

**THE REPUBLIC OF UGANDA,
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPEAL NO 3 OF 2011**

(CORAM: KIRYABWIRE, BAMUGEMEREIRE, MADRAMA, JJA)

UGANDA WILDLIFE AUTHORITY}APPELLANT

VERSUS

- 1. KULUO JOSEPH ANDREW}**
- 2. APOHIA MUHIMBURA ATUKUNDA}**
- 3. MOSES MAPESA WAFULA}RESPONDENTS**

(Appeal from the ruling and orders of the High Court (Civil Division) at Kampala (Honourable Mr. Justice Yorokamu Bamwine) dated 5th November, 2010 in Miscellaneous Cause No. 106/2010)

JUDGMENT OF CHRISTOPHER MADRAMA

This is an appeal against the orders of Bamwine, J in an application for judicial review by the Respondents wherein the learned trial Judge granted an order of mandamus requiring the Minister of Tourism, Trade and Industry to appoint a Board of Trustees of Uganda Wildlife Authority in accordance with the qualifications set out in the relevant legislation. Secondly, an order of injunction restraining the 3rd to the 7th Respondents in the application, from acting in the office of Chairman and Trustees, respectively, of Uganda Wildlife Authority. Thirdly, the learned trial Judge issued a declaratory order that the employment services of the second applicant who is now the second Respondent to this appeal were unlawfully terminated. The learned trial Judge further awarded general damages of Uganda shillings 30,000,000/= for unlawful and malicious termination of the services of the second applicant who is now the second Respondent to this appeal. The application succeeded



5 with costs and interest was awarded at 25% per annum on the general damages.

The applicant being aggrieved, appealed to this court on the following grounds of appeal:

- 10 1. The learned trial Judge erred in law and fact in holding that the second Respondent was unlawfully terminated.
2. The learned trial Judge erred in law and fact in awarding the second Respondent Uganda shillings 30,000,000 being general damages for unlawful and malicious termination of service.
- 15 3. The learned trial Judge erred in law and fact in holding that the Appellant pays costs of the application on behalf of the 3rd – 7th Respondents.
- 20 4. The learned trial Judge erred in law and fact in awarding excessive interest of 25% per annum from the date of the ruling till payment in full on the general damages to the second Respondent.

The Appellant prays that the appeal is allowed and the orders of the High Court relating to the termination of the second Respondent, general
25 damages, costs and interest are set aside. The Appellant also prays for costs of the appeal to be provided for in this court and in the High Court.

At the hearing of the appeal, learned Counsel Mr. Kituuma Magala appeared for the Appellant while learned Counsel Mr. Hannington Mutebi holding brief for learned Counsel Mr. Peter Walubiri appeared for the Respondents.
30 Following prior directions of the court, learned Counsel filed written submissions and accordingly prayed that they are adopted as the address of



5 the parties to this court in the appeal. With leave of court the parties relied on their written submissions on record and judgment was reserved on notice.

10 **Submissions of Counsel**

Ground 1

The learned trial Judge erred in law and fact in holding that the second Respondent was unlawfully terminated.

15 The Appellants Counsel submitted that in the notice of motion and paragraph (d) thereof, the Respondents sought a declaration that the second Respondent's services were wrongly terminated by an illegal board. On 30th June, 2010 the board reviewed the performance of the second Respondent according to her letter of appointment dated November 3, 2009 and chose to terminate her contract of employment.

20 It was the case of the second Respondent in the pleadings and affidavit in support that she was never given a chance to be heard before the board terminated her services. Secondly, actions of the board were made in bad faith. Further, the board had no mandate as it had been illegally instituted.

25 The Appellant's Counsel conceded that it is true that the second Respondent was not given a chance to be heard, however according to the decision of Kanyeihamba JSC in **Civil Appeal No 1 of 1998; Barclays Bank of Uganda v Godfrey Mubiru**, that the trial Judge in the Mubiru case erred both in law and fact by finding that the summary dismissal of the Respondent by the Appellant was wrongful and therefore the Respondent was entitled to
30 damages. The Appellant's Counsel submitted that in this appeal, the



5 Appellant duly paid three month's salary in lieu of notice. Further, the
unrebutted evidence in the affidavit in reply of Mark Enoth Kamanzi is that
the second Respondent never performed to the satisfaction of the Appellant.
Secondly, the arguments of the second Respondent was premised on the fact
that the board had no mandate to terminate the employment of the second
10 Respondent and the controversy for determination was whether in the event
of court declaring that the appointment of the 3rd to 7th Respondents was in
contravention of the law all their actions as board of trustees are null and
void.

The Appellant's Counsel submitted that the learned trial Judge held that a
15 declaration that all actions of the board are null and void would be an
absurdity, irrational, and unreasonable and he was not inclined to make such
a finding. The Appellant's Counsel submitted that the board acted lawfully in
as far as the termination of the second Respondent was concerned. He
prayed that the first ground of appeal is answered in the affirmative.

20 **Submission of the Respondent's Counsel in reply to ground 1**

The Respondent's Counsel submitted that as a general overview, the
Appellant in the first ground of appeal criticised the learned trial Judge for
holding that the second Respondent was unlawfully terminated. He
submitted that the Appellant concedes that the second Respondent was not
25 given a hearing. Thirdly it appears that there are inconsistencies regarding
reasons for which the services of the second Respondent were terminated.
The reason given in the termination letter was lack of experience and
irregular recruitment for the position and yet Mark Enoth Kamanzi, the acting
Executive Director of the Appellant in his affidavit in reply stated that the
30 second Respondent's failure to perform to the satisfaction of the board was
the reason for her termination. The Respondent's Counsel submitted that this
was not only inconsistency but also bias because the second Respondent was
given one reason for termination of her services when there was more than



5 one reason. He contended that the existence of the other reasons was sufficient basis to give the second Respondent a hearing before termination of her services.

The Respondent's Counsel relied on article 28 (1) of the Constitution and submitted that the right of fair hearing therein cannot be derogated from and is entrenched by Article 44 (c) of the Constitution. Secondly, the
10 applicant as a public institution is obliged to treat the second Respondent justly and fairly as directed by Article 42 of the Constitution. He submitted that failure to do so entitled the second Respondent to seek redress in a competent court. The Respondent's Counsel further relied on section 66 of
15 the Employment Act 2006 for the proposition that it directs employers under subsection 2 thereof to hear and consider any representations of the employee on any allegations of misconduct or performance before the termination of services. He concluded that the right to a fair hearing was a procedural step that should have been taken before termination of the
20 second Respondent's employment contract.

The Respondent's Counsel invited the court to consider the judgment of the High Court **Mrs. Mary Pamela Sozi v the Public Procurement and Disposal of Public Assets Authority; Civil Suit No 063 of 2012** that an employer cannot hide under the cover of clauses in a contract of
25 employment to deny an employee's rights under the Constitution. The Respondent's Counsel further submitted that in **Barclays Bank of Uganda v Godfrey Mubiru; Civil Appeal No 1 of 1998** and the judgment of Kanyeihamba JSC, the Respondent's summary dismissal was on lawful grounds and distinguishable. On the other hand, the second Respondent's
30 case in the current appeal was that her services were terminated summarily but not for breach of a fundamental term of the contract. It was dismissal on unproved and untested allegations of irregular recruitment and poor performance as stated in the letter of termination.



5 The Respondent's Counsel concluded that the failure of the Appellants to
accord the second Respondent a fair hearing before termination of her
services and hiding behind the option of paying the second Respondent
three month's salary in lieu of the notice was unfair and therefore amounted
to unlawful termination. He submitted that the learned trial Judge rightly
10 held that the second Respondent was unlawfully terminated by directing his
mind on the applicable law and coming to the right conclusion.

Ground 2

**The learned trial Judge erred in law and fact in awarding the 2nd
Respondent Uganda shillings 30,000,000 general damages for unlawful
15 and malicious termination of service.**

Submissions of the Appellant's Counsel

The Appellant's Counsel submitted that the award of Uganda shillings
30,000,000/= was never supported by the second Respondent in the affidavit
in support of the application or in rejoinder. He relied on **Uganda**
20 **Commercial Bank v Kigozi [2002] 1 EA 305** for the holding that general
damages include anticipated future loss as well as damages for pain,
suffering and loss of amenity. He submitted that the Respondent who was
irregularly appointed as a director of corporate affairs, ought to have
appreciated that there was no breach by the Appellant as all that was done
25 was within the terms of contract. The contract provided for a probation
period of 6 months and at the same time a notice period of 3 months or
payment in lieu thereof and therefore she wrongly sought general damages
for termination of services. The Appellant's Counsel further submitted that
damages are presumed in respect of any unlawful act. He contended that all
30 actions of the Appellant were in accord with the terms of the contract and
therefore there was no breach on the part of the Appellant. The Appellants
Counsel relied on **IMPRESS ING - FORTUNATO FEDERICI V IRENE**



5 **NABWIRE (Suing Through her next of friend Dr. JULIUS WABWIRE);**
Supreme Court Civil Appeal Number 3 of 2000 for the proposition that an
appellate court may interfere with an award of damages where the trial court
in assessing the damages took into consideration an irrelevant factor, failed
to take into account relevant factors, or otherwise applied the wrong
10 principle of law (see judgment of Mulenga JSC). Secondly, the court may
intervene where the amount awarded by the trial court is so inordinately low
or inordinately high that it is a wholly erroneous estimate of the damages
suffered.

Learned Counsel further submitted that the proviso to rule 8 of the Judicature
15 (Judicial Review) Rules SI No 11 of 2009, empowers the court to award
damages in an application for judicial review if it is included in the motion. It
is contended that the second Respondent ought to have adduced evidence
in her affidavit in support or rejoinder to prove the injuries, loss suffered and
inconveniences. However, the learned trial Judge just awarded a sum of
20 Uganda shillings 30,000,000/= simply because it had been prayed for without
evidence to support the loss or injury. In the premises, the learned trial Judge
failed to take into account material factors and considered irrelevant factors.

The Appellant's Counsel further contended that the services of the second
Respondent were terminated on 6th July, 2010 and the judicial review
25 application was filed on 16th August, 2010 and ruling delivered on 5th
November, 2010. In those circumstances the second Respondent never
suffered any loss or inconveniences to warrant the award of Uganda shillings
30,000,000/=. Alternatively, the Appellant's Counsel's submitted that the
award of general damages was inordinately high, based on an erroneous
30 estimate of the damages allegedly sustained and following wrong principles.
He prayed that the award of general damages be reduced to a sum of
Uganda shillings 10,000,000/=.

Submissions of the Respondent's Counsel in reply to ground 2



5 In reply the Respondent's Counsel relied on **Patel v Samaj and another; Civil Appeal No 20 of 1942 (1944) 11 EACA 1** where the Court of Appeal of East Africa cited with approval **Flint v Lovell (1935) 1 KB 360** per Greer LJ:

10 "in order to justify reversing the trial Judge on the question of the amount of damages it will generally be necessary that this court should be convinced either that the Judge acted upon some wrong principle of law or that the amount awarded was so extremely high or so very small as to make it in the judgment of this court, an entirely erroneous estimate of the damage to which the plaintiff is entitled".

15 The Respondent's Counsel further relied on **Bank of Uganda v Betty Tinkamanyire SCCA No 12 of 2007** where the Supreme Court awarded general damages for embarrassment and inconvenience of Uganda shillings 100,000,000/= for wrongful termination of employment.

20 The Respondent's Counsel submitted that the second Respondent's services were terminated when she worked for the Appellant in a senior position and as such she was embarrassed for being terminated without a hearing. She was also highly inconvenienced. In the premises, he submitted that the award of Uganda shillings 30,000,000/= was appropriate. Further, he submitted that where an employee is wrongly terminated, he or she is entitled to damages and this is supported by the decision in **Vine v National Dock Labour Board [1956] 1 QB 658** cited with approval in **SCCA No 8 of 2000; Doreen Rugundu v International Law Institute**. He submitted that a person who is wrongly dismissed has no claim for remuneration except under the contract after repudiation and this claim is for damages for having been prevented
25
30 from earning his remuneration. Further, the second Respondent was denied a chance to earn a living entitling her to damages. He supported the holding of the learned trial Judge in the award of general damages of **Uganda shillings 30,000,000/=**.



5 Ground 3 of the appeal was abandoned.

Ground 4

The learned trial Judge erred in law and fact in awarding excessive interest for 25% and from the date of the ruling payment in full on the general damages to the 2nd Respondent.

10 Submissions of the Appellant's Counsel

On ground 4, the Appellant's Counsel submitted that an award of interest is discretionary and is based on the fact that the defendant kept the plaintiff out of his money and the defendant has the money and ought to compensate the plaintiff accordingly (see **Harbutts Plasticide Ltd v Wayna Tank and Pump Company Ltd. [1970] 1 QB 447**. This principle was applied by the Supreme Court in **Civil Appeal No 12 of 1995; Sietco v Noble Builders (U) Ltd**. He further submitted that the basis for the award of interest is a statutory under section 26 (2) of the Civil Procedure Act. He contended that there was no basis for the of an interest at 25% and general damages from the date of the ruling till payment in full. The Appellant's Counsel reiterated earlier submissions on the basis of the award of damages pursuant to unlawful termination of an employment contract. He contended that the Appellant did not owe the Respondent. He contended that it was erroneous to award excessive interest at 25% per annum. In the alternative, he prayed that interest is reduced to a rate of 6% per annum.

Submissions of Respondent's Counsel in reply to Ground 4

In reply the Respondent's Counsel relied on section 26 (2) of the Civil Procedure Act and submitted that it gives the court wide discretion to award interest as it deems fit. In the premises, the learned trial Judge rightly awarded interest of 25% per annum on the general damages on the basis of the circumstances of the second Respondent pursuant to termination and the consequences she faced pursuant to the unlawful termination. He



5 submitted that interest at a rate of 25% per annum on general damages is not excessive but reasonable. He contended that if the Appellant paid the damages soon after the High Court ruling, it would not suffer any interest payment. On the other hand, if there is any delay in the payment of the second Respondent, she would have been kept out of the property
10 (Judgment credit) justifying an award of interest at the rate of 25% per annum.

Resolution of Appeal

I have carefully considered the grounds of appeal, the record of appeal, the submissions of Counsel and the law.

15 The Appellant abandoned ground 3 of the memorandum of appeal. This ground dealt with an appeal against an award of costs against the 3rd – 7th Respondents in the High Court. The rest of the grounds of appeal namely grounds 1, 3, and 4 concern the issue of termination of the second Respondent's contract of employment with the Appellant. In the
20 circumstances it is necessary to consider the basis of the holding of the learned trial Judge that the second Respondent's services were unlawfully terminated. This issue further relates to ground 1 of the appeal. Secondly, grounds 2 and 4 of the appeal specifically deal with consequential orders of the award of damages and interest pursuant to the finding that the second
25 Respondent's services were unlawfully terminated. For ease of reference, I set out the remaining 3 grounds of appeal below:

1. The learned trial Judge erred in law and fact in holding that the second Respondent was unlawfully terminated.

30 2. The learned trial Judge erred in law and fact in awarding the second Respondent Uganda shillings 30,000,000/= being general damages for unlawful and malicious termination of service.



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3. The learned ...

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4. The learned trial Judge erred in law and fact in awarding excessive interest of 25% per annum from the date of the ruling till payment in full on the general damages to the second Respondent.

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It is the duty of this court as a first appellate court to re-evaluate the evidence and come to its own conclusions on all matters of fact bearing in mind that it did not have the opportunity of hearing and seeing the witnesses testify. In **Peters v Sunday Post Limited [1958] 1 EA 424**, at page 429 the Court of Appeal for East Africa held that:

"An appellate court has, indeed, jurisdiction to review the evidence in order to determine whether the conclusion originally reached upon that evidence should stand. But this is a jurisdiction which should be exercised with caution: it is not enough that the appellate court might itself have come to a different conclusion.

20

The Supreme Court of Uganda reaffirmed this principle in **Kifamunte Henry v Uganda; S.C.C.A. No. 10 of 1997** when they stated that the duty of a first appellate is:

25

"... to review the evidence of the case and to reconsider the materials before the trial Judge. The appellate court must then make up its own mind not disregarding the judgment appealed from but carefully weighing and considering it."

30

The principle for the court to caution itself may not be applicable to the facts of this appeal because evidence was adduced by way of affidavits and documents attached thereto and no deponents to the affidavits were cross examined. The court was addressed in written submissions after a scheduling conference and ruling was reserved on notice and delivered accordingly. In the circumstances we have the same materials as that before the learned trial Judge and do not need to caution ourselves in the evaluation of the affidavit

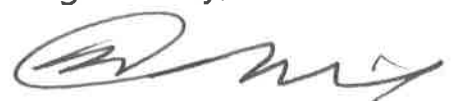


5 evidence and documents attached in support and opposition to the application in the High Court.

The applicant's application in the High Court was for judicial review in which the applicants sought *inter alia* for the following reliefs:

- 10 1. An order for mandamus to issue requiring the Minister of Trade Tourism and Industry to appoint a Board of Trustees for the Uganda Wildlife Authority in accordance with the qualifications set out in paragraph 1 of the Schedule to the Wildlife Act, cap 200 as amended by Statutory Instrument No 26 of 2006.
- 15 2. An injunction to restrain the 3rd, 4th, 5th, 6th, and 7th Respondents from acting in the office of Chairman and Trustees respectively of the Uganda Wildlife Authority for which the not entitled.
- 20 3. An injunction to issue restraining the Respondents from
 - a. Implementing the purported termination of the 3rd Respondent as Executive Director or terminating his contract of employment.
 - b. Initiating or continuing any disciplinary proceedings against any other staff the Uganda Wildlife Authority or terminating their employment.
 - 25 c. Terminating any contracts, tenancy agreements, sport hunting permits, memorandum of understanding and concessions already awarded to various persons....

30 Most importantly, and what is relevant to grounds 1, 2 and 4 of the appeal, the applicants in the High Court sought a declaration that the second applicant was wrongly terminated and by an illegal board. Secondly, they sought a declaration that the purported termination of the third applicant by the illegal Board of Trustees and not the Minister is illegal. Lastly, and in the



5 alternative, they sought an order that the second and third applicants be awarded damages for wrongful termination.

The learned trial Judge set out 8 issues for determination but I need only to refer to issues numbers 3 – 8. These are:

- 10 3. Whether the appointment of the 3rd – 7th Respondents as members of the Board of Trustees was in accordance with the law.
4. If the appointment was not in accordance with the law, whether the 3rd – 7th Respondents continue to act in office illegally.
- 15 5. Whether in the event of a court declaring the appointment of the 3rd – 7th Respondents was in contravention of the law, all their actions as Board of Trustees are null and void.
6. Whether the termination of the second applicant's contract was lawful.
7. Whether the termination of the third applicant's contract was lawful.
8. Remedies

On issue number 3, the learned trial Judge for and I quote:

20 "in all these circumstances, it is plain to me that the appointment of the 3rd – 7th Respondents is tainted with illegality in the sense that it was not done in accordance with the law."

With regard to issue number 4 as to whether the 3rd – 4th Respondents continue to act in office illegally, the learned trial Judge found as follows:

25 "I would make a finding that the board was illegally constituted and therefore lacks capacity to continue in office."

On issue No 5 on whether the actions as Board of Trustees are null and void, the learned trial Judge found as follows:



5 "the applicants are seeking an injunction to restrain 3rd – 7th from staying in office
illegally and performing the range of acts stated in the application. Mr. Walubiri
has invited me to find that this issue, in as far as it relates to past actions of the
board was erroneously framed; that it is outside the scope of the pleadings. Both
10 Counsel for the first Respondent, Ms. Mutesi, and Mr. Kituuma- Magala for the
remaining Respondents are in agreement with Mr. Walubiri's submission.

In view of that concession on the part of Counsel and believing, as I should, that a
declaration that all actions of the board are null and void would be an absurdity,
irrational and unreasonable, I am inclined not to make such finding."

15 On issue number 6 as to whether the termination of the second applicant's
contract was not lawful, the learned trial Judge found that there was failure
to observe the basic rules of natural justice or failure to act with procedural
fairness in that she was not given an opportunity to state her case and rebut
any allegations made against her and to give an explanation on the issues at
hand.

20 "...the overall effect of denial of natural justice to an aggrieved party renders the
decision void and of no effect. Applying the same principle to the instant case and
with the greatest respect to those who terminated her services, therefore, I would
answer this issue in the negative and I have done so."

25 The second applicant is now the second Respondent to this appeal. From the
grounds of appeal, no issues were framed regarding the 3rd Respondent.
The learned trial Judge on the issue of remedies issued a declaration that the
second applicant was unlawfully terminated (from the employment service
of the Appellant).

30 The Appellant's Counsel in his written submissions highlighted the fact that
the pleading of the Respondents in the High Court together with the affidavit
in support show that they sought a declaration that the services of the
applicants were terminated by an illegal board. Secondly, the pleadings of
the second Respondent were that she was not given a hearing. Thirdly, that
the action of the Appellant was made in bad faith. Lastly, the case of the



5 Respondents in the High Court was that the board had no mandate and it was illegally constituted. Further, both Counsel agreed that the second Respondent was not given a hearing. The learned trial Judge found that the decision of the board was void and of no legal effect.

10 The question for consideration is whether the learned trial Judge erred in to find that the termination of the services of the second Respondent was void and of no legal effect. Clearly the learned trial Judge found that the second Respondent had not been given a hearing at all which is a fundamental rule of justice enshrined in article 28 (1) as well as article 44 (c) of the Constitution. I may as well add that it is enshrined in article 42 of the Constitution which
15 commands that anybody appeared before any administrative court or tribunal is entitled to be treated fairly and justly and is entitled to apply to a competent court for redress in respect of any administrative decision made against him or her. Nonetheless, another basis for finding that the decision to terminate the services of the Appellant is void and of no legal effect could
20 have been the fact that the board was not legally constituted.

O. Hood Phillip's Constitutional and Administrative Law; 7th edition at page 662 describes what an ultra vires rule maybe:

25 "A minister, a local authority and any public body may only validly exercise powers within the limits conferred on them by common law or statute. A decision may fall outside those powers and so be *ultra vires* because the body concerned has attempted to deal with the matter outside the range of the power conferred on it – substantive *ultra vires* – or because it has failed, in reaching its decision, to follow a prescribed procedure – procedural *ultra vires*.

30 Failure to give a deserving party a hearing falls under the said procedural ultra vires. It is not only contrary to article 28 (1) and article 44 (c) and therefore ultra vires, a person who is treated unfairly in any administrative decision is entitled to be treated justly and fairly in terms of article 42 of the Constitution. Article 42 of the Constitution provides that:



5 "Any person appearing before any administrative official or body has the right to be treated just and fairly and shall have the right to apply to a court of law in respect of any administrative decision taken against him or her."

The Respondents alleged that the body which terminated the services of the second Respondent to this appeal was not lawfully constituted in that it had
10 been illegally appointed. The learned trial Judge was not inclined to grant a blanket declaration that the actions of the Board of Trustees was a nullity, though the law is clear that the actions of any person who is not authorised to act by a statute where power is conferred by a statute is a nullity.

According to H. W. R. Wade in **Administrative Law, Fifth Edition** pages 39
15 - 40:

"Any administrative act or order which is ultra vires or outside jurisdiction is void in law, i.e. deprived of legal effect. This is because in order to be valid it needs statutory authorisation, and if it is not within the powers given by the Act, it has no legal leg to stand on. The court will then quash it or declare it to be unlawful or
20 prohibit any action to enforce it. The terminology here depends to some extent on the remedy granted. 'Quashing' is used in connection with the remedy of certiorari, but in effect it is simply a declaration of nullity. A declaratory judgment is an alternative remedy with similar effect: it declares the offending act to be a nullity in law. Prohibition of execution may be an order of prohibition (a prerogative
25 remedy) or an injunction. But these technicalities make no difference to the legal result: an act found to be outside jurisdiction (ultra vires) is void and a nullity, being destitute of the statutory authority without which it is nothing.

Once the court has declared that some administrative act is legally a nullity, the situation is as if nothing had happened. In this way the unlawful act or decision
30 may be replaced by a lawful one. If a compulsory purchase order is quashed as being ultra vires, there is nothing to prevent another order being made in respect of the same land, provided it is done lawfully.

It is a fact that the learned trial Judge granted an order of mandamus requiring the Minister of Tourism, Trade and Industry to appoint a Board of
35 Trustees of Uganda Wildlife Authority. By that act the learned trial Judge

5 recognised that the board was not lawfully constituted. Secondly, the learned trial Judge issued an order of injunction restraining the 3rd to the 7th Respondents in the application from acting in the office of chairman and the trustees respectively of Uganda Wildlife Authority. Again the order flows from a recognition that the Board of Trustees was not lawfully constituted.
10 Where a board is not lawfully constituted, are their actions not ultra vires or without jurisdiction? Nonetheless, the learned trial Judge issued a declaratory order that the employment services of the second Respondent to the appeal were unlawfully terminated on the ground that she was not given a hearing.

15 Learned Counsel for the Appellant rested his case on the proposition that the second Respondent was on probation and after 6 months was not confirmed. Secondly, the fact that she could be summarily dismissed and thirdly, her services terminated on the payment of 3 months' salary in lieu of notice. Last but not least the Respondents Counsel pointed out certain inconsistencies in
20 the grounds for termination of services of the second Respondent. This is because, the first reason given in the termination letter was lack of experience and irregular recruitment to the position. But the evidence of the Executive Director of the Appellant in his affidavit in reply was that the second Respondent failed to perform to the satisfaction of the board. The second
25 reason obviously relates to the fact that the contract was subject to a probationary period of 6 months and therefore subject to confirmation of a four-year contract.

It should be noted that the appointment of the second Respondent is supported by a letter attached to the second Respondent's affidavit dated
30 3rd of November 2009 as Director Corporate Affairs and paragraph 2 thereof which is relevant states as follows:

"the appointment is on a four-year contract, and is renewable at the discretion of the Board of Trustees/management. You will be subjected to a probationary period



5 of 6 months. Your confirmation in this appointment will be dependent on your successful completion of the probation."

In another letter dated 6th July, 2010 the Chairman/Board of Trustees of the Appellant wrote to the second Respondent to this appeal on the subject of "TERMINATION OF SERVICES AND PAYMENT IN LIEU OF NOTICE". The letter
10 reads as follows:

"At the Board of Trustees meeting held on the 20th day of June 2010 at UWA Conference Room 3, it was discovered that you were irregularly recruited because you do not have the required experience for the job. As a result, the Board of Trustees rejected to confirm you into Uganda Wildlife Authority Employment.

15 In view of the above, I regret to inform you that your services with Uganda wildlife authority are no longer required with effect from Thursday 8th July 2010. As per your contract, you are entitled to three month's salary in lieu of notice.

...

20 I would like to take this opportunity to thank you for the services you have rendered to UWA and wish you the best in your future endeavours."

It is clear from the preceding letter that the failure to confirm the Respondent for a four-year contract was not because of non-performance of her duties or incompetence but rather because it is alleged that she was irregularly recruited and did not have the required experience for the job. I have
25 carefully considered the terms of contract between the Appellant and the second Respondent. This is an agreement dated 1st December, 2009 between the Appellant and the second Respondent entitled "Employment Contract". Clause 2 of the contract stipulates that the duration of the contract is for 4 years' subject to confirmation after 6 months of probation or for a
30 determined period of time. Secondly, it is provided that renewal of the contract shall be at the discretion of the Board of Trustees.



5 Further, clause 3 of the contract stipulates that the Board of Trustees may terminate the employment at any time by written notice of not less than 3 months or by payment in lieu thereof. It is further provided that:

10 "(a) The expiry or termination of the contract however arising shall not affect such provisions thereof as expressed to operate or have effect hereafter and shall be without loss of any right of action already accrued or any breach of this contract by the parties."

15 The contract of the parties is clear that the employment contract may be terminated by the Appellant by giving not less than 3 months' notice in writing or by payment in lieu thereof. The Appellant was given payment in lieu of notice. However, the Appellant was also given reasons for termination of her services and it is apparent that the termination was not on the ground of incompetence but rather on the ground that she was not qualified for the job or for not having the necessary qualifications for the job. It is not a coincidence that the services of the second Respondent were not confirmed after the 6 months' probationary period. However, the Appellant did not proceed under the contractual provision but rather give reasons for termination of services. It should have been sufficient to say that her services were not confirmed at the discretion of the board. The termination envisaged upon notice has nothing to do with confirmation or no confirmation upon
25 expiry of the probationary period.

Generally, section 67 of the Employment Act 2006 provides that section 66 of the Employment Act does not apply to probationary contracts as it stipulates as follows:

"

30 67. Probationary contracts

(1) Section 66 does not apply where a dismissal brings to an end a probationary contract.



- 5 (2) The maximum length of a probationary period is 6 months, but it may be extended for a further period of not more than 6 months with the agreement of the employee.
- (3) An employer shall not employ an employee under a probationary contract on more than one occasion.
- 10 (4) A contract for a probationary period may be terminated by either party by giving not less than 14 days' notice of termination, or by payment, by the employer to the employee, of 7 days' wages in lieu of notice."

15 It is clear from section 67 (1) of the Employment Act that section 66 does not apply where the dismissal brings to an end a probationary contract. In this case the probationary period of 6 months was over when the services of the 2nd Respondent were terminated. The term "dismissal from employment" is defined by the Employment Act 2006 to mean

20 "dismissal from employment" means the discharge of an employee from the employment at the initiative of his or her employer when the said employee has committed verifiable misconduct."

In the circumstances of this appeal, the Appellant's services were not confirmed on the allegation that she did not qualify for the job and had got the job irregularly. In other words, she should not have been recruited in the first place, or be on probation at all. This was not envisaged in the contract and she was further given payment in lieu of notice. However, she was not dismissed. In the circumstances, she was entitled to just treatment in terms of article 42 of the Constitution. In any case, section 66 (1) of the Employment Act, 2006 provides that:

66. Notification and hearing before termination

- 30 (1) Notwithstanding any other provision of this Part, 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



5 considering dismissal and the employee is entitled to have another person of his
or her choice present during this explanation.

10 There are several subsections of section 66 that may be considered but they
also deal dismissals and I need not refer to them. Was the Appellant entitled
to discontinue the services of the second Respondent upon giving her
10 payment in lieu of notice in the circumstances? The answer would be yes if
the circumstances were not that the employer wrote that she was irregularly
employed and not qualified for the job. The law allows an employer to give
an employee statutory or contractual notice of termination of services or
payment in lieu thereof in any contract of service.

15 The circumstances of the Appellant's appeal are clear in that the reasons
given for the termination of the second Respondent's services are not
satisfactory and she was entitled to a hearing because it is alleged that she
was irregularly recruited and she did not have experience for the job. This
was in writing and the conclusion was reached without giving her hearing. It
20 is a fundamental principle of natural justice or a principle of fundamental
justice enshrined in article 42 of the Constitution that a person appearing
before any administrative tribunal or official shall be treated justly and fairly
and is entitled to apply to a competent court in respect of any decision made
against him or her. I therefore do not find any basis to fault the decision of
25 the learned trial Judge that the Appellant was not given a hearing let alone
a fair one. The letter of termination could be a stain in her potential career
potentially affecting her prospects for employment and she was in the
circumstances entitled to challenge the letter on any valid grounds for having
been reached without giving her an opportunity to defend herself. The
30 decision about the grounds for the termination of her services should not
have been reached before giving her a hearing.



5 According to **Administrative Court: Practice and Procedure: Blackstone Chambers, General Editor: Beverley Lang QC**: on the right to be heard at pages 32 paragraph 2 - 86

The general principles set out in R v Secretary for the Home Department Ex Parte Doody [1994] 1 AC 531 at 560 per Lord Mustill:

10 "fairness will very often require that a person who may be adversely affected by the decision will have an opportunity to make a representation on his own behalf either before the decision is taken with a view to producing a favourable result; or after it is taken, with a view to procuring its modification; or both."

15 Further the authors note that the "right to be heard" has been held to include a right:

(1) to note charges/allegations made (Ridge v Baldwin [1964] AC 40)

(2) to know what evidence has been given against them (Kanda v Government of the Federation of Malaya [1960] AC 322)

20 (3) To have time to prepare the case, which may require an adjournment (R v Thames MC Ex Parte Polemis [1974] 1 WLR 1371);

(4) to make a representation (O'Reilly v Mackman [1983] 2 AC 237 at 279 paragraphs F – G per Lord Diplock)

(5) to have an oral hearing (R v Parole Board Ex Parte Smith & [2005] UK HL 1)

25 (6) where witnesses are called at an oral hearing, to cross examine them (Bushell v Secretary of State for the Environment [1981] AC 75 at 116 D per Lord Edmund Davies; R v Army Board of the Defence Council ex parte Anderson [1992] 1 QB 169 at 188 per Taylor LJ)

30 I wholly agree with the above summary and I would find that the learned trial Judge reached the correct conclusion that the termination of the second Respondent's services were unlawful, the second Respondent not having been accorded a hearing.



5 Secondly, I would find that the learned trial Judge ought to have pronounced
himself on the effect of the Board of Trustees of the Appellant sitting and
determining the matter when they were unlawfully constituted. Their
decisions would be a nullity and in fact the learned trial Judge following his
10 finding on the constitution of the Board of Trustees, granted an injunction
restraining them from further acting in that capacity. That decision was not
appealed and it stands. There is no evidence or submission that the second
Respondent was recruited by the same Board. In the premises, ground 1 of
the appeal has no merit and is disallowed.

Ground 2.

15 **The learned trial Judge erred in law in awarding the 2nd Respondent
Uganda shillings 30,000,000/= being general damages for unlawful
and malicious termination of service.**

The crux of the submission of the Appellant is that the damages needed to
be proved before the award. The fundamental principle for the award of
20 damages is *restitutio in integrum*. In **Dharamshi v Karsan [1974] 1 EA 41**
the East African Court of Appeal cited with approval Halsbury's Laws of
England for the principle that:

"In Volume 11, p. 233, para. 400, Halsbury Laws of England, 3rd edn., it is
stated:

25 "The fundamental principle by which the Courts are guided in
awarding damages is *restitutio in integrum*. . ."

The principle means that the Plaintiff is to be restored as nearly as possible to a
position he or she would have been at had the injury complained of not occurred.
In **Halsbury's laws of England Fourth Edition Reissue Volume 12 (1) Para**
30 **812** general damages are defined as those losses, usually but not exclusively
non-pecuniary, which are not capable of precise quantification in monetary
terms. They are those damages which will be presumed to be the natural or



5 probable consequence of the wrong complained of; with the result that the Plaintiff is required only to assert that such damage has been suffered. There is therefore no requirement to specifically plead or quantify the general damages suffered.

10 Pain, suffering, inconveniences, embarrassment etc. is a suffering which may be presumed to follow the injury complained about. They cannot be specifically quantified in monetary terms but may be presumed to be the natural or probable consequence of the wrong suffered at the hands of the defendant. They are matters that may be compensated or atoned for by an award of general damages at the discretion of the court.

15 The court was referred to the decision of this court in **Uganda Commercial Bank v Kigozi [2002] 1 EA 305**. In that appeal, the Appellant's appeal was that the trial Judge erred in law and in fact in awarding the Respondent general damages in a total sum of **Uganda Shillings 3,000,000/-**. This total sum comprised of **Uganda shillings 2,000,000/-** for inconveniences as a
20 consequence of the Appellant impounding his vehicle, **Uganda shillings 500,000/=** for wrongful arrest and detention and **Uganda shillings 500,000/=** for assault while under detention. The Appellant had been awarded damages for loss of earning separately. The Court of Appeal found no merit in the ground of appeal and held that the award of special damages
25 was awarded for loss of earnings for unlawful detention of the Respondent's vehicle but the general damages appealed against were awarded for inconveniences suffered for not having the vehicle. Further, general damages were awarded for the tort of assault, wrongful arrest and detention suffered by the Respondent in an attempt by officials to recover money from the
30 Respondent for which the Appellant was vicariously liable.

The decision in **Uganda Commercial Bank v Kigozi** (supra) supports the Respondents case because general damages were upheld for the presumed damages as a consequence of torts suffered by the Respondent.



5 Granted, the 2nd Respondent was offered payment of three months' salary in lieu of notice. The sum was stated to be contractual and but it did not compensate the 2nd Respondent for the inconvenience, pain and suffering she went through. The award of general damages would cover the inconvenience, the damages to her prospects by the termination letters and
10 embarrassment she suffered. Further the breach of her fundamental right to be treated justly and fairly attracts general damages. Her services were terminated without a chance of explaining anything and on grounds that she was inter alia, irregularly appointed. The record of her employment was tarnished without a hearing in breach of the right to be treated justly and
15 fairly as enshrined in article 42 of the Constitution. The learned trial Judge awarded the general damages for unlawful and malicious termination of services. Malicious termination of services can attract aggravated damages which are over and above the usual measure of damages. I would find that general damages were properly awarded.

20 In the alternative ground, that the damages were manifestly excessive, I do not agree. The damages were commensurate with the status of the second Respondent as a corporate secretary of Uganda Wildlife Authority. I would in the premises disallow ground 2 of the appeal.

As noted above, ground 3 of the appeal was abandoned.

25 Ground 4

The learned trial Judge erred in law and in fact in awarding excessive interest of 25% per annum from the date of the ruling till payment in full on the general damages to the Second Respondent.

The learned trial Judge did not give reasons for the award of interest at 25%
30 per annum on the general damages. Section 26 of the Civil Procedure Act gives wide discretion to a Judge to award reasonable interest. Under section



5 26 (2) of the Civil Procedure Act the court has discretion where a decree is for payment of money to order interest:

10 "at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit."

15 In the circumstances of this appeal the award of general damages was compensation and no other monetary award was given to the second Respondent. Rule 8 of the Judicature (Judicial Review) Rules, 2009 allows an award of general damages if it is pleaded which the applicant did plead for in paragraph (f) of the pleading by Notice of Motion. The general damages being an order that is compensatory following unlawful termination of services and a declaration of breach of the fundamental non derogable rights of the second Respondent, reasonable interest may be awarded on the award.

25 It has been held that an award of interest is compensatory. In **Riches v Westminster Bank Ltd [1947] 1 All ER 469 HL** and at page 472, Lord Wright held that:

"...the essence of interest is that it is a payment which becomes due because the creditor has not had his money at the due date.

30 The second Respondent upon judgment became a judgment creditor entitled to the money. If the money is withheld, it should attract interest per annum. 6% per annum interest is only presumed interest where the Judge has not awarded interest under section 26 (3). Where reasonable interest is awarded, the trial Judge takes into account the possibility of inflation and



5 depreciation of the shilling. Secondly, the fact that the judgment creditor may not have the use of the money sooner and may be delayed so as not to erode the compensation awarded by the court through depreciation of the value of the award.

10 In **Tate & Lyle Food and Distribution Ltd v Greater London Council and another [1981] 3 All ER 716** Forbes J held that the award of interest should:

“reflect the rate at which the Plaintiff would have had to borrow money to supply the place of that which was withheld.”

15 I agree. Interest ought to be awarded at the rate of lending by the banks which is about 18 – 20% per annum. In the premises I would find that the award of interest at 25% per annum was excessive and I would partially allow ground 4 of the appeal. I would substitute therefore an award of interest at 17% per annum from the date of the award of the High court till payment in full.

20 The Appellant’s appeal having substantially failed, I would order that the Appellant meets 3 ¼ of the taxed costs of the second Respondent in this court.

Dated at Kampala the 11th day of March, 2021



Christopher Madrama

25 **Justice of Appeal**

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPEAL NO. 3 OF 2011

(Appeal from the Ruling of the High court of Uganda at Kampala (Civil Division) before
Yorokamu Bamwine J dated 5th day of November, 2010 in Misc. Cause No.106 of 2010)

UGANDA WILDLIFE AUTHORITY===== APPELLANT

VERSUS

- 1. KULUO JOSEPH ANDREW**
- 2. AOPHIA MUHIMBURA**
- 3. MOSES MAPESA WAFULA=====RESPONDENT**

CORAM: HON. MR. JUSTICE GEOFFREY KIRYABWIRE, JA
HON. LADY JUSTICE CATHERINE BAMUGEMEREIRE, JA
HON. MR. JUSTICE CHRISTOPHER MADRAMA, JA

JUDGMENT OF HON. MR. JUSTICE GEOFFREY KIRYABWIRE, JA

I have had the advantage of reading the draft Judgment of my learned brother Hon. Mr. Justice Christopher Madrama JA.

I agree with him that this Appeal substantially fails for the reasons he has set out in his Judgment. I also agree with the orders he has proposed.

As the Hon. Lady Justice Catherine Bamugemereire, JA also agrees.

It is hereby ordered as follows;

1. The Appeal substantially fails.
2. The Appellant is ordered to pay general damages of Ug Shs. 30,000,000/= to the second Respondent.
3. The award of interest is hereby substituted with an award of 17% per annum from the date of the award of the High court till payment in full.
4. The Appellant is ordered to pay 3¼ of the taxed costs of the second Respondent's costs in this court.

Dated at Kampala this.....11th..... day ofMarch.....2021.



HON. MR. JUSTICE GEOFFREY KIRYABWIRE
JUSTICE OF APPEAL

THE REPUBLIC OF UGANDA
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HON. JUSTICE CATHERINE BAMUGEMEREIRE, JA
HON. MR. JUSTICE CHRISTOPHER MADRAMA, JA

JUDGMENT OF HON. JUSTICE CATHERINE BAMUGEMEREIRE, JA

I have had the advantage of reading in draft the Judgment of my learned
brother Hon. Mr. Justice Christopher Madrama JA.

I agree with his decision and orders.

Dated at Kampala this.....^{11th}..... day of ...*March*.....2021.



.....
HON. JUSTICE CATHERINE BAMUGEMEREIRE
JUSTICE OF APPEAL