THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE NO. 235 OF 2019
(ARISING FROM LABOUR COMPLAINT KCCA/RUB/LC/180/2019)

MARIAM AKIROR ::CLAIMANT

VERSUS

INTERNATIONAL FOOD POLICY RESEARCH INSTITUTE:::::::::::::::::::::::::RESPONDENT

Before:
The Hon. Mr. Justice Anthony Wabwire Musana,

Panelists:
1. Hon. Adrine Namara,
2. Hon. Suzan Nabirye &
3. Hon. Michael Matovu.

Representation:
1. Ms. Martha Asire and Mr. Henry Balwanyi Magino of M/s. Asire & Co Advocates for the Claimant.
2. Mr. James Zeere of M/s. S & L Advocates for the Respondent.

AWARD

Introduction

[1] Ms. Mariam Akiror *(the Claimant)* was employed as an Advocacy Specialist with the Respondent from 25th July 2016 until the 17th of April 2019, when she was terminated from employment. Before termination, the Respondent had proposed mutual separation. A draft Mutual Separation Agreement (*from now MSA*) was shared with the Claimant. She did not object to mutual separation but made a counteroffer on terms of separation. She also did not sign the MSA. Immediately after, the Respondent terminated her services and paid her UGX 65,4122,502/= in terminal benefits. M/s Asire & Company Advocates then filed a complaint of wrongful, unlawful, and unfair termination with the Kampala

Labour Officer on the Claimant's behalf. The mediation proceedings were unsuccessful, and on the 23rd day of January 2020, a dispute was referred to this Court.

[2] In her memorandum of claim filed before this Court, the Claimant sought declaratory orders that her termination was wrongful, unlawful, and unfair, that her local recruitment for a regional position with local salary violated her right to equal employment for equal value and pay, that her termination was an outcome of retaliation to complaints on racial discrimination, that the settlement and release agreement(MSA) was an attempt to rob her of the option of seeking legal redress, UGX 600,000,000/= being back pay for performing in a regional position, payment of salary, leave days, medical insurance and NSSF for the remaining 16 months of her contract, UGX 150,000,000/= in general damages, compensation for occupational asthma, UGX 21,804,168/= as additional severance pay, UGX 43, 608, 336/= as severance fine, punitive damages, interest and costs of the suit.

[3] The Respondent opposed the claim contending as a preliminary point of law, that the memorandum of claim contained reliefs that were not brought before the Labour Officer and should be struck off. Counsel for the Respondent wisely and rightly, in our view, abandoned this objection.

[4] In its substantive response, it was contended by the Respondent that the termination was lawful and justified. Following a disagreement on renewing her contract, the Claimant had abused leave policies and was not completing her assignments. She created a hostile working relationship with her supervisors, and the Respondent initiated a discussion leading to a mutual separation. The Claimant rejected the MSA, and the Respondent terminated her employment with a settlement package. The Claimant was paid UGX 65,4122,502/= consisting of statutory compensation of 1 month's wages, additional statutory compensation of 3 months' wages, severance pay, and payment in lieu of notice, and she acknowledged receipt and utilized the funds. She was therefore approbating and reprobating. The Respondent asked that the claim be dismissed with costs.

[5] The parties filed a Joint scheduling memorandum which was adopted with the following issues for determination:

(i) Whether the Claimant's Employment Contract was unlawfully, wrongfully, and unfairly terminated?

(ii) Whether the Claimant was locally recruited for a Regional Position with a local salary pay. If yes, whether this violated her right to Equal Employment for Equal Value and Equal Pay?

(iii) Whether the Memorandum of Claim raises reliefs which were not claimed by the Claimant before the Labour Office. If yes, whether the said reliefs should be struck out of the Memorandum of Claim?

(iv) What remedies are available to the parties?

The Proceedings and Evidence of the Parties

[6] The parties presented one witness each.

The Claimant's Evidence

[7] The Claimant testified that she was employed as an Advocacy Specialist Africa Region for the HarvestPlus Program on 25th July 2016, and her contract was supposed to end on 31st July 2020. She was locally recruited for a regional position with a local salary compared to her predecessor. Her role involved the highest level of regional, continental, national, and global engagements. In 2017, she was left in charge of HarvestPlus Africa Policy and Advocacy work, which required two staff members. She was not paid an acting allowance. She also testified that the position was described as International Staff outside of head office under the HarvestPlus 2017-2021 Strategic Plan Organo Chart. That a process of salary formalization started in March 2017 and was part of the February 2018 performance review discussion, she testified of her diligent performance, immeasurable commitment, selflessness, passion, and exemplary achievements. The Claimant testified that she was terminated via email on Thursday, 17th April 2019, without notice of a hearing. That the payment of termination benefits was a cover-up. While she was reading a soft copy of the termination letter, she received a hard copy, her office laptop was withdrawn, her email disconnected, and she was asked to vacate the office. She

completed her handover on 18th April 2019 and was issued a certificate of service.

[8] The Claimant also testified that she did not have irreconcilable differences with her colleagues or supervisors and was not given a report of any complaints of the same nor an opportunity to defend herself. She testified that she had asked her supervisor to stop being "loud and domineering." Further, the MSA discussions were inconclusive because she was not heard and did not agree to all the terms. The Respondent's Director General did not reply to her counteroffers.

[9] Regarding the Skype meeting on the 17th of April 2019, she testified that she was unwell and had asked the Director of HR to communicate in writing. Instead, she received a termination letter. She testified that she did not sign the end-of-2018 performance review, which earned the lowest merit increment. She raised concerns about this with a supervisor, but this supervisor did not give her any feedback. She testified that her supervisors, the Director of external affairs, told her that they had decided to retain the old salary regarding the local versus regional position. She testified that she had raised this issue at HarvestPlus regional team meeting held in Nairobi in April 2018. Regarding the equal opportunity violation, she filed a complaint on the 21st of November, 2018; she testified that there was no impartiality when the complaint was unsuccessful. Regarding the final written warning letter and appeal, she testified that this letter on 4th September 2018 was issued without a hearing. She appealed to the Director of HR. No committee was constituted to hear the appeal, and no meeting was held between her and her supervisors to discuss and resolve the concerns openly. It was a testimony that the circumstances and issues raised did not warrant a final warning.

[10] She testified that she had witnessed a colleague accuse a Director of racism. Regarding the violation of equal employment opportunities, her application for a contract extension and change of job title was made in a very cruel intimidating, and suppressive manner. It required her to sign the contract extension no later than 5:00 pm on 31st July 2018 or consider her employment terminated. She testified that there had been a 10% salary increment and title change. She was disappointed and considered this inequitable, discriminatory, and unconstitutional. She was advised to think twice. She testified that her predecessor and the rest of her colleagues in the HarvestPlus regional team

enjoyed benefits like housing, transport facilitation, unemployed spouse benefits, education for up to four children, medical insurance, 15% of gross salary contribution towards retirement scheme on top of Social Security fund contribution. She was only paid a salary, a 10% NSSF contribution, and medical insurance; no acting allowance had been considered. It had been noted that she was doing a job meant for six to 10 people and that she had been recommended for promotion. Colleagues earned salaries and benefits commensurate with their jobs. She also testified that she had heard that two of her colleagues were given front pay to the end of their contract. As a result, she felt discriminated against and experienced racial discrimination, and she challenged senior management colleagues. It was also her testimony that her termination was pre-determined. She testified that in March 2019, a bank declined to process a loan because it had been informed of her termination. She also testified that she heard that the decision to terminate had been reached in a meeting between the Director of HR Africa, the Finance and Administration Manager, and the Head of Operations. Legal advice had been sought from Sebalu & Lule Advocates. She did not abscond from work even once, did not abuse the respondent's overtime and sick leave policy, and requested annual leave at short notice when she needed to stay home to take care of the children below ten years of age. She testified that she had not failed to complete assignments on time except when partners delayed approving a policy brief or her supervisors delayed in approving the budget for translation. It was a testimony that her attitude to work with other colleagues was not poor, and she was not constantly insubordinate to her supervisors. The claimant also testified that following pressure at work in the hostile work environment, she suffered acute headaches, sudden hiking, and lowering blood pressure, and had suffered occupational asthma. That following termination, she has increased allergies and stress and is in poor physical and mental health. Finally, the termination has damaged her chances of securing employment.

[11] In cross-examination, she confirmed that she was not terminated for misconduct or poor performance. Before termination, there had been an attempt to enter into a separation agreement. She did not agree to the terms and was paid a sum referred to as terminal benefits. She accepted this payment and did not refund this money. She testified that her point of disagreement was not the amount of money. When she received MSA, she made a counteroffer. She confirmed that she did not state that it was reasonable to terminate our contract. She was shown exhibit CEX10 and confirmed this was a counteroffer.

She was also shown exhibit CEX11 and confirmed having written to the Respondent's management in Washington. She noted that she agreed to mutual separation provided that the amount that she would be paid was a condition for separation. She testified that she had raised five conditions and did not desire to exit the respondent if the five conditions were not met. She could not recall any letter she had written to the respondent asking to be heard. She testified that before joining the respondent, she had been very healthy. Now she has asthma and high blood pressure. She testified that she received the payment of terminal benefits and did not know it was a conditional offer. She was shown REX12 and confirmed that she wrote this letter after signing the termination letter. She testified that she did not know if there was any other business for the respondent to make the payments to her apart from the termination. She confirmed that she was before Court for unlawful termination and disputed the allegations. No committee was formed to hear complaints, and their colleagues were not called. Stating that she was in poor health, she accepted the money and would pursue justice later. She was entitled to the money and did not know if this money was in the appointment letter or the HRM. She testified that she did not come to court because she wanted more money but sought justice. When she was shown her appointment letter, she confirmed duties required a 10% presence in Uganda. She was aware of her regional role deputising the Head of African Strategic Alliances. She also confirmed that she did not know if the local salary was in the contract. She also confirmed that she did not have a document where the respondent used the phrase local salary. She was shown REXH6 and confirmed that she was locally recruited.

[12] The Claimant also testified that her second grievance was that she was recruited locally for the regional position. Another grievance was that she was offered a promotion which was withdrawn, but she did not have proof of it in court. She testified that she protested the final written warning, and her appeal was rejected, and that she raised the issues of racism and discrimination with the Director of HR. When she was shown CEX17, she confirmed that this was the Equal Employment violation, which was investigated, and the report submitted to her was admitted in evidence as REXH8. No committee was constituted, but she did not know whether the HR manual required the committee to be constituted. On the performance appraisal, she testified that this was not a true reflection of performance.

[13] In re-examination by Ms. Asire, the Claimant clarified that she had the conditions for signing the MSA because of her poor health and the hostile work environment. She testified that she faced institutional racism. That Peg Willingham had been accused of racism by a colleague in Ghana, and this soured her relationship with Peg. When Doctor Anne Marie was promoted, she was left to work in two positions, and there was no enhancement acting allowance.

[14] Mr. Magino also conducted a re-examination during which the Claimant clarified that mutual refers to two people agreeing. The MSA was drafted by S & L Advocates, and she had been told that it was confidential. But she did not have any input. It was given to her to read &, but she did not sign it. She confirmed that her predecessor earned international benefits, housing, and an international salary. But she did not have accommodation or transport. In respect of reference to emails being too loud and domineering, she explained that the emails were rude and impolite and that her supervisor was intimidating during Skype calls.

The Respondent's evidence

[15] Mr. Jason Yauney testified on behalf of the respondent as Country Representative and Head of Office in Uganda. He confirmed that the Respondent was employed as an Advocacy Specialist for two years between 25th July 2016 and 31st July 2018. Duties were not restricted to any specific country. Clement performed the contract without an immediate incident until July 2018, when the contract was scheduled to expire. In April 2018, the Claimant and her supervisor, Peg Willingham, commenced discussions about extending her contract. Eventually, it was resolved that the claimant's job title be changed and the salary enhanced by 10%. No promotion was discussed. The offer of extension was communicated on 2nd July 2018. In response, the claimant wrote to Peg Willingham and Brittany Leoboldt, raising several grievances, including a regional position with local salary, a salary commensurate with the Claimant's professional value, and the new extension involving less regional travel. The claimant was told that there were no regional roles, that the Claimant had made a case for salary enhancement, and that a person would be assigned to travel. These were contained in REX2, which the Claimant acknowledged receipt of.

[16] Mr. Yauney also testified that the Claimant rejected the extension offer and made a counteroffer requiring a monthly salary of USD 4000, payment of 15% monthly gratuity, child care benefits, housing allowance, transport and internet allowance, and relocation to Ethiopia or Nairobi. He testified that he informed the Claimant that this was not part of the Respondent's benefit and remuneration structure, and she accepted the new terms. Following this acceptance, the Claimant started abusing the organization's attendance and leave policies, failed to complete assignments on time, and displayed a poor attitude to work. Abuse of leave policy was 12th July 2018, for three weeks, end of July 2018 and August 2018. On 4th September, she was issued a warning letter. She appealed against it and raised issues of breach of the Respondent's Equal Employment Opportunity Policy. The Director of HR found the appeal to be without merit. On 21st November 2018, the Claimant also made a formal complaint of discrimination which was investigated and dismissed.

[17] Regarding the MSA, Mr. Yauney testified that because the Claimant was disgruntled and not agreeable to the changes in her contract, she created a hostile working environment and a breakdown in working relations. The Claimant refused to comply with the IT guidance on data backup and refused to complete the annual appraisal process for 2018. Because of her disposition, the Respondent initiated the MSA. On 5th April 2019, the Director HR reached out to the Claimant about the possibility of mutual separation, and the Claimant, in breach of protocol, wrote to the Respondent's Director General seeking a larger payout. The Respondent had no option but to terminate the Claimant's employment contract. She accepted the payment made to her but demanded more money than she had been offered in the termination letter. The witness also testified to the Claims made before the Labour Officer differing from those in this claim.

[18] In cross-examination, Mr. Yauney testified that he was not the Claimant's direct supervisor during her employment with the Respondent. Her supervisors were based in Washington. She was locally recruited, and her duties were regional. He testified that he was not privy to discussing her contract extension or the appraisal for an extension. He testified that the Claimants extension came with an upgrade because of her excellent work. It was his evidence that she was not happy after the extension. Regarding her extension in 2018, the offer letter had a deadline of close of business on 31st July 2018, and the Claimant had had one month to process this. He confirmed that the Respondent issued the MSA, and

it was issued following a breakdown in the working relationship. Work was not getting done satisfactorily. He confirmed that, eventually, the Claimant was terminated. She was not given notice but was paid in lieu of notice. The process was not rushed because it took about one year. He testified that the warning letter was part of the disciplinary procedure. He was referred to the Respondent's HRM (REX6) and confirmed that the Respondent had not followed 805.3.2 and 805.3.5 but that the Director H.R. had the discretion to skip any steps in the disciplinary process under 805.3.8. He confirmed that Legal Counsel advised the Respondent to pay in lieu of notice. He confirmed that the infractions relating to failure to follow procedure did not require a committee or an investigation. He maintained that the termination letter was self-explanatory and that the equal employment complaint was attended to in accordance with procedure.

[19] Mr. Magino also cross-examined the witness, who stated that he did not believe the Claimant was being profiled. He confirmed that the appraisal in 2018 led to the Claimant being upgraded on account of her performance. Her performance deteriorated after the extension.

[20] In re-examination, Mr. Yauney confirmed that the Respondent offered the extension on 2nd July 2018 with a deadline of 31st July 2018. The Claimant responded on 31st July 2018. He confirmed having written a letter that the Claimant's demands were outside the Respondent's ambit. He also clarified that the termination letter stated that the employment relationship had broken down. He testified that he did not recall why a hearing was not held regarding misconduct.

[21] At the close of the Respondent's case, Counsel was invited to address Court on the issues through written submissions. The Court expresses its gratitude for the succinct submissions.

Analysis and Decision of the Court.

Issue 1. Whether the Claimant's Employment Contract was unlawfully, wrongfully, and unfairly terminated?

Submissions of the Claimant

[22] It was submitted for the Claimant that she was terminated without notice, although she was paid in lieu of notice. She was terminated without justifiable

reasons and without following the lawful procedure in compliance with the Respondent's HRM, the Employment Act 2006,[1] and the 1995 Constitution of the Republic of Uganda. It was argued that these provisions require that an employee be given a hearing by a disciplinary Committee/Impartial Tribunal, a basic tenet of natural justice. Counsel cited Articles 28 and 41 of the Constitution, **Section 66 (2) of the Employment Act 2006** *(from now EA),* and the decision of this Court in **Airtel Uganda Ltd v Peter Katongole LDA 013 of 2002**. It was submitted that the Claimant was not given a hearing, a copy of the report of alleged complaints from colleagues and supervisors, or an opportunity to defend herself before a disciplinary committee. Counsel referred the Court to the termination letter, which stated that it was based on alleged complaints from fellow employees and supervisors and recognition by the Respondent of inconclusive confidential discussions to terminate the Claimant's employment consensually. Counsel suggested that absent of any testimony of the Claimant's attitude before a DC, the termination mode crystallized into a summary termination, meaning that the Claimant had committed an act of Gross Misconduct. It was submitted that in terminating the Claimant, the Respondent's Director of HR had failed to comply with Articles 805.4.1 and 805.4.16 of the HRM and failed to conduct fair and proper disciplinary proceedings. In Counsel's view, the Director HR was unilateral, Investigator, Prosecutor, and Judge.

[23] For the Respondent, it was submitted that the Claimant's employment contract was not unlawfully, wrongfully, or unfairly terminated because the contract was terminated by mutual consent and not for misconduct or poor performance. Counsel referred to the termination letter, which was admitted as CEX6, submitting that the letter followed a request for mutual separation, which the Claimant was agreeable to but had stated her own terms. The termination followed a breach of the Respondent's policies by the Claimant, for which a warning was issued. Instead of commencing disciplinary proceedings, the Respondent opted for mutual separation. It was submitted that because the Claimant was not initially opposed to the mutual separation, the employment relationship had broken down. The Claimant acknowledged receipt of the termination letter, did not protest the same, and provided instructions for payment of her terminal benefits which were paid and received. Counsel cited Section 2 of the Contracts Act, 2010 and the case of **Protea Chemicals East**

[1] The Claimant made reference to the Employment Act of 2016. The proper citation is the Employment Act, 2006, Act 6 of 2006 and not 2016.

Africa Ltd v KAC Chemicals & Paints Ltd HCCS No. 470 of 2016 for the proposition that the acceptance of an offer to a contract may be stated by words or by conduct. The Respondent argued that the supposed counter offers on terms of separation were vitiated by the subsequent acceptance of payments and instructions on how the payments were to be made. In this regard, the Claimant had unequivocally departed from her counteroffer and accepted the Respondent's offer. Counsel relied on the decision of this Court in the case of **Samuel Serungoji v International Justice Mission LDR No. 211 of 2016** for the proposition that a party who knowingly accepts the benefits of a contract is estopped from denying the binding effect of the contract on him or her. Counsel submitted that the Claimant received the terminal benefits under the MSA and is estopped from challenging the termination under which benefits were paid to her. She was not wrongfully, unlawfully, or unfairly terminated.

Resolution of Issue 1

[24] It is common to both parties that the Claimant's employment was brought to an end by a letter dated 17th April 2019. The letter was admitted as Claimants Exhibit No. 6 "CEXH6". The Claimant contends that she was wrongfully, unlawfully, and unfairly terminated. The Respondent counters that the termination was lawful.

[25] It is trite that the employer has an unfettered right to terminate an employment relationship, provided it follows the procedure. **(See the case of Hilda Musinguzi v Stanbic Bank (U) Ltd SCCA 05 of 2016)**[2]. For a fuller contextual understanding of the law relating to the termination of employment contracts or the employment relationship, revisiting the Employment Act 2006 is helpful. The law relating to termination is found in **Sections 65, 66, 68, 69, and 70(6) EA,** which we propose to visit in brief detail;

(i) **Section 65EA** provides for circumstances where termination shall be deemed to take place, which include (a) where the employer ends the contract without notice, (b) by expiry or effluxion of time or non-renewal, (c) where an employee ends the contract for unreasonable conduct of the employer or (d) where the employee

[2] Per Mwangushya J.S.C(as he then was) in Hilda Musinguzi v Stanbic Bank(U)Ltd SCCA 05 of 2016

receives notice but before the expiry of the notice period. **Section 65(2) EA** delineates the time or date of termination in each of the above circumstances.

(ii) **Section 66 EA** provides for notice and a hearing before termination for misconduct or poor performance. It also spells out employee rights in a disciplinary hearing. The right to be heard in employment disputes has been very well articulated in the case of **Ebiju James v Umeme Ltd** [3]

(iii) **Section 68 EA** requires an employer to prove the reason for termination. The onus is on an employer to justify the termination or dismissal.

(iv) **Section 69** EA proscribes summarily dismissal, which occurs without notice or less statutory notice when the employee has, by his or her conduct, indicated that he has fundamentally broken his or her obligations under the contract.

(v) And finally, under **Section 70(6) EA,** the employee has the onus probandi or burden to prove that a dismissal has occurred while the employer must justify the grounds of dismissal.

[26] These five provisions regulate the law relating to the termination of employment contracts. They give effect to the expressive dicta from the **Hilda Musinguzi** case that the right of an employer to terminate a contract cannot be fettered by the Court so long as the procedure for termination is followed. And this Court has **Nicholas Mugisha v Equity Bank Ltd**[4] expressed the view that termination of employment is about substantive and procedural fairness, where substantive fairness relates to the reason for termination or dismissal. In contrast, procedural fairness relates to the process of termination. By the combined dicta in the Musinguzi and Mugisha cases, this Court's role is to interrogate the fairness of the termination against the parameters of procedural and substantive fairness, which we will proceed to do here below.

[3] H.C.C.S No. 133 of 2012
[4] LDR 281 of 2021

[27] It was common cause that a series of emails were exhibited in Court. REXH1 was a thread of emails following the proposal to renew the Claimant's contract. There was a discussion about promotion and details of a Skype call between the Claimant and Peg Willingham, her immediate supervisor. The emails reflected the Claimant's displeasure with the 10% salary increase that she had been offered and her discomfort with frequent travel. REXH 2 was also a thread of emails detailing the Claimant's thoughts on her position as a regional officer with local benefits. Leoboldt Brittany responded to these emails expressing the Respondent's policy on payment of a local salary for regional positions. REXH5 was a thread of emails between the Claimant and Peg Willingham where Ms. Willingham had required the Claimant to complete certain tasks within a specific timeframe. REXH7 was another thread of emails relating to a final warning and appeal over productivity and absence from work. The culmination of this breakdown was that on the 5th of April 2019, the Respondent's Director of Human Resources inquired from the Claimant if she was willing to consider a mutual separation. The email, admitted in evidence as CEXH9, included the proposed terms in a draft MSA attached to the email. On the 10th of April 2019, the Claimant responded to this proposal. Her email was admitted as CEXH 10, and she stated her terms for the mutual separation. This included front pay, remittance of social security benefits, and medical insurance until the end of the contract term in July 2020. The Respondent's response was to terminate the Claimant.

[28] To fully contextualize the Claimant's termination, it is helpful to employ the full text of the termination letter (CEXH6) which triggered this claim. It reads as follows;

"Wednesday, April 17, 2019

Ms. Mariam Akiror
IFPRI-Kampala

Dear Mariam

TERMINATION FROM EMPLOYMENT

The International Policy Research Institute (IFPRI) regrets to inform you that your employment with the organisation is hereby terminated with

effect from the 18th of April 2019. We will provide you payment of wages through April 17, 2019, as well as payment for unused annual/vacation days, per IFPRI-Uganda policy.

IFPRI acknowledges that it has engaged you in confidential discussions to consensually terminate your employment following complaints from fellow employees and your supervisors about your conduct. It is further acknowledged that these discussions have been inconclusive and yet your continued employment with the organisation is considered undesirable. IFPRI has therefore decided to accord you the following termination package in lieu of your continued employment and in compensation for all procedural rights preceding your termination:

	Termination Package	***Gross Amount (UGX)***
1.	*Statutory Compensatory award(1 month's wage) under Section 78 of the Employment Act 2006*	*10,902,084*
2.	*Additional statutory compensatory award(3 months wage) under Section 78 of the Employment Act 2006*	*32,706,251*
3.	*Statutory Severance Pay(1 months Wages) under Section 87 of the Employment Act 2006*	*10,902,084*
4.	*Payment in lieu of notice(1 month's wages) under Section 58 of the Employment Act 2006*	*10,902,084*
	Sub-Total	***65,412,502***
	NSSF	***3,270,625***
	PAYE	***25,067,001***
	NET PAY	***37,074,876***

The above termination package, less the applicable statutory deductions will be paid directly into your bank account within 7 (seven) days of receiving this letter after you have handed over all the IFPRI property in your possession. A certificate of service shall also be provided to you following receipt of a signed copy of this letter.

This communication is without prejudice to IFPRI's existing legal rights.

IFPRI wishes you the best in your future endeavors.

Kindly acknowledge receipt of this correspondence by signing in the space provided below.

Yours faithfully,

Sherian Abramaitys-Yi
Director, Human Resources
IFPRI

I acknowledge receipt of this correspondence.

Signature: ..... *DATE 18 of April 2019*
Name: *Mariam Akiror."*

[29] The termination letter speaks of the following key elements:

(i) the Respondent terminated the Claimant without notice.
(ii) the reason for termination was that there had been complaints from fellow employees and the continued employment of the Claimant was considered undesirable.
(iii) the discussions on mutual separation were inconclusive.
(iv) the Claimant would be paid terminal benefits.

[30] In paragraph 25 above, we outlined the employment termination modes under the Employment Act 2006. We must add that the law, as it stands and echoed in paragraph 25 above, is that the employer has an unfettered right to terminate an employee provided they follow procedure. In our view, the legal position regarding the Claimant's termination is twofold, as we shall demonstrate below.

[31] First, the Respondent contends that the termination was by mutual agreement. While no statutory provision for termination by agreement subsists under the EA, it has been adjudged acceptable in our labour sphere. In the case of **Samuel**

Serungoji v International Justice Mission[5] which was cited by Counsel for the Respondent, the Industrial Court observed that termination of employment could also be by mutual agreement of the parties to the employment contract and irrespective of who initiates the termination, good practice requires an interview to define the termination package and the date of termination. In that case, the Claimant was presented with a Separation and Release Agreement and signed the same. The Industrial Court did not find any evidence that the Claimant had been forced to sign the agreement and he was estopped from denying its validity. The question is, what are the elements of a valid termination of employment by mutual agreement?

[32] According to Malcolm Sargeant and David Lewis on **Employment Law,**[6] termination by mutual consent is an important concept widely used by employers to reduce the number of staff. The authors argue that the important question is whether the employer and employee have freely agreed to end the employment contract. In the Kenyan case of **Marylyn Nyambura Mbuthia v Safaricom Ltd**[7] the Honourable Lady Justice Maureen Onyango observed that a mutual separation agreement is characterized by an aspect of choice, and if this is missing, it cannot qualify to be such. Under Rule (4) of the Tanzanian Employment and Labour Relations (Code of Good Practice) Rules, 2007, an employer and employee may agree to terminate the contract in accordance with their agreement. In **Workplace Law,**[8] Professor John Grogan observes; *"Just as the consensus of the parties brings the employment contract into existence, so too consensus may end a contract... [this] does not constitute a dismissal for the purposes of the common law or the LRA."*

[33] What emerges from the dicta of the cases cited above and the treatise is that choice, consent, consensus, or free will is central to terminating an employment contract by mutual agreement. The absence of consent or choice would render a mutual agreement void.

[34] In the case before us, the draft MSA was sent to the Claimant on the 5th of April 2019. It offered terminal benefits. The Claimant made her counter-offer on the terminal benefits on the 8th of April 2019. Mr. Jason Yuaney testified that on the 10th of April 2019, the Claimant accepted the settlement and release of all claim's agreement but demanded a settlement package beyond what the

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[5] LDR 211 of 2016
[6] 5th Edition mylawchamber at page 82
[7] Industrial Cause No. 1413 of 2016
[8] Workplace Law 8 Edn (Juta Cape Town 2005) at pages 84 and 85,

Respondent was willing to offer. This response was contained in an email dated 10th April 2019, which was admitted as CEXH 10. It was a lengthy three-page email which was captioned **"RE: RESPONSE TO THE PREMATURE TERMINATION OF CONTRACT: SETTLEMENT AND RELEASE OF ALL CLAIMS AGREEMENT."** In it, the Claimant indicated that she had not signed the MSA for various reasons, including what she felt might be building a case for summary dismissal. She set her terms and pledged her total commitment to a peaceful and successful handover and added in closing, ***"I will seek legal redress only as a last resort if the above terms are not satisfactorily met."*** This was followed by other emails and a Skype meeting, and then, on the 17th of April 2019, the Respondent terminated the Claimant summarily.

[35] The Claimant's response to the proposed mutual separation was conditional. She would only agree to mutual termination upon the terms in her email of 10th April 2019. Indeed, during her re-examination by Co-Counsel, Mr. Henry B. Magino, the Claimant explained her understanding of mutual to be where two people agree. She had no input in drafting the MSA, which she was given to read and sign.

[36] We are of the firm persuasion that the process of mutual separation, as heralded by Counsel for the Respondent, ceased with the inconclusiveness of the discussions. The Respondent had correctly reached out to the Claimant to discuss mutual separation, but before the discussions could be finalized, the Respondent elected to terminate the Claimant. Our view is that the notion of mutuality is incompatible with inconclusive discussions. When the Claimant made a counteroffer and declined to sign the MSA, her consent to mutual termination on the terms proposed by the Respondent in the MSA was withheld. Her consent to termination without notice was conditional. The element of choice and free will to terminate was absent. In this context, the termination letter, REXH 6, was not an offer the Claimant could accept. It was final, terminal, or terminus, severing the employment relationship. It only required the Claimant to acknowledge receipt and handover. It did not invite the Claimant to anything further than termination. The inescapable conclusion is that her termination by mutual consent was wanting consent. To this extent, the termination was unfair, and we so find.

[37] Secondly, none of the modes of termination listed in **Section 65(1)(a)-(d)EA** permits an employer to end a contract of service without notice. Termination

without notice is expressly prohibited under **Section 58(1) EA.** The termination letter was issued on the 17th of April 2019, terminating the Claimant's employment effective from the 18th of April 2019. There was no notice at all. The Respondent sought the Claimant's views on termination by mutual agreement and, in this way, sought her consent to termination without notice. While there is no specific procedure for seeking consent for a termination without notice, in **Stanbic Bank v Constant Okou**[9], Madrama JA (as he then was) considered whether the Employment Act allows an employer to terminate without notice. In resolving this question, His Lordship made several significant observations, the first of which is that; under **Section 58(1) EA**, a contract of service shall not be terminated by an employer unless he or she gives notice to the employee except for a summary termination or attainment of retirement age and secondly, the only exception to termination without notice is where an employee is summarily dismissed for fundamental breach of a contract of service under **Section 69(3) EA.** The Court of Appeal held that for termination of the contract of services by payment in lieu of notice to be valid, the e mployer must first seek the employee's consent before issuing the termination letter. Having found the termination wrongful for want of notice, the Court held that it could not be justified under **Section 69(3) EA.**

[38] In the case before us, it was common cause that between June 2018 and April 2019, the relationship between the Claimant and her employer was deteriorating, and the Respondent sent the Claimant a draft MSA which she did not sign because she did not agree to the terms. We have already found that these discussions were inconclusive. Therefore, the critical question would be whether the Claimant consented to the termination without notice.

[39] Mr. Zeere proposes that the Claimant consented by her conduct in accepting the terminal benefits, directing where they should be paid, and utilizing the same. He cited Section 3(2) of the Contracts Act, 2010, and the case of **Protea Chemicals East Africa Ltd v KAC Chemicals & Paints Ltd H.C.C.S 470 of 2016** to support the proposition that an offer can be accepted by conduct. He also submitted that having accepted the terminal benefits, the Claimant would be estopped from challenging the termination. It was contended by the Respondent that the termination was lawful because the Claimant accepted the

[9] C.A.C.A No.60 of 2020

terminal benefits in the termination letter, and she was therefore estopped from challenging the termination.

[40] Under cross-examination, the Claimant explained that she accepted the terminal benefits because she was in poor health and believed she could pursue justice later. In our view, the fact of termination is final. The termination letter severs the employment relationship between an employer and an employee. While Mr. Zeere raises an appreciable point on the doctrines of approbation and reprobation, acceptance by conduct, and estoppel, we do not entirely agree that these principles apply to the case before us. The evidence is that the Claimant does not unequivocally accept the terms of the mutual separation. In her response, she clarified that she would resort to legal redress if her terms were unmet. The Respondent does not respond formally to her counteroffer. Instead, the Respondent terminates the contract of service summarily. Mr. Zeere cited the Indian Supreme Court case of **State of Punjab & Ors v Dhanjit Singh Sandhu Civil Appeal Nos. 5698-5699 of 2009**[10] in support of the proposition that a party who knowingly accepts the benefits of a contract is estopped from denying the binding effect of the contract on him or her. The case very clearly articulates the doctrine of approbation and reprobation. The law is that a person cannot benefit from a right and renegade later to a position inconsistent with the former, or one cannot simultaneously blow hot and cold.

[41] What the Claimant did is quite different. She did not blow cold on receipt of the terminal benefits and then hot at filing the labour claim. She made it clear that she had terms upon which she would accept the termination. There is a basis in law to support this proposition. The case of **State of Punjab & Ors v Dhanjit Singh Sandhu (*ibid*)** was the subject of further discussion in **Chanchal Kumar Chatterjee v State of West Bengal & Ors W.P 4398(W) of 2018,**[11] where Saraf J citing another Indian Supreme Court decision in **Rajasthan State Industrial Development and Investment Corpn v Diamond And Gem Development Corpn Ltd (2013) 5 SCC 470** observes that the doctrine of approbate and reprobate or the estoppel by election is a rule that is applied to do equity, however, it must not be applied in a manner as not to violate the principles of right and good conscience.[12] The Industrial Court sits as a Court of Equity. [13] We also note that the employment relationship is skewed. It is a power

[10] 2014(15) SCC 144
[11] W.P 4398(W) of 2018 accessed at-http:indiankanoon.org/doc/65455164 last accessed on 15.08.2023 at 1458hrs.
[12] Saraf J. also refers American Jurisprudence, 2nd Edn Vol.28 pp 677-80
[13] This has been expressed in the case of Tembo Steels (U) Ltd Vs Wamala Collins LDMA NO.261 of 2019

relationship. There is the parties' relative bargaining power, demonstrable in the case before us, by the unilateral election by the Respondent to terminate the employment relationship before the conclusion of the mutual separation agreement. The Court's role is to balance the relationship. And for this reason, it cannot, in good conscience, be said that by accepting the terminal benefits, the Claimant had accepted the termination, having earlier maintained that her acceptance was conditional upon the Respondent meeting her terms. We think this Court must apply the maxim *"ubi jus ibi remdeium";* thus, equity will not suffer a wrong to be without a remedy. The role of the Court in employment disputes attempts to balance the scales of justice. In his book **"By God's Grace The Judge That I Was,"** the Honourable Mr. Justice Asaph Ruhinda Ntengye,[14] opines that the Industrial Court plays a role in balancing the power of capital with the power of labour. Honourable Dr. Justice Douglas Karekona Singiza expresses a kindred disposition of labour relations in the case of **Obed Mpwerirwe v Hima Cement Ltd[15].** His Lordship observes that the relationship between the owners of capital (employers) and the owners of labour (employees) is conflictual. The former is for profit maximization, while the latter is focused on reasonable pay and a good, safe working environment. In our view, the Industrial Court is an arbiter in balancing the scales of labour justice.

[42] Thus, from a general juristic sense, we cannot accept the Respondent's contention that the Claimant has approbated and reprobated. Ms. Akiror made her position clear. She would only accept the termination by mutual agreement on the terms she had proposed. We do not think the Respondent has demonstrated sufficiently that Claimant accepted the terms of termination by her conduct. In any event, any labour complaints would be made *post facto* or after termination or the grievance. We are therefore inclined to the view that the Respondent unfairly terminated the Claimant.

[43] The other aspect of the termination contested by the Claimant is that her termination was unlawful and wrongful because she was not given a fair hearing regarding the reason for her termination. She anchors this proposition on the reasons advanced by the Respondent regarding complaints from fellow employees and her supervisors. She submits that there was no evidence adduced before a competent disciplinary committee. She argued that the facts

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[14] The Honourable Mr. Justice Asaph Ruhinda Ntengye retired as Head Judge of the Industrial Court in 17th February 2022. The autobiography was published by Roots Publishers Ltd, Kampala 2022

[15] H.C.C.S No. 0311 of 2012

raised by the Respondent crystallized into summary dismissal for which there was no hearing and contravened Articles 28 and 41 of the 1995 Constitution, **Section 66(1) EA** and Articles 805.4.1 and 805.4.16 of the Respondents Human Resource Manual, which was admitted as REXH6. In the termination letter we reproduced verbatim in paragraph 27 above, the Respondent acknowledges the confidential discussions regarding a mutual separation following complaints about the Claimant's conduct. The Respondent also concedes that the discussions were inconclusive, leading to its decision to terminate the Claimant summarily with compensation.

[44] Under **Section 69(1) EA** summary termination occurs when an employer terminates an employee without notice or with less notice than the employee is entitled to. The exception to summary termination is under **Section 69(3) EA,** where an employer is entitled to dismiss an employee summarily where the employee has fundamentally broken his or her obligations under the contract of service. The Respondent asserts that the Claimant was not terminated for misconduct or poor performance but because there was mutual consent. The termination letter pointed to summary termination following confidential, inconclusive discussions to consensually terminate the Claimant's employment following complaints from fellow employees and the Claimant's supervisors about her conduct. Her continued employment was considered undesirable. In our view, these reasons were the basis of the termination. We, therefore, do not accept Mr. Zeere's argument that the termination resulted from a mutual agreement. No agreement was reached, or at all.

[45] Therefore, the provisions of **Section 66(1) EA** are applicable. The Claimant was entitled to a hearing on the complaints about her conduct and how her continued employment was considered undesirable. We agree with Counsel for the Applicant that there was no proof that the supervisor or other employees complained of the Claimant's conduct. Counsel referred the Court to Articles 805.4.1 and 805.4.16 of the HRM, which was admitted as REXH6. Article 805.4.1 provides for suspension pending a hearing before a disciplinary committee. It is common that no such committee was constituted regarding the Claimants alleged infraction.

[46] We agree with Counsel for the claimant that the Respondent failed to conduct a fair hearing, and for this reason, the summary termination is unlawful. The

tenets of a fair hearing are well set out in the case of **James Ebiju v Umeme Ltd.**[16]

[47] Counsel directed us to Article 805.4.16, which provides for an appeal from the committee's decision. The Article provides that the right of appeal only accrues to dismissed employees dissatisfied with the decisions of a disciplinary committee. As there was no such committee in the present matter, the Article would be inapplicable to the facts of this case.

[48] **Section 68(1) EA** provides that in any claim arising out of termination, the employer shall prove the reason or reasons for the dismissal, and where the employer fails to do so, the dismissal shall be deemed to have been unfair within the meaning of **Section 71 EA.** It is our determination that absent of a hearing, the termination of the Claimant was unfair.

[49] For the avoidance of doubt, the dicta in the Musinguzi case has an overarching reach. An employer has an unfettered right to terminate but must follow procedure. Every employer has the right to protest any conduct that is, in the opinion of the employer, inimical to the organization's culture, objectives, norms, rules, and regulations. This right to impose disciplinary penalties must be exercised by the law. If the Respondent was anchored in the view that the Claimant's conduct and continued employment were undesirable, it had the options of mutual termination (which was inconclusive) or the imposition of disciplinary proceedings for misconduct. In that stead, the Respondent opted to summarily terminate the Claimant, which we find unfair and unlawful.

[50] After objectively considering the facts, circumstances, evidence, and the law, we determine that the Claimant was unfairly and unlawfully terminated. Issue 1 would be answered in the affirmative regarding unfair and unlawful termination.

Issue II. Whether the Claimant was locally recruited for a Regional Position with a local salary pay. If yes, whether this violated her right to Equal Employment for Equal Value and Equal Pay?

[16] H.C.C.S 133 of 2012

[51] The claimant submitted that she was discriminated against, while employees in the same grade were treated more favourably with international salaries. She earned less than her predecessor and argued that Ms. Leoboldt Brittany advised her of a policy that requires the Respondent to pay a local salary to anyone who is a national of the country in which their position is based. She argued that she brought this anomaly to the Respondent's attention, which amounted to discrimination.

[52] On its part, it was submitted for the Respondent that the Claimant was recruited as an Advocacy Specialist from within Uganda, and her duty station was based in Uganda. Counsel referred the Court to the contract of employment (CEXH1) and the HRM (REXH6). In Counsel's view, there was no distinction between regional versus local positions but only locally and internationally recruited. There was therefore no discrimination.

[53] Article 21 of the 1995 Constitution prohibits discrimination. Under Article 21(3), discrimination means to give different treatment to different persons attributable only or mainly to their respective descriptions by sex, race, colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion, or disability. Under Section 6(3) EA, discrimination in employment is unlawful.

[54] The Claimant's evidence was that in April 2018, she publicly raised the issue of local recruitment vs. a regional position and received unanimous support. She also expressed disappointment in June 2018 regarding her title change and 10% salary increment. She testified that her predecessor and the other colleagues in the HarvestPlus Team enjoyed benefits like housing allowance, transport to work facilitation, unemployed spouses benefits, education for up to 4 children, medical insurance, and a 15% contribution to the retirement scheme.

[55] We were referred to the HRM provision on discrimination. Policy 202.8 of the HRM reads as follows:

> *"Non-discrimination in Recruitment. Candidates recruited for positions at IFPRI will not be discriminated against by the EEO policy and Employment Act, 2006. ....."*

Policy 202.9 provides for local recruitment and states that candidates are recruited primarily, but not exclusively, within Uganda through IFPRI internal postings, external advertising, and personal referrals.

[56] According to the **Constitutional Court of Uganda in the case of Caroline Turyatemba & 5 Others v the Attorney General and Uganda Land Commission,**[17] the prohibition against discriminatory conduct is based upon the universal principle of equality before the law. The human race as a family is characterized by the attribute of oneness in dignity and worthiness as human beings. Therefore, there ought not to be one group of human beings entitled to privileged treatment regarding the enjoyment of basic rights and freedoms over others because of perceived superiority. Likewise, no group of human beings should be taken as inferior and not entitled and be treated with hostility, as regards enjoyment to the full of the fundamental rights and freedoms.

[57] From the evidence before the Court, the Claimant suggested that her predecessor was entitled to housing allowance, transport to work facilitation, unemployed spouses benefits, education for up to 4 children, medical insurance, and a 15% contribution to a retirement scheme. The primary document governing the Respondent's Human Resource Policy was the Human Resources Policy Manual for locally recruited staff in Uganda. Our review of the HRM REXh6 does not show these benefits as payable to a category of workers known as international recruits. We were not presented with a document detailing the benefits of the Respondent's internationally recruited employees. The Claimants employment contract CEXH1 listed her duties, amongst which were to "research, prioritize and assist approaching donor and partner prospects for Country Office Managers and teams in sub-Saharan Africa, support development and advocacy efforts in target countries/regions and globally and liaise with full HarvestPlus team especially country managers and their staffs, as well as global and regional communications, marketing and research teams." A local, regional, and global role was indicated. The salary and other terms and conditions of service were listed. CEXH2 was a letter suggesting a salary increment with a revised job description. This is what the Claimant signed up to. The Claimant did not present us with evidence of pay rates for internationally recruited staff. Therefore, we are not satisfied that on the balance of probabilities, the Respondent is culpable for treating the Claimant in

[17] Constitutional Petition No. 15 of 2006

a discriminatory manner and differently from her predecessor or the rest of her colleagues in the HarvestPlus regional team. The Claimant has not laid a foundation to support this claim, and we answer issue 2 in the negative.

Issue III: Whether the Memorandum of Claim raises reliefs which were not claimed by the Claimant before the Labour Office. If yes, whether the said reliefs should be struck out of the Memorandum of Claim?

[58] Counsel for the Respondent abandoned this issue. While it would not ordinarily merit further comment, it is to be noted that excepting an appeal from an adjudicatory decision before a Labour Officer, a referral from a Labour Officer is subjected to a trial before this Court, *de novo*, which would imply that a Claimant is at liberty to craft their memorandum in a manner that articulates their case.

Issue IV: What remedies are available to the parties?

[59] Mr. Zeere contended that the Claimant was not entitled to any remedies because the contract was mutually terminated. Having found, as we have, that the Claimant was unfairly and unlawfully terminated, the Claimant would be entitled to remedies arising from the unfair termination. We note, however, that the Respondent paid the Claimant **UGX 65,412,502/=** consisting of statutory compensation, severance pay, and payment in lieu of notice. We have considered these payments in making any monetary award.

Declaratory orders

[60] We hereby declare that the Claimant was unfairly terminated.

[61] Having answered issue No. II in the negative, we decline to grant a declaration that the Claimant's local recruitment for a regional position with a local salary violated her right to equal employment for equal value and equal pay. In the same measure, the claim for an award of UGX 600,000,000 as back pay for performing a role meant for two people stands unsubstantiated and was not strictly proven. It is therefore denied.

Front Pay

[62] The claim for payment of salary, leave days, medical insurance, and remittance of NSSF for the remaining sixteen months of the employment contract is futuristic. The jurisprudence of this Court is that an employee is only entitled to pay for work that has been done. The Court of Appeal in **African Field Epidemiology Network v Peter Waswa Kityaba**[18] and the Court established that a former employee should not get more than he or she would have earned. Further, in **Simon Kapio Vs Centenary Bank Ltd** [19] it was held that the only remedy to the person who was wrongfully dismissed was damages. Therefore, the claim for prospective earnings cannot stand. Future earnings are speculative given that a person may not serve or complete their employment term because of circumstances such as death, lawful termination of employment, decision to change jobs, and closure of business. We agree with Counsel for the Respondent that the claim for future salary, leave days, medical insurance, and remittance of NSSF for the remaining sixteen months of the employment contract is speculative. The dicta expressed by the Supreme Court of Uganda in **Bank of Uganda v Betty Tinkamanyire**[20] is clear. We, therefore, decline to grant this prayer.

General Damages

[63] The Claimant was contending for UGX 150,000,000/= in general damages. The basis of this sum was general damages for mental anguish, retaliation, and racial discrimination and compensation for occupational asthma precipitated by exposure to different weathers, altitudes, and air conditions. Presently, the law is that general damages are those damages such as the law will presume to be the direct natural consequences of the action complained of[21]. The Court of Appeal has 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.[22] In the case of **Donna Kamuli v**

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[18] Civil Appeal No. 124 of 2017 [2019] UGCA 2098. The decision of the Court of Appeal was followed in Simon Kapio v Centenary Bank, LDC 300/2015. Equity Bank Vs Musimenta Rogers, LDA 26/2007, Blanche Byarugaba Kaira Vs AFNET LDR No. 131/2018 and Chandia Christopher Vs Abacus Pharma (AFRICARE) Ltd, 237/2016.

[19] Ibid

[20] S.C.C.A No. 12 of 2007

[21] Stroms v Hutchinson [1950]A.C 515

[22] Stanbic Bank (U) Ltd v Constant Okou Civil Appeal No. 60 of 2020

DFCU [23] the Industrial Court considered the earnings of the Claimant, age, position of responsibility, and contract duration to determine the damages awardable. In the case of **Nicholas Mugisha v Equity Bank Ltd,**[24] we considered that the Claimant had worked for the Respondent for about three years and was earning UGX14,000,000/= per month. We awarded UGX 52,000,000/=.

[64] We consider that the Claimant is entitled to general damages. She had worked for the Respondent from the 11th of July 2016. Her termination was on the 17th of April 2019, for two years, nine months, and six days, from the date of her appointment. She is about 43 years old. No evidence of her employability was led. Considering all circumstances, we determine that based on her monthly salary, the sum of **UGX 30,096,275/=** as general damages will suffice.

Additional Severance allowance

[65] Under **Section 87(a) of the EA,** an unfairly dismissed employee is entitled to a severance allowance. The Industrial Court has held in **Donna Kamuli v DFCU Bank Ltd**[25] that an employee calculation of severance shall be at the rate of his monthly pay for each year worked. In the termination letter, which was admitted as CEXH 6, the Respondent paid the Claimant one month as severance pay. Considering her service period, she would be entitled to a further sum of **UGX 19,355,481/=,** which we award as additional severance pay for one year, nine months, and six days.

Payment of severance fine

[66] Counsel for the Claimant was contending for **UGX 43,608,336**/= as severance fine. Counsel for the Respondent submitted that it is not provided for under any law. That is not entirely accurate. Under **Section 92(1) EA,** an employer who is liable to pay severance allowance and who willfully and without cause fails to pay the allowance in the manner and within the time provided under the Act commits an offence. The time frames under the Act are set in **Section 91 EA.** Severance allowance is payable to an employee on cessation of employment or on the grant of any leave of absence pending cessation of employment or within

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[23] LDC No. 002 of 2015
[24] LDR No. 281 of 2021
[25] The Court of Appeal maintained this position in DFCU Bank Ltd vs Donna Kamuli C.A.C.A No 121 of 2016.

30 days to the surviving spouse of a deceased employee. These circumstances do not obtain in the present matter, and we decline to grant any severance fine.

Punitive Damages

[67] In **DFCU Bank Ltd v Donna Kamuli**[26], the Court of Appeal held that punitive damages can be awarded in employment disputes but with restraint and in exceptional cases. This is because punishment ought, as much as possible, to be confined to criminal law and not the civil law of tort or contract. We have not been persuaded that a case has been made out for an award of punitive damages, and we decline to award the same.

Interest

[68] Given the inflationary nature of the currency, the total sum awarded in this award shall attract interest at the rate of 15% per annum from the date of the award till payment in full.

Costs of the Claim

[69] The Industrial Court has held that 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.[27] We do not find any such misconduct by the Respondent. The Respondent attempted to reach a mutually agreeable position on termination, albeit inconclusively and without due regard to the law. In this case, we decline to award the Claimant's costs.

Final orders of the Court

[70] The final orders of the court are as follows:

(i) We declare that the Claimant was unfairly and unlawfully terminated from the Respondent's service.

(ii) We decline to grant declaratory orders of discriminatory treatment.

(iii) The claim for UGX 600,000,000 in front pay is denied.

[26] C.A.C.A No 121 of 2016.
[27] Joseph Kalule Vs Giz LDR 109/2020(Unreported)

(iv) The claim for salary, leave days, medical insurance, and remittance for the remaining sixteen months of the contract is denied.

(v) We decline to award UGX 43,608,336/= as severance fines.

(vi) We decline to award punitive damages.

(vii) The Respondent is ordered to pay the Claimant the following sums:

(a) **UGX 19,355,481/=** as additional severance pay.

(b) **UGX 30,096,275/=** as general damages

(c) The sums above shall carry interest at 15% p.a. from the date of this award until payment in full.

(viii) There shall be no order as to costs.

It is so ordered this 18th **day of August 2023**

Anthony Wabwire Musana,
Judge, Industrial Court

THE PANELISTS AGREE:

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

Ruling delivered in open Court on 18th of August 2023 at 9.41a.m in the presence of:

1. For the Claimant, **Mr. Henry Balwanyi Magino**
2. For the Respondent, **Mr. Ferdinand Musiimenta**

Court Clerk: **Mr. Samuel Mukiza.**

Anthony Wabwire Musana
Judge, Industrial Court