



THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE NO. 120 of 2020
(Arising from KCCA/RUB/LC/580/2019)

OCHIENG PETER:.....CLAIMANT

VERSUS

PARLIAMENTARY COMMISSION:.....RESPONDENT

Before:

The Hon. Mr. Justice Anthony Wabwire Musana,

Panelists: Hon. Adrine Namara, Hon. Susan Nabirye & Hon. Michael Matovu.

Representation:

1. Mr. Steven Turyatunga of Leadman Advocates for the Claimant.
2. Ms. Ivy Kemigisha and Ms. Rachel Ampeire of the Department of Litigation and Compliance, Office of the General Counsel to Parliament, for the Respondent.

Case summary

Employment Law: Unfair and unlawful dismissal:

The Claimant, an office assistant, was arrested and convicted of theft, leading to his suspension and subsequent dismissal from parliamentary service. However, his conviction was later quashed on appeal, prompting him to seek compensation for unlawful termination. The court examined whether the dismissal was lawful and procedurally fair, considering the employer's regulations and the impact of the overturned conviction. The court ruled the dismissal was unfair and unlawful due to procedural errors and lack of a fair hearing, despite substantive justification for the initial decision.

AWARD

Introduction

- [1] On 3rd April 1987, the Respondent employed the Claimant as an office assistant. On 7th April 2015, the Claimant was arrested for alleged theft of a video deck, LGs/No.507DIDM 256586, from the Budget Office at Parliamentary buildings. The Claimant was granted a police bond pending arraignment scheduled for 15th April 2015 before the Chief Magistrates' Court of Buganda Road at City Hall. Following a letter reference CID/PAC/23 dated 17th March 2015 from the Parliamentary Police Directorate, the Clerk to Parliament suspended the Claimant on 14th April 2015, with half pay in accordance with the Parliamentary Service (Staff Regulations), 2001 S.I No. 53 of 2001 (*hereinafter "the Regulations"*), pending conclusion of the criminal proceedings. After his arraignment, the Claimant was remanded to Luzira Prison. On the 9th of September 2015, His Worship Moses Nabende, Magistrate Grade One, convicted the Claimant jointly with one Moses Owori on a charge of theft. He was sentenced to eight months imprisonment or a fine of UGX 600,000/=. Following that conviction, on the 11th day of February 2016, the Respondent dismissed the Claim for parliamentary service effective the date of his conviction and sentence. The Parliamentary Pension Fund Manager was requested to process his pension dues. The Claimant opted to pay the fine. He also preferred Criminal Appeal No. 054 of 2019 before the Criminal Division of the High Court. On the 18th day of September 2019, the Honourable Mr. Justice Yasin Nyanzi quashed the conviction and set aside the sentence.

Compliant before the labour office

- [2] The Claimant, after getting an extension of time, lodged a complaint of unlawful termination and sought lost salary, allowances, insurance, pension, gratuity, severance, repatriation and general damages. He contended that the Respondent did not accord him a hearing. He sought compensation for about UGX 2,728,750,000/= (shillings two billion seven hundred twenty eight million seven hundred fifty thousand). He served the Respondent and the Attorney General, who denied the claim, arguing that the dismissal was lawful and in accordance with the Regulations. Following a failed mediation, the Claimant's Advocates asked the Labour Officer (*from now "the LO"*) to refer the matter to this Court. On the 15th of July 2020, the matter was referred to this Court.

The Claim before this Court

- [3] In his memorandum of claim (*from now "the MOC"*), the Claimant, naming the Parliamentary Commission as the 1st Respondent and the Attorney General of Uganda as the 2nd Respondent¹, sought a declaration that his dismissal was unlawful and reiterated his claim for damages as before the LO. He contended that he was terminated without a fair hearing, without notice or

¹ Proceedings against the Attorney General were terminated by a ruling of this Court rendered on 31st March 2023

payment in lieu thereof, for a reason of a false charge of theft, which an appellate court set aside and that for the four years of his criminal trial and remand, he was humiliated. It was also contended that his rights to personal liberty were violated.

- [4] The Respondents denied the claim, arguing that the 1st Respondent lawfully terminated the Claimant, and he received all his benefits in the circumstances. It was also contended that the Claimant's dismissal was dictated by statute for which the 1st Respondent could not be held liable. The 1st Respondent cited the Uganda Government Standing Orders, Parliamentary Commission Human Resource Policy Manual (HRPM), and the Regulations. It was contended that the Claimant did not notify the Respondent of his intention and lodgment of an appeal against his conviction and sentence. It was also contended that his prosecution followed investigations by the Uganda Police and the Director of Public Prosecutions and not the 1st Respondent.
- [5] In its written statement of defence (WSD) filed in Court on the 8th of February 2021, the 2nd Respondent contended that the claim was frivolous, vexatious, bad and barred in law. The 2nd Respondent reiterated the summary dismissal of the Claimant upon conviction of an offence involving dishonesty. It was further contended that the Claimant was not entitled to a fair hearing and his dismissal was justified. His claims were grossly exaggerated, speculative and were denied. The 2nd Respondent challenged the propriety of the action before the Industrial Court. The 2nd Respondent also filed a memorandum in response on the 16th of November 2021, which mirrored the arguments in the WSD.
- [6] In rejoinder, the Claimant reiterated the decision of Nyanzi J. in his criminal appeal and suggested that the 1st Respondent was notified of that decision at the mediation before the LO. It was also argued that the DPP fully participated in the appeal process and the 2nd Respondent maliciously prosecuted the Claimant.

The Proceedings

The Issues

- [7] The parties filed a Joint Scheduling Memorandum by which three issues were framed and agreed upon.
- (i) *Whether the Claimant was lawfully terminated from the parliamentary service?*
 - (ii) *Whether the Claimant was accorded a fair hearing? and*
 - (iii) *What remedies are available to the parties?*



Preliminary point of law

- [8] On the 23rd of March 2023, when the matter came up for scheduling, Mr. Moses Mugisha, Senior State Attorney, rose on a point of law on the jurisdiction of this Court to hear the claim against the 2nd Respondent, who did not have an employment relationship with the Claimant. In a written ruling delivered on the 31st of March 2023, we upheld the objection and dismissed the claim as against the 2nd Respondent.
- [9] Because of that ruling, further references to Respondent in this award mean the Parliamentary Commission, as there is now no distinction between the Respondents.

The Claimant's Evidence

- [10] In his witness statement adopted as his evidence in chief, the Claimant testified to not being accorded a fair hearing, not being given notice or payment in lieu thereof, being suspended unlawfully, and the procedure of his dismissal as a public servant was not followed. He told this Court that he successfully appealed his conviction and sentence by the Magistrates' Court. He said he had spent two years on remand. He stated that he was on half salary for 11 months following his suspension, earned half salary, and claimed UGX 19,250,000/= (shillings nineteen million two hundred fifty thousand) as the remainder of his salary. He also claimed UGX 1,800,000/= (shillings one million eight hundred thousand) for attire and UGX 7,700,000/= (shillings seven million seven hundred thousand) per month as his HIV/AIDS Welfare fee, totaling UGX 88,750,000/= (shillings eighty eight million seven hundred fifty thousand). It was his evidence that over the 10 years of service left, he would earn salary and allowances of UGX 600,000,000/= (shillings six hundred million), attire allowance of UGX 40,000,000/= (shillings forty million), insurance cover of UGX 900,000,000/= (nine hundred million) and HIV Welfare of UGX 180,000,000/= (shillings one hundred eighty million). He asked for a total of UGX 1,808,750,000/= (shillings one billion eight hundred eight million seven hundred fifty thousand) with interest at 25% from the date the cause of action arose until payment in full. He also asked for general, punitive and exemplary damages, unpaid leave, gratuity severance and repatriation allowances.
- [11] Under cross-examination, he confirmed that he was an employee of the Parliamentary Commission, where he served as an Office Assistant. He said he was arrested on allegations of stealing a DVD, prosecuted and convicted by the Chief Magistrate's Court of Buganda Road. He recognized the judgment of His Worship Nabende, which was marked REX 10. He said he presented his defense and examined the state witnesses. He clarified his suspension during the trial. When he was shown the letter of suspension, he said he was paid half salary during suspension. He confirmed that the Respondent paid the fine while he was in Luzira prison and that he was dismissed as a consequence of his conviction with effect from the date of conviction, the 9th September 2015. He said he was supposed to retire in 2026. He told us

he did not know if he had been paid his pension. He confirmed signing the discharge forms (REX 5). He said those documents were not explained to him, and he signed them as a layperson. He disowned the letter requesting a pension. He said the pension is from salary and Parliamentary contributions. He said he signed the final discharge form on 22nd April 2016. He said he appealed the decision of the Magistrate, and the Parliamentary Commission was served.

- [12] In re-examination, he clarified that he was charged, convicted and sentenced by the Magistrates Court at City Hall and appealed to the High Court, which set aside the conviction and sentence, and he was happy with that judgment. He said he was not given a hearing before he was suspended and dismissed by the Respondent. He said the sum of UGX 36,481,024/= (shillings thirty-six million four hundred eighty-one thousand twenty-four) was not his entire pension. He stated that he did not understand Discharge Form No. 6, as there was no explanation of the formula used to compute his pension. He said he was set to retire in 2026, and he was supposed to get more money and a house.

The Respondent's Evidence

- [13] Jackson Kumakech, a male adult aged 57 years, resident of Seeta, Mukono, Director of Human Resources at the Commission, testified on its behalf. His witness statement was adopted as his evidence in chief. He confirmed the Claimant's employment history and eventual dismissal. He told this Court that the Parliamentary Police Directorate, in its letter dated the 17th of March 2015, informed the Commission of the Claimant's arrest on suspicion of theft of a DVD deck from the office of the director of the parliamentary budget on or about the 9th of March 2015. He said the letter also informed the Commission that the Claimant had been arraigned for criminal prosecution before the Magistrates' Court at City Hall, Kampala. Subsequently, the Clerk to Parliament (*from now "the CTP"*) suspended the Claimant pending the conclusion of the court proceedings brought against him. The Claimant was paid 50% of his salary. The Claimant was convicted on the 9th of September 2015 and sentenced to 8 months imprisonment or a fine of UGX 600,000/= (shillings six hundred thousand). On the 11th of February 2016, the Claimant was dismissed from parliamentary service effective the date of his conviction in accordance with Regulation 17 of the Regulations. He told us the Claimant was paid 50% of his salary withheld during the period of his interdiction, along with all accrued pensions. His total benefit at the time of exit was UGX 49,418,312/= (shillings forty nine million four hundred eighteen three hundred twelve), which he signed for. He told this Court that at the time of the Claimant's conviction and signing of his discharge forms and receipt of his benefits, he did not inform the Respondent Commission of the pending appeal against his conviction and sentence. He said that the Claimant's dismissal was lawful and in accordance with the Regulations.



[14] Under cross-examination, he told this Court that he had served the Respondent for seven years and had seen the Claimant for the first time in Court. He stated that his witness statement and evidence were based on the department's records. He said he joined the Human Resources department of the Respondent on 1st July 2016. He also said he was not a Director at the time the Claimant was an employee. He told us that the letter referred to in paragraph 8 of his witness statement was in his lawyer's custody. It was his testimony that the Respondent had an arrangement for disciplining errant employees. He said he was not aware that the Respondent had called the Claimant in respect of the offences against him or the reason for his dismissal. He confirmed that he had not supplied any record of a disciplinary hearing. He told the Court that the Respondent had Parliamentary Staff Regulations, which had been admitted in evidence and marked REX 11. He was referred to Regulation 33 (1) & (2) of the Regulations and said the Claimant's offence was categorized as gross misconduct. He said he was not aware of any disciplinary proceedings against the Claimant. He stated that he was not present at the time and had not received a handover report. He told us that the lawyers could answer the question of whether there was a lack of a hearing under Regulation 33. He also said that the lawyers were not in charge of Human resources. He read out Regulation 34. He said he did not have any evidence that the Claimant was asked to explain his conduct. He said he was not aware of the appointment of any committee.

[15] He confirmed that Regulation 34 was not complied with. He was referred to Section 5.2 (i) of the Respondent's Human Resource Policy Manual (*from now HRPM*), admitted in evidence and marked REX 12. He said that this was the policy before the 2019 revision and applicable in the Claimant's case. He said fair treatment means that a person must be given time to defend themselves. He told us that if a Court commits a person, then the Commission relies on the Court's decision. He said the Respondent had an obligation to tell an employee that a dismissal was on account of a conviction. He could not confirm whether the Claimant was given a hearing. He stated that he was not competent to provide a legal interpretation of Clause 5.3 in relation to all disciplinary proceedings. He confirmed that he was not aware of disciplinary proceedings against the Claimant. He was also not aware that the procedure in Clause 5.3 (a) (i) and (iii) was followed. He said the Claimant was dismissed based on a Court Judgment. He assumed that the Claimant got a copy of the judgment. He could not tell whether the Claimant was invited to defend himself. He said the Commission communicates any final decision of the Committee, and the duty is delegated to the CTP under the Administration of Parliament Act. He said he was not aware that the Claimant appealed the Magistrate's decision. He told this Court that the Respondent received the judgment in Criminal Appeal No. 0054/2019 on 15th November 2019. He said that if the Respondent had known of the appeal, it would have stayed the proceedings on the dismissal action. He said he learnt of the successful appeal in 2021. If the Respondent had been informed after the Magistrate's communication that there was an appeal, it would have stayed the dismissal. He said it was the Claimant's duty to notify the Respondent of his appeal.

- [16] In re-examination, he told us that in criminal cases, it is the Court that decides. He clarified that an employee on interdiction is on half pay. He told us that the Court is the most competent authority. The employee has an opportunity to defend themselves in Court. If the employee is acquitted, they are reinstated with full pay. If the employee is dismissed, they are paid all their benefits, including the withheld half pay. He said gross misconduct is both criminal and civil. Because the Claimant was convicted of a criminal offence, there was no need to waste time forming the Disciplinary Committee. He told us the Claimant was dismissed in 2016. He said he came to learn of the appeal in 2021. He also said the Claimant did not inform the Respondent of the appeal when he signed the discharge forms. He said the Claimant was dismissed on 11th February 2016, having been convicted in September 2014. He said the Respondent did not have any information on the Appeal from 2014 to 2021. He clarified that the letter of dismissal stated that the reason for dismissal was the conviction on a charge of theft. He said the Claimant was dismissed under Regulation 27 of the Parliamentary (Staff) Regulations (2001), and the Respondent took its decision based on the conviction.
- [17] At the close of the Respondent's case, we invited Counsel to file written submissions. The Court is grateful for the succinct arguments which we have summarized and considered in rendering this award.

Determination.

Issue I: Whether the Claimant's dismissal was lawful?

Claimant's submissions

- [18] Mr. Turyatunga, appearing for the Claimant, made two principal points in support of the proposition that his client was unfairly dismissed. First, the claimant was dismissed on the flimsy charge of theft, whose conviction and sentence were later quashed and set aside. Secondly, the Claimant was dismissed without being accorded a fair hearing. In support of these propositions, we were referred to Articles 28 and 44(c) of the 1995 Constitution, Sections 66 and 68 of the Employment Act Cap. 226, Regulations 23,33(1) and 34(1) of the Parliamentary Service (Staff) Regulations S.I. 53 of 2001, Clause 5.3 of the Respondents' Discipline and Grievance Handling Policy and the case of Bakaluba Peter Mukasa v Nambooze Betty Bakireke². It was submitted that the Respondent's witness had confirmed that the Claimant was not given an opportunity to be heard, that there was non-compliance with the regulations and HRMP, and that this refusal to hold a hearing was a fundamental breach of the Claimant's statutory rights, the employment contract, the HRMP and the regulations. We were asked to find that the Claimant was unlawfully dismissed.

² [2010] UGSC 44

Respondents reply

- [19] Ms. Kemigisha and Ms. Ampeire, appearing jointly for the Respondent, drew our attention to Regulation 36 (2) of the Regulations, which provides for dismissal of a convicted officer if no appeal is preferred. In their view, having been convicted by the Magistrate's Court, the Claimant was lawfully dismissed in accordance with Regulation 27 of the Regulations, paid and acknowledged receipt of UGX 49,418,312/= (shillings forty nine million four hundred eighteen thousand three hundred twelve) as his terminal benefits, signed his discharge forms and initiated his pension. It was submitted that he did not inform the Respondent of his appeal, and the Respondent only learnt of the appeal after the Claimant filed a labour complaint. Counsel relied on Maviri v Jomayi Property Consultants Ltd³ for the proposition that it was the Claimant's responsibility to take the essential step of informing the Respondent of the pending appeal. We were also pointed to Rule 78(1) of the Judicature (Court of Appeal Rules) Directions, which requires a notice of appeal to be served on the opposite party within 7 days of the filing of a notice of appeal.
- [20] Regarding the right to a fair hearing, we were referred to Zachary Olum & Anor v The Attorney General⁴ in support of the proposition that the Claimant had an opportunity to defend himself before the Magistrate's Court. It was suggested that after exercising that opportunity, there was no need for the Respondent to retry the Claimant. Counsel cited Ogol and Another v Attorney General⁵ in support of this view arguing that the criminal trial was a fair hearing within the meaning of the EA. We were asked to dismiss the claim.

Rejoinder

- [21] In rejoinder, Counsel for the Claimant made a series of arguments which, if we understood him correctly, centered on the effect of a disciplinary hearing. He contended that there is a difference between a hearing under the EA and a fair hearing by a court of law. It was suggested that a hearing under the EA would avoid a court hearing, which in itself could encroach on an employee's human rights under Article 40 of the Constitution. It was submitted that Regulation 33 (1) of the Regulations and Section 5.3 of the HRMP provided for formal disciplinary proceedings in all cases of gross misconduct and were couched in mandatory language. Counsel argued that the Respondent's witness confirmed the absence of a hearing under cross-examination. Counsel reiterated his submissions to the effect that if a hearing had been held, the Respondent would have found the charges baseless. The criminal prosecution was

³ [2015] UGCA 178

⁴ Constitutional Petition No. 6 of 1999

⁵ [2022] UGHCCD 45

therefore malicious and false. Counsel suggested that in *Bakaluba*, Katureebe JSC held the right to a fair hearing as non-derogable. In closing, we were asked to find for the Claimant.

- [22] The other broad argument was that the Respondent had been informed of the appeal by the DPP, and upon the Claimant's filing of the reference. It was also submitted that upon learning of the Claimant's successful appeal, the Respondent did not seek out the Claimant to resolve the dispute.

Decision

- [23] In our jurisdiction, industrial jurisprudence on the law on dismissal for misconduct is well settled. The employer has an unfettered right to terminate or dismiss an employee, provided that the employer follows procedure⁶. The right to dismiss an employee is neither absolute nor automatic, and to exercise this right, an employer must follow procedure. It is settled that under Section 65 (1) EA, where an employer is considering dismissal for misconduct, it must hold a hearing.⁷ The lawfulness of a dismissal is predicated on two things: procedural fairness, which entails the right to a fair hearing and substantive fairness, which relates to the reason for dismissal.⁸ And there is but one exception. An employer may dispense with a hearing where there has been an admission of an employment infraction.

Procedural fairness

- [24] In the present matter, the facts are common cause. First, it is a common fact that the Respondent suspended the Claimant on account of his arrest on allegations of theft of a parliamentary video recorder. It is also accepted that the Claimant was charged, tried, and convicted of theft. It is not in dispute that he was sentenced to a term of imprisonment or payment of a fine and that he paid the fine. It is also not disputed that he was dismissed following his conviction.
- [25] It now transpires that he successfully appealed against his conviction and sentence. Mr. Turyatunga hypothesises that following his acquittal, the Claimant's dismissal without a hearing was unlawful and unfair. The competing hypothesis advanced by Ms. Kemigisha and Ms. Ampeire is that the Respondent followed the letter of the law in dismissing the Claimant. Under Regulation 27 of the Regulations, upon which Counsel for Respondent leaned heavily, it is provided that an employee convicted of an offence involving dishonesty or sentenced to imprisonment for an offence against the Service shall be dismissed from the date of conviction.

⁶ Ibid

⁷ See *Ashaba v Mutoni Construction Uganda Limited* [2025] UGIC 1 (16 January 2025)

⁸ See *Mugisa v Equity Bank Uganda Limited* [2023] UGIC 62

And on this basis, the Respondent dismissed the Claimant. But the Claimant successfully appealed the conviction and sentence.

[26] Therefore, this Court is confronted with the issue of whether the Claimant's dismissal can be considered lawful in light of a criminal conviction that was later overturned on appeal. This is a justifiable question because the claim turns on its resolution.

[27] There is no specific provision of the EA that deals with criminal proceedings preceding disciplinary proceedings in the workplace. However, Section 94EA does not exempt any person on whom a disciplinary penalty has been imposed from criminal proceedings or prosecution. In other words, where a disciplinary sanction has been imposed, criminal proceedings can be commenced against the employee. In *Miyingo v Sogea Satom Uganda*⁹ this Court considered the point. It concluded that the employer does not need to await the conclusion of criminal proceedings before commencing disciplinary proceedings. Therefore, as the law now stands, an employer confronted with pending criminal proceedings against its employee is entitled to stay proceedings pending conclusion of the criminal case and abide by the decision of the criminal court or hold disciplinary proceedings and determine the employee's fate. In other words, the employer may elect to halt disciplinary proceedings, await the outcome of criminal proceedings or pursue disciplinary proceedings concurrently with the criminal case. See also *Kiboko Enterprises v Asaba Esther*¹⁰.

[28] Regulation 26 of the Regulations grants the Respondent a wider berth than Section 94EA. It provides that;

"The acquittal of an employee of a criminal charge shall not by itself prevent him or her from being punished under these Regulations unless the issue raised in the charge in the disciplinary proceedings is in substance the same as that raised and resolved in the court or Tribunal in the criminal charge."

This provision maintains the employer's liberty to impose disciplinary proceedings regardless of the outcome of criminal proceedings while permitting for the defence of double jeopardy. Further, Regulation 29 of the Regulations appears to conform to the view by providing for the interdiction of an employee against whom either disciplinary or criminal proceedings have commenced.

[29] But what happens in cases where the criminal court convicts an employee who is then dismissed from employment based on the conviction, and subsequently successfully appeals

⁹ [2023] UGIC 60

¹⁰ Labour Dispute Appeal NO. 46 of 2018.



the conviction and sentence? Under Regulation 36(3) and (4) of the Regulations, the Commission is empowered to suspend imposition of a disciplinary penalty where an employee convicted of a criminal offence against a person or organisation other than the service has appealed against such conviction and notified the Commission of the impending appeal. In our view, the regulation is somewhat restrictive. Its application is to conviction for offences against other persons not being the Respondent.

[30] However, Mr. Kumakech conceded under cross-examination that had the Respondent known about the Claimant's appeal, it would have stayed the dismissal. That concession is consistent with the dicta of Ssekaana J. (*as he then was*) in *Nkuningi Ssembajja v Secretary Public Service Commission Another*¹¹ where the Applicant had been charged and convicted for certain criminal offences. He appealed against the judgment and conviction and was granted bail pending the disposal of his appeal. The Applicant's name was deleted from the payroll, and his position was given to another individual without his being heard or given any reasons. He did not receive his emoluments. His appeal was successful, and an order of retrial was issued. At the retrial, he was convicted. He appealed against the decision and was granted bail pending appeal. He found that he was dismissed from the public service of Uganda with immediate effect. In an action for review before the High Court, it was observed that it was a practice of the public service to wait for the determination of the appeal against conviction because it would cause unnecessary confusion in the public service administration when decisions of the lower Court which convicted a public servant are overturned on appeal.

[31] From the above decision, a successful appeal against conviction has the effect of displacing a dismissal founded on the earlier conviction. In other words, there would be no legal basis for the dismissal as it was based on an overturned conviction, hence the need to wait for the outcome of the appeal. In the Indian case of *Tarini Kumar v Chief Commercial Superintendent Eastern Railway*¹² it was observed that where an employee is convicted by a criminal court and dismissed from employment as a result of that conviction, the result of the appeal being allowed, in law, is to quash the conviction. It appears to us from *Kumar* that the emergent principle is that there would be no legal basis to sustain the dismissal. Therefore, an appeal against conviction, if notified to the employer, such as the instant Respondent, operates as a stay of the employment disciplinary proceedings or imposition of a disciplinary sanction such as dismissal.

[32] For that reason, in *Ssembajja Ssekaana J.* was of the firm disposition that at every stage of the employment disciplinary process, an affected person ought to know about the decision that is going to be taken against him. His Lordship held that this is best achieved through a hearing where notice is issued and the affected person presents their case. The Judge concluded that

¹¹ HCMA No. 82 of 2019

¹² AIR 1965 CAL 75

"It is wrong to assume that once the court has handed down a conviction against a public servant, then automatically, the secretary Public Service Commission acts like a robot with punched-in-information to auto dismiss any such convicted public servant." This conclusion is consistent with the non-derogable right to a fair hearing. It is for this reason that Section 65EA is couched in mandatory terms, an employer seeking to dismiss an employee for misconduct must hold a hearing.

[33] So, did the Respondent "auto-dismiss" the Claimant?

[34] Two propositions address this question;

[35] The first proposition concerns notification of the appeal. Mr. Turyatunga argued that the Respondent was aware of the appeal. At the same time, Counsel for the Respondent protested knowledge of the appeal until after the labour reference was served on the Respondent. Was this notice or service material? We think that on reading *Ssembajja*, the answer to that question is yes. Notification of the appeal was material as it would avoid the confusion that the parties now find themselves in. The Claimant contends that he notified the Respondent. At the same time, the Respondent denies this because when the Claimant collected his benefits and initiated his pension, he did not inform his erstwhile employer of his pending appeal. We were referred to *Maviri* for the proposition that the Claimant did not take an essential step of notifying the Respondent. The position in *Maviri* involves taking a crucial step in an appeal before the Court of Appeal, which may be only of analogous value in the present circumstances, as neither Ms. Ampeire nor Ms. Kemigisha pointed us to a regulation requiring the Claimant to notify the Respondent of his appeal. So, we are not inclined to accept this proposition because of the reasoning in *Maviri*. Further, the Claimant's proposition that the DPP informed any officer of the Respondent of the pendency of the appeal, as Mr. Turyatunga submitted, is without evidence. It was an unsupported assumption. At best, Counsel for the Claimant assumes that the DPP informed the Respondent of the pendency of High Court Criminal Appeal No 0054 of 2019, whose decision was rendered on the 18th of September 2019. There is no formal document of notification of this pending appeal or service of the notice of appeal. Therefore, we would not be persuaded that the Claimant notified the Respondent of the appeal.

[36] And this is compounded by the Claimant's own conduct. On the 11th of February 2016, the CTP issued a letter of dismissal of the Claimant from the Parliamentary Service. The letter informed the Claimant of his dismissal with effect from the date of his conviction, the 9th of September 2015. There was no evidence of communication between the Claimant and Respondent between the date of conviction and the date of dismissal, a period of five months, and we shall return to this later in this award. On the 12th of February 2016, one day after his dismissal, the Claimant signed a discharge of trustees form (REX5) acknowledging receipt of UGX 12,354,578/= (shillings twelve million three hundred fifty four thousand five hundred seventy eight) being

25% of his pension amounting to UGX 49,418,312/= (shillings forty nine million four hundred eighteen thousand three hundred twelve). In the same discharge form, he was to be paid UGX 37,063,734/= (shillings thirty seven million sixty three thousand seven hundred thirty four) as annuity every month. By an undated letter (REX7), the Claimant had sought 25% of his pension paid as a lump sum to his Housing Finance Bank Account No. 011443774200. He also signed a discharge form acknowledging receipt of his future pension of UGX 36,481,024/= (shillings thirty-six million four hundred eighty-one thousand twenty-four) on the 22nd of April 2016. When he appeared before us and these documents were put to him, the Claimant said;

"I signed the discharge forms. These documents were not explained to me. I signed them like a layperson. I disown the letter requesting my pension".

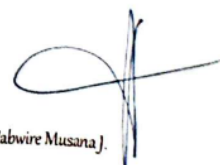
However, we are not inclined to believe the view that the Claimant did not understand the discharge forms. To disown a document under one's hand, the Honourable Justice Benard Namanya, in *Nabagesera and 4 Others v Uganda Land Commission*,¹³ observed the general rule to be that a party of full age and understanding is normally bound by his or her signature on a document, whether he or she reads or understands it or not. If, however, a party has been misled into executing a document, different from that which he or she intended to execute or sign, he or she can plead *non est factum* (it is not my document). The burden of proving *non est factum* falls on the party seeking to disown the document. His Lordship cited *Saunders v. Anglia Building Society*¹⁴ where the court rejected a plea of plaintiff, who sought to disown a deed of sale of a house, claiming that it was not her intention to sell the house to a different party, but rather to gift the house to her nephew.

[37] In the present context, it is difficult to accept the Claimant's testimony of disowning his letter requesting a lump sum of 25% of his pension. He did not explain why he was disowning it. He had preferred an appeal and was served with a dismissal letter, five months after his conviction and yet attended to the signing of the discharge vouchers without mentioning his pending appeal. On a balance of probabilities, we are not persuaded that the Claimant notified the Respondent of the pending appeal.

[38] Does the conclusion in paragraph [37] above absolve the Respondent? We think not. And that takes us to the second proposition. In *Sembajja*, Ssekaana J. emphasised the right to be heard as a constitutional right. He found the Public Service Commission's view that the Applicant did not have a right to be heard at that stage untenable and the decision to dismiss robotic. This is a dictum we think most apt to the circumstances before us. While it is quite true that Regulation 27 of the Regulations which provides;

¹³ [2024] UGHCLD 219

¹⁴ [1970] 3 All ER 961,



"An employee convicted of an offence involving dishonesty or sentenced to imprisonment for an offence against the Service shall be dismissed from the date of conviction"

suggests an automatic dismissal upon conviction by a criminal court, Industrial Jurisprudence has entrenched the right to be heard, in all circumstances. This is natural justice traceable to, and having biblical underpinnings. The Constitutional Court¹⁵ has held the right to be as old as creation itself, for even in the Garden of Eden, the Lord first afforded a hearing to Adam and Eve, as to why they had eaten the forbidden fruit, before he pronounced them guilty. This Court¹⁶ has employed this biblical analogy observing that even when the evidence of their having tasted of the forbidden fruit was overwhelming and Adam had pointed an accusatory finger at Eve, who led him to eat the forbidden fruit. God asked Eve, "What is this you have done?" Thus, the right to a fair hearing is non-derogable as per the dicta of Katureebe JSC in *Olum* as cited by Mr. Turyatunga. Counsel for the Respondent cited *Ogol*. We think that it is distinguishable because in *Ogol*, unlike *Sembajja*, the Applicants were convicted by the Anti-Corruption Court and did not appeal against their conviction. *Sembajja*, in our view, is more applicable in the same circumstances, given the successful appeal against sentence and conviction, which is also the case with the present Claimant.

[39] What emerges from the above dicta is that the right to be heard is to be observed in all circumstances. Even where the employee has been convicted of a criminal offence for which he is to be dismissed, the employer is still statutorily required to invite the employee to **explain** its decision and the reasons for which it intends to dismiss him. It is not automatic, absolute or robotic. In our judgment, while the Parliamentary Staff Regulations set the procedure for dealing with members of staff convicted of criminal offences, the Regulations are subservient to the Employment Act Cap. 226, which governs the employment relationship in Uganda and provides for a mandatory right to be heard under Section 65(1)EA. The EA sets the irreducible minimums below which it is not expected that any employment regulations made under any other law should fall. Therefore, the Respondent would still be required to explain to its employees convicted by the Courts of its intention to sever the employment relationship on account of such conviction. That is what due process demands.

[40] Thus, the procedural requirement as expressed by Musoke J. in *Ebiju James v Umeme Ltd*¹⁷ would have to be met. The right to be heard is expressed thus:

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

¹⁵ *Carolyn Turyatamba & 4 Ors v Attorney General & Anor* [2011] UGCA 6

¹⁶ See *Tituryebwa v Sino Minerals Investments Company Limited* [2025] UGIC 4 at page 10

¹⁷ H.C.C.S No. 0133 of 2012

Notice of Allegations against the plaintiff was served on him, and sufficient time allowed for the plaintiff to prepare a defence.

The notice should set out clearly what the allegations against the plaintiff and his rights at the hearing, where such rights would include the right to respond to the allegations against him orally and or in writing, the right to be accompanied to the hearing and the right to cross-examine the defendant's witness or call witnesses of his own.

The plaintiff should be given a chance to appear and present his case before an impartial committee in charge of disciplinary issues of the defendant."

- [41] In the present context, none of the above elements was present. The Respondent did not **explain** to the Claimant the reasons for which it intended to dismiss him. It simply dismissed him. This, coupled with the Respondent's Director of Human Resources' concession under cross-examination that there was no hearing at all, would render the dismissal procedurally unfair for not holding a hearing. It would be this Court's finding that the Respondent's actions were robotic and devoid of due process. Upon receipt of the judgment and conviction in Criminal Case No. 1095 of 2015, the Respondent 'auto dismissed' the Claimant. For this reason, we find the Claimant's dismissal unfair for that procedural misstep.
- [42] The other aspect of the procedure that merits comment is the form of the hearing. Mr. Turyatunga took issue with the Respondent's view that there was no need for a hearing because the Claimant had a fair hearing before the criminal court. Both these arguments are strange in light of the unambiguous provisions of Section 65(1)EA which requires an employer considering dismissal to explain to the employee the reasons for which the employer is considering dismissal and under Section 65(2) EA which requires the employer to hear and consider the employee's representations to the grounds of misconduct or poor performance. Such a hearing, had it been held, would have brought to the fore the Claimant's pending appeal. This matter is not dissimilar to Sembajja, where the fact of appeal would have arisen had the Respondent held a hearing. Further, in *Kimbugwe v Kiboko Enterprises Limited*¹⁸ this Court observed the divergence in standards of proof between a hearing before a criminal court, proof beyond reasonable doubt, and the standard of reasonable grounds in a disciplinary hearing. The differences in the evidentiary burdens, standards and rules of procedure in each case hold the potential for varied outcomes. Therefore, we do not accept the Respondent's argument that, because there was a hearing before the criminal court, there was no need for a hearing by the Commission. It is not tenable.

¹⁸ [2022] UGIC 5

- [43] The final procedural question relates to the Respondent's own disciplinary procedure. Under Regulation 33(1) of the Regulations, formal disciplinary proceedings shall be instituted in all cases of gross misconduct. An elaborate step-by-step procedure is set out under Regulation 34(1). Employers who set out elaborate disciplinary procedures are taking a step in the right direction, but it has also been held that where an employer does not follow its own procedure, it cannot be said that the dismissal was lawful.¹⁹ In the present case, the Respondent flouted its Regulations. It cannot now claim that the Claimant's dismissal was fair and lawful. We hold the dismissal to be procedurally unfair and unlawful.

Substantive fairness

- [44] The onus, under Section 67EA, is on the employer to prove the reason for termination or dismissal. In Musimenta v United Bank of Africa²⁰ we observed that to pass the substantive fairness threshold, an employer must prove that the reasons for dismissal were valid and fair. We referred to Uganda Breweries Ltd v Kigula²¹ where the Court of Appeal held that substantive fairness subsists when a good and well-grounded, valid and substantive reason for dismissal exists, where verifiable misconduct exists, and not based on the suppositions or whims of the employer, the employer must demonstrate that the employee was actually guilty of misconduct.

- [45] In the present case, the Respondent grounded the justification on the judgment of the Magistrates' Court. The dismissal letter, REX2, referred to the Claimant's conviction and sentence before the KCCA Court on the 9th day of September 2015 on the charge of theft. Reference was also made to Section 27 of the Regulations, which provided for dismissal of an employee of the service upon conviction, a point Ms. Kemigisha and Ms. Ampeire impressed upon this Court in their written submissions. So, at the time of the Claimant's dismissal, there was a well-grounded justification. In our estimation and judgment, it would be impossible to fault the Respondent for its decision to summarily dismiss the Claimant at the time the decision was taken. We would therefore find the decision substantively fair at the time the decision to dismiss the Claimant was taken.

Conclusion

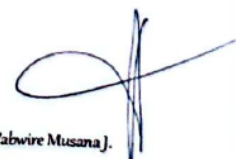
- [46] In the result, while the dismissal was procedurally unfair, it was substantively justified. This Court, in Mugisa v Equity Bank Uganda Limited²² held procedural and substantive fairness to be twin tenets, the absence of one or the other rendering the dismissal unfair.

¹⁹ See persuasive dicta of Employment and Labour Relations Court of Kenya in Charles Ochieng Opiyo v Lake Basin Development Authority [2021] eKLR

²⁰ [2024] UGIC 41

²¹ [2020] UGCA 88

²² [2023] UGIC 62



- [47] Because the Respondent was procedurally unfair by not adhering to the procedural safeguard of the right to be heard, because it disregarded its procedure and because the substantive justification for the dismissal was overturned in the appeal, we do not agree that the Claimant's dismissal was fair and lawful. While there may have been substantive justification for the dismissal at the time of the dismissal, there was procedural unfairness in the process of dismissing the Claimant. The 'auto dismiss' provision under Section 27 of the Regulations is unfair. We therefore must conclude that the Claimant was unfairly and unlawfully dismissed. Issue one will be answered in the affirmative.

Issue II. What remedies are available to the parties?

- [48] The Claimant sought declaratory relief, lost salary, allowances, insurance, pension, gratuity, severance, repatriation and general damages totaling about UGX 2,728,750,000/= (two billion seven hundred twenty eight million seven hundred fifty thousand). We propose to deal with the individual prayers for relief.

Declaration

- [49] Having found as we have, the Claimant is entitled to a declaration that he was unfairly and unlawfully dismissed from employment. Accordingly, it is entered and hereby declared that the Claimant was unfairly and unlawfully dismissed from his employment with the Respondent.

Unpaid salary and allowances.

- [50] The Claimant sought UGX 19,250,000/= (shillings nineteen million two hundred fifty thousand) being his half salary for the period 14th April 2015 to 11th February 2016. Under Regulation 31 of the Regulations, if an employee is acquitted of charges for which he or she has suffered interdiction or suspension with loss of pay and any disciplinary proceedings instituted against him or her after that do not result in his or her dismissal, that portion of his or her salary withheld shall be restored to him or her. Given our declaration of unfair and unlawful dismissal, the Claimant would be entitled to any withheld salary.
- [51] What would be the quantum? The Claimant did not attach his appointment letter or any payslip to support his claim of salary and allowances of UGX 3,500,000/= (shillings three million five hundred thousand) per month. The CTB does not contain a single document indicating the Claimant's remuneration. This Court has held that salary and allowances are proven as special damages, that is, strictly pleaded and specifically proven.²³ In Ssessimba v Nakaseke District

²³ See Kamukama v Summit Project Limited [2023] UGIC 54

Service Commission & Anor²⁴ the dicta on an unguided approach to damages in two cases²⁵ was referred to. The Court observed that Plaintiffs must understand that if they bring actions for damages, it is for them to prove their damage; it is not enough to write down particulars and so to speak, throw them at the head of the court saying, " This is what I have lost. I ask you to give these damages" They have to prove it.

[52] In our judgment, the Claimant has not shown any evidence supporting the claim of UGX 19,250,000/= (shillings nineteen million two hundred fifty thousand) as unpaid salary. It is not the duty of the Court to form a contract or to determine the terms and conditions of an employment contract. It is not for the Court to set the salary and emoluments. That is for the parties. An unsupported and unsubstantiated claim is bound to fail. Any attempt and imposition of such an award would be the Court's abstract view and, by extension, judicial overreach. We therefore decline to award it.

[53] The Claimant sought an attire allowance of UGX 1,800,000/= (shillings one million eight hundred thousand) in the MOC. In the written submissions, Counsel for the Claimant sought UGX 400,000/= (shillings four hundred thousand) per month for attire and therefore UGX 4,000,000/= (shillings four million) over ten years. He also sought a monthly sum of UGX 7,700,000/= (shillings seven million seven hundred thousand) as an HIV Welfare allowance. The claims for these allowances suffer the same fate as unpaid salary. They are unsupported and unproven, and they collapse accordingly.

Loss of future earnings

[54] It was the Claimant's case that he ought to have retired in 2026 and therefore had lost 10 years of his working life. He sought UGX 1,808,750,000/= (shillings one billion eight hundred eight million seven hundred fifty thousand), comprising salary and allowances at UGX 5,000,000/= (shillings five million) per month, attire at UGX 4,000,000/= (shillings four million), insurance at UGX 900,000,000/=:, and HIV Welfare at UGX 180,000,000/= (shillings one hundred eighty million), at UGX 1,500,000/= (shillings one million five hundred thousand) per month. These figures were all unsupported, unproven and unsubstantiated and an approach this Court cannot countenance. We are not persuaded to grant the Claimant these reliefs.

[55] There is also a second reason why this Court would be reluctant to grant these remedies. They are futuristic and speculative. This Court has long held that an employee is only entitled to that salary and allowances for work done. Under Section 41EA, an employee is entitled to only that salary which he or she has worked for. Any future earnings are speculative. ²⁶(See *Namakula*

²⁴ [2018] UGHCCD 103

²⁵ See *Bendicto Musisi vs Attorney General* HCCS No. 622 of 1989 [1996] 1 KALR 164 & *Rosemary Nalwadda vs Uganda Aids Commission* HCCS No.67 of 2011

²⁶ See *Stanbic Bank v Kiyemba Mutale* S.C.C.A No. 10 of 2010 cited in *Kamegero*

*v Scooby-Doo Daycare and Nursery School*²⁷, *Akiror v International Food Policy Research Institute*²⁸ and *Nazziwa v National Social Security Fund*²⁹). Therefore, the Court declines to enter any award in respect of these speculative earnings.

General damages

- [56] On general damages, Mr. Turyatunga cited *Peter Wasswa Kityaba v AFNET*³⁰ in support of the proposition, Courts express their disapproval of the manner of dismissal of employees in an award of damages. Counsel for the Respondent asked that all the prayers for damages be denied.
- [57] The position regarding general damages in employment disputes was reset in *Uganda Post Limited v Mukadisi*³¹. General damages in employment disputes can be awarded in addition to the payment in lieu of notice given to an employee who has been unlawfully dismissed from employment. General damages are awarded in addition to payment in lieu of notice and are not tied to specific financial losses. The court assesses general damages and is not restricted to the salary or pecuniary benefit stipulated in the employment contract. They are awarded to compensate the employee for non-economic harm and distress caused by the wrongful dismissal. These damages include compensation for emotional distress, mental anguish, damage to reputation, and any other non-monetary harm suffered due to the dismissal. In *Stanbic Bank (U) Ltd v Constant Okou*³² Madrama, JA (*as he then was*) held employability or prospects of employment, age, and manner of termination as considerations for the quantum of general damages. *Mukadisi* also holds the value of the subject matter or the salary to be a consideration. In the circumstances that we have found that the Claimant was unlawfully dismissed, he is entitled to general damages.
- [58] In terms of quantum, the Claimant appears to have taken the oft-used expression “general damages are at large” quite literally. There was no guidance whatsoever on quantum or other considerations. This approach is not helpful, as indicated by the observations from *Ssessimba* in paragraph [51] above. The Claimant has not shown this Court his monthly earnings. However, he had served the Respondent for over 28 years at the time of dismissal. The Respondent could have managed the manner of his dismissal better by holding a hearing and learning of the pending appeal, whose outcome had the potential to alter the course of the disciplinary proceedings. The Claimant lost his livelihood over a procedural misstep. He told this Court that he was set to retire in 2026. That means his prospects for alternative employment, as per *Okou*, would be diminished. For these reasons and because the

²⁷ [2022] UGIC 93

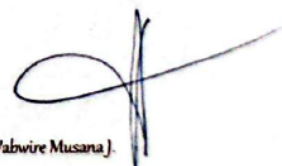
²⁸ [2023] UGIC 44

²⁹ [2022] UGIC 36

³⁰ LDR 84 of 2016

³¹ [2023] UGSC 58

³² Civil Appeal No. 60 of 2020



Respondent has paid a lump sum of pension and is paying the Claimant an annuity, we consider the sum of UGX 28,000,000/= (shillings twenty-eight million) in general damages to be sufficient and we so award it.

- [59] The Claimant also sought punitive and exemplary damages, unpaid payment in lieu of leave, UGX 98,000,000/= (shillings ninety-eight million) as severance pay, interests, and costs of the claim. The claim for unpaid payment in lieu and severance pay suffers the same fate as the claims for special damages. The claim for payment in lieu of leave and severance pay was presented to the Court in the manner described in *Ssessimba*, with the hope that the headwinds would steer the Court towards awarding these sums. In these circumstances, we decline to make any such award.
- [60] Regarding punitive and exemplary damages, in *DFCU Bank Limited v Donna Kamuli*³³, the Court of Appeal held that punitive damages are awardable in employment disputes, with restraint as punishment should be confined to criminal law and not the law of tort or contract. In *Alaba v Bank of Uganda*³⁴, we observed that these are awardable to punish, deter, and express outrage of the court at the defendant's egregious, highhanded, malicious, vindictive, oppressive, and malicious conduct. They are also awardable for the improper interference by public officials with the rights of ordinary subjects.
- [61] In our estimation and from the evidence before us, the Respondent's conduct cannot be found to have been arbitrary or oppressive because the Respondent grounded its decision to dismiss the Claimant on a conviction and sentence of a Magistrates Court.
- [62] However, the Respondent's action of not permitting a hearing before dismissal, albeit on the basis of Regulation 27 of the Regulations, would be unconstitutional as the right to a fair hearing is a non-derogable constitutional right. For this reason and in keeping with *Wangala v Steel and Tube Industries Limited*³⁵ where Justice Boniface Wamala observes that exemplary damages may be awarded for the unconstitutional action by the servants of government, we are inclined to find that an award of UGX 20,000,000/= (shillings twenty million) in exemplary damages is warranted, and we so award it.

Interest

- [63] An award of interest is at the discretion of the Court. See *Ahmed Bholim v Car and General Ltd*³⁶ and Section 26 of the Civil Procedure Act Cap. 282. We consider interest at the rate of

³³ [2019] UGCA 2088

³⁴ [2025] UGIC 33

³⁵ 2024 UGHCCD

³⁶ [2004] UGSC 8

14% per annum on the award of general and exemplary damages from the date of this award until payment in full to be appropriate in this case.

Costs

- [64] Costs in employment disputes are the exception on account of the employment relationship, except where the losing party has been guilty of some misconduct.³⁷ In the present case, we are persuaded to award the Claimant the costs of the claim as the Respondent was procedurally unfair and unlawful in its decision to dismiss the Claimant. The Respondent compounded this by violating its Regulations. Therefore, the Claimant shall have the costs of the claim.

Final orders

- [65] In the final analysis, it is our finding that the Claimant was unfairly and unlawfully dismissed. We make the following declarations and orders:

- (i) It is hereby declared that the Claimant was unfairly and unlawfully dismissed from employment by the Respondent.
- (ii) We order the Respondent to pay the Claimant the sum of UGX 28,000,000/= (shillings twenty eight million) in general damages.
- (iii) The Respondent is also ordered to pay the Claimant UGX 20,000,000/= (shillings twenty million) in exemplary damages.
- (iv) The awards in (ii) and (iii) above shall carry interest at 14% per annum from the date of this award until payment in full.
- (v) The Claimant shall have the costs of the claim.

It is so ordered.

Signed, sealed and delivered at Kampala, this 19th day of August 2025

Anthony Wabwire Musana,
Judge, Industrial Court of Uganda

³⁷ See *Kalule v Deutsche Gesellschaft Fuer Internationale Zusammenarbeit (GIZ) GmbH* [2023] UGIC 89

The Panelists Agree

1. Hon. Adrine Namara,

Adrine Namara

2. Hon. Susan Nabirye &

Susan Nabirye

3. Hon. Michael Matovu.

Michael Matovu



19th August 2025

9:43 a.m.

Appearances

1. For the Claimant:

Mr. Steven Turyatunga.

2. For the Respondent:

Ms. Ivy Kemigisha and Ms. Rachel Ampeire

Court Clerks:

Mr. Samuel Mukiza and Ms. Valeria N. Mudooka

Mr. Turyatunga:

Matter for award, and we are ready to receive it.

Court:

Award delivered in open Court.

10:35a.m.

Anthony Wabwire Musana,
Judge, Industrial Court of Uganda.