an employer to seek the consent of the employee before making any variation of the particulars

of employment and a notice of such changes must be made to the employee in writing. We respectfully do not agree with the submission that the COVID-19 pandemic was an impediment to communication in writing. On the contrary online communication was used as the most convenient form of communication during the COVID-19 Pandemic. It is therefore misleading for

Counsel for the Respondent to state that it would amount to an absurdity to require the Respondent to seek the Claimant's consent to vary her contract in writing, during the Pandemic. We are not convinced that the Respondent was constrained to seek written consent, yet RWI testified that it sought her verbal consent online by teleconference. We strongly believe that if the Respondent could teleconference, it could equally electronically write to the Claimant at least via e-mail seeking her written consent to vary her salary and her email response would suffice, as evidence that she consented, but this was not the case. It is not sufficient to merely assume that her silence about this variation amounted to acquiescence. We associate ourselves with Hon. Justice Musoke's decision (as she then was) in the Sozi case (supra) that, the terms of an employment contract cannot be unilaterally varied. Therefore, by withholding her salary without her consent, the Respondent breached her contract. However, having undertaken to pay her back and the Claimant having agreed to receive the monies paid, and taken benefit of it, even though it was paid in installments, this claim is not actionable, it has no basis and is denied.

Remedies

[26] The Claimant prayed for declaratory orders that the Respondent breached her contract. We have established that the respondent did breach her contract when it withheld her half of her salary for over 6 months, but this was remedied when the Respondent undertook to pay it and did pay it and the Claimant took benefit of the payment. We also found that it also breached her contract, when it withheld her CPI which was part of her salary, for 25 months.

a) General damages

[27] The Claimant prayed for general damages of Ugx. 50,000,000/-. It is trite that General damages are compensatory in nature. They are intended to return the injured party to the position he or she was in before the injury occasioned by the Respondent, occurred *(restitutio in integrum)* Counsel for the Claimant argues that

the Claimant was entitled to damages because the Respondent refused to admit liability and terminated her instead.

It is a fact that the Respondent withheld the Claimant's half pay for 6 months and her CPI for 25 months and only computed it and paid both after she escalated her complaint about it to the Labour Officer. It is also not in dispute the formula applied to compute her CPI is in dispute, hence this suit. As already discussed, the remuneration of an employee for work rendered is a fundamental right, the deprivation of which amounts to a fundamental breach of the employment contract. By withholding the Claimant's salary for 6 months and her CPI for 25 months the Respondent deprived her of part of her remuneration, for which she deserves compensation. Having received the half pay withheld before this suit, she can only be awarded damages for depriving her of enjoying part of her salary in the form of CPI for 25 months.

However, given that we have already ordered the Respondent to recompute the CPI based on the monthly rates published by UBOS between May 2020 to May 2022 and pay it to her, less Ugx. 6,785,626/-, that has already been paid to her, we shall award her general damages for the inconvenience caused to her when she was deprived of her CPI for 25 months in the sum of Ugx.15,000,000/-.

Aggravated damages

It

[28] Lord Devlin in *Rookes v Barnard* where he stated thus:

English law recognized the awarding of exemplary damages, that is, damages whose object was to punish or deter and which were distinct from aggravating damages (whereby the motives and conduct of the defendant that aggravating the injury the plaintiff would be taken into account in assessing compensatory damages) The fact that the injury to the plaintiff has been aggravated by malice or by the manner of doing the injury, that is the insolence arrogance by which it is accompanied, is not justification for an award of exemplary damages, aggravated damages can do in this type of case what otherwise could be done by exemplary damages.

The Respondent was aware that the CPI it had withheld was part of the Claimant's remuneration and remuneration is consideration for the services rendered by an employee and is a fundamental right. To compound this, the Respondent ignored the Claimant when she made a complaint about this deprivation, until she escalated the matter to the Labour Commissioner. It is undisputed that she served the Respondent for 7 years and there is nothing on the record to indicate that she did not perform her job well. The withholding of the CPI was wrong and a breach of her

employment contract that was aggravated by the indifference of the Respondent, when it chose to ignore her complaint until she escalated the matter to the Commissioner Labour and it computed the CPI based on adjusted rates contrary to her contract. We are satisfied that the Claimant deserves an award of aggravated damages for depriving her of part of her remuneration for more than 2 years (25 months) and for the conduct of the Respondent who ignored her complaint until the Commissioner Labour intervened and for computing it on a formula it had not agreed with her. We think an award of Ugx. 15,000,000/- is sufficient as aggravated damages.

Costs of the suit

[29] Counsel for the Claimant cited **Okumu Godfrey v Shreeji (u) Ltd** LDR No. 138 of 2021, where this Court awarded Costs to the Claimant for the unreasonable conduct on the part of the Respondent. He argued that in the instant case, the Respondent trampled on the Claimant's contractual and statutory rights for which it should pay costs. He invited court to reconsider its general no-costs policy because it is contrary to Article 126(2) (c) of the Constitution which enjoins court to award adequate compensation to victims of wrong. He

argued that by denying the Claimant costs of the suit, she is constrained to meet her litigation expenses from the fruits of the award, yet the awards are tax deductible thus placing a disproportionate burden on the employee than the employer.

Whereas Counsel may be correct, this would apply in circumstances where a Claimant succeeds, but the story is different where the same Claimant would be required to pay the Respondent costs moreover where he or she has lost employment. This is the reason we maintain the position that costs in labour disputes should be granted in exceptional circumstances. This is to balance the unequal contract between the employer and the employee, where the employer is the holder of capital and therefore, he or she can afford to incur the costs of litigation and the employee who has lost the means of earning is not in the position to pay costs. Therefore, to award costs against an employee who has lost his or her job would amount to condemning him or her to destitution. To ensure equality in justice, however, this principle applies to the employer as well. Given that we have ordered the Respondent to recompute the Claimant's CPI based on the UBOS monthly rates between May 2020 to May 2022 and given that we have awarded her general and aggravated damages, we make no order as to costs.

Signed in Chambers at Kampala this 27th day of November 2024.

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

The Panelists Agree:

- 1. Hon. Bwire Abraham,
- 2. Hon. Julian Nyachwo &
- 3. Hon. Mwamula Juma.

27th November 2024 2:30 pm

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