THE REPUBLIC OF UGANDA

IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA

LABOUR DISPUTE REFERENCE NO. 131 OF 2018

(ARISING FROM KCCA/NDC/C.B/055/2016)

BLANCHE BYARUGABA KAIRA……..CLAIMANT

VERSUS

AFRICA FIELD EPIDEMIOLOGY NETWORK……..……..…RESPONDENT

BEFORE

1. Hon. Chief Judge RuhindaAsaphNtengye
2. Hon. Lady Justice Linda TumusiimeMugisha

PANELISTS

1. Mr. Ebyau Fidel
2. Ms. Harriet NganziMugambwa
3. Mr. F. X. Mubuuke

AWARD

Brief facts

The claimant was an employee of the respondent as a Senior Laboratory Scientist having been offered employment by letter dated 7/4/2014. During her employment she obtained a salary loan from Chartered Standard Bank. By letter dated 12/2/2016 the claimant was informed that effective 29/2/2016 her employment would be terminated.

At the hearing the claimant was represented by counsel Lydia Tamale of M/s. Tamale & Co. advocates while the respondent was represented by counsel Waniala of Sebalu&Lule Advocates.

Agreed issues

By joint memorandum filed in court on 04/04/2019 both counsel agreed to the following issues

a) **Whether the Industrial court has jurisdiction to entertain the claims as pleaded.**
b) **Whether the termination of the claimant's contract of employment was fair and lawful/**
c) **What remedies are available to the parties?**

The claimant adduced evidence from herself and one other witness while the respondent adduced evidence from one Samuel Twinomugisha, the operations and logistics manager of the respondent.

According to the evidence of the claimant as Senior Laboratory assistant she was under the supervision of the Head of Programmes and was not under any specific project. Her job was not dependent on funds available in a specific project of the respondent. The respondent extended her term of contract from 1/05/2015 to 30/4/2018 and increased her salary from time to time. According to her, the Executive Director was on 26/11/2015 expressing bitterness about persons he alleged had written anonymous letters. In her evidence, one Dr. Sheba Nakacubo Gitta was perceived as one of those who wrote the anonymous letters that had caused the suspension of the Executive Director and she was terminated. Because the claimant was her close friend, she was as well suspected to have been one of those that wrote

the said anonymous letters and according to her she was terminated arising from the vengeance of the Executive Director.

The evidence of the second claimant's witness was largely corroborative of her own testimony especially as regards the suspension of the executive Director and his suspicions that the claimant was one of those that authored the anonymous letters. According to him the Executive Director expected apologies from those he suspected had authored the letters but none was given to him by anybody.

The witness having witnessed the Board's suspension of the claimant in the Boardroom earlier on 26/8/2015, he was later on the same day and under the same circumstances terminated with the claimant.

The only respondent's witness, one Twinomugisha testified that the claimant was specifically employed for the laboratory project since she had laboratory specific skills and the project was funded by the United States of America's organization of Centre for Disease Control (CDC). Her contract, accordingly to the witness, was subject to availability of funds and the project period was 30th September, 2010 to 29th September 2016. The witness testified that the project which the clamant was contracted under expired in 2015 but she was only given extension of one year to September 2016 without the donors extending more funds. With the project coming to an end, according for the witness, the respondent was entitled to invoke the termination clause in the contract agreement notwithstanding the fixed term nature of the contract.

Submissions

Relying on **Section 5 of the Labour Disputes (Settlement & Arbitration) Act** 2006, the claimant argued that this court had jurisdiction to entertain this matter , the labour officer having referred it to this court when the respondent refused to attend the proceedings before the said labour officer. Without any clear elaboration, the respondent submitted that the industrial court does not have exclusive original jurisdiction similar to the one the High Court enjoys in all matters in adjudicating employment disputes. He relied on section 8 (1) (b) of the **Labour disputes(Arbitration and Settlement) Act 2006(LADASA)**. Counsel for the respondent pointed out that the industrial court is limited in granting claims/ remedies on reference to it within the mandate of the labour officer

For the second issue, the claimant, relying on the definition of "termination of employment" as expounded in **section 2 of the employment Act**; **section 68 and section 66 of the same Act** and the authority of **Florence MufumbaVsUganda Development Bank, L.D.C 138/2014** strongly argued that the claimant was unfairly and unlawfully terminated. Counsel also relied on the case of **Dr. Peter Wasswa Kityaba vs AFNET L.D.R 084/2016**.

In response to the submissions of the claimant on the second issue, the respondent strongly argued that in accordance with **Section 68(1) of the Employment act,** the claimant was terminated for the reason that there were no longer funds for the project under which she was employed. It was argued that as team leader the claimant ought to have known the importance of notices of award for her project **marked R1 and R2**. According to the respondent, under **Section 114 of the Evidence Act** the claimant was estopped from denying that funds would not be available to

sustain her contract beyond the project life. In the alternative the respondent argued that under **Sections 61(f) and 68(3) of the Employment Act** the reasons for termination should be provided in the certificate of service and only if the claimant requested the same. According to the respondent, the fact that claimant did not request for the reasons of termination implied that she was aware of the budgetary constraints to support her contract of service.

Relying on **HILDA MUSINGUZI VS STANBIC BANK (U) LTD SCCA 005/2016** counsel for the respondent submitted that the right of the employer to terminate the contract of service whether by giving notice or incurring the penalty of paying compensation in lieu of notice could not be fettered by the courts.

In discussing and submitting on the third issue, the claimant contended that she was entitled to all the remedies sought including special damages, general and aggravated damages, costs of the suit as well as interest. Relying on **Simon KapioVs Centenary Bank LDC 300/2015** and **Equity Bank VsMugisha Musimenta Rogers L.D.Appeal 26/2017,** the respondent contended that salary arrears for the period that the claimant did not work were not recoverable. Counsel argued that if the court was inclined to grant general damages, it could only grant damages to the extent authorized by **Section 78 of the Employment Act.**

DECISION OF COURT

1) **Whether the court has jurisdiction to entertain the claim**.

Whereas counsel for the respondent relied on the case of **United States International University (USIU) Vs Attorney General (2012)& KLR**, he did not explain the relevance of the case to the instant matter before court relating to jurisdiction of the court.

On perusal of this decision, it occurs to us that it discusses the power of the Industrial court of Kenya as enshrined in the constitution of Kenya visa- a-vis the power of the High court. The case also discusses the original jurisdiction before the Industrial court of Kenya was created by an Article in the Constitution of Kenya.

Counsel for the respondent asserted that

"**Industrial court is limited in granting claims/remedies on reference to it within the mandate of the labour officer"** but he did not elaborate on whether or not the instant claim was properly referred to this court so as to properly attack its jurisdiction.

Consequently we have no reason to question or to disagree with the claimant's submission that in accordance with S**ection 5 of the LADASA,** the respondent having failed or refused to appear before the labour officer, the case was referred to this court for determination as empowered by **Section 8 of the LADASA.**

Section 5 of the LADASA provides:

"5 when labour officer may refer dispute to Industrial court.

1) **If, for weeks after receipt of a labour dispute.**
   a) **The dispute has not been resolved in the manner set out in Section 4(a) or (c) or**
   b) **A conciliator appointed under Section (4(b) considers that there is no likelihood of reaching any agreement, the labour officer shall at the request of any party to the dispute and subject to Section 6, refer the dispute to the Industrial court.**
2) …….

3) **Where a labour dispute reported to a labour officer is not referred to the Industrial Court within eight weeks from the time the report is made, any of the parties or both the parties to the dispute may refer the dispute to the industrial court.**

Section 8 of the LADASA provides

"Functions of the Industrial court

1) **The Industrial court shall**
   a) **Arbitrate on labour dispute referred to it under this act.**
   b) **Adjudicate upon questions of law and fact arising from references to the Industrial Court by any other law.**
   c) **The Industrial court shall dispose of the labour disputes referred to it without undue delay.**

Given the above provisions and given that nothing to the contrary is in the submission of counsel for the respondent, the first issue is in the affirmative.

2) **Whether the termination of the claimant's contract was fair and lawful.**

   The submission of the claimant in its entirety was that unless termination is done in accordance with **Section 2, 68 and 66 of the Employment Act**, such termination would be unfair and unlawful and according to her, the termination in the instant case was without regard to the said Sections of the law and therefore unlawful and unfair.

The respondent on the other hand contended that the termination was in accordance with Section 68 above mentioned since the claimant was aware of the fact that the project under which she was employed was running out of funds and therefore the

contract could not be sustained. It was contended also that given that she was aware of this fact, the respondent acted lawfully to terminate her with notices as provided for in the contract of service.

Section 2 of the Employment Act defines "termination of employment" as

> "**the discharge of an employee from an employment at the initiative of the employer for justifiable reason other than misconduct, such as expiry of contract, attainment of retirement age etc…."**
>
> The section also provides that **termination** has the meaning given by **Section 65** which provides;

"65 Termination.

1. **Termination shall be deemed to take place in the following instances:-**

a) **where the contract of service is ended by the employer with notice;**

b) **where the contract of service, being a contract for a fixed term or task, ends with the expiry of the specified term or the completion of the specified task and is not renewed within a period of one week from the date of expiry on the same terms or terms not less favourable to the employee;**

c) **where the contract of service is ended by the employee with or without notice, as a consequence of unreasonable conduct on the part of the employer toward the employee; and**

d) **where the contract of service is ended by the employee, in circumstances where the employee has received notice of termination of the contract of service from the employer, but before the expiry of the notice**

Section 68 of the Employment Act provides;

“68 Proof of reason for termination.

1) In any claim arising out of termination the employer shall prove the reason or reasons for the dismissal, and where the employer fails to do so, the dismissal shall be deemed to have been unfair within the meaning of **Section 71**.
2) The reason or reasons for dismissal shall be matters, whiche the employer, at the time of dismissal, genuinely believed to exist and which caused him or her to dismiss the employee.
3) In deciding whether an employer has satisfied this Section, the contents of a certificate such as is referred to in Section 61 informing the employee of the reasons for termination of employment shall be taken into account.

Section 66 of the Employment Act provides;

“66 Notification of hearing before termination.

1) Notwithstanding any other provision of this part, an employer shall, before reaching a decision to dismiss an employee, on the grounds of misconduct or poor performance, explain to the employee, in a language the employee may be reasonably expected to understand, the reason for which the employer is considering dismissal and the employee is entitled to have another person of his or her choice present during this explanation.
2) Notwithstanding any other provision of this Part, an employer shall, before reaching any decision to dismiss an employee, hear and consider any representations which the employee on the grounds of misconduct or poor performance, and the person, if any chosen by the employee under subsection (1) may make.

3) The employer shall give the employee and the person, if any, chosen under subsection (1) a reasonable time within which to prepare the representations referred to in subsection (2).
4) Irrespective of whether any dismissal which is a summary dismissal is justified, or whether the dismissal of the employee is fair, an employer who fails to comply with the section is liable to pay the employee a sum equivalent to four weeks' net pay.
5) A complaint alleging a failure of the employer to comply with this section may be joined with any complaint alleging unjustified summary dismissal or unfair dismissal, and may be made to a labour officer by an employee who has been dismissed, and the labour officer shall have power to order payment of the sum mentioned in subsection (4) in addition to making an order in respect of any other award or decision reached in respect of the dismissal.

This Court in the **R. Constant Vs Stanbic Bank LDC 171/2014** stated**" It is our firm conviction that in order to reach a fair decision as to the legality of dismissal or termination of an employee, the above (Sections 2, 65,66,68 of the Employment Act) have to be read together in addition to any disciplinary procedures or Human Resource Manuals available and that the exit clause in the contract alone is not sufficient.**

It was contended by the respondent that Section 68 above was complied with since the claimant was aware of the life span of the project under which she was employed and that when funds ran out, the lack of funds as a reason for termination was within her knowledge.

The contract of the claimant dated 7/4/2014 provided

"RE: Offer of Employment

I am pleased to give you an offer of employment as Senior Laboratory Scientist; with the African Field Epidemiology Network (AFENET). We foresee your potential skills as a valuable contribution to our organization.

1. **Position**

   You are appointed to the position of a Senior Laboratory Scientist and in this capacity you will be directly supervised by the Head of Program at AFENET. Your start date in this position will be May 1, 2014.

   Your contract will be for a period starting May 1, 2014 to April 30, 2015.

   In this assignment, your responsibilities shall be:-

   a. **Support the implementation of laboratory quality management systems among the Network African Countries**.
   b. **Assist in the roll out in-country laboratory management trainings. SLMTA.**
   c. **Support the implementation of external Quality Assessment (EQA) such as: Dried Tube Specimen (DTS) technology for HIV serology.**
   d. **Provide technical assistance in laboratory mentoring and assist in laboratories towards sustained improvement.**
   e. **Working closely with Ministries of Health and other partners, implement new initiatives related to the laboratory strengthening activities.**
   f. **Participate in the grant proposal and budget writing.**
   g. **Participate in report writing as required by funding organizations on progress of laboratory activities and mentorship plans**.

h. **Working closely with the Laboratory projects coordinator, provide updates and quarterly reports to the Ministries of Health and relevant stakeholders on progress of Laboratory strengthening activities.**

i. **Any other duties that may be assigned by the immediate sup**ervisor.

The Court record (**trial bundle of the claimant page 3)** contains a fixed term contract between the parties effective 1/5/2014 worded in the same terms as the offer above mentioned and providing 30/4/2015 as end of the contract period. At page 23 of the claimant's trial bundle is an extension of the contract period for a further 3 years ending 30/4/2018 stating

> **"It is important to note that continuity and maintenance of this contract is subject to availability of funds, this contract ceases when funding ceases. All other terms remain as per original contract……"**

The evidence of the Respondent through the only witness was to the effect that there were 2 awards which we understand to mean funding of projects, and that these awards were attachments **R I and R II to the statement of the witness**.

R II according to the witness ran from **30/09/2014 to 29/9/2015.** On perusal of both awards we found that R I has a budget period of 30th Sept 2014 – 29/09/2016 and a project period of 30/09/2010 – 29/09/2016 while R II has a budget period of 3/09/2014 – 29/9/2015 and a project period of 30/09/2010 – 29/09/2015.

The witness maintained that the respondent did not have a lab portfolio before these awards. It is clear from the offer of appointment to the claimant that she was given the offer of Senior Laboratory Scientist on 7/4/2014 culminating in a fixed term contract on 1/5/2014, after the awards. The termination letter of the claimant was effective 29/02/2016.

In cross examination the claimant admitted that she was a team leader of a project, funded by Centre for Diseases Prevention and control and that salaries and wages were arising from the same project whose funding would lapse in December 2016. Although the claimant was reporting to the Head of Programmes, evidence on the record points to the fact that the budgetary provisions for her work as Senior Laboratory Assistant and head of a project were funded by Centers for Disease control and prevention project and this included her own salary. We therefore do not accept her insinuation that even if the project stopped running for reasons of no funding or any other reason, she would still remain an employee of the respondent, simply because her contract was not specifically tagged to the project or any other project's expiry. The fact that the extension of the contract dated 25/5/2015 mentioned availability of funds as a precondition for the continuance of the contract just like the original fixed contract of 1/5/2014 did, speaks volumes. It is common knowledge that continuation of employee and employer relationship is basically dependent on the capacity of the Employer to pay the employee in accordance with the agreed terms in the contract.

However, we do not accept the insinuation of the respondent that because the claimant was aware of the fact that the funding of the project was to stop, she was therefore aware of the reason of termination within the meaning of **Section 68** of the **Employment Act.** The Section in our view demands that at the time of dismissal the employer shall have explained the reasons for dismissal and the employee shall have either appreciated the reasons or have defended his/her position on any allegations as provided for under **Section 66 of the Employment Act.**

The Section is not intended to allow the employer to keep the reasons to his/her heart and release them in a bombshell to the employee in the termination letter or at the exact time of termination.

Proving the reason or reasons for dismissal, involves explaining to the employee factors taken into account to terminate the employment and engaging an impartial tribunal, to determine the fate of the employee in accordance with Section 66. As **Section 2 of the Employment Act** stipulates, there must be a justifiable reason before termination.

It was not therefore acceptable for the respondent to assume that because the claimant was a team leader and therefore in the know of the budgetary provision of the project, she was aware of the reason of her termination. Even if this Court were to accept the assertion from the respondent that the reason for termination of the claimant was lack of funding, it is hard to imagine how possible the same project lacking funding and about to close for the same reason could increase salary of the claimant (and other staff) by letter dated 3/12/2015 effective 1/09/2015 only on 13/2/2016 to write a termination letter on the grounds that the respondent was broke!! The letter increasing salary stated (Inter alia):

"Your outstanding salary arrears will to this effect be computed and remitted to your salary account a long side subsequent salary payments……."

Capacity to pay salary arrears of over 330 US Dollars per month and continue to pay an increased salary in future to this magnitude could not have been by a broke and soon to close Respondent!!

If lack of funding was the reason that the respondent genuinely believed to exist and caused the dismissal/termination of the claimant, we strongly believe this would have

been clearly put to her in the letter that increased her salary or at the worst in the letter of notice of termination.

Evidence led by the respondent suggested that even by the time this case was heard all the employees in the same project except the claimant were still in employment under the same project, indicating that the project did not close or was not intended to close by the time the claimant was terminated.

The evidence from the Respondent's witness is that the project period was from 30/9/2010 to 29/10/2016 (**R I attached to his witness statement**) but that **"the project which the claimant was contracted under expired in 2015 but was only given an extension of 1 year to September 2018 without donors extending more funds ….."**

In our opinion this sounds contradictory. It is not clear whether it was the contract of the claimant which was extended without funding or the project itself extended without funding. Whatever expired in 2015 according to the witness, there was no justification for increase of salary by letter dated 3/12/2015 except the justification that there was every reason for the respondent to believe that the project would not be closed as evidenced by the continuation of employment of the staff in the project after the termination of the claimant.

Consequently we do not believe that the reason for termination was lack of funding and even if it was, the respondent was short of complying with Section2 and 68 of the Employment Act.

We need to emphasize as we have done before, that the **Employment Act**, (**particularly Sections 2, 66 and 68)** is a replica of the various **International Labour Conventions** to which the government of Uganda is party which have been rectified.

The termination of Employment Conventions (No. 58) sets forth the principle that employment of a worker should not be terminated unless a valid reason for such termination connected with the workers capacity or conduct based on the operational requirement of the undertaking or establishment or services. Therefore the mere fact that there is an exit clause in the contract of service stipulating notice periods to be given before termination is not sufficient by itself to legally terminate the contract. Thus in the case of **HILDA MUSINGUZI VS STANBIC BANK (U) LTD SCCA05/2016**, relied upon by the respondent in the instant case, after pointing out the right of the employer to terminate the contract by notice where it is provided in the contract as expounded in **Barclays Bank of Uganda Vs Godfrey Mubiru SCCA 01/1998**, the court at page 12 of the Judgment said

> **"Section 68(1)** demonstrates that the words "**dismissal"** and **"termination"** are **used interchangeably. As already observed the discharge of the appellant was a dismissal and a reason was assigned for her discharge. It is noted that the appellant was first suspended on 2/11/2007 following a robbery at Bundibugyo Service centre. The appellant was given notification of a disciplinary hearing which was conducted …… The respondent was in my view rightly held accountable for the loss in the branch and as already stated the right of an employer to terminate a contract cannot be fettered by the court so long as the procedure for termination Is followed to ensure that no employee's contract is terminated at the whims of an employer and if it were to happen the employee would be entitled to compensation."**
>
> In the case of **Okour R. Constant VsStanbic Bank LDC 071/2014**, this court from the above case drew a legal proposition that

"Although the employer is entitled to terminate the contract as provided for in the contract of employment, such termination has to conform with Section 66 and 68 of the Employment Act.

It is not an authority (just like Godfrey Mubiru is not) for the proposition that an employer can unreasonably and without justification terminate a contract of an employee just because there is a clause in the Employment contract that allows for payment in lieu of notice."

We have no reason to change our minds from the above proposition and therefore we find that the claimant was unlawfully terminated. The second issue is in the negative.

The third issues is what remedies are available.

1) Special damages

a) The claimant prayed for 4,384USD being 1 month's salary for denied hearing. The claimant relied on the authority of **Peter WasswaKityabaVs AFNET(supra).** Whereas it is correct that **Section 66(4) of the Employment Act** provides for a penalty for breach of offering an employee the opportunity to be heard, we have a strong conviction that it can only be invoked when the employer has summarily dismissed the employee under **Section 69 of the Employment Act.**

We take the position that whereas an employee who has fundamentally broken his contract of service under section 69 is entitled to a hearing, the law does not treat an employer who fails to provide such hearing the same

way it treats an employer who has flagrantly breached Section **66(1) (2) and(3) of the Employment Act**, by refusing to grant an employee a hearing despite the allegations of poor performance or gross misconduct or where even if afforded a hearing such a hearing is fundamentally opposed to the procedures provided for under the same **Sections of the Act.** In the latter case the employer gets slammed with general (and if necessary aggravated/punitive damages while in the former case it is only a paltry 4 weeks as a penalty.

Although in the case of **Peter Wasswa** this court granted 4 weeks'pay under section 66(4) of the Employment Act, this was considered in the later cases of BUREAU VERITAS UGANDA LIMITED VS DALVIN KAMUGISHA labour dispute appeal 025/2017 TUKAHIRWA JULIUS VS NDEJJE VIEW PRIMARY SCHOOL L.D.R.046/2016 to have been decided ***per incurium.*** In the BUREAU VERITAS case this court after citing section 66(4) of the Employment Act had this to say

"In our considered opinion this section of the law is meant to provide the employees who were summarily dismissed after fundamentally breaching their obligations without a hearing and not entitled to general damages because of the fundamental breach. An employee having been dismissed for fundamentally breaching his/her contract is therefore under this section of the law entitled to 4 weeks net pay. This section of the law in our view entrenches the principle of a hearing in both a case of summery dismissal under section 69 and a case of dismissal for misconduct under section 66 both of the Employment Act. We consider the weeks' pay as a

penalty against the employer for failure to provide a hearing despite having taken a correct decision to summarily terminate the employee"

The **PETER WASWA case** did not consider the distinction between an employer culpable as offending Section 66(1) of the Employment Act and the one culpable under Section 69 of the same Act, having summarily dismissed an employee for fundamentally breaching the contract.

The instant case having not been a summery dismissal for a fundamental breach, we accordingly disallow the prayer for four weeks' pay as being not applicable.

b) **4,384USD** being I month's salary for no reason given for termination.

We disallow this prayer for the simple reason that the claimant has not substantiated it and particularly she has not distinguished it from the above prayer. We form the opinion that it falls under the claim for general damages.

(c) **Severance allowance**

One of the circumstances entitling an employee to this allowance is if the court finds that such employee was unfairly/unlawfully terminated, which this court has already found. In accordance with **Donna KamuliVs DFCU LDC 002/2015**, the claimant would be entitled to a salary of 1 month for every year that she served the respondent. The claimant started working for the respondent on 1/5/2014 and was terminated on 29/2/2016. She earned 3,718 USD per month until 25/5/2015 when her earnings were increased to 4,051 USD. She will **therefore be paid 3,718 USD for the first year May 2014 – May 2015**. She earned 4,051 USD till 3-12/2015 when earnings were increased to 4,384 USD.

For this period **she will be paid severance allowance of 6 months which is 2,025 USD**.

(d) **Salary arrears**

Whereas the authority of **Mufumba Florence Vs UDC** and **Peter Wasswa** (supra) were to the effect that salary arrears to the date of an award were payable, the subsequent cases of **Simon KapioVs Centenary Bank LDC 300/2015 and Equity Bank VsMugisha Musimenta Rogers LD Appeal 26/2017** were of different view. The change of heart was because the earlier decisions were delivered without the court addressing its mind on **Section 41 of the Employment Act** that provides for payment of salary only when an employee has provided services to the employer and without considering the natural hazards that could compromise the claimant's continuation of employment even when not terminated. The latter cases held that an award of damages would be sufficient for the claimant and that payment of salary arrears in addition to damages would be construed as double payment. Accordingly a prayer of salary arrears for the period the claimant did not work is denied.

e)Salary Loan: This court has pronounced itself on salary loans acquired solely on the security of a salary deduction as a method of payment. The cases of **FlorenceMufumba (supra), OkelloVs Rift Valley Railways HCCS 195/2009 and MbiikaVs Centenary Bank, LDC 023/2014** are in support of the legal proposition that **where a contract of employment is terminated illegally/unfairly and the claimant is said to have obtained a salary loan recoverable only and only by deduction of salary having been authorized by**

the employer, such loan could not be payable by the employee after termination and therefore denial of the salary.

In the instant case the loan obtained by the claimant had a repayment period beyond the period of her employment contract with the respondent. According to the respondent her loan repayment period extended to 25/07/2019 well after the lapse of the contract period. On perusal of the contract of service, it is clear that the contract would lapse on 20/4/2018. It is not clear from the claimant why she took a loan, repayment of which would extend more than 1 year after the lapse of her contract. It seems to us that she was under the impression that either her contract would be extended or that she would find other means of satisfying the loan. The loan repayment was therefore not solely based and dependent on the salary deductions as was clearly the case in **Mbiika, Mufumba and Rift Valley cases cited above.** The prayer for the recovery of outstanding loan obligations is denied.

2) General damages: We take cognizance of the fact that the claimant was earning from her employment which catered for her needs and the need of her family and that all this was shattered after the unlawful termination of her employment. She earned over 4,000 USD per month and she had a further 26 months of earning and taking into account other factors that could have led to her failure to work for the 26 months, we find 150,000,000/= sufficient as general damages. We have failed to appreciate the contention of counsel for the respondent that this court (not being a labour office) should restrict itself to compensation provided for under **Section 78 of the Employment Act.**

3) Aggravated damages; These damages arise from the finding of court that in dismissing or terminating an employee the respondent acted with malice that subjected the claimant to humiliation. In the **Peter Wasswa case** this court found that the denial of promotion to the claimant by the Executive Director and the subsequent termination constituted malice and humiliation and awarded aggravated damages. On perusal of the particulars of malice as enumerated in the amended memorandum of claim in the instant case, we find that the particulars only establish the unlawful nature of the termination which is cause for this court to allow general damages. We are not convinced that there is need to award aggravated damages.

4) Interest : Given the inflationary nature of our currency, the amounts allowed in this claim will attract a 20% interest per yearfrom date of Award till psyment in full.

5) costs; We decline to give an order for costs. As opposed to the finding in Peter Wasswa (supra) we have not found any malicious intention in this case.

Delivered and Signed by:

1. Hon. Chief Judge RuhindaAsaphNtengye ……..
2. Hon. Lady Justice Linda TumusiimeMugisha ……..

PANELISTS

1. Mr. Ebyau Fidel ……..
2. Ms. Harriet NganziMugambwa ……..
3. Mr. F. X. Mubuuke ……

Dated26/07/2019