THE REPUBLIC OF UGANDA

IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA

LABOUR DISPUTE APPEAL NO.013 OF 2021
(Arising from Complaint No. KCCA/RUB/LC/170/2017)

ABDALLAH KIMBUGWE::APPELLANT

VERSUS

KIBOKO ENTERPRISES LTD::RESPONDENT

BEFORE

THE HON. JUSTICE ANTHONY WABWIRE MUSANA,

PANELISTS:

Ms. ADRINE NAMARA,

Ms. SUZAN NABIRYE &

Mr. MICHAEL MATOVU.

AWARD.

Introduction

1.0 This is an appeal against the decision of the Labour Officer at Kampala Capital City Authority in Labour Complaint No. KCCA/RUB/L.C/170/2017. The Appellant registered a complaint against the Respondent on the 29th April 2019. He sought a determination that his summary dismissal was unlawful and various remedies.

2.0 The Labour officer found in favour of the Respondent. She determined that the Appellant had occasioned loss of stock worth **UGX 7,615,700/=(Seven Million, Six Hundred Fifteen Thousand, Seven Hundred Shillings Only)** for which he was subjected to a disciplinary process. The labour officer also found that the Appellant was lawfully dismissed under Section 69(3) of the Employment Act 2006 and was not entitled to any of the remedies sought.

3.0 Dissatisfied with the decision of the Labour Officer, the appellant filed this appeal on the following grounds;

i. The Labour Officer erred in law when she failed to properly evaluate the evidence on record thereby reaching at a wrong conclusion.

ii. The Labour Officer erred in law when she placed the burden of proof for the alleged loss of stock worth UGX 7,615,700/= on the claimant.

3.1 The Respondent also filed a Notice of Cross-Appeal on the ground that the labour officer erred in law when she held that she did not agree that the claimant was on probation by the time of his subsequent dismissal.

Preliminaries

4.0 The Respondent raised a preliminary point to the effect that the Appellant has, without leave of this Court, introduced **new evidence** in the form of the judgment and criminal proceedings in the Chief Magistrates Court of Makindye vide Criminal Case No. MAK/CO/189 of 2017 which was never part of the record at the court of first instance. Counsel for the respondent submits that the appellant has also introduced **a question of fact** contrary to Section 94(2) of the Employment Act 2006. Counsel implores this Court to dismiss the appeal on this ground.

5.0 Counsel for the Appellant countered that the Respondent's written submissions and **notice of cross-appeal** were filed **out of time** and **without leave** of the Court. Counsel asked that the contents of both the submissions and the notice of cross-appeal be disregarded.

Resolution of preliminary points:

New Evidence

6.0 There is no provision regarding the admission of new evidence under the rules of this Court. However, this Court has established a standard of applying the Civil Procedure Rules S.I 71-1(CPR) where there is a lacuna in the Industrial Court Rules. The rule relating to new evidence on appeal requires a party to file a formal application under the provisions of Order 43 Rule 22 of the Civil Procedure Rules S.I 71-1(CPR). Under this rule parties would be entitled to produce additional evidence on appeal if the trial court has refused to admit the evidence or the High Court requires the evidence to be admitted to enable it pronounce judgment or for any other substantial cause.

6.1 There has been no formal application presented before us seeking admission of any new evidence. When the matter was called on the 5th of September 2022, Counsel for the Appellant attempted to do so informally before this Court but did not press on the point. The record of proceedings before the in Makindye Criminal Court Case No. MAK/CO/189 of 2017 was also not placed before this Court in the record of appeal. It would appear at this point that the Respondent's preliminary objection would be without foundation and would be overruled. However, we will return to this point later in our award.

Introduction of new facts

7.0 In relation to the introduction of a question of fact, under Section 94(2) of the Employment Act, 2006, an appeal shall lie on a question of law, and with leave of the Industrial Court, on a question of fact forming part of the decision of the labour officer. The Respondent suggested to us that the judgment of the criminal court contained facts and evidence which did not form part of the original record before the labour officer. We have found that it would have been proper for the labour officer to stay the proceedings pending the conclusion of the criminal case.

Cross-Appeal

8.0 In relation to a cross-appeal, we are of the persuasion that a cross-appeal may only be commenced after an appeal has been properly filed. We have had the benefit of reviewing the said Notice of Cross Appeal and it relates to the finding that the Appellant was not on a probationary contract. We propose to resolve this ground of appeal together with the Appellants grounds of appeal.

Timelines for filing submissions

9.0 In respect of time limes, it is established practice that Counsel and parties to a dispute shall respect court timelines. Under Section 13 of the Labour Disputes (Arbitration and Settlement) Act 2006(LADASA) decisions of this Court are reached by consensus. For this reason, on the 5th day of September 2022, this Court made the following directions. The Appellant was to file his submissions by the 12th of September 2022. The Respondent was to file its replies by 19th September 2022 to enable a rejoinder by 22nd September 2022. The Court Coram was fixed for the 7th of October 2022. The

Respondent filed their submissions on the 26th of September 2022, 4 days outside the time allotted. The Appellant filed their rejoinder on 30th September 2022. Excepting prejudice in time permitted for the rejoinder, late filing has the effect of disrupting preparations for Coram and thereby affecting timely delivery of the Courts determination. The Court discourages late filing and would ordinarily reject documents filed out of time without leave as provided in Rule 6 of the Labour Disputes(Arbitration And Settlement) Industrial Court Rules,2012(LADASA Rules). However, in the present case, no prejudice has been shown to be occasioned and as such the submissions shall not be rejected.

Drafting of grounds of appeal

10.0 The manner in which the grounds of appeal were drafted also merits some comment. The appeal was founded on two grounds the first of which is that *the Labour officer erred in law when she failed to properly evaluate the evidence on record thereby reaching at a wrong conclusion.* The rules relating to drafting of grounds of appeal require more circumspection on the part of the appellant. This Court has adopted the standards of the Civil Procedure Rules S.I 71-1 where there are no specific rules under the Court's Rules. Order 43 Rule 1 (2) of the Civil Procedure Rules provides:-

> ***"The memorandum of appeal shall set forth concisely and under district heads, the grounds of objection to the decree appealed from without any argument or narrative, and the grounds shall be numbered consecutively".***

10.1 In the case of **Nyero Joma Vs Olweny Jacob and 4 others Civil Appeal No. 0050 of 2018**, the Honourable Justice Mubiru while dealing with a ground of appeal which read " *the trial magistrate erred in law and fact when he failed to properly evaluate the documentary evidence before him, hence reaching a wrong judgment*" had this to say about such grounds of appeal at paragraph 14 of page 7 of his judgment

> ***"Properly framed grounds of appeal should specifically point out errors observed in the course of the trial, including the decision, which the appellant believes occasioned a miscarriage of justice. Appellate courts frown upon the practice of advocates setting out general grounds of appeal that allow them to go on a general fishing expedition at the***

hearing of the appeal hoping to get something they themselves do not know. Such grounds have been struck out numerous times".

10.2 The ground of appeal in the present case is not dissimilar to the ground in the Nyero case. It is general and does not point to the specific evidence, error of judgment and miscarriage occasioned by the labour officer.[1] We accept the Respondent's contention that the 1st ground of appeal is vague and superfluous. In the circumstances, this ground of appeal is accordingly struck out.

10.3 This would have been the end of this ground but we are alive to our duties as the first appellate Court.

10.4 We also form the opinion that the second ground of appeal is more pointed, we shall proceed to consider it together with or duty to re-evaluate the evidence, in any event.

The duties of a first appellate court

11.0 In the exercise of its mandate as a first appellate court, this Court has a duty to re-evaluate or reappraise the evidence presented to the court of first instance in full and arrive at our own conclusions. There is ample jurisprudence on this point. [2] In considering the appeal, this court would also be concerned with the merits of the decision of the labour officer in the decision under appeal. We will therefore consider all the grounds of the appeal in keeping with this duty.

The submissions of Counsel for the Appellant

12.0 At the hearing, the Appellant was represented by Mr. Abdul Tomusange appearing jointly with Mr. Derrick Lutalo. Counsel opted to argue the grounds of appeal together. Counsel submitted that the labour officer failed to properly evaluate the evidence and reached wrong conclusions that the appellant failed to account for stock worth UGX 7,615,700/=, that failure to

[1] It has been held that grounds of appeal should be as clear as possible, as brief as possible and as persuasive as possible without descending into narrative or argument. See **M/s Tatu Naira & Co. Emporium V Vergee Brothers Limited. SCCA No. 0002/2000. Kitgum District Local Government and anor Vs Oyella Odoch Jimmy Joel HCCA No. 0208/2015**

[2] **Father Nanensio Begumisa and three Others v. Eric Tiberaga [2004] KALR 236** and **Kifamunte Henry V Uganda, S.C Criminal Appeal No. 10 of 1997**

account amounted to theft which the Appellant did not dispute. It was on this basis that the labour officer found that the appellant was lawfully dismissed.

The submissions of counsel for the Respondent

13.0 The Respondent submitted that the Appellants' summary dismissal was lawful because he was on probation. In the Respondent's view, the labour officer having correctly found that the Appellant had been readmitted to employment, could not at the same time find that the Appellant was not on probation at the time of his termination. After his resignation he was never given a fair hearing and a reason for termination in contravention of **Sections 66 and 68 of the Employment Act, 2006.**

Analysis of the grounds of appeal

14.0 We have carefully studied the Lower Court Record, considered the parties' submissions, the law and authorities cited therein, and all relevant materials to the determination of this appeal. As counsel found it convenient to submit on the grounds jointly, we propose to resolve the same in like manner.

Grounds 1 and 2 Failure to Evaluate Evidence and Burden of Proof and Cross-Appeal on Probationary Contract.

15.0 On ground 1 of the appeal, The Appellant testified that he resigned from the Respondent to upgrade his education. The Respondent did not accept his resignation and offered him better terms including a salary increment from UGX 600,000 to UGX 1,200,000 per month. He continued to work and was surprised to receive a summary dismissal letter on 2nd November 2016 on the allegation of failure to account for UGX 7,615,700/=.

16.0 The Respondent witnesses, Mr. Joseph Masereka, testified that shortly after the Appellants resignation, he sought readmission to his previous position. The Respondent reluctantly accepted and granted the Appellant a six-month probationary contract with effect from the 15th of June 2016. The letter of readmission was subject to fresh terms. These terms were:

(i) The earlier engagement contract was deemed to have ended the previous employment.

(ii) The Appellant was to serve a probationary period of six months with effect from 15th June 2016

(iii) And the other terms of engagement were the same as the previous contract.

17.0 There was a common position that the Appellant was an employee of the Respondent. It was also common to the parties that the Appellant resigned from his employment on 8th June 2016 and that he was readmitted. What was in controversy is whether the Appellant was readmitted on fresh terms or on his earlier terms. The Appellant maintained that he understood his resignation to have been waived. The Respondent produced a letter dated 11th June 2016 offering the Appellant employment on fresh terms as set out in paragraph 16.0 above. It was suggested by the Respondent that the letter dated 11th June 2016 revived the initial contract of employment and the Appellant was estopped from denying the new contract.

17.1 The labour officer was faulted for a selective reliance on this letter. The Respondent premised this contention on law regarding the variation of written contracts is well established. The courts have long held[3] that the Parole Evidence Rule is to the effect that evidence cannot be admitted (or even if admitted it cannot be used) to add, vary or contradict a written instrument. While this is the correct statement of the law, the Appellant was unequivocal in respect of this letter of 11th June 2016. It was his testimony that he held a discussion with the Respondent's CEO Mr. Praveen Kumar in respect of his fresh terms after his resignation. He understood his resignation to have been waived and new terms agreed upon. He continued working for the Respondent on these new terms which included promise of salary enhancement.

17.2 We are minded that his initial contract was in writing and signed by him. It is therefore curious that the letter of 11th June 2016 as compared to the contract of employment dated 23rd March 2012, was not signed by the Appellant. The Respondent's Human Resource Manager, Joseph Masereka referred to new terms of reference in his witness statement but did not provide a written and signed agreement on the new terms. Mr. Masereka also testified to the Appellants request for readmission. None of these were

[3] Per Bamwine J in **D.S.S Motors Limited V Afri Tours And Travels Limited And Amin Tejani Hct-00-Cc-0012-2003**

provided in writing. And even more specifically under **Section 2 of the Employment Act, 2006** a probationary contract means a contract of employment which is of not more than six months duration, is in writing and expressly states that it is for a probationary period. In the proceedings leading up to this appeal, no instrument executed by the Appellant in respect of his readmission into the employment of the Respondent was on the record. It is difficult to fault the labour officer for finding that the Appellant was not on probation at the time of his dismissal. It follows, that we reject the Respondent's contention that the labour officer erroneously considered one part of the letter. The said letter is not endorsed by both parties as per the record of Appeal. We find no reason to fault the labour officer in that regard. To this extent, the appeal succeeds.

18.0 In the second ambit the labour officer is faulted for having placed the burden of proof for the alleged loss of stock worth **UGX 7,615,700/=** on the Appellant.

18.1 It is the Appellant's contention that the Labour Officer shifted the burden of proof on the Appellant for failing to account loss of goods worth **UGX 7,615,700/=**. It was contended that the Respondent had not adduced any evidence that the Appellant received these goods and did not account for them.

18.2 The burden of proof is the obligation to prove a fact or set of facts. In terms, he who alleges must prove.[4] In civil cases, the burden of proof lies on the plaintiff to prove his case on the balance of probabilities. In respect of employment matters, the burden of proof is specific and keeps shifting. Under Section 70(6) of the Employment Act, for any complaint of unfair dismissal, the burden of proving that a dismissal has occurred rests on the employee, and the burden of justifying the grounds for the dismissal rests on the employer. In the trial, the Appellant proved that a dismissal had taken place. The Respondent called 2 witnesses before the labour officer who testified that the Appellant had failed to account for goods worth **UGX 7,615,700/=** which were placed in the wholesale van that was under his control. In paragraph 7 of Mr. Masereka's witness statement, he alleged that the Appellant had failed to account for goods invoiced to his van. The said

[4] Section 101 Evidence Act Cap. 6.

invoice or invoices were not produced before the labour officer. At paragraph 13 of the witness statement, Mr. Masereka suggested that the Appellant had occasioned a loss of **UGX 67,000,000/= (Sixty Seven Million Shillings Only)**. He did not provide any documentary proof. The Second witness, Mr. Raymond Muntu supposedly corroborated Mr. Masereka's evidence. On this basis the Labour Officer found that the Appellant failure to account for the loss amounted to theft and this was gross misconduct. Before her, the Appellant had provided a system generated account statement for the period 4-01-2016 until 1-10-2016. The system report contains information on sales invoices, cash receipts, bank payment and credit notes. It does not reflect a loss or non-accounting of either **UGX 7,615,700/=** or **UGX 67,000,000/=**which sums the Appellant is alleged to have failed to account for or embezzled. The evidence of the Appellant was not considered. We are not satisfied on the balance of probabilities, that the Respondent discharged the burden to prove that the Appellant had failed to account for the sum of **UGX 7,615,700/=** and that this was gross-misconduct.

19.0 The Appellant invited this Court to consider the judgment in Makindye Criminal Court Case No. MAK/CO/189 of 2017 and its bearing on the outcome of the matter before the labour officer. In this judgment, the Appellant was acquitted of the charge of theft. In the Respondents view, the introduction of this judgment in the appeal before us was illegal or untenable. The Appellant countered that the same was admissible under the provisions of Section 31 of the Evidence Act Cap. 6.

19.1 Our perusal of the lower record reflects that the labour officer was aware of the criminal proceedings in in Makindye Criminal Court Case No. MAK/CO/189 of 2017. She noted that the matter had been reported to the Uganda Police for investigation of the case and was still being heard at the Makindye Chief Magistrates Court. The Appellant suggested that the criminal case formed part of the record before the labour officer. Counsel for the Appellant submitted that the labour officer ought to have waited for the outcome of the criminal case before rendering her ruling. We think this is not a very accurate statement.

19.2 There is a unanimity of views that there is no statutory requirement that a civil or criminal matter should take precedence over the other. In her ruling

in the case of **Musumba Yahaya & Anor vs Uganda**[5] the Honourable Justice Eva K. Luswata opined that due to their public nature and the fact that criminal matters address wrongs against society generally, they should take precedence. Her Lordship also cited a passage from the case of **Sebulime Baker vs Uganda**[6] where it was observed that there is no universal principle that proceedings in a criminal case must necessarily be stayed when a similar or identical matter is pending before a civil court. The principle that emerges is that neither a criminal nor a civil case takes precedence over the other. The Supreme Court of Uganda has in the case of **Sarah Kulata Basangwa vs Uganda**[7] held that where a civil suit is pending between two parties, criminal proceedings arising from the same facts may be instituted against one of the parties.

19.2.1 We are mindful that both the Musumba and Sebulime cases concerned land rights and determination of ownership. The case before us concerns an alleged infringement of the Employment Act. This Court has previously held that;

> *"The fact that there was reported a criminal case at police involving the respondent could not stop the disciplinary proceedings and neither court the non-prosecution or even the acquittal of the respondent before the courts of law. It was therefore irrelevant whether the respondent appeared at the anti-corruption court or not and this submission from counsel for the respondent had no bearing on the matter before the disciplinary committee or before the labour officer."*[8]

From the above, it appears that criminal proceedings would have no bearing on either disciplinary proceedings of proceedings before a labour officer.

19.3 Under Section 95 of the Employment Act, it is provided that nothing in the Act and no imposition of a disciplinary penalty for a breach of the Disciplinary

[5] High Court Criminal Revision Cause No. 4 of 2019.
[6] High Court Criminal Appeal No. 21 of 2018.
[7] S.C Criminal Appeal No. 3 of 2018
[8] See Kiboko Enterprises Vs Asaba Esther Labour Dispute Appeal NO. 46 of 2018

Code shall exempt any person from being proceeded against, convicted or punished for a criminal offence. In the case of **Julius Rugumayo vs Uganda Revenue Authority**[9] this Court citing the case of **Assimwe Moses Vs Uganda Revenue Authority**[10] held that an employer was not obliged to await the completion of criminal proceedings before any other disciplinary action could be taken against the offending employee. This is in keeping with the dictum in the Basangwa case (ibid). In the case before us, the evidence that was placed before the labour officer was materially the same as that placed before the criminal court. In our view, while there was no legal bar against the criminal proceedings at Makindye Court, it is no possible to fault the labour officer from proceeding with the dispute. The Appellant suggested that the labour officer ought to have awaited the outcome of the criminal proceedings. We think the Appellant had the option of seeking to stay the proceedings before the labour officer pending conclusion of the criminal proceedings. He chose not to do so. The rationale of seeking an order of stay would be to prevent the danger of two conflicting judgments which is where the Appellant finds himself now.

19.4 Be that as it may, both the burden and standards of proof in either cases are different. Before the criminal court, the burden of proof is on the prosecution[11] and the standard of proof is beyond reasonable doubt while before the labour officer sitting as a civil court, the standard of proof would be on the balance of probabilities. We have pointed out that under Section 70(6) of the Employment Act, for any complaint of unfair dismissal, the burden of proving that a dismissal has occurred rests on the employee, and the burden of justifying the grounds for the dismissal rests on the employer**.** In terms, the burden is on the employer to prove that the employee committed a certain infraction to the detriment of the employer and such a burden shifts from employer to employee in respect of proving the occurrence of the dismissal. In the present case, the Appellant faults the labour officer for shifting the burden of proof to account for the sum of **UGX 7,615,700/=**. In the trial before the labour officer, the evidence of Raymond Muntu RW2 was presented which he testified that he had carried out an audit of the Appellant's wholesale van and found the amount of U**GX**

[9] Labour Dispute No. 27 of 2014
[10] H.C.Misc Cause No. 140/2011
[11] Woolmington vs DPP(1935) A.C 462

7,615,700/= missing in stock. An audit report was stated to have been presented at the disciplinary meeting which the Appellant disputed. The audit report did not form part of the lower record. We have also not benefitted from perusing the same. It is also apparent that the statement provided by the Appellant in respect to the stock was not considered. In our view, the purpose of an audit report in the present circumstances would be to carry out an investigation to determine the facts or fact-finding. The outcome of the report would be a basis for further determination of the Appellant's culpability, if any. This report does not appear in the record of the labour officer. In the result, we do not think that the labour officer's conclusion that the Appellant did not dispute this fact in the Audit Report was well founded. Accordingly, ground 2 of the appeal, would succeed.

19.5 The final ambit of appeal relates to the summary dismissal of the Appellant. The procedural evidence of the disciplinary hearing commenced with a letter of invitation to attend a disciplinary hearing. This letter was dated the 28th of October 2016 inviting the Appellant for the disciplinary hearing scheduled for the 31st of October 2016. The Appellant did not acknowledge receipt of this letter. It was followed by a handwritten attendance sheet of the said disciplinary meeting. The said sheet contained the name of the Appellant but did not bear his signature. It was also apparent that the names had been affixed by single individual and then signed. There were also the unsigned minutes of the aforesaid disciplinary hearing. The Appellant disavowed this document as a forgery. On its part, the Respondent maintained that a disciplinary hearing took place but the Appellant simply refused to append his hand to the minutes. The final document in this regard was the letter of dismissal dated the 2nd of November 2022. The Appellant signed the same. The Respondents contended that the Appellant was not entitled to a hearing but led evidence and made arguments supporting the proposition that there were disciplinary proceedings. The labour officer also concluded that the Appellant was granted a proper hearing. The Appellant maintained that the said disciplinary meeting did not take place. Our consideration of the documentary evidence leading to and following the said hearing leads us to a conclusion that the evidence of the meeting could not be relied upon. The documents appear to have been prepared to attend to an impression of a fair hearing in conformity with the tenets of the law. We do not think that the invitation letter was properly served on the Appellant. The attendance

list was drawn under one hand and the minutes of the disciplinary hearing were unsigned. The documentary evidence is not a believable account of the disciplinary proceedings.

19.6 The law relating to a disciplinary hearing as provided under Section 66(1) of the Employment Act, enacts the right to a fair hearing which is guaranteed in Article 42 of the 1995 Constitution of the Republic of Uganda. The Constitution enacts that:

> "**Any person appearing before any administrative official or body has a right to be treated justly and fairly and shall have a right to apply to a court of law in respect of any administrative decision taken against him or her."**

Article 44(c) of the same constitution provides that the right to a fair hearing cannot be derogated from. In the case of **Ebiju James Vs Umeme Ltd**[12] provides guidelines of what constitutes a fair hearing as follows to include (i) notice of allegations served on the employee in sufficient time to prepare a defense, (ii) the notice should set out clearly what the allegations against the employee and his or her rights at the oral hearing were and (iii) the employee should be given chance to appear and present his or her case before an impartial committee in charge of disciplinary issues of the defendant. These above cardinal tenets do not appear to have been present in the proceedings leading to the Appellant's dismissal. In view of our conclusion that the Respondent's account of the proceedings leading to and after disciplinary hearing was not believable and not conducted in accordance with the law, we would find that the labour officer would not have been justified to find that the Respondent was lawfully dismissed. Accordingly, the ruling of the labour officer that the Appellant was lawfully dismissed is set aside.

20.0 In the final analysis, the appeal substantially succeeds. That would enjoin the court to consider remedies available.

21.0 Remedies.

The Appellant invited this Court to grant several remedies in the event that the appeal was successful. Having set aside the ruling of the labour officer

[12] **H.C.C.S 0133/2012**

and finding that the Appellant was wrongfully dismissed, in view of the decision in the case of **Eng. John Eric Mugyenzi vs Uganda Electricity Generation Co. Ltd**[13] and in light of Rule 24(3) of the Labour Disputes (Arbitration and Settlement) Industrial Court Procedure) Rules, 2012 grant the following remedies to the Appellant:

21.1 General Damages

21.1.1 The Appellant sought the sum of UGX 130,000,000/= as general damages because the Appellant had been an employee of Bata Uganda Limited and the Respondent convinced him to move to their company for better rewards. This point was made in the final submissions to this Court on the appeal. It was not canvassed in the witness statement filed at the labour office or in the submissions before the labour officer. From the facts, the Appellant had worked for the Respondent for a period of about 4 and a half years. He earned a monthly salary of between **UGX 600,000/=** and **UGX 1,200,000/=** million at the time of his dismissal. We also found that that dismissal was wrongful and that the Respondent did not grant the Appellant a fair hearing. The Appellant suggested that the 5 year trial at Makindye Chief Magistrates Court was draining and unfortunate.

21.1.2 The principles on the award of general damages are those damages such as the law will presume to be the direct natural consequence of the action complained of[14]. In the case of **Dr. Omona Kizito vs Marie Stopes Uganda**[15] this Court observed that damages are assessed depending on the circumstances of a given case and in the discretion of the court.

21.1.3 We do not think that the Appellant laid firm ground for an award of UGX 130,000,000/= for in general damages. In the Dr. Omona case (ibid), where the Claimant was on a 2 year fixed contract, was earning UGX 2,500,000/= per month and was terminated with 14 months to the end of the contract, this court awarded him UGX 32,000,000/= in general damages.

Considering the circumstances in the case before us, we think the sum of **UGX 20,000,000/= (Twenty Million Shillings)** would suffice in general damages

[13] C.A.C.A No167 of 2018
[14] Stroms v Hutchinson[1950]A.C 515
[15] LDC NO.33 of 2015

21.2 The Appellant invited us to grant UGX 80,000,000 as punitive or aggravated damages. The claim was anchored on the baseless charges by the Respondent, the malicious arrest, prosecution, defamation and humiliation. Aggravated damages are awarded as a form of ***"extra compensation"*** for injury to feelings and the dignity caused by the manner in which the defendant acted[16] In the case before us we do not find elements of malice, humiliation and defamation but we do find the following aggravating factors: (i) the documents relating to the dismissal of the Appellant were disguised to conform to the requirements of the law (ii) In so doing, the Respondent made a mockery of the sacrosanct right to a fair hearing and (iii) a number of people at the Respondent Company must have been complicit in this hearing. For these reasons, we award **UGX 20,000,000/= (Twenty Million)** in aggravated damages.

22.0 The Appellant sought for weeks' pay as penalty for failure to give the employee a fair hearing in accordance with Section 66(4) of the Employment Act. Having found deficiencies in that regard, we award the sum of **UGX 600,000/=**

23.0 The Appellant is awarded severance pay at the rate of 1 months pay for every year worked.

24.0 The Appellant is awarded a compensatory order of four weeks' pay under Section 78(1) of the Employment Act.

25.0 No evidence was laid to support the claim for overtime and as such it is denied.

<u>Decision and orders of the court</u>

26.0 In the result, the appeal succeeds to the extent stated in this award. Under **Section 24 of the LADASA**, this court may confirm, modify or reverse any decision from which an appeal is made. In the exercise of these powers, the ruling and orders of Ms. Irene Nabbumba-the Senior Labour Officer at Kampala Capital City Authority Labour Office in Labour Complaint No. KCCA/RUB/170/2017 dated 21st March 2021 are set aside and substituted with the following orders:

1. The Appellant was wrongfully dismissed.

[16] Obongo vs Kisumu Council[1971]EA 91

2. The Appellant is awarded for weeks' pay under Section 66(1) of the Act in the sum of UGX 600,000
3. The Appellant is awarded severance pay at a rate of 1 months' pay for each year of worked.
4. The Appellant is awarded a compensatory order of for weeks' pay under Section 78(1) of the Act in the sum of UGX 600,000
5. The Respondent is entitled to pursue his social security benefits with the National Social Security Fund.
6. The Appellant is awarded **UGX 20,000,000/=** (**Twenty Million Uganda Shillings**) as general damages for wrongful dismissal.
7. The Appellant is awarded **UGX 20,000,000/=** (**Twenty Million Uganda Shillings**) as aggravated damages for wrongful dismissal.
8. The Appellant is awarded costs of the appeal.

Delivered at Kampala this 22nd day of December 2022

ANTHONY WABWIRE MUSANA, Judge _____

PANELISTS

1. **Ms. ADRINE NAMARA** _____
2. **Ms. SUZAN NABIRYE** _____
3. **Mr. MICHAEL MATOVU** _____

Delivered in open Court in the presence of:

Court Clerk. Mr. Samuel Mukiza.