THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

Coram: Tibatemwa-Ekirikubinza, Mugamba, Buteera, Tuhaise, Chibita, JJ.SC

CIVIL APPEAL NO. 18 OF 2018

STANBIC BANK UGANDA LIMITED……………………..APPELLANT

Versus

DEOGRATIUS ASIIMWE…………………………………RESPONDENT

[Appeal arising from the Judgement of the Court of Appeal of Uganda in Civil Appeal No. 89 of 2015 before Kakuru, Kiryabwire and Madrama, JJA, delivered on the 10th of September, 2018]

Judgment of Percy Night Tuhaise, JSC

This is an appeal from a decision of the Court of Appeal which found that the respondent was wrongfully terminated from employment, and accordingly overturned a High Court decision which had been in favor of the appellant.

The brief background to this appeal is that the respondent, Deogratius Asiimwe, was initially employed by Uganda Commercial Bank Limited (UCB) as a Bank Supervisor. UCB was subsequently acquired by Stanbic Bank Uganda Limited (Stanbic Bank), the appellant in this appeal. The appellant's Managing Director, by way of a letter dated 18th December

2002, notified the respondent of the variation of the terms and conditions of his employment.

On 23rd December 2002, a fresh contract was executed between Stanbic Bank and the respondent in which the respondent was retained as a Supervisor. The respondent's employment was eventually terminated in a letter dated 19th January 2005, and he was paid three months' salary in *lieu* of notice. The letter indicated that his performance was unsatisfactory.

The respondent instituted High Court Civil Suit No. 279 of 2005 against the appellant for damages arising out of wrongful dismissal. Judgment was given in favor of the appellant and the respondent's suit was dismissed with costs. The learned trial Judge held that the termination of the respondent's employment was lawful because it was done in accordance with the terms and conditions of his employment contract.

The respondent was dissatisfied with the judgment of the High Court. He appealed to the Court of Appeal which found that he was wrongfully terminated from employment. The Court of Appeal set aside the judgment of the High Court and awarded him UGX 10,000,000/= (Uganda shillings ten million) as general damages and UGX 30,000,000/= (Uganda shillings thirty million) as aggravated damages. He was also awarded costs of the suit and the appeal.

The appellant was dissatisfied with the judgment of the Court of Appeal, and now appeals to this Court against the decision of the Court of Appeal, on the following grounds of appeal:-

1. **That the learned Judges of the Court of Appeal erred in law in holding that the respondent was wrongfully dismissed yet he had been terminated upon payment in *lieu* of notice which payment had in any event been made.**
2. **That the learned Judges of the Court of Appeal erred in law in awarding the respondent general damages of UGX 10,000,000/= (Uganda Shillings ten million) which exceeded the amount that would be payable to him in lieu of notice.**
3. **That the learned Judges of the Court of Appeal erred in law in awarding to the respondent aggravated damages of UGX 30,000,000/= (Uganda Shillings thirty million) there having been no basis in fact or law and/or for award in that quantum.**

Representation

At the hearing of this appeal, the appellant was represented by Mr. Ernest Ssembatya Kaggwa of MMAKS Advocates. The respondent was represented by Mr. Simon Kakama of M/S Kakama & Co. Advocates. The parties filed written submissions.

Submissions for the Appellant

On **ground 1**, the appellant's Counsel submitted that the respondent's contract of employment could be terminated under clause 16 of the contract which provided that it could be terminated by either party with three (3) months' notice or payment in *lieu* of notice; that in this case, the respondent having been paid in *lieu* of notice, which payment was not in dispute, he cannot allege that his termination was unlawful. Counsel

contended that, accordingly, the Court of Appeal was wrong in holding as it did that the termination was unlawful.

Counsel cited the case of **Barclays Bank of Uganda V Godfrey Mubiru, Supreme Court Civil Appeal No. 1 of 1998** and submitted that the principle of an employer's unfettered right to terminate an employment relationship cannot be fettered by courts. He also cited the case of **Stanbic Bank Ltd V Kiyemba Mutale, Supreme Court Civil Appeal No. 02 of 2010** and submitted that an employer may terminate the employee's employment for a reason or for no reason at all as long as he or she does so according to the terms of the contract.

Counsel submitted that, based on the authorities he cited, the termination of an employment contract by payment in *lieu* of notice was lawful, and that the finding of the Court of Appeal was erroneous and contrary to the clear position of the law. He prayed that ground 1 of the appeal be answered in the affirmative.

On **ground 2**, Counsel submitted that this Court has in a number of decisions held that upon a finding of an unlawful termination, the measure of damages would be what the employee would have earned during the notice period. He cited the case of **Betty Tinkamanyire V Bank of Uganda, Supreme Court Civil Appeal No. 12 of 2007** to support this proposition. He submitted that in the instant case, in spite of the Court of Appeal having noted that the respondent had been paid in *lieu* of notice, which would have been his entitlement had a finding of wrongful dismissal been made, it went ahead and awarded him general damages of UGX

10,000,000/= (Uganda Shillings ten million). He prayed that this Court finds that the award of general damages was erroneous and orders it to be set aside.

On **ground 3**, Counsel submitted that the respondent did not adduce any evidence of aggravating factors to warrant an award of aggravated damages at the trial, yet the first appellate court found that the termination of his employment on grounds of poor performance was aggravating. He relied on the case of **Fredrick Zaabwe V Orient Bank & Another, Supreme Court Civil Appeal No. 4 of 2006** on what constitutes aggravated damages, and prayed that the award of aggravated damages be set aside as there was no basis for the first appellate court to make the award.

In conclusion, Counsel prayed that the appeal be allowed, that the judgment and orders of the Court of Appeal be set aside, and that the costs of this appeal and in the courts below be awarded to the appellant.

Submissions for the Respondent

On **ground 1**, learned Counsel for the respondent submitted that the employer (appellant) did not *per se* exercise its right to terminate the respondent's contract under the contract of employment or the Employment Act, Cap 219, but that "unsatisfactory performance" was clearly the reason the appellant terminated the services of the respondent as indicated in the letter of termination, without which, other factors remaining constant, the respondent would still be an employee of the appellant.

Counsel submitted that the appellant, having had a reason to terminate the respondent's contract, put upon itself the responsibility of justifying the reason for the termination, which would be through a hearing. He cited the case of **Ridge V Baldwin and Others [1964] AC 40** to support his submissions.

Counsel argued further, that the appellant's reason for termination of the respondent's employment was unsatisfactory performance, yet the evidence as adduced by the respondent shows that between 2002 and 2003 the respondent was appraised as a good performer, and he consequently received an award of merit and an annual increment. Counsel submitted that no evidence was adduced by the appellant to rebut the good performance of the respondent, neither did the appellant adduce in court the performance review report forming the basis of termination of the contract, nor was any warning ever issued to the respondent about his performance, nor had he ever been summoned regarding his performance.

Counsel submitted that the act of the appellant terminating the respondent's contract was in violation of the principles of natural justice especially the right to be heard, which was wrongful. He concluded that the learned Justices of Appeal were right in their finding that the respondent was wrongfully dismissed. He prayed that ground 1 of the appeal be disallowed.

On **ground 2**, Counsel cited the case of **Stroms V Hutchinson [1905] AC 515** where Lord Macnaghten stated that general damages are such as the law will presume to be the direct natural or probable consequence of the

act complained of. He submitted that the act complained of in this case is wrongful dismissal of the respondent, having been condemned unheard by the appellant, which is breach of the principle of natural justice and the right to be heard.

Counsel argued that the respondent's chances of securing another job were compromised by the appellant's letter which portrayed him as a non-performer, that, as such, no company would take on a non-performer for an employee. He argued that this totally ruined his career as a banker based on an unjustified claim, which entitles the respondent to adequate compensation in form of general damages. He argued, further that the respondent was embarrassed and inconvenienced as the termination came without any warning or notice.

Counsel submitted that the learned Justices of Appeal, in their judgment, relied on the case of **Stanbic Bank Ltd V Kiyemba Mutale, Supreme Court Civil Appeal No. 02 of 2010**, where this Court held that where the employee is unfairly dismissed, he is entitled to adequate compensation, upon which the Court restored the award of general damages and exemplary damages. He submitted that the appellant's act of dismissing the respondent for unsatisfactory performance without according him any hearing was the basis for the award of general damages. He prayed that this Court finds that the award of general damages was justified and that the same should be upheld.

On **ground 3**, Counsel submitted that the fact of the appellant issuing a letter to the respondent deeming him a non-performer without any

justification is, in itself, an aggravating factor, considering that the respondent had, in the previous year, been awarded merits and earned salary increment for his good performance. He argued that it was humiliating and demeaning to the respondent before the staff he was supervising as senior staff; that the appellant, in addition to the unfounded and unproved letter of termination, issued a post termination letter terming the respondent as a Banking Assistant.

Counsel referred to the respondent's testimony that even the terminal benefits which would serve as a benefit were reduced to settle the loan obligation, leaving the respondent with literally nothing to go home with; that such actions would entitle the respondent to aggravated damages. He contended that the learned Justices of Appeal were guided by the pleadings and the adduced evidence to award aggravated damages, which was elaborated upon in their judgment.

Counsel submitted that the appellant's acts were not only unlawful but were degrading and callous. He contended that a good case has been shown for the respondent to be eligible for the award of aggravated damages, and that the learned Justices of Appeal were justified when they gave such award, which Counsel prayed this Court to uphold.

In conclusion, Counsel prayed that this appeal be disallowed, that the judgment of the Court of Appeal be upheld, and that the costs of this appeal be granted to the respondent.

Resolution of the Appeal

This is a second appeal. A second appellate court is precluded from questioning the findings of fact of the trial court, provided that there was evidence to support those findings, though it may think it possible, or even probable, that it would not have itself come to the same conclusion. This Court can, as a second appellate court, only interfere where it considers that there was no evidence to support the finding of fact, this being a question of law. See **Father Narsensio Begumisa and 3 Others V Eric Tibebaga Supreme Court Civil Appeal No. 17 of 2002.**

On **ground 1**, the issue that arises is whether the respondent was wrongfully dismissed by the appellant.

The appellant's contention is that the respondent's contract of employment was lawfully terminated under clause 16 of the contract of employment which provided that it could be terminated by either party giving the other party three (3) months' notice, or payment in *lieu* of notice; that in this case, the respondent having been paid in *lieu* of notice, which payment was not in dispute, he cannot allege that his termination was unlawful.

The respondent does not deny that he was paid the said 3 months' salary in *lieu* of notice of termination of his employment contract. He however contends that the appellant, having stated a reason for terminating the respondent's contract, put upon itself the responsibility of justifying the reason for the termination, which would be through a hearing; that he never appeared before any committee to defend himself but that his employment was simply terminated.

The contract of employment which is the subject of this appeal was signed by the parties on 2nd January 2003. It took effect on 1st January 2003 and was terminated by a letter dated 19th January 2005. It was therefore, throughout its duration, regulated by the Employment Act, Cap 219, which has since been repealed by the Employment Act 2006.

Section 25 of the Employment Act, Cap 219 (now repealed) stated as follows:-

*"25. **Termination Notice***

(1) Subject to any agreement providing for a period of notice of longer duration, any contract of service of indefinite duration, not being a contract falling within section 12 and 14, may be terminated by notice as provided in this section.

(2) The minimum period of notice to be given by an employer or an employee shall be-

(a)...............

....

(e) three months if the service has lasted at least ten years.

(3) Notwithstanding sub section (2), an employer or an employee may, in lieu of the notice, pay to the other party a sum of money equivalent to wages of the days of the relevant notice."

The specific clause in the contract that the appellant invoked to terminate the respondent's employment was clause 16.3 of the contract of employment, exhibit P2, which states that:-

"16.0 Termination of employment

16.1 *save in the event of summary dismissal, notice of termination of your employment is subject to the terms as noted in the Employment Decree. Minimum period of notice to be given to you or the Bank is as follows:*

....

(vi) 10 years or more (period of service) – 3 months (notice period)

16.3 *The Bank may pay you the equivalent of your pro-rata salary in lieu of the notice, and you have the option to pay the Bank in lieu of the termination notice should you wish to leave employment."*

The High Court held that the termination of the respondent's contract upon payment in *lieu* of notice, was in accordance with clause 16 of his employment contract, and was accordingly lawful. However the Court of Appeal found that the respondent was wrongfully terminated.

The law on when and how an employer may terminate an employment contract was well stated by this Court in **Stanbic Bank V Kiyemba Mutale, Supreme Court Civil Appeal No. 02 of 2010**, where C. N. B Kitumba, JSC, in her lead judgment, stated as follows at page 10:-

The position of the law is that an employer may terminate the employee's employment for a reason or for no reason at all. However, the employer must do so according to the terms of the contract otherwise he would suffer the

consequences arising from failure to follow the right procedure of termination."

In this appeal, the letter terminating the respondent's employment, exhibit P3, partly read as follows:-

"<u>RE: TERMINATION OF SERVICE</u>

Management has reviewed your performance over the past year and your performance has been found to be unsatisfactory.

This is to inform you that Management has decided to terminate your services from the Bank with effect from 28th January 2005.

You will be paid 3 months' salary in lieu of notice, plus your 29.33 days outstanding leave and salary up to 31st January 2005…."

It is not in dispute in this appeal, and indeed, so is the position of the law, that a contract of employment can be terminated without notice upon payment in *lieu* of notice. This was clearly provided for under section 25 (3) of the Employment Act, Cap 219 (repealed), and, in this appeal, it was indeed a term in the contract of employment (exhibit P3) under clause 16.3.

The right of the employer to terminate a contract of employment whether by giving notice or incurring a penalty of paying compensation in *lieu* of notice cannot therefore be fettered by the courts. In **Barclays Bank of Uganda V Godfrey Mubiru, Supreme Court Civil Appeal No. 1 of 1998,** this Court stated that:-

"The right of the employer to terminate the contract of service, whether by giving notice or incurring a penalty of paying compensation in lieu of notice for the duration stipulated or implied by the contract cannot be fettered by the courts ... "

Thus, based on the foregoing authorities, courts of law cannot impose terms in a contract. The question to pose at this point is, did the appellant correctly terminate the respondent's employment in as far as the procedures pertaining to the termination of the respondent's employment was concerned?

It is not disputed that clause 16 of the employment contract allowed either party to the contract to terminate the contract without notice as long as there was payment in *lieu* of notice. It is also very clear from the adduced evidence that the appellant terminated the respondent's services without notice but it paid him the equivalent of his three months' salary in *lieu* of the required three months' notice. The respondent admits this in his pleadings and in his evidence. This was also well covered by the Employment Act, Cap 219 (repealed), which was the law applicable then, namely Section 25 (2) (e) and 25 (3) which when read together means that either party could terminate the employment immediately, that is, without giving the three months' notice on payment of equivalent to the wages of the days of the relevant notice.

The authorities cited above are clearly to the effect that an employer can terminate the employee's employment for a reason or for no reason at all. To that extent one would not fault the appellant for terminating the

respondent's employment immediately and paying him his three months' wages in *lieu* of notice, as indeed it did in this appeal, but that is if, and only if, it had gone no further than simply stating that it was terminating the respondent's services. To the contrary however, the termination letter exhibit P3 stated that the reason for terminating the contract of employment was the respondent's unsatisfactory performance, which put the respondent's performance in issue. Under such circumstances it would only have been fair, in line with the principles of natural justice, to avail the respondent a hearing, to allow him defend himself prior to his dismissal, since the termination was expressly stated to be fault based against the respondent.

In **Ridge V Baldwin [1964] AC 40** where the appellant was dismissed on grounds of neglect of duty, it was held that a decision reached in violation of the principles of natural justice, especially the one relating to the right to be heard, is void and unlawful; that an officer cannot be dismissed without first telling him what is alleged against him and hearing his defence or explanation. It was stated that, even if the respondents had power to dismiss without complying with the regulations, they were bound to observe the principles of natural justice and give the appellant an opportunity of being heard.

Thus, in this appeal, the fact that the respondent was paid the 3 months' salary in *lieu* of notice, did not in any way atone the violation of the respondent's right to be heard in a situation where his dismissal was based on what his employer, the appellant, called unsatisfactory performance.

Accordingly, whereas in form, the termination of the respondent's services passed off as if it was effected under clause 16.0 of his contract of employment (and this was the case as presented by the appellant), in substance, the appellant was summarily dismissed for purported unsatisfactory performance, because no evidence was adduced by the appellant to show that the respondent was availed a right of hearing to defend himself under the principle of *audi alteram partem* (listen to the other side).

The appellant therefore cannot be correct to say that it terminated the respondent under clause 16.0 of his contract. The appellant was well protected by the law, as highlighted by the cited authorities above, even if he had just terminated the contract and kept quiet about the reason for the dismissal of the respondent. However, the nature of the reason it advanced in the letter of termination of services required the respondent to defend himself in exercise of his right to a fair hearing. Indeed, the record shows that at the trial the respondent availed evidence which was not challenged that he was given a positive appraisal in April 2003 and his salary was increased in May 2003, as revealed by exhibits P6 and P7.

The learned Justices of Appeal therefore did not err in law when they held that the respondent was wrongfully dismissed.

This ground of appeal fails.

On **ground 2**, the issue that arises is whether the learned Justices of Appeal erred in law in awarding the respondent general damages of UGX

10,000,000/= (ten million) which exceeded the amount that would be payable to him in *lieu* of notice.

Section 26 of the Civil Procedure Act, Cap 71, provides that general damages are at the discretion of the Judicial Officer. An appellate court shall only interfere with an award of general damages if it is demonstrated that the learned Justices of Appeal exercised their discretion injudiciously or erred on the side of the law, which error occasioned prejudice to the appellant.

The appellant contends that the award of UGX 10,000,000/= (ten million) would have been the respondent's entitlement had a finding of wrongful dismissal been made against him; that there was no discussion at all on general damages and or any basis in the Court of Appeal judgment for the award of general damages; and further that the respondent's only entitlement upon a finding of wrongful dismissal would be what he would have earned for the notice period.

The adduced evidence on record shows that all that was due to the respondent following the termination of his employment was paid. The respondent himself was in agreement that he was paid all that was due to him in *lieu* of notice.

In the case of **Betty Tinkamanyire V Bank of Uganda, Supreme Court Civil Appeal No. 12 of 2007,** (lead Judgment of Hon. Justice George Kanyeihamba, JSC), it was stated that:-

*"In **Barclays Bank of Uganda V Godfrey Mubiru, C.A No. 1 of 1998 (SC) (Unreported)**, I had opportunity to say; "In my opinion, where any contract of employment, like the present, stipulates that a party may terminate it by giving notice to a specified period, such contract can be terminated by giving the stipulated notice for the period.*

In default of such notice by the employer, the employee is entitled to receive payment in lieu of notice and where no period for notice is stipulated, compensation will be awarded for reasonable notice which should have been given, depending on the nature and duration of employment. Thus, in the case of **Lees V Arthur Greaves Ltd, {1974} I.C.R. 501** *it was held that payment in lieu of notice can be viewed as ordinary giving of notice ... The right of the employer to terminate the contract of service, whether by giving notice or incurring a penalty of paying compensation in lieu of notice for the duration stipulated or implied by the contract cannot be fettered by the Courts. An employee is entitled to full compensation only in those cases where the period of service is fixed without provision for giving notice."*

According to Justice Kanyeihamba, the contention that an employee whose contract of employment is terminated prematurely or illegally should be compensated for the remainder of the years when they would have retired is unattainable in law; and similarly, claims of holidays, leave, lunch allowances and the like which the unlawfully dismissed employee would have enjoyed had the dismissal not occurred are merely speculative and cannot be justified in law.

In **Betty Tinkamanyire V Bank of Uganda, Supreme Court Civil Appeal No. 12 of 2007** this Court cofined the compensation for the unlawful dismissal of the appellant to the monetary value of the period that was necessary to give proper notice of termination, commonly known in law as compensation in *lieu* of notice.

The principles laid out by this Court in the foregoing case decision are a good guidance to the instant appeal where the first appellate court awarded general damages to the respondent who had already been paid three months' salary in *lieu* of notice by his employer upon termination of his employment.

Upon applying the principles set out by this Court in **Betty Tinkamanyire V Bank of Uganda, Supreme Court Civil Appeal No. 12 of 2007**, I would expect that the first appellate court could only direct the respondent to be paid the three months' salary in *lieu* of notice, as directed by the contract of employment, upon arriving at a finding that the termination of the respondent's employment was unlawful. However, the situation in this appeal, as revealed by the adduced evidence on record, is that the said money had already been paid by the appellant on termination of the contract. This, in my opinion, would infer that there would be no other monies due to the respondent, having been paid all that was due to him, even upon a finding that the respondent's termination of employment was unlawful.

I have also carefully considered the respondent's arguments that the termination ruined his career as a Banker, embarrassed and

inconvenienced him. These are the same arguments he advanced regarding exemplary damages. The respondent's Counsel did not object that the aspect of general and aggravated damages was discussed concurrently by the learned Justices of Appeal.

In my considered opinion, a distinction has to be drawn between the general damages and the aggravated damages. In this appeal, much as the appellant unlawfully terminated the respondent's employment, it had fully paid the three months' salary in *lieu* of notice, which is as good as compensating for the termination of employment without notice. Thus, additional general damages cannot be awarded when the appellant clearly compensated for the termination without notice. That is precisely what general damages would address or atone if such compensation had not been paid to the respondent by the appellant.

It was therefore erroneous for the learned Justices of Appeal to award general damages of UGX 10,000,000/= (Uganda Shillings ten million) to the respondent since there was no pending liability due for either party. The appellant (employer) paid the money that it should have paid on termination of the contract.

This ground of appeal succeeds.

On **ground 3**, the issue is whether the learned Justices of Appeal erred in law in awarding to the respondent aggravated damages of UGX 30,000,000/= (thirty million) there having been no basis in fact or law for the award and/or for award in that quantum.

In arriving at this award, the learned Justices of Appeal stated:-

> *"The crux of the matter is that in this Appeal the Appellant was unfairly dismissed because his chances of securing another job was compromised by a report which was written showing that he was dismissed for unsatisfactory performance without giving him a hearing. He was dismissed summarily and there was an attempt to bring the determination within the terms of Clause 16.3 of the terms of the contract service by paying him three months' in lieu of notice ....*
>
> *The Appellant was dismissed in January 2005 barely ten months later. Because of the Respondent's high handed action; its disregard of the Appellant's future employment prospects in the banking sector; failure to follow its own procedures; dismissing an employee with a proven record of good performance on account of unproved and unrecorded incompetence, we find that this is an appropriate case to award aggravated damages against the respondent in favour of the appellant."*

It was submitted for the appellant that the respondent did not adduce any evidence of aggravating factors to warrant an award of aggravated damages at the trial. Aggravated damages are "extra compensation" to a plaintiff for injury to his feelings and dignity caused by the manner in which a defendant acted; that such damages are awardable by court when aggravating circumstances, like malice, ill will, persistence in a falsehood exhibited by a defendant to the detriment of the plaintiff, *etcetera,* exist in the act or intention of the wrongdoer.

In **Fredrick Zaabwe V Orient Bank & Another, Supreme Court Civil Appeal No.4 of 2006** this Court, in awarding the appellant aggravated damages, considered his station of life as a senior lawyer and respected member of society; that his family lived on the suit property from which they were wrongfully evicted and he had to find alternative accommodation for his family; that he lost some of his books and files as well as his clients; that his livelihood as a lawyer was compromised; that he suffered much humiliation and distress; and that he had been denied use of his suit property for a long time without good reason, and awarded UGX 200,000,000/= (Uganda Shillings two hundred million) as aggravated damages.

The record in this appeal shows that the respondent demonstrated to court the manner in which he was terminated robbed him of the opportunity of getting employment. He was about forty years of age at the time his employment was terminated, and he had a long way to go in his employment career. His record was tainted as an unsatisfactory performer, which is something prospective employers would not ignore. He further demonstrated to the trial court that the way he was terminated in the presence of his junior colleagues was degrading. Following his termination, the appellant was issued a letter titled to whom it may concern stating:-

> *"This is to confirm that the above named was on employee of Uganda Commercial Bank/Stanbic Bank Uganda from 2-May-88 until/31-jan-05 when he left the bank. He was a Banking Assistant by the time he left."*

The apparent contradiction is that the letter (exhibit P5) refers to the respondent as a Banking Assistant, yet he was a Supervisor, and he did not leave the bank out of his own free will but was terminated unlawfully.

In the already cited case of **Bank of Uganda V Betty Tinkamanyire,** Justice Kanyeihamba at page 9 and 10 of the judgment, stated that:-

> *"The illegalities and wrongs of the appellant were compounded by its lack of compassion, callousness and indifference to the good and devoted services the respondent had rendered to the bank. After her unlawful dismissal, the Appellant's officers carried out an inquiry into the Respondent's history of employment and performance. They found that not only had she a clean record but her zeal and performance as an employee of the Appellant were exemplary."*

The same can be said for the respondent in this appeal. He furnished the trial court with his annual performance appraisal reports. He further testified that he received an award of merit and salary increments which impute that he had a clean record. This evidence was not challenged by the appellant.

In the circumstances, I find that the amount of UGX 30,000,000/= (thirty million) covers for the inconvenience the respondent had to deal with, including the manner in which the appellant handled the termination without giving the respondent a chance to be heard, and degrading him among his colleagues. The record still remains to date that he was terminated for unsatisfactory performance. For that reason, I would uphold

the decision of the Court of Appeal and maintain the award of aggravated damages.

This ground of appeal fails.

Overall this appeal fails on grounds 1 and 3 but succeeds on ground 2.

I would therefore order as follows:-

1. This appeal is dismissed in respect of grounds 1 and 3.
2. The award of UGX 10,000,000/= (ten million) by the Court of Appeal as general damages be and is hereby set aside.
3. The award of UGX 30,000,000/= (thirty million only) as aggravated damages to the respondent by the Court of Appeal is upheld.
4. The appellant shall bear the costs of the appeal in this Court and in the Courts below.

Dated at Kampala this ......8th.......... day of ......Oct..................... 2020.

....

Percy Night Tuhaise

Justice of the Supreme Court.

5 **THE REPUBLIC OF UGANDA**

IN THE SUPREME COURT OF UGANDA AT KAMPALA

[CORAM: TIBATEMWA-EKIRIKUBINZA; MUGAMBA; BUTEERA; TUHAISE; CHIBITA; JJSC.]

10 **CIVIL APPEAL NO. 18 OF 2018**

BETWEEN

STANBIC BANK (UGANDA) LIMITED:::::::::::::::::: APPELLANT

15

AND

DEOGRATIUS ASIIMWE:::::::::::::::::::::::::::::::::: RESPONDENTS

[Appeal arising from the judgment of the Court of Appeal of Uganda in Civil
20 *Appeal No.89 of 2015 before (Kakuru, Kiryabwire and Madrama, JJA) dated 10th September, 2018 at Kampala.]*

JUDGMENT OF TIBATEMWA-EKIRIKUBINZA, JSC.

I have had the benefit of reading in draft the judgment of my learned sister, Percy Night Tuhaise, JSC.

25 I agree with her reasoning and the conclusion that the appeal succeeds on ground 2 but fails on grounds 1 and 3.

As the rest of the members on the Coram agree with the lead judgement, I make the following orders as proposed therein:

1. This appeal is dismissed in respect of grounds 1 and 3.
30 2. The award of UGX 10,000,000/= (ten million) by the Court of Appeal as general damages be and is hereby set aside.

5

3. The award of UGX 30,000,000/= (thirty million) as aggravated damages to the respondent by the Court of Appeal is upheld.
4. The appellant shall bear the costs of the appeal in this Court and in the Courts below.

10

Dated at Kampala this ....8th.... day of ....Oct.... 2020.

....

PROF. LILLIAN TIBATEMWA-EKIRIKUBINZA

15 **JUSTICE OF THE SUPREME COURT.**

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

[CORAM: TIBATEMWA, MUGAMBA, BUTEERA, TUHAISE, CHIBITA. JJ.S.C.]

CIVIL APPEAL NO. 18 OF 2018

BETWEEN

STANBIC BANK UGANDA LTD :::::::::::::::::::::::::::: APPELLANT

AND

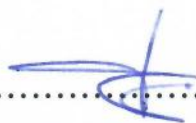
DEOGRATIUS ASIIMWE::::::::::::::::::::::::::::::::::::RESPONDENT

(An appeal from the Judgment of the Court of Appeal (Kakuru, Kiryabwire and Madrama JJA) in Civil Appeal No. 89 of 2015 delivered on the 10th September, 2018.)

JUDGMENT OF HON.JUSTICE MUGAMBA, JSC

I have had the benefit of reading in draft the judgment prepared by my learned sister Hon. Justice Tuhaise, JSC. I agree with her reasoning and the orders she proposes.

Dated at Kampala this....8th.....day of....Oct..................2020



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HON. JUSTICE PAUL MUGAMBA

JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

(CORAM: EKIRIKUBINZA; MUGAMBA; BUTEERA; TUHAISE AND CHIBITA, JJ.SC)

CIVIL APPEAL NO. 18 OF 2018

BETWEEN

STANBIC BANK UGANDA LIMITED::::::::::::::::::::::::::::APPELLANT

AND

DEOGRATIUS ASIIMWE::: RESPONDENT

(Appeal arising from the Judgment of the Court of Appeal of Uganda in Civil Appeal No. 89 of 2015 before Kakuru, Kiryabwire and Madrama, JJA, delivered on the 10th of September, 2018).

JUDGMENT OF BUTEERA, JSC

I have had the benefit of reading in draft the judgment of my learned sister, Percy Night Tuhaise, JSC.

I concur with her judgment and the reasoning therein. I also concur in the orders she has proposed.

Dated at Kampala this......8th......day of.............Oct.............2020.

RICHARD BUTEERA
JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

[**Coram: Tibatemwa- Ekirikubinza; Mugamba; Buteera; Tuhaise; Chibita JJ.S.C.**]

CIVIL APPEAL NO. 18 OF 2018

BETWEEN

STANBIC BANK (UGANDA) LIMITED ---------- APPELLANT

AND

DEOGRATIUS ASIIMWE -------------------------------RESPONDENT

(Appeal arising from the judgment of the Court of Appeal of Uganda in Civil Appeal No. 89 of 2015 before Kakuru, Kiryabwire and Madrama, JJA, delivered on 10th September, 2018)

JUDGMENT OF CHIBITA MIKE, JSC

I have had the benefit of reading the judgment, in draft, of my learned sister, Percy Night Tuhaise, JSC.

I concur with her judgment and the orders she proposes.

Dated at Kampala this ..8...day of ......Oct.......... 2020

Mike J. Chibita

JUSTICE OF THE SUPREME COURT