

**THE REPUBLIC OF UGANDA**  
**IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA**  
**LABOUR DISPUTE NO. 42 OF 2014.**  
**ARISING FROM HCT-CS-171/2013**

**BOSCO AKUGIZIBWE** ..... **CLAIMANT**

**VERSUS**

**BARCLAYS BANK (U) LTD** ..... **RESPONDENT**

**BEFORE:**

- 1. THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE**
- 2. THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA**

**PANELISTS**

- 1. MR. EBYAU FIDEL**
- 2. MS. HARRIET MUGAMBWA NGANZI.**
- 3. MR. F X MUBUKE**

**AWARD**

**BRIEF FACTS**

The Claimant was employed by the Respondent as a personal banker, in March 2010, earning Ugx.15,675,000/=per annum. He was confirmed as Business Customer Adviser with effect from 1<sup>st</sup> November 2011 on the same terms.

He was terminated for negligence for processing a Real Time Gross Settlement (RTGS) of Ugx. 32,260,000/- purportedly for an imposter a one Hope Bainga Mugenyi purported holder of Account No. 014053927410 on 26/7/2011. On 14/03/2012, he was terminated after being subjected to a Disciplinary hearing. According to him the termination was unlawful hence this suit.

## **ISSUES**

- 1. Whether the Claimants employment was unlawfully terminated by the Respondent?**
- 2. Whether the Claimant /respondent to counter claim is indebted to the defendant Counter Claimants?**
- 3. Remedies to the parties**

## **REPRESENTATIONS**

The Claimant was Represented by Mr. Abbas Bukenya of .... and Mr. Moses Adriko senior Counsel assisted by Mr. Alex Ntale of MMAKS Advocates were for the Respondents.

## **SUBMISSIONS**

### **1. Whether the Claimants employment was unlawfully terminated by the Respondent?**

It was submitted by Mr. Abbas Bukenya, Counsel for the Claimant that on the 26/07/2011 while at Garden City Branch the Claimant was approached by a customer a one Hope Bainga Mugenyi, with instructions to process an RTGS for Ugx.32,260,000/- to account Number 014053927410 in the names of Gideon Tusiime. The Claimant received the said instructions by appending a receipt signature and a copy of the customer's original passport as identification. However because of a network failure that day he advised the customer to return the following day, 27/7/201. On the 27/7/2011, he verified the identity of the said customer by comparing the documents she submitted for the transaction, with the data base information she had submitted when she opened her account with

the Bank. According to Counsel the customer's Account was opened before the claimant joined the Bank. It was his submission that the Claimant did due diligence and confirmed the identity of Hope Bainga Mugenyi and he also compared the image in the data base with the one in the passport, she presented, her date of birth as 7/02/1963 and her phone number as 0712711110. He also confirmed her signature which he found materially similar to the specimen signatures she had provided to the Bank and under the name Bainga. He further contacted the customer on her cell No. 0712711110 via the Bank's official line No. 0414232025 to seek her confirmation of the transaction. When she confirmed, he forwarded the application to his supervisor for further verification and confirmation with the customer and then to the Operations manager for further verification and final authorization, which was done.

Counsel asserted that procedurally, the operations manager having sanctioned the RTGS, approved it, authorized it and forwarded it to headquarters for payment to be effected, the Claimant could not be faulted for the payment or for the information on the data base that he relied on to verify the customer, because the only duty he had was to verify the customers details.

He further submitted that the investigation that was carried out revealed that there were errors in the Banks database regarding the phone number. Whereas the Bank database indicated 0712711110 as the customer's number, the Account opening forms indicated 0717711110 as the correct number. There were also errors on the names, whereas the name the electronic data base bore the name Hope Bainga, the Account opening forms bore the Hope Banga Mugenyi. Counsel however argued that given that the particulars on the form were not

entered onto the system by the Claimant he could not be blamed for his superiors' failure to undertake their verification roles before authorizing payment. He contended that the Disciplinary committee disregarded the fact that, it was the management's responsibility to verify the authenticity of the customer and the account details and instead it shifted the blame on the Claimant, even after the investigation report found that a one Patience Birungi, a personal banker, admitted to entering erroneous information on the the Bank's system while opening the customer's account on 25/7/2007. She admitted that she entered the wrong telephone number, wrong names and contacts, and this is the same information which the Claimant relied on to undertake the verification of the customer.

It was Counsel's submission that, the Respondent should have called Claimant's immediate supervisor, a one Bisaaso, the Operational Manager , Semukaya Godfrey Max the , RTGS authorizer one Rogder Bamwita and the RTGs supervisor, a one Ann Munezero, as witnesses, because they were responsible for approving the transaction. Counsel argued that an adverse inference should be drawn against the Respondent Bank for not calling them as witnesses, because the Claimant had no role in the end to end transaction. He cited **J.K. Patel vs Spear motors Ltd (SCCA 4 of 1991 and Feiba L Taituka vs Abdu Nkendo [1999] HCB 275** in which it was held that;

***“An adverse inference be drawn against a party for not calling a key witness.”***

He further contended that whereas the disciplinary Committee recommended that the Claimant's termination is affected on 11/11/2011, the Respondent's

witness Stella Malinga, testified that the investigation report on which the committee relied to make its decision was only submitted to Management on 28/11/2011. He contended that, this was contrary to the principle that an investigation must be complete and a report therefrom issued to the employee in issue before the hearing commences. He relied on **Haji Asuman Mutekanga vs Equator Growers (U) Ltd SCCA No. 7 of 1995**, which was to the effect that there is no better evidence than an admission by a party and there is no better judgement premised on an admission. He also cited sir Ronald Sindair's holding in **Zariwa vs Noshir (19630 EA 239 EACA**, that;

*“The general rule is that admissions by a party to a proceeding are admissible against him, but not in favour of such party to prove the truth of the fact stated.”*

Counsel insisted that the RTGS transaction in issue, passed through the correct channels and the only person who was to be faulted was Patience Birungi who admitted to making errors when making the entries about the Customers new account on the system and this was before the Claimant was offered employment at the Respondent Bank.

He took exception to the move to amend the customer's account in respect of her name, identification, i.e, passport B0550751 on the date of the Claimant's hearing and insisted that it was done in bad faith and thus rendered his termination unlawful.

He argued that passport No. 550751, that was purported to be the customers genuine her identity, was only produced by the customer on the day of the investigation, but it was not used to open the account as alleged. According to

Counsel the appearance of the Customer's name in the Bank's electronic system under the account operating instruction at page 57 and 58 of the trial bundle, bore the name Hope Bainga Mugenyi and this matched the name on passport No.0580726, which she presented to Claimant as identification , for processing an RTGS on 26/7/2011 and not Hope Milly Mugenyi, as alleged.

He contended that the deliberate exclusion of the customer from the disciplinary proceedings was an indication that there was actually no loss occasioned to the Bank as purported, especially because there was no audit was undertaken and no audit report was tendered as part of the investigation report.

He also discredited the appeal process on the grounds that, the Claimant lodged the appeal on 20/03/2012, but on 11/4/2012, when it was heard, the Claimant was denied a right to representation, contrary to the Respondents policies and procedures and particularly, paragraph 43 on page 105 and paragraph 6.1 on page 109 of the trial bundle, which provided that he could appear.

Counsel also refuted the Respondents reliance on a Human Resources Manual to terminate the Claimant, yet RW1 and RW2, testified that the Human Resource Manual only came into effect after the Claimant was terminated from employment therefore it was not applicable to him. He also blamed also attributed the Claimant's failure to get a job elsewhere in the Banking sector, to the Respondent's refusal to issue him with a certificate of service.

In reply, Senior Counsel for the Respondent, Mr. Adriko, admitted that on 14/5/2012, the Respondent dismissed the Claimant from employment for fundamentally breaching his obligations under the contract of employment.

Citing Section 69(1) and (3) of Employment Act (Act No.6 of 2006) which defines summary termination as follows:

***1) Summary termination shall take place when an employer terminates the service of the without notice or with less notice than that to which the employee is entitled by any statutory provision or contractual term.***

...

***(3)An employer is entitled to dismiss summarily, and dismissal shall be justified, where an employee has, by his or her conduct indicated that he or she has fundamentally broken his or her obligations arising under the contract of service.”***

Mr. Adriko contended that, the Claimant acted negligently and contrary to the Respondent’s Branch Procedural Manual which all employees were expected to follow as part of their terms of employment. He submitted that the Claimant’s contract provided that he could be terminated with notice or payment in lieu of notice, for acts of gross misconduct which include noncompliance with the Respondent’s policies and procedures.

It was further Senior Counsel’s contention that the Claimant violated the Respondent’s Branch Procedure manual on pages 75-77 of the joint trial bundle as follows:

The Claimant received the RTGS from an imposter and processed it after purportedly receiving instructions to process the RTGS from a one Hope Bainga Mugenyi on 26/7/2011, but he altered the date of receipt to 27/7/2011. This

alteration amounted to a breach of procedure and furthered the fraudulent transaction.

Secondly the customer in her statement denied being at the Bank on the stated dates although, the police report and CCTV footage, could not confirm beyond reasonable doubt that the customer was at the Bank on those dates. The Report merely stated that the imposter could be related to the customer.

That the Claimant's submission that Edith Bisaaso, confirmed the Customer's presence was mis conceived because during the investigation, she stated that she did not know the customer.

It was further Senior Counsel's submission, that the Claimant failed to undertake proper due diligence when receiving the RTGS instructions from the customer because had he done so, he would have noted that the alleged customer was an imposter.

The Claimant was further faulted for calling the customer on phone, to confirm the transaction yet as customer service consultant, it was not his responsibility to do so, but that of the branch Manager. Therefore, by calling the customer he conducted an end to end process which was in breach of the Respondent's procedures, thereby facilitating the completion of the fraudulent transaction.

The Claimant was also faulted for failing to verify the forged signatures on the RTGS form in comparison to the customer's signatures on the Respondent's electronic system. According to Senior Counsel had the Claimant been diligent, he would have noticed that the signature on the RTGS form was significantly different from the ones captured in the Bank system and the specimen signatures. He refuted the assertion that the evidence about the confirmation of signatures

was unchallenged and stated that this assertion was misplaced and should be rejected. In any case RW2 Grace Kyomuhendo, testified that the signatures were significantly different.

Counsel further submitted that the findings of the Investigation report were confirmed by the Claimant's testimony; that he received from an imposter a forged passport and the investigation also indicated that the procedures for processing the customer instructions were not complied with, when the Claimant conducted an end to end process by receiving the instructions, verifying the signature thereon and making a call back to confirm the instruction. He asserted that collectively these actions /omissions justified the disciplinary proceedings which the Respondent's subjected the Claimant to.

It was further his submission that, it was not necessary to call Edith Bisaaso, Semukwaya Godfrey Max, Ann Munezero and the customer as witnesses as asserted, because the Claimant's actions amounted to a breach of the Respondent's rules amounting to gross misconduct and negligence which attracts dismissal under the Banks Discipline and Grievance Core procedures.

He insisted that the questionable inquiries which the claimant made on the customers' Account, on 22<sup>nd</sup>, 26<sup>th</sup> and 27<sup>th</sup> July prior to receiving the RTGS instruction on 28/05/2011, enabled him to acquaint himself with the Customer's details, as a means to facilitate the fraudulent transaction by use of accomplices. He cited **Grace Matovu vs UMEME Ltd, LDC No. 004** in which this Court held inter alia;

***“... respondent genuinely believed that the Claimant had fundamentally breached a core responsibility assigned to her and was justified to summarily dismiss her.”***

He argued that the Respondent in the instant case, genuinely believed that the Claimant had fundamentally breached his contract. He invited Court to find that the Claimant’s termination was justified under the circumstances.

He further submitted that Sections 66 and 68 of the Employment Act, provides that upon dismissal of an employee, the employer should give the employee reasons for the dismissal. He cited **Hilda Musinguzi Vs Stanbic Bank (U) Limited (supra)** in which their Lordships held as follows:

***“... My reading of section 68(2) of the Employment Act, 2006 is that it does not impose such a high standard of proof of the reasons of termination as would be required in a court trial...”***

Counsel asserted that the reason for the Claimant’s summary dismissal was gross negligence at work and the dismissal was done following a disciplinary hearing in accordance with Section 66 of the Employment Act.

He refuted the Claimants contention that the disciplinary process was flawed because it was conducted before the issuance of the investigation report because Grace Kyomuhendo testified that she briefed the disciplinary committee about her findings in relation to the disputed fraudulent transaction and the Claimant was made aware of the allegations against him, so his claim is clearly misconceived.

It was Senior Counsel's view that the submission date was immaterial given that it was not a legal requirement to have a written investigation report before the hearing and besides the meeting that was held on 11/11/2011 after the committee was briefed about the findings.

He cited Matovu(supra), to the effect that:

***“... a disciplinary hearing needn't apply the strict procedures applied in a Court of law.”***

The cases of ***GENERAL MEDICAL COUNCIL OF MEDICAL EDUCATION AND REGISTRATION OF THE UNITED KINGDOMS VS SPACKMAN 919430 ALLER 340, and CAROLINE KARISA GUMISIRIZA VS HIMA CEMENT LIMITED HCCS NO. 84 OF 2015***, concluded that a disciplinary procedure needn't follow the procedure as applied in the courts of law but merely required that an employee appearing before it, is given an opportunity to defend him/herself without the requirement of the standards of a court of law. In this case the claimant had been given an opportunity to defend himself and she failed to convince the committee hence her dismissal.

Counsel insisted that the notice of the disciplinary hearing clearly stated that the allegations were based on an investigation and it stated that he was entitled to attend the hearing with a colleague of his choice. The Claimant was also notified about the composition of the committee which comprised of; Philip Dande, Stella Malinga and Pauline Mugerwa for Human Resources and Carol Apako who was taking notes, therefore his dismissal was lawful.

## **DECISION OF COURT.**

It is not disputed that the claimant was terminated for gross negligence for processing an RTGs for a purported imposter.

It is trite that a person will be considered in breach of his or her duty of care, if he or she takes less care than the reasonable person would have taken. **Blyth vs Birmingham waterworks Co. (1856) 11 781 at 784,**

The question to be resolved in the instant is whether the Claimant breached the duty of care owed to the Respondent in processing the RTGS? As an employee, the Claimant was expected to perform his duties in accordance with the contract of employment and the Respondent's Human Resources Policies attendant thereto, therefore the he owed the Respondent a duty care.

It is the Respondent's case that the Claimant was expected to follow the procedures as, laid down in the Respondent's Procedure's Manual, but he omitted to do so and as a result he received instructions from an imposter, thus causing a loss of over Ugx 32 million to the Respondent..

The procedures referred to were set out as follows:

- a) *Receive a duly completed and signed RTGS instruction form together with a cheque from the customer. The customer or their known agent must have a copy of a valid identity card attached to the RTGS instructions or agents ID.*
- b) *Verify that identification documents the voter's card, driving permit, work ID, LC ID and passport are valid;*
- c) *Log onto the flex cube with user ID and password and key in past 7002;*
- d) *Key in the customer account number and tab check the account balance;*

- e) *Write the account balance on the transaction and assign a branch reference number in the format BR/RTGS NO./DDMMYR;*
- f) *Stamp instructions with a date and time receipt stamp*
- g) *Record particulars of instructions in register held in bank*
- h) *Pass RTGS instructions and the register on the BRANCH SYBRIN MAKER for scanning onto imaging and workflow*

It was not disputed that the Claimant received instructions from a customer whose name, phone number and instructions are disputed. He logged onto the Respondent's Bank electronic System and verified the information given to him by the said customer. He verified the identity of the customer and the RTGS, based on the information about her on the system and forwarded it to his immediate supervisor for approval and onward processing.

Although the Claimant is accused of not doing due diligence by among others failing to verify forged signatures, the record shows that he relied on the information in the Respondent's electronic data system to verify the identity of the customer in issue, and it tallied with the information on the RTGS instructions form. The name **Hope Bainga Mugenyi**, and telephone **071771110** in the Accounts operating instructions on the system tallied with the RTGS instructions form. It is also not disputed that the internal investigation marked "D15" on the record at page 92 of the trial bundle found among others that on the day the customer opened her Account, a one Patience Birungi a personal banker, was responsible for entering her information on Respondent's electronic system and she admitted that she had entered a the name **Hope Bainga Mugenyi** and not **Hope Banga Mugenyi** and a wrong telephone number **0712711110** and this was

done before the Claimant was employed by the Bank. The investigation also established a customer relationship manager a one Mulekwa Rodeger, also made changes on the same customers profile, but he did not update the electronic account operating instructions.

A further perusal of the Respondent's procedure Manual at page 76 of the trial bundle, revealed that it was the responsibility of Management to verify the signatures and authenticity of an RTGS applicant or his or her agent. It was the testimony of both the Respondent's witnesses and a finding in the investigation report, that all the Managers, who had a role to perform in the verification of the RTGS, did not perform their roles, as was required of them by the said procedures in the Manual. Nothing on the record indicated that they took steps to verify the signatures on the form the Claimant referred to them, there was no call log to show that they called the customer in issue. Whereas the Respondent adduced a call log as evidence that the Claimant called the customer, none was adduced to show to that the Managers whom the Respondent insisted were dressed with the responsibility for approving the RTGs called the Customer and each of them appended their signatures to the form evidence of their approval without calling the customer. This was confirmed by the investigation report which stated that all the Managers relied on the Claimant's verification, which we found very peculiar!

In **BARCLAYS BANK OF UGANDA VS GODFREY MUBIRU, SCCA No.1 OF 1998**, Justice Kanyeihamba JSC, held that:

***“Managers in the banking business have to be particularly careful and exercise a duty of care more diligently than managers of most businesses. This is because***

***banks manage and control money belonging to other people and institutions, perhaps in their thousands and therefore are in a special fiduciary relationship... Moreover, it is my opinion that in the banking business any careless act or omission, if not quickly remedied, is likely to cause great losses to the bank and its customers ....”***

We are of the very considered opinion that the Managers in the instant case were not only very careless, but grossly negligent, because they failed to carry out their various verification protocols before approving the RTGS, and only relied on the Claimant who was only expected to do basic verifications, before forwarding it to them.

The investigation report clearly indicated that the Claimant logged on to the electronic system and verified the information on the RTGS, which tallied with the information in the system, he sent the application to his immediate supervisor a one Bisasso for further verification, and this was the only role he was supposed to undertake as provided under the Respondent's procedure manual. Although he was faulted for doing more when he called the Customer, we failed to see the nexus between the call he made and the fraud he was alleged to have committed, because the form had to be verified by management before final approval, which was not the case. We also failed to see how the change of the receipt date on the RTGS from 26/07/2011, to 27/7/2011, had affected its authenticity and even if it had the process should not have gone beyond the immediate supervisors' desk.

We strongly believe that the loss would not have been occasioned, if the various Managers had carried out their responsibility as already discussed above. We are inclined to agree with Mr. Bukenya Counsel for the Claimant, that it seems that

the Managers intentionally shifted the blame on the claimant, because they realized their own omissions.

We also found no reason to treat the Claimant's interrogation of the Account, prior to the application of the RTGS transaction as suspicious, given that Florence Tushabe's one of the Respondent's managers who testified before the disciplinary committee, stated that at that time, the Bank was undertaking a campaign to fix large deposits and the claimant was an aggressive sales person hence the constant checking of Accounts with consistently large amounts of money.

With regard to the verification of signatures, the evidence on the record indicated that the Claimant was only expected to verify the application against the information on the Respondent's data base, which he did and it tallied. Its authenticity was supposed to be confirmed by the relevant Managers, who as the investigations showed did not do their job.

In the circumstances we find no basis for the disciplinary committee's finding that the claimant was negligent for failing to verify the customer's signature, when his responsibility was limited to ensuring that the signatures tallied on the RTGS form tallied with those on the system and the Managers were required to ensure that they were authentic, but none of them performed their duty to do so. Therefore, on a balance of probabilities, we find no proof of negligence on the part of the Claimant to have warranted his dismissal.

With regard to the disciplinary procedure, it was not in dispute that the claimant was not privy to the findings of the investigation report until he appeared before the disciplinary committee. Although there is no mandatory legal requirement to provide an employee with a written investigation before the disciplinary hearing,

where the allegations against an employee are a result of the findings of an investigation, they must be put to the said employee within a reasonable time before the hearing, at least 7 days before, to enable him or her prepare a response to them. The right to a fair hearing is non derogable and even if the standards of a disciplinary hearing are lower than those of a court of law, this right must never be violated and the principles of natural justice must be upheld. The employer must put the infractions levied against the employee to him or her and allow the employee reasonable time to respond to them, accompanied by a person of his or her own choice.

Therefore, even if the disciplinary Committee was briefed about the findings of the investigations before as submitted by Senior Counsel Mr. Adriko, the notification of interview arrangements, to the Claimant, did not specify and or particularize the said findings to him. They were not even summarized to him on the day of the hearing as the minutes of the hearing attached on the record as exhibit D2, indicated. He was therefore not given an opportunity to prepare any response to the allegations against him or to defend himself. The notification only stated that there was an investigation into his alleged “*negligence evidenced from the disputed RTGS amounting to Ugx. 32,650,000/-* “. Even if at the hearing he was given an opportunity to explain what happened on the fateful dates, the fact that the allegations were not particularized to him before the hearing, to enable him properly prepare his response/defense, rendered the hearing unfair and it violated section 66 of the Employment Act, which makes it mandatory for an employee to be given a reason for termination and reasonable time to respond to the reason, before the decision to dismiss/terminate him or her is taken.

In conclusion, having found that the Respondent did not prove the Claimant's alleged negligence, and it did not accord him a fair hearing, it is our finding that his dismissal was both substantively and procedurally unlawful.

## **2. Whether the Claimant /Respondent to the counter claim is indebted to the Respondent/ Counter Claimants?**

The Respondent counter claimed for a sum of Ugx. 28,996,000/- being an outstanding loan, with interest at 23% per annum from date of termination until payment in full, general damages and costs of the counterclaim. The basis of the claim is that the claimant took out a salary loan of which Ugx. 28,996,000/- remained outstanding at the time of filing this case. The Claimant however claimed that the said Ugx. 28,996,096/-, was written off by the Respondent under Annex "E" and "F". Therefore, in accordance with Section 114 of the evidence Act, the Respondent is estopped from claiming the same from the Claimant. He insisted that the fact that there was no rebuttal about the debt being written off, was an indication that the Respondent conceded to it being written off. Counsel cited **Osman VS Haji Haruna SCCA No. 34 of 1995**, where it was held that ambiguity, works on the drawer of a document. Therefore, the Counter claim should be dismissed with costs.

Counsel for the Respondent insisted that the loan remained outstanding and there was no evidence to prove that it had been written off. He cited the **financial Institutions (credit Classification and Provisioning) Regulations, 2005**, which made it a requirement for a financial institution, to make specific provisions of loss of assets to be maintained at 100% of the outstanding balance of the credit facility. According to him the loss of assets are to be written off against the

accumulated provisions within 90 days of being identified as a loss, unless approval of the Central Bank to defer the write off has been obtained. This however did not waive off a loan and did not recuse the Claimant from fulfilling his contractual loan obligations, therefore judgement should be entered against the claimant on the counterclaim.

It is not in dispute that the claimant took out a salary loan and by the time of his dismissal the loan amounting to Ugx. 28,996,096/- remained outstanding. We have perused the **Financial Institutions (credit Classification and Provisioning) Regulations, 2005**, and particularly regulation 11, which was cited by Senior Counsel Mr. Adriko. The regulation in our view is intended to ensure that the Bank complied with the capital adequacy requirements by recognizing impairments arising from provisions for bad and doubtful Accounts, among others. It however does not create a waiver on the part of a debtor.

This notwithstanding, the loan that was acquired by the claimant was a salary loan, whose recovery was premised on deductions of the Claimant's salary. This court's holding in **Donna Kamuli vs DFCU Bank LDC No. 002 of 2015**, is to the effect that where an employee obtained a loan whose recovery was premised solely on the deduction of his or her salary and it is established that he or she was unlawfully dismissed/terminated from employment, the outstanding loan balance and interest thereon must be paid by the employer who unlawfully dismissed or terminated the employee.

Therefore even if the Respondent's write off of the loan, in compliance with regulation 11 of the **Financial Institutions(credit Classification and Provisioning) Regulations, 2005**, did not waive the Claimant's obligations to pay the

outstanding loan of Ugx.28,996,096/-, given that he was unlawfully terminated, f **Donna Kamuli**(supra), would apply. In the circumstances the burden of paying the outstanding balance and interest thereon, shifts onto the Respondent. The Respondent is therefore ordered to pay the outstanding loan balance of Ugx. 28,996,096 at interest of 23% per annum stated by the Respondent until payment in full.

### **3.Remedies to the Parties**

In his submission on remedies, Mr. Bukenya Counsel for the Claimant prayed that Court considers the fact that the unlawful dismissal and non-issuance of a recommendation to the Claimant, by the Respondent caused the Claimant inconvenience for which he should be awarded damages of Ugx. 50,000,000/=.

He also prayed that the summary dismissal of the claimant is declared unlawful, payment of special damages of Ugx. 1,214,804/-from the date of termination to date, compensatory order of weeks being monthly salary of Ugx. 1,214,804/-, severance allowance of Ugx. 3,000,000/= interest of 20% per month from the date of filing the suit till payment in full, costs of the suit, any other remedies court deemed fit.

We have already found that the Claimant was unlawfully dismissed, therefore, he, is entitled to some of the remedies prayed for as follows:

- 1.We have already declared that his termination was unlawful.

### **2.General Damages**

It is settled that an employee who is unlawfully dismissed is entitled to an award of General damages. General damages are awarded at the discretion of Court

and are intended to return an aggrieved party to the position he or she was in before the injury caused by the Respondent occurred. They are compensatory in nature. In the instant case, the claimant was employed by the Respondent in March 2010 earning net salary of Ugx. 1,214,804/ per month. He was dismissed on 14/03/2012, exactly 2 years later. This court takes cognizance of the suffering occasioned by the termination of one's employment, the difficulty in securing alternative employment and the embarrassment suffered especially when the termination is unlawful. Therefore, given that the Claimant worked for the Respondent for 2 years without any blemish and he was earning a net salary Ugx. 1, 214,804/= per month, and he was trying to mitigate his loss of employment, by looking for another job, and failed because the Respondent's refused to grant him a certificate of service when he requested for one, we think an award of **Ugx. 18,000,000/=** is sufficient as General damages.

#### **4. Severance Pay**

Section 87(a) of the Employment Act, entitles an employee who has been in an employer's continuous service for a period of 6 months and was unlawfully dismissed, to severance pay. Section 89 of the same Act provides that severance allowance should be negotiated between the employer and employee. Counsel prayed that the Claimant is paid Ugx 3,000,000/- he however did not show how he arrived at this amount. In **Donna DFCU Bank LDC No. 002 of 2015**, (supra), this court held that where the employer and employee have no agreed formula for calculating severance pay, the employee would be entitled to 1 months' salary for every year he or she served the employer. Given that the claimant served for 2

years he would therefore be entitled to an award 2 month's salary amounting to Ugx. 2,429,608/- as severance pay.

#### **5.Compensatory order.**

In **Edace Micheal vs Watoto Child Care Ministries LD Appeal No.016/2015**, this court held that section 78 of the Employment Act, 2006, “... *in our view covers whatever damages that could have arisen from illegal termination although section 78(3) provides for maximum amount of additional compensation which in our view is equivalent to damages.*

*Unlike the Industrial Court, the discretion of the Labour officer to award such damages under section 78(3) is limited to 3 months wages of the dismissed employee's salary...*” It was settled in **African Field Epidemiology Network (AFNET) vs Peter Waswa Kityaba CA .No.0124/2017** that: “...*the Industrial Court, can determine any dispute which can be filed in the high court .In that respect it has unlimited jurisdiction on the question of remedies that it can lawfully order...*”. In the circumstances this court cannot make a compensatory order which is provided under Section 78, as already stated the Court has discretion to award damages as compensation, and it already has, in the circumstances the prayer for compensation of 1 month's salary of Ugx.1,214,804/- claimed, fails.

#### **6. Interest**

The claimant is awarded an interest of 15% per annum on all the pecuniary awards above, from the date of this award until payment in full.

No order as to costs is made.

Delivered and signed by:

1. THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE .....

2. THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA .....

**PANELISTS:**

1. MR. EBYAU FIDEL .....

2. MS. HARRIET MUGAMBWA NGANZI. ....

3. MR. F X MUBUUKU .....

DATE: 27<sup>TH</sup> APRIL 2020