



**THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE NO. 116 OF 2018
(ARISING FROM LD. NO. 511)**

MIYINGO ABDULHAKIM:.....CLAIMANT

VERSUS

SOGEA SATOM UGANDA:.....RESPONDENT

Before:

The Hon. Mr. Justice Anthony Wabwire Musana,

Panelists:

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

Representation:

1. Mr. Fred Mutumba of M/s. Baluti & Ssozi Advocates for the Claimant
2. Ms. Evelyn Akullo of M/s. Frederick Francis & Associates Advocates for the Respondent.

AWARD

Introduction

- [1] The Claimant was a Senior welder for the Respondent from 17th March 2014 until November 2016, when he was arrested on suspicion of having stolen a jackhammer. He was arraigned on theft charges before the Chief Magistrate's Court at Makindye. On the 17th of August 2017, he was acquitted. On the 7th of November 2017, his Advocates, M/s. Baluti & Ssozi Advocates, filed a complaint of unfair dismissal with the Commissioner of Labour, Industrial Relations and Productivity at the Ministry of Gender, Labour and Social Development. On the 7th day of June 2018, the dispute was referred to this Court.
- [2] In his memorandum of claim, the Claimant sought a declaration of compensation for unfair dismissal/termination, basic compensation for unfair termination,


recovery of unpaid salary arrears, compensation for lack of a fair hearing, general damages, interest at commercial rate, and costs of the claim.

- [3] The claim did not go unopposed. The Respondent filed a reply to the memorandum of claim contending that it had reasonable grounds to suspect that the Claimant had stolen a Jack Hammer and reported the matter to the Uganda Police. The Claimant was never terminated and was expected back at work after his acquittal. He did not report back, and the Respondent considered the matter as termination without notice under **Section 65(1)(c) of the Employment Act, 2006**(from now "EA"). The Respondent denied that the Claimant was entitled to any remedies sought.
- [4] On the 6th of February 2023, during the scheduling conference, the following issues were framed for determination, namely:
- (i) *Whether the Claimant was unlawfully dismissed by the Respondent?*
 - (ii) *What remedies are available to the parties?*

The Proceedings and Evidence of the Parties

- [5] The parties called two witnesses each.

The Claimant's Evidence

- [6] The Claimant testified that he was employed as a Senior Welder on the 17th of March, 2014. In late November 2016, his boss, Mr. Deogratius Akol, instructed plain-clothed gentlemen to arrest him because he had stolen a hydraulic jackhammer. He was handcuffed. He protested his innocence, and Mr. Akol led plain-clothed gentlemen to take him to the police station. He testified that he was dismissed immediately after arrest. From the Police Station, he was arraigned before the Chief Magistrates Court at Makindye and remanded to Luzira Prison. On the 17th of August 2017, Her Worship Christine Nantege acquitted him on a no case to answer. The hydraulic jackhammer was later recovered at the Respondent's Muyenga branch. He testified that the Respondent did not follow procedure while terminating him. He did not receive any warning letters, did not appear before a disciplinary committee, and his right to a fair hearing was disregarded; he has been tainted in the eyes of right-thinking public members and sought UGX 100,000,000 in damages. He testified that he attempted to report back to work after his acquittal, but the Respondent's Security Guards denied him entry. He asked for salary arrears for 87 months in the sum of UGX 100,661,088/=, UGX 11,570,024 as additional compensation for lack of a fair hearing, general damages for pain, loss, and suffering, and costs of the suit.
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- [7] In cross-examination, he confirmed that after getting bail, he returned to work, and the Security Officers prevented him from entering the Respondent's premises. He then called his bosses, who told him he was no longer an employee of the Respondent. He confirmed that he did not have evidence to prove that the jackhammer was in Muyenga. He also testified that he was not served with a termination letter.
- [8] In re-examination, the Claimant clarified that he had an open contract. He did not know why he had been arrested and why he was the chief suspect. He explained that the Respondent did not contact him during or after mediation to ask him to return to work. The Respondent had his contact, and he did not try to go back to the workplace. He filed a complaint with the labour office.
- [9] Mr. Bernard Matovu (*Claimant's Witness No. 2/CW2*) testified that he was the Claimant's co-accused with one Simon Aguna. Mr. Akol and Julius Kimaka gave evidence before the Chief Magistrates Court. He testified that the Claimant was acquitted and that the Respondent did not respect his rights during termination.
- [10] During cross-examination, CW2 testified that he was employed by Angus, who had seconded him to the Respondent. His evidence was that the Claimant did not return to work for the Respondent. In re-examination, CW2 confirmed that he clarified that the Respondent had sub-contracted Graded (U) Services Ltd to outsource employees. After the Graded's contract expired, he was sent to Angus, who paid his salary. All the work tools and uniforms were branded with the Respondent's logo.

The Respondent's evidence

- [11] Mr. Tonny Ogwal (*Respondent's Witness No. 1/RW1*), the Respondent's Senior Human Resource Officer, testified in that capacity. His evidence was that in September 2016, a hydraulic pump hammer went missing at Muyenga Tank Hill. He was aware the Claimant was acquitted on the allegations of theft and never went through trial. He testified that the Claimant was never released from his employment and believed that the Respondent did not owe the Claimant any monies since the Claimant voluntarily left work. At mediation, he was asked to report back but did not make an appearance. He also testified that no disciplinary proceedings were brought against the Claimant, and the dismissal claim was false. The Respondent did not breach the employment contract terms and could not be held liable.
- [12] Under cross-examination, he testified that he was unsure if the Respondent communicated with the Claimant after the theft incident. He was also uncertain if the Claimant had been asked to return. The project ended in 2016, so he could

not be called back to work. All employees of the Respondent ceased to be so when the project was handed back to the National Water and Sewerage Corporation in July 2016.

- [13] In re-examination, RW1 testified that he did not attend the mediation sessions but recalled that the Respondent was asked to return to work.
- [14] Mr. Julius Kimaka (*Respondent's Witness No. 2/RW2*) testified next. His evidence was that on 20th September 2016, he received a call from Erick Bourgour that a hydraulic pump hammer had gone missing at Muyenga Tank Hill. He went and reported a case at Kabalagala Police Station. During the general inquiry, one Hussein, a driver of a Dyna Truck, identified the claimant, CW2, and one Aguna Simon as having hired the truck that carried the jackhammer. The Respondent then left the investigations to the Uganda Police, and he did not know how the Claimant and other accused persons were arrested. He also testified that the machine was never recovered.
- [15] Under cross-examination, he testified that he was not present when the Claimant was arrested; he did not conduct investigations before but only after the arrest. He did not know of the Claimant's misconduct. He claimed not to know Hussein, the driver, who guided Police to the garage in Katwe. He testified that he did not know the terms and conditions of the Claimant's employment and did not know if the Claimant was convicted of the criminal charges. In re-examination, he confirmed that the Respondent had all its employee's data, including their photographs, and that is how the three persons were picked out as having carried out the theft.
- [16] At the close of the Respondent's case, Counsel were invited to address Court on the issues through written submissions. The Court expresses its gratitude for the succinct submissions.

Analysis and Decision of the Court

Issue 1. Whether the Claimant was unlawfully dismissed by the Respondent?

Submissions of the Claimant

- [17] It was submitted that the Claimant's termination was contrary to **Section 66(1) EA** and **2EA**. Counsel contended that the evidence in paragraphs 17 of 22 of the Claimant's witness statement was unchallenged during cross-examination. Counsel pointed out that the Claimant did not know that the project had ended, and no one called him to return to work. Counsel submitted that from the evidence, the Claimant was not given the 1st, 2nd, and 3rd warnings with any valid

reason for dismissal. He had no previous record of misconduct or poor performance, was informed of the charges against him on arrest, was not invited for a hearing, was not allowed to defend himself, and there was no record of any testimonies regarding the theft. Further, RW1 and RW2 had testified that the project ended in 2016, yet the Claimant had an open contract. It was submitted that the Claimant was unfairly dismissed without due process.


Submissions of the Respondent

- [18] In reply, it was submitted for the Respondent that as an aggrieved and law-abiding institution, it reported an incident of theft to the Uganda Police and furnished necessary information to assist with investigations by Article 17(1) (f) of the Constitution. The Respondent did not terminate the Claimant because of the ongoing court proceedings, nor did it intend to do so. If it did, it would have followed the procedure under **Section 66(1) and (2) EA** and issued a termination letter. The Respondent considered the Claimant a good employee with no prior misconduct record and had no reason to initiate disciplinary proceedings. It was submitted that denying entry to the premises was speculative, and there was no proof. Counsel submitted that the Claimant was not constructively terminated, and without a formal termination letter, the Claimant should have returned to work. Citing the case of **Moses Obonyo v MTN (U) LTD LD 045 of 2015**, it was submitted that the Claimant had failed to prove that the Respondent unfairly dismissed him.

Rejoinder

- [19] In rejoinder, reference was made to the First Schedule EA, and the evidence of RW1 for the proposition that the submission of the Respondent did not terminate the Claimant was unfounded because RW1 testified that following the project end, the Claimant could not be called back to work. It was submitted that the disciplinary process ought to have commenced on the theft charges. It was also submitted that the criminal proceedings were a guise to flush out the Claimant. It was submitted that the Claimant was unfairly dismissed in November 2016 since the NWSC project had ended in July 2016, three months before the Claimant's arrest. That there was no evidence of theft and the Claimant's acquittal did not come as a surprise.

Resolution of Issue 1

- [20] The first question that this Court must determine is whether the Claimant was dismissed. It is common to both parties that no dismissal letter was produced in Court. In this case, the second commonality is that no disciplinary proceedings were conducted. The parties proffered two accounts of termination of the
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Claimant's employment. The first account by the Claimant is that he was dismissed because no disciplinary proceedings were held, the criminal proceedings were a guise of dismissing him, the fact that the National Water & Sewerage Corporation (*from now NWSC*) project ended in July 2016 meant that his prosecution in November 2016 was unfounded and when he attempted to return to work, he was denied entry to the Respondent's premises. The other account by the Respondent is that they did not terminate the Claimant, and he did not return to work after his acquittal.

- [21] From the evidence before this Court, the Respondent reported a theft complaint of a jackhammer or hydraulic hammer to the Uganda Police at Kabalagala Police Station. RW2 confirmed that the employee data and interview with one Hussein, a Dyna Truck driver, implicated the Claimant and his alleged accomplices. The Claimant was arrested and detained at Kabalagala Police Station. He was arraigned in Court on the 2nd day of December 2016 on theft charges. According to the record of proceedings before the Chief Magistrates Court (admitted as CEXH4), RW2 gave evidence on the 13th of April 2017. One Kiyaga Abdu Arafat, Kitandwa Hussein, and Frank Wamala gave evidence in the criminal trial. On the 6th of September 2018, Her Worship Christine Nantege, Magistrate Grade One, found that the prosecution had failed to prove that the claimant and his co-accused were responsible for the theft of the hydraulic machine/jackhammer. The Claimant was acquitted.
- [22] The Respondent's case was that the Claimant did not return to work. RW2 suggested it would have been impossible to reinstate the Claimant because the NWSC project ended in July 2016. In our view, the end of the NWSC project is immaterial because the contract of employment, CEXH1, was not pegged on the NWSC project. We think it was pretty disingenuous of the Respondent to attempt to justify the impossibility of reinstatement at the end of the project. The NWSC project had ended at the time of the criminal complaint. The Claimant's account is that he attempted to report to the Respondent's premises but was denied entry. The Claimant was arrested and handcuffed at the time of exit. On the 6th of September 2018, when the Chief Magistrate's Court acquitted the Claimant, Ms. Evelyn Akello, who prosecuted the Respondent's defence in this matter, was on watching brief. The Respondent was, therefore, aware of the acquittal. According to the lower Court record, a complaint was lodged with the Commissioner of Labour on the 8th of November 2018. Annexure D to the Reply to the Memorandum of Claim invited the Claimant to a meeting to discuss an amicable resolution. It appears that this course failed hence the matter being referred to this Court.
- [23] On the record, there was no evidence of any communication from the Respondent inviting the Claimant to work, mainly because the Respondent, who had been

keenly following the criminal proceedings, was aware of the acquittal. We will return to the matter of criminal proceedings later in this award, but for now, we are satisfied that the Respondent did not demonstrate that it advised the Claimant to return to work. On the balance of probabilities, we are inclined to believe the Claimant's account of events. It is more plausible than not that he was denied entry into the Respondent's premises.

- [24] Because of the finding in paragraph [23] above, the arguments raised on summary dismissal do not gain any purchase before this Court. It is impossible to say that the Claimant was summarily dismissed. Summary dismissal was defined in the **Ebiju James v Umeme Ltd**¹ case as a dismissal without notice (without a hearing) and is reserved for serious misconduct. Under **Section 69(3) EA**, summary dismissal occurs when the employee has, by his or her conduct, indicated that he has fundamentally broken his or her obligations under the contract. In the case before us, we do not find a fundamental breach on the part of the Claimant. However, the contract ended after the criminal proceedings against the Claimant had been terminated.
- [25] The law relating to criminal proceedings during the subsistence of the employment relationship is instructive. **Section 95 EA** provides that nothing in the Act and no imposition of a disciplinary penalty for breach of the disciplinary Code shall exempt any person from being proceeded against, convicted, or punished for a criminal offence. In our view, the import of this provision is that an employer can decide whether to impose a disciplinary penalty or report and pursue a criminal complaint. In terms, disciplinary proceedings may precede criminal proceedings, or both proceedings may take place contemporaneously. We are fortified in this view by the decision of the High Court of Uganda in the case of **Robert Mukembo v Ecolab East Africa(U) Ltd**² where the Honourable Mr. Justice Yorokamu Bamwine held that;

"If I have understood the plaintiff's complaint herein, and I believe I have, he attributes the alleged wrongfulness of the termination of his employment to the fact that the action was taken before his guilt or innocence was established through the normal police inquiry and prosecution. Such an argument cannot be sustained. In my opinion, in a situation where an employee is accused of a criminal offence, as herein, the employee may be prosecuted by the police. It could be many months before the case is tried. It is not the law, unless the parties have so agreed in the contract document, that the employer must await the outcome of that case before he takes action. Thus in British Home Stores vs Burchell [1978] I. R.

¹ H.C.C.S No. 133 of 2012

² H.C.C.S No. 54 Of 2007 cited with approval in Timothy Mugabi v Tage Budolfson & 2 Ors H.C.C.S No 408 of 2014 See also the decision of the Industrial Court in Julius Rugumayo v Uganda Revenue Authority Labour Dispute No. 42 of 2014

L. R 379 an employee was dismissed for alleged dishonesty relating to staff purchases. The Employment Appeal Tribunal held that in such cases the employer had only to show that he entertained a reasonable suspicion amounting to a belief in the guilt of the employee of that misconduct at the time."

In the present case, the Respondent elected to report a criminal complaint. The Respondent had the option to wait for the outcome of the criminal proceedings or pursue disciplinary proceedings pending the outcome of the criminal case. What the Respondent did was to await the outcome of the criminal proceedings but appears not to have taken any step after the acquittal of the Claimant.

[26] This matter, therefore, raises an important point. The Employment Act does not impose any duty on the employer to take any step after criminal proceedings have been commenced against an employee. Precedent of the Industrial Court has established that an employer is not obliged to wait for the outcome of the criminal trial before deciding the fate of an employee.³ The Industrial Court of Kenya (ICK) provides valuable persuasive guidance. In **David Kemei v Energy Regulatory Commission**⁴ Rika. J found that the employment disciplinary process remains an internal and private mechanism that cannot be subject to the criminal process, which is a public process. It could not be expected that employers have to wait for policemen, prosecutors, and judicial officers to determine employment offences at the workplace. This dictum was repeated in the case of **James Nyaga Samwel v Board of Governors, Kamuthatha Primary School**⁵ where the ICK held that even where there is nothing to incriminate the claimant with the offence of stealing, the employer is not barred from initiating disciplinary proceedings against the claimant for negligent performance of duty. In our view, the grain of these cases is that an employer can elect to wait for the outcome of the criminal proceedings or not. Where the employer has elected not to pursue a disciplinary process during the pendency of the criminal trial, then such an employer would be expected to abide by the outcome of the criminal proceedings. This view would be consistent with the prudence and principles of equity to avoid the possibility of two adverse outcomes.

[27] The effect of our findings and conclusion in paragraph [23] above is that we would be to deem the termination of the Claimant's contract of service to have occurred as a consequence of the unreasonable conduct on the part of the employer towards the employee under **Section 65(1) EA**. The Respondent did not take steps to reinstate the Claimant after his acquittal, and the Claimant, therefore, terminated the employment relationship because of the employer's unreasonable conduct. There is no credible or persuasive evidence that would

³ LDR No. 040 of 2016 Kyambadde Vincent v Sembabule Town Council and Another.

⁴ Industrial Cause No. 1492 of 2011[2011] LLR 204(ICK)

⁵ Industrial Cause No 1327 of 2010 [2010] LLR (ICK)

warrant a different outcome. We hold so because the employment relationship is built on the essential bond and principle of mutual trust and confidence. The Industrial Court has expounded on the duties of an employee in the case of **Eva Naziwa Lubowa v National Social Security Fund**⁶. The Court establishes that the employee must exercise fidelity and good faith, be loyal and faithful, keep confidentiality and be honest. These kindred principles extend to the conduct of the employer. Indeed in **Gogay v Hertfordshire County Council**⁷ the civil division of the Court of Appeal of England and Wales discussed the duty of trust and confidence. The Court found an allegation made against an employee without reasonable and probable cause to have severely damaged the employment relationship by breach of the duty of trust and confidence. In the case before us, we find that the employment relationship between the Claimant and Respondent had been so damaged as to amount to termination by the unreasonable conduct of the Respondent. This bond was broken at the commencement of the criminal proceedings and ought to have been mended at the acquittal of the Claimant. The Respondent has not persuaded us of the steps to restore the relationship. We find that the Respondent terminated the Claimant's employment contract by unreasonable conduct. In keeping with the dicta of the Industrial Court in **Dennis Mbiika v Centenary Bank**⁸ where the employee ends the contract of service with or without notice as a consequence of unreasonable conduct on the employer's part towards the employee, we would find that the claimant was constructively dismissed.

- [28] In sum, issue 1 will be answered in the affirmative. We declare that the Claimant was constructively dismissed.

Issue II. What remedies are available to the parties?

- [29] We determine that the Claimant is entitled to remedies for unlawful dismissal, which we have considered below.

Severance allowance

- [30] The Claimant was employed on 17th March 2014 and arrested in November 2016. Under **Section 87(a) of the EA**, an unfairly dismissed employee is entitled to a severance allowance. Having found that the claimant was unlawfully dismissed, we hold that he is entitled to severance pay. We also adopt this Court's reasoning in **Donna Kamuli v DFCU Bank Ltd**⁹ that the Claimant's calculation of severance shall be at the rate of his monthly pay for each year worked. He was earning UGX 1,157,024/= per month. We hereby award **UGX 2,988,978/=** for the two years he was in the Respondent's service.

⁶ LDR 001 of 2019

⁷ [2000] IRLR 703

⁸ Labour Dispute Claim 23 of 2014. 2018 UGIC 11

⁹ The Court of Appeal maintained this position in *DFCU Bank Ltd vs Donna Kamuli* C.A.C.A No 121 of 2016.

Leave pay

- [31] This Court has held that for a claim for accrued leave to succeed, the employee must prove that leave was requested for and declined.¹⁰ In the case before us, we are not satisfied that, based on the evidence adduced, the Claimant asked for leave, which was denied. We, therefore, decline to award the same.

One month's pay in lieu of notice of termination

- [32] The Claimant sought payment of one month's salary in lieu of notice under Clause 15(a) of the employment contract. This is consistent with **Section 58(3)(b)EA**, which provides for notice of not less than one month when an employee has served for over 12 months but less than five years. Accordingly, we award the sum of **UGX 1,157,024/=**.

Basic Compensatory Allowance

- [33] Under **Section 78(1) EA**, an unfairly terminated employee shall, in all cases, be entitled to a basic compensatory order of four weeks' pay. Accordingly, we award the sum of **UGX 1,157,024/=**

Additional Compensation

- [34] The Claimant sought further compensation under **Sections 78(2) and (3) EA**. In our view, this remedy is exclusive to the Labour Officer. **Section 78(2) EA** reads;

"An order of compensation to an employee whose services have been unfairly terminated may include additional compensation at the discretion of the labour officer" (underlining supplied)

In this case, we determine that the discretion in this provision is vested in the labour officer and not the Industrial Court. In the case of **Yahaya Kariisa v Attorney General and M.K Radia**¹¹ discretion means the faculty of deciding or determining in accordance with circumstances and what seems just, fair, right equitable, and reasonable in given circumstances. It is not open and proper for the Industrial Court to interfere with the exercise of discretion vested in the Labour Officer.

Salary arrears

- [35] The Claimant sought salary arrears from November 2016 to January 2023 amounting to **UGX 100,661,088/=**. Counsel contended that the Claimant had an

¹⁰ See *Edace Michael v Watoto Child Care Ministries L.D.* A 21 of 2015 and *Ochwo John v Appliance World Ltd* LDR 327 of 2015

¹¹ S.C.C.A No. 7 of 1994

open contract and he had been humiliated. The jurisprudence on salary arrears in a labour dispute suggests that employees may only earn what they have worked for. In the case of **Olweny Moses v Equity Bank U Ltd**¹² the Industrial Court realigned the position following the decisions in **Florence Mufumba v Uganda Development Bank LDC 138 of 2014** and **Peter Waswa Kityaba Vs African Field Epidemiology Network (AFNET) LDC 86 of 2016**. In both cases, the Court had granted salary arrears for the reversionary period of the employment contract until the date of judgment. The question of salary arrears was the subject of appeal before the Court of Appeal in **African Field Epidemiology Network v Peter Waswa Kityaba**¹³ and the Court of Appeal established that a former employee should not get more than what he or she would have earned. In the case of **Simon Kapio Vs Centenary Bank Ltd**¹⁴ it was held that the only remedy to the person who was wrongfully dismissed was damages; therefore, the claim for prospective earnings cannot stand. The Court considered that the claim for prospective earnings was speculative given that a person may not serve or complete his or her employment term because of circumstances such as death, lawful termination of employment, decision to change employment, and closure of business, among others. The emergent doctrine from these cases is that a claim for salary arrears would be speculative and that an employee would be entitled to general damages.

- [36] However, the circumstances of the Claimant's case are that he was arrested, arraigned, prosecuted, and acquitted. Under **Section 41(6) EA**, an employee is not entitled to receive wages for any period where he or she is absent from work without authorization or good cause. The meaning of this section would imply that from November 2016 to January 2023, the Claimant was not at work and would, therefore, not be entitled to wages. Exceptions to earning wages while not at work are provided for under **Section 41(6)(a)(b) and (c)EA**. These provisions are to the effect that an employee prevented from reaching work by exceptional events, absence attributable to a summons to attend a court of law, or any public authority having the power to compel attendance, or absence attributable to the death of a member of an employee's family or dependent relative would be entitled to wages. Specifically, under **Section 41(6)(b) EA**, an employee compelled under summons of court is not considered absent from duty. The section reads;

"(6) An employee is not entitled to receive wages in respect of any period where he or she is absent from work without authorization or good cause except that, in the case of an employee who has completed at least three months continuous service with his or her employer, the following shall not constitute absence without good cause—

¹² LDR 225 of 2019

¹³ Civil Appeal No. 124 of 2017 [2019] UGCA 2098. The decision of the Court of Appeal was followed in *Simon Kapio Vs Centenary Bank*, LDC 300/2015. *Equity Bank Vs Musimenta Rogers*, LDA 26/2007, *Blanche Byarugaba Kaira Vs AFNET* LDR No. 131/2018 and *Chandla Christopher Vs Abacus Pharma (AFRICARE) Ltd*, 237/2016

¹⁴ Ibid

(b) absence attributable to a summons to attend a court of law or any other public authority having power to compel attendance; or"

- [37] Cognisant of our finding regarding the election of an employer to report and await the outcome of the criminal proceedings, the Respondent did not bring the employment contract to an end during the pendency of the criminal proceedings. The Claimant was not suspended, nor were disciplinary proceedings commenced to terminate the employment relationship. To this effect, the employee would not be considered absent from work with good or sufficient cause within **Section 41(6)(b)EA**. In the Kenyan case of **Nicholas Gitahi Ndegwa v Aga Khan University Hospital**¹⁵ Nduma J. held that if no suspension or dismissal is given to an employee between the period he was arrested by the police and charged and subsequently acquitted of the charges thereof, the claimant is entitled to his salary up to the time he presents himself to the employer upon acquittal and not taken back by the employer. This dictum is persuasive in the circumstances of the matter before us. We are mindful that in the case of **Benjamin Alipanga v Gulu University**¹⁶ the Industrial Court declined to award a Claimant salary from the date of interdiction until the date of the award. In that case, the facts were that the Claimant opted to attend a Ph.D. Programme while in employment. He was not granted study leave. The Respondent made a complaint to the Inspectorate of Government and elected to await the outcome of the complaint. The Industrial Court held that any criminal investigation or acquittal of an accused person may not necessarily prevent the same accused person from civil liability. The Court observed that the clearance of criminal charges did not prevent the Respondent from commencing disciplinary proceedings and found that the Claimant was not unlawfully dismissed.
- [38] In the present case, the Respondent reported the Claimant to the Uganda Police and elected to await the outcome of the criminal proceedings. This claim is not within the ambit of limitation on future earnings. In our view, the Claimant would be entitled to salary arrears from November 2016 to 6th September 2018, when he was acquitted. We have already found that the acquittal was in the knowledge of the Respondent. No evidence of a positive action taken to either repair or terminate the employment relation was led. The Respondent had an affirmative duty to act by either awaiting the outcome of the criminal proceedings, which it did or commencing disciplinary proceedings against the Claimant which it did not do. For these reasons, we hold that the Claimant is entitled to salary arrears for 22 months during his prosecution in the criminal proceedings. He was earning UGX 1,157,024/= per month. Pursuant to **Section 41(7) EA**, which provides to the

¹⁵ Industrial Cause No. 472 of 2012[2012] LLR 265

¹⁶ LDC No.002 of 2016

effect that an employee absent from work on account of the situations in **Section 41(6) EA** is entitled to receive wages as if they had not been absent from work and fully performed their duties, we award the Claimant the sum of **UGX 25,454,528/=** as salary.

General damages

- [39] Mr. Mutumba was contending for UGX 100,000,000/= in general damages. He cited a loss of name amongst colleagues and professional acquaintances but did not provide any evidence. He spoke of the diminution of employment opportunities but did not provide evidence of any job applications and rejections. He explained that he had lost an expected standard of living, and his family had suffered. The criminal charges were baseless, and the Respondent treated him unfairly, did not accord him a fair hearing, and he was turned away by the Security Guard. Counsel cited the case of **Richard Ndemerweki v MTD U Ltd L.C No. 101 of 2014** in support of the proposition that general damages were compensatory. The Court of Appeal has, in the case, **Stanbic Bank (U) Ltd v Constant Okou**,¹⁷ held that general damages are based on the common law principle of *restituto in integrum*. Appropriate general damages should be assessed on the prospects of the employee getting alternative employment or employability, how the services were terminated, and the inconvenience and uncertainty of future employment prospects. Applying these principles of the case to the matter before us, the Claimant was earning **UGX 1,157,024/=** per month. He is 48 years now. He had worked for the Respondent for two years and eight months. He testified on the diminution of future prospects of employment. Based on his monthly salary, given his position as a senior welder, and considering his age, we determine that the sum of **UGX 6,942,144/=** as general damages will suffice.

Interest

- [40] Considering and mitigating inflation, the total sum awarded in this award shall attract interest at 19% per annum from the award date till payment in full.

Costs of the Claim

- [40] Mr. Mutumba sought costs under Section 27(2) of the Civil Procedure Act Cap. 71. We have held that the grant of costs to the successful party is an exception on account of the nature of the employment relationship except where it is established that the unsuccessful party has filed a frivolous action or is culpable of some form of misconduct.¹⁸ We do not find any such misconduct by the Respondent and decline to award the Claimant's costs.

¹⁷ Stanbic Bank (U) Ltd v Constant Okou Civil Appeal No. 60 of 2020

¹⁸ Joseph Kalule Vs GIZ LDR 109/2020(Unreported)

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

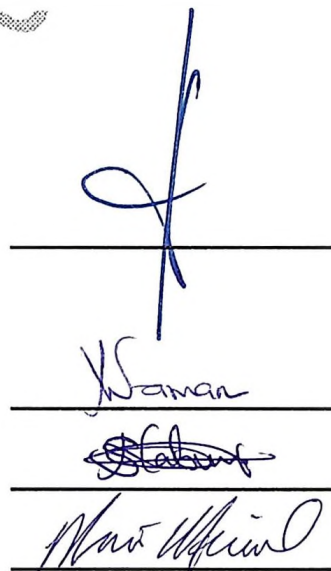
- (i) We declare that the Claimant was constructively dismissed from the Respondent's service.
- (ii) The Respondent is ordered to pay the Claimant the following sums:
 - (a) UGX 2,988,978/= as severance pay.
 - (b) UGX 1,157,024/= as salary in lieu of notice
 - (c) UGX 1,157,024/= as basic compensatory pay
 - (d) UGX 25,454,528/= as salary arrears
 - (e) UGX 6,942,144/= as general damages
 - (f) The sums above shall carry interest at 19% p.a. from the date of this award until payment in full.
 - (g) The Respondent shall also issue a certificate of service to the Claimant within 21 days of this award.
- (iii) There shall be no order as to costs.

It is so ordered this 21st day of August 2023.

Anthony Wabwire Musana,
Judge, Industrial Court

THE PANELISTS AGREE:

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



Award handed down in open Court on 21st of August 2023 at 3.30 p.m.

1. In the presence of the Claimant.
2. In the presence of Counsel for the Respondent, **Ms. Evelyn Akullo.**

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

Anthony Wabwire Musana,
Judge, Industrial Court

