THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPEAL NO. 154 OF 2015

[Coram: R. Buteera DCJ, Bamugemereire & Musota, JJA]

HOT LOAF BAKERY LIMITED::APPELLANT

VERSUS

NDUNGUTSE XAVIER AND 28 OTHERS:::RESPONDENTS

(An Appeal from the decision of Elizabeth Musoke J, as she then was, in HCCS No.133 of 2009, delivered at the High Court of Uganda (Civil Division) at Kampala)

Employment: Unlawful Dismissal, over time pay, payment in lieu of notice, severance pay, award of general damages: Jurisdiction whether the High court has jurisdiction vis-à-vis a Labour Officer.

JUDGMENT OF CATHERINE BAMUGEMEREIRE JA

This appeal arises from the decision of Elizabeth Musoke J, as she then was, in which in which she entered judgment for the respondents with the following: Declarations that the plaintiffs were wrongfully and unlawfully terminated, the High Court has jurisdiction over the matter, the respondents were each entitled to payment in lieu of notice to the tune of UGX 6,621,000, 491 shillings**(with interest at the rate of 20% per annum from the date of judgment still payment in full)**, they were entitled to overtime pay to the tune of UGX223,676,676 **with interest at court rate from that date of judgment still payment in full** severance pay consolidated to a salary of two months each year depending on the salary **(with interest at the rate of 20% per annum from the date of judgment still payment in full)** and general

damages of UGX 3,000,000 each **with interest at court rate until the date of payment in full** and costs of the suit.

The 29 respondents are former employees of the appellant. The appellant is a limited liability company dealing in bread, pastries and confectionary which trades as Hot Loaf Bakery Ltd. The appellant was sued by the defendants, jointly and severally, for breach of contracts of employment and unlawful dismissal without notice, without any hearing and without paying them their terminal benefits. The respondents who were formerly the plaintiffs were employed by the appellants/defendants at various dates between May 2001 and June 2006 They were deployed to various positions as bakery assistants, supervisors, office messengers and team leaders. On the 3rd of December 2006 they were all summarily dismissed. The respondents prayed for awards of payment in lieu of notice; unpaid overtime; compensatory orders; severance pay, general damages and interest on costs. The defendant on the other hand denied liability and prayed that the court find that the summary dismissal was justified due to the respondent's/plaintiffs' fundamental breach of contracts of employment which amounted to gross misconduct. It was the defendant's contention that the plaintiffs were not entitled to notice and that the plaintiffs were paid overtime pay at the end of each month together with their salary; they asked court to find that the plaintiffs had no entitlement to NSSF and that the complaint was lodged by the plaintiffs before the labour office in compliance with the employment

act of 2006 and that the labour office had the decision made on the two of the matters in 2007 under **Complaint No. CB 1024 of 2006**.

Grounds of appeal

1. **The learned trial judge erred in law and in fact in finding that the High Court had original jurisdiction of the matter wherein a decision had already been reached by the labour office.**
2. **The learned trial judge erred in law and in fact in coming to the decision that the appellants dismissal of the respondents was unlawful.**
3. **The learned Judge's award of overtime payment, general damages, payment in lieu of notice, severance pay to the respondents in error as it was excessive and contrary to the law.**

Representations.

When this appeal came up for hearing, the appellant was represented by Mr. Fred Muwema of Muwema and company advocates. The Respondents scheduling notes were drawn by Dr. John Jean Barya of Barya, Byamugisha and Company Advocates. The respondent's counsel filed scheduling notes. This court relied on the scheduling notes and the submissions of both sides to arrive at its judgment.

Submissions for the Appellant

Ground No. 1
The learned trial Judge erred in law and in fact, in finding that the High Court had original jurisdiction over a matter in which a decision had already been reached by the Labour Officer.

In resolving the above ground of appeal, counsel for the appellant submitted that this court had a duty to establish whether or not the

complaints involved in this appeal had in fact hitherto been brought before the Labour office and whether a decision had been rendered in respect thereof. It was his submission that the matter had already been heard and determined by the Labour Officer vide Complaint CB No. 1024 of 2006. Counsel admitted that it was not in contention that the High Court has original jurisdiction over all matters including labour disputes. He argued that it was not in dispute that the law allows an employee with a complaint to file the same to the Labour office within six months after the date of dismissal as provided for under section 70 Employment Act, 2006.

Counsel for the appellant invited this court to find that the respondents mis-applied the above-mentioned provision of the law when they filed Complaint No. CB 1024 of 2006 and yet they ignored a decision which was rendered on 17th of May 2006.

It was the submission of counsel for the appellants that when the respondents were dissatisfied with the decision of the labour officer on a complaint made under the Act they ought to have appealed against the decision in the Industrial Court under section 94 of the Employment Act 2006. Counsel argued. He contended that the respondents' option to either file a suit in the High Court or a complaint with the Labour office was extinguished the moment they opted for the latter. He argued that once that decision was rendered, the respondents were then estopped from filing a fresh suit in the High

Court. Counsel submitted that the respondents were barred by the principle of **res judicata**.

Res judicata is a concept, among others which bars re-litigation of factual fact issues that have already been necessarily determined by a judge or jury as part of an earlier claim. Res Judicata presupposes that; there are two opposing parties; there is a definite issue between them; there is a tribunal competent to decide the same and finally that within its, competence the tribunal has done so. Counsel submitted that the Labour officer was a competent tribunal to handle the respondent's complaint and that he did so ably. He prayed that this court upholds the ground of appeal insofar as the trial court erred, both in law and in fact, in finding that the High Court had jurisdiction over the matter.

Ground No. 2

2. The learned trial judge erred in law and in fact in coming to the conclusion that the appellants dismissal of the respondents was unlawful.

Counsel for the appellant contended that the summary dismissal of the appellants was lawful and justified. His submission was that the trial Judge in her Judgment concluded that if the plaintiffs conduct or misconduct was regarded as amounting to disregard of essential conditions of the contract of service and therefore justifying summary dismissal, the plaintiffs had to be accorded the right to be heard. He further submitted that the law allows an employer to summarily dismiss an employee for gross misconduct without the need for a

hearing or notice. He submitted that in the alternative, and without prejudice to the foregoing the respondents were accorded a fair hearing prior to the dismissal.

Counsel invited this court to find that in the cross examination of PW1 he testified that the workers gathered at the main office to see the Ag General Manager Humphrey Nzeyi to inform him of the difficulties they were facing and that it was further the testimony of PW1 that Mr Nzeyi later came out of his office and held a meeting with the workers. PW1 further testified, during the re-examination that the workers had meetings with Mr. Nzeyi in which meetings, their grievances were heard and undertakings were made to have the grievances addressed. It was his submission that after their issues had been entertained, the respondents' subsequent action of absconding from work before the grievances were addressed warranted summary dismissal.

Counsel invited this court to adopt the reasoning in DFCU Bank v Donna Kamuli Court of Appeal Civil Appeal No. 121 of 2016

> "the hearing contemplated by section 66 of the Employment Act 2006 did not require an employer to hold a mini quote. The hearing can be conducted either through correspondence or through face to face hearings..."

Counsel for the respondents submitted that the respondents were engaged in illegal strikes and in total defiance of the directive to return to work, walked out of the gate and did not immediately report to work. Counsel argued that it was this defiance and adamant refusal

to report to work that justified the summary dismissal. He relied on **Barclays Bank v Godfrey Mubiru SCCA 1 of 1998** in which the supreme court upheld the principle that summary dismissal would be justified where an employee commits a serious breach of duty, amounting in effect to a repudiation by the employee or his obligations under the contract of employment. The employer has no duty to give notice.

Ground No. 3

3. **The learned Judge's award of overtime payment, general damages, payment in lieu of notice, severance pay to the respondents in error as it was excessive and contrary to the law.**

Counsel for the appellant submitted the trial Judge erred when she granted the respondent's claimed for UGX 6,621,491/=, as an entitlement for payment in lieu of notice on account of unlawful dismissal. The appellant, on the other hand, contended that the summary dismissal was justified in the circumstances and that it was not required to give any notice to the respondents. The case for the appellant is that the respondents had waived their rights by deliberatively participating in an unauthorised strike and subsequently absconded from work without any explanation. Counsel averred that the appellant had demonstrated that the respondents were accorded a fair hearing when the appellant's Acting General Manager, Mr. Nzeyi, met and held meetings with the intention of addressing any grievances that the respondents might have had. It was

therefore the contention of the appellant that there the trial judge had erred in law and in fact, when she awarded the respondent payment in lieu of notice amounting to you UGX 6,621,491/=

Overtime Pay

Counsel for the Appellant drew the attention of court to the submissions in the lower court where the respondents erroneously stated that both parties had agreed that the respondents would be working in a 12-hour shift every day, six days per week. His argument was this was not the true position of their work conditions. He argued that, as a matter of fact, nowhere in that proceedings did the appellant admit working for the respondents in 12-hour shifts. Counsel submitted that the respondents claim for overtime was unsubstantiated since there was no evidence to prove on a balance of probabilities that all the respondents were working 12-hour shifts. He relied on section 101 of the Evidence Act to state that whoever desires any court to give judgement as to any legal right or liability dependant on the existence of facts which he or she asserts must prove that those facts exist see Section 101 of the Evidence Act CAP. Counsel also argued that the only evidence that the respondents anchored in their claim was that PW3 Tweheyo, an accountant and former employee of the respondent's lawyers during examination, had calculated overtime based on documents that had been availed by the respondent's lawyers.

Counsel argued that it was an error on the part of the trial Judge to award all the respondents overtime pay without any proof. As to which respondent were entitled to overtime. And how many overtime hours each respondent had worked? This, his, he argued, was an error both in law and in fact. He invited this court to find that each respondent ought to have adduced evidence to show how many hours each one worked, and that without this evidence, there was no justification to award overtime pay for each and every respondent.

Severance Pay.

Counsel for the respondents argued that the respondents in their submissions made a prayer to be awarded severance pay equivalent to two months gross pay per employee per year worked, which would essentially translate to UGX 1,680,000. Counsel was concerned that in her judgement, the trial Judge granted this prayer without giving any justification as to how she arrived at a two months consolidated severance pay and that this was erroneous. Counsel submitted that severance pay is due where an employee has been in continuous service for a period of six months. He submitted that severance pay is payable in instances where, inter alia, the employee is unfairly dismissed by the employer. Counsel noted that the lower court based its reasoning on unlawful termination, to grant severance pay of two-months' consolidated pay. He reiterated his earlier submission that the respondents termination was justified and lawful in the circumstances and invited this court to uphold the ground of appeal.

General Damages.

With regards to the prayer for general damages, counsel for the appellant submitted that the lower court awarded each of the respondents you UGX 3,000,000 as general damages for the embarrassment of being portrayed as incompetent people, as well as the resultant inconvenience and suffering. Counsel submitted that this was erroneous because there was no justifiable evidence adduced before such an award could be made. He argued that the employee must prove facts that call on the court's disapproval of the employers behaviour in terminating his or her employment. He referenced **Charles Lwanga versus Centenary Rural Development Bank. Civil Appeal No.30 of 1999**. Counsel further submitted there was no cogent evidence led by the respondents to prove that their dismissal was unlawful and warranted an award of general damages. He maintained his earlier position that the respondents' termination was lawful. He further argued that this award was arbitrary and improper since there was no evidence led to prove actual loss or damage that was suffered. Finally, he prayed that this court allows the appeal with costs and that the ruling and Judgment of the trial court be reversed and be set aside, and the orders of the Labour office be maintained.

Submissions for the Respondents

Ground No.1 whether the high court had jurisdiction over the matter

This issue was argued by the respondents by referring to the ruling in the decision of Justice Elizabeth Musoke as follows:

"I have examined the relevant provisions of the Employment Act and other laws referred to by Counsel and also carefully considered the learned counsels submissions plus authority cited. Section 93(1) Appears to make it obligatory where there is no law to the contrary for any person claiming an infringement of any rights granted under the Employment Act to address their complaint to a labour officer."

The court's understanding of section 93(1) of the Employment Act is that it only relates to the rights granted under the Act. And even then, if there is anything in any other law or even in the same act to the contrary, the provisions of section 93(1) would not apply. The Act further makes a distinction between types of infringements of employment rates and how they would be addressed. Counsel argued that where a party had both the right to appeal from a decision of a tax authority and filing a matter in the High Court, the party chose to file a matter in the High Court. Counsel submitted that courts have reached the decision that it was the parties choice and then that under the provision of Article 139(1) of the Constitution, the party can choose to bring their complaint to the High Court which has original jurisdiction overall matters. **Commissioner General of Uganda Revenue Authority v Meera Investments Ltd Civil Appeal No.3 of 2007.**

Counsel submitted that the Labour office is restricted to specific matters under the Employment Act. For instance, it cannot deal with

the issues of unpaid NSSF and is unable to deal with and calculate overtime dues nor is it mandated to deal with general damages and costs under the Employment Act. Counsel submitted that was therefore prudent for the respondents to approach the High Court for resolution of their disputes with the appellant. Counsel finally submitted that this matter regarding jurisdiction was settled by the Supreme Court and that the Court of Appeal is bound by all Supreme Court decision's which state that the High Court has jurisdiction to entertain the suit.

Ground No. 2

Counsel for the respondent submitted that the summary dismissal of the respondent was clearly unlawful. Counsel's main argument was that the appellant's summary dismissal could not be justified where an employee had not committed a serious breach of duty amounting to a repudiation of the employee obligations under the contract of employment. Cancel referred to the Judgment where the trial Judge ruled as follows:

> "In the present case, the defendant has not proved to court that the plaintiffs absconded from duty. Although those who could report to work would register in the attendance book as a policy of the defendant, the attendance register for three days in issue was not put in, in evidence. This would have indicated to court the employees who appeared for work and those who did not. DW1 stated during cross examination that according to his

recollection, some of the workers were reporting and others were not and some would report but not work fully. He continued that those who did not report to work for three days were noted and he did not produce to support his allegations. From the above, I find that the defendant has not adduced evidence on the balance of probabilities that the summary dismissal was justified."

Counsel submitted the trial Judge correctly concluded that failure to grant a hearing before dismissal renders the dismissal unlawful, as it contravenes the Constitution, the Employment Act and the rules of natural justice. Counsel invited this court to find the dismissal unlawful and to dismiss this ground of appeal.

Overtime Pay

Counsel for the respondent argued that's the calculation of overtime pay was clearly shown in Exhibit P.7. The document explained how overtime pay was calculated and arrived at. Counsel submitted that this exhibit was not objected to. It was counsel's submission that DW1 made an elaborate explanation about how overtime was arrived at. His evidence was as follows:

"Overtime is for extra time worked. Hours worked were standard. Overtime was predictable. There was a column for overtime over the set working time and the other holidays. On letters of appointment, consolidated salary is a basic salary plus overtime.

Counsel finally submitted that the trial judge properly assessed the issue of overtime and arrived at the conclusion that the proponents were entitled to overtime pay. He prayed that this court upholds that decision.

Severance Pay

Counsel for the respondent submitted that the trial Judge awarded severance pay of two months consolidated pay for each plaintiff/respondent. Counsel submitted the standard award for severance pay as determined by the Industrial Court, is one month per year worked. He gave an example of this computation in the decision of **Johnson Ojok and others v Torres Industrial Court Labour Reference No. 24 of 2015**. Counsel then prayed that the severance pay as awarded by the trial court be maintained, although it was a Conservative award.

Payment in Lieu of Notice

It was a submission for the respondent that the respondents were summarily dismissed without notice. Respondent's having been dismissed unlawfully and without notice, were entitled to payment in lieu of notice under the provisions of the Employment Act. Counsel invited this court to uphold the decision of the trial judge.

General damages

Counsel for the respondent argued that once it was decided that the respondent had been lawfully unlawfully terminated, it followed that they would be entitled to general damages. The trial judge was correct when she awarded UGX 3,000,000 (Uganda Shillings Three Million) per respondent. The Court of Appeal should have no reason to overturn this award. Counsel for the respondent therefore prayed that this court maintains a decision of the trial judge.

Counsel for the respondents accordingly prayed that the reasons advanced in the appeal were not sufficient to overturn the decision of the trial Judge and therefore that the appeal should be dismissed with costs.

In rejoinder counsel for the appellant reiterated his earlier positions that the high court had no original jurisdiction and should not have entertained this matter since it was res judicata; that dismissal of the respondents was justified and lawful, that the awards such as overtime and severance pay, payment in lieu of notice, general damages and costs were unjustified. He invited the court to allow the appeal and set aside the Judgment of the trial Court with costs.

Consideration of the Grounds of Appeal

I am alive to the fact that this being a first appeal, the court of appeal has the duty to re-hear and re-appraise the evidence and all the materials that that were placed before the High Court. In **Father Narsensio Tiberanga & 3 Others v Eric Tibebaga SCCA No.**

17 of 2002 (delivered on 22.6.04 at Mengo) from **CACA 47 0F 2000 [2004] KALR 236** in which the Supreme Court held that:

> **"It is a well settled principle that on a first appeal, the parties are entitled to obtain from the appeal court its own decision on issues of fact as well as law. Although in a case of conflicting evidence the appeal court has to make due allowance for the fact that it has neither seen nor heard the witnesses, it must weigh the conflicting evidence and draw its own inference and conclusions."**

As 1st appellate court we shall subject the whole evidence to a fresh and exhaustive scrutiny. However, we shall bear in mind that we did not have the opportunity to hear and see the witnesses first hand. I will proceed to handle the grounds in chronological order.

I have carefully studied the record of appeal and cautiously considered the submissions of both counsel as well as the law and authorities cited to us plus others that I found relevant in determining this appeal.

Ground No. 1

The learned trial Judge erred in law and in fact in finding that the High Court had original jurisdiction of the matter wherein the decision had already been reached by the Labour office.

Counsel for the appellant submitted that under section 66 (5) of the Employment Act, the law requires that complaints of unjustified

summary dismissal or unfair dismissal are made to a Labour Officer. He submitted that the trial Judge erred in law and in fact when she ruled that the High Court has jurisdiction over this matter. Counsel for the appellant relied on section 7 of the Civil Procedure Act to submit that since a complaint had been made to the Labour Officer and the decision was passed by the Labour Officer it was erroneous of the respondents to file a fresh suit at the high court. Counsel relied section 93(1) Of the Employment Act which makes it obligatory that any person claiming an infringement of any of their rights granted under the Employment Act must address their complaint to the Labour office. Counsel was critical of the trial Judge for relying **Commissioner General Uganda Revenue Authority v Meera. Investments Ltd Court of Appeal Civil Appeal No.3 of 2007** where this court found that the respondent's had no original jurisdiction over disputes arising from tax matters because the tax appeals tribunal gave the High Court appeal jurisdiction, which was limited to matters of law only. It was therefore held that the High Court could only handle tax disputes on appeal. Counsel cited **Rabo Enterprises Uganda Limited v Commissioner general. Court of Appeal Civil Appeal No.55 of 2003** in which the courts pronounce itself over the jurisdiction of the High Court in this manner:

> "The conferment of appellate jurisdiction on the High Court by Section 27 of the Tax Appeals Tribunal Act over the decisions of the Tax Appeals Tribunal has no effect on the original

jurisdiction of the High Court conferred by Article 139 (1) of the Constitution. That meant that a party who is aggrieved by the decision of the Tax Authority on tax matters may choose either to apply to the Tax Appeal Tribunal for review or file a suit in the High Court to redress that dispute. The choice is his or has. Once he or she goes direct to the High Court, that court cannot chase him or her away on the ground that it lacks the original jurisdiction over the matter. Such a ground would not be tenable because of Article 139(1) of the Constitution."

The trial Judge was also swayed by the arguments of counsel for the respondents. In her Judgment she relied on **Habre International Co Ltd v Assam and others [1999] EA 125** and on **David B Kayondo v Cooperative Bank Uganda limited Court of Appeal Civil Appeal No. 10 of 1991** to the effect that the original jurisdiction of the High Court cannot be ousted by granting of jurisdiction by statute to another body.

In this case, although the employees of Hoat Loaf Bakeries Ltd placed a complaint before a Labour Officer, they soon realized that the decision they received did not address all the reliefs they sought. I found nothing in the law that prohibits the above employees from seeking redress from a court with inherent and unlimited jurisdiction in all matters. This was 2004 and the Employment Tribunal as we know it today was not established. If the matter had been tried and resolved before that tribunal headed by a Judge and the same matter

was filed in the High Court of Uganda, the issue of re judicata could arise. In this case res judicata does not arise.

I find that High Court is a court of first instance and is the only court of unlimited jurisdiction. As a court of first instance the jurisdiction of the High Court cannot be ousted by statute. Having re-examined the evidence and the authorities, we agree that the workers could have recourse to the High Court.

Ground No. 1 fails.

Ground No. 2

2. **The learned trial judge erred in law and in fact in coming to the conclusion that the appellant dismissal of the respondents was unlawful.**

The evidence on the record is to the effect that the dismissal of the respondents was based on the allegation that all of them were involved in an illegal strike. It is the appellant's case that the illegal strike happened at the company headquarters when the respondents gathered to demand for better working conditions. Counsel for the appellant vehemently argued that the dismissal was lawful under section 69(3) of the Employment Act. Counsel for the appellant further argued that the respondents acted in defiance of the employer when they walked out of the gate and did not immediately heed the employer's demands to return to work. It was his argument that by their conduct the respondents had fundamentally breached their obligations under their contract of service. Counsel for the appellants

opined that the behaviour of the respondents amounted to open defiance.

Counsel for the respondents maintained that the summary dismissal of the respondents was unlawful and unjustified.

The allegation that the respondent/plaintiffs were involved in an illegal strike was put forward by the main defence witness DW1 who was also Ag General Manager, at the time, Mr. Humphrey Nzeyi. It was his evidence that on the 22nd November 2006, some production staff in the bread department demanded for the dismissal of the Production Manager. The employees complained about a non-conducive work environment. In spite of their grievances, the Production Manager continued to work. It was his testimony he had a long meeting with the staff and promised to attend to their grievances. He testified that the staff did not return to work for three consecutive days. His testimony was that the staff were not dismissed but went away on their own and that this prompted the management to dismiss them. They were given their dismissal letters at UMA show grounds.

The question was whether their summary dismissal was unlawful under section 66(1) and 73(1) of the Employment Act 2006. I will recite what section 69(3) states:

> " An employer is entitled to dismiss summarily and the dismissal shall be termed as justified, where the employee has by his or her conduct indicated that he or she has fundamentally

broken his or her obligations arising under the contract of service."

The evidence of PW1 and of DW1 illustrate that there was a misunderstanding between the workers and the management over a one Thadeus Havuga. The workers demanded his immediate dismissal. The facts involving the nature of dispute which led to the summary of dismissal, in my view, did not fall under circumstances requiring summary dismissal. On the contrary, these were circumstances which required more honest and open engagement with the management in order to understand why the workers in the bread department felt ill-treated. At common law, employers have a duty to take reasonable care for the safety of their employees in all the circumstances of employment. The duty to provide a safe work place relates to the employer's responsibilities imposed by the common law to ensure that the work place is reasonably safe, while the employer's duty to provide a safe work system relates to the responsibility to ensure that the actual mode of conducting work is safe. Efforts ought to have been made to understand what the complaints were. After a careful reading of the Employment Act I agree with the trial Judge that section 66 of the Employment Act reserves the right to a fair hearing before a worker is terminated, especially in circumstances as was described above. The law is that even where the matter warrants summary dismissal, the employer is under a duty to grant the employee a fair hearing.

66. Notification and 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 a summary dismissal is justified, or whether the dismissal of the employee is fair, an employer who fails to comply with this section is liable to pay the employee a sum equivalent to four weeks' net pay.

The Employment Act requires an employer to hear and consider any representations made by the workers. This means nothing should be

done to prejudice an employee without giving him or her an opportunity to defend themselves. The facts and the decision in this case notably defer from **Barclays Bank v Godfrey Mubiru SCCA No. 1 of 1997**. In this case I would find that the employees had grievances and were dismissed without being granted a right of hearing as under section 66. In as much the appellant/defendant has not proved on the balance of probabilities that there was behaviour that warranted a summary dismissal of the respondents without pay I would think that **Kengrow Industries Ltd v Chandrani SCCA No. 7 of 1997 is** still good law.

I would disallow ground No. 2 of the appeal.

Ground No. 3

> **3.The learned Judge's award of overtime payment, general damages, payment in lieu of notice, severance pay to the respondents in error as it was excessive and contrary to the law.**

Counsel for the appellant submitted the trial Judge erred when she granted the respondent's claimed for UGX 6,621,491/=, as an entitlement for payment in lieu of notice on account of unlawful dismissal. He also submitted that the respondents claim for overtime was unsubstantiated since there was no evidence to prove on a balance of probabilities that all the respondents were working 12-hour shifts.

Overtime Pay

From the evidence of PW1, PW2 and the admissions of DW1, the workers at Hot Loaf Bakery Ltd worked in 12-hour shifts for 6 days a week which translates into a 72-hour week. Section 39(1) of Employment Act species the hours a worker should be expected to be at work.

> 39. **Hours of work.**
> (1)The normal weekly hours of work of any employee shall not exceed forty-eight hours.
> (2)The normal daily hours of work of any employee shall not exceed nine hours in industrial undertakings and ten hours in any other employment.
> (3)An employee whose hours of work exceed six hours a day shall be given by his or her employer one break or more during the day totalling at least thirty minutes, arranged so that the employee does not work continuously for more than five hours.
> (4)Hours of work and breaks shall be so arranged as not to require

In Uganda under the Employment Act, employees who work more than 48 hours a week are entitled to a higher pay rate for the additional work beyond the 48th hour. This is called overtime pay. A 48-hour week means that for the 6 days employees would have worked for 8 hours a week. The employees demonstrated that they worked in 12-hour shifts each. The employer accepted that it was a true position. This means that for every day worked, the employees worked an extra 4 hours, over and above a normal 8hr work day. Since the employees of Hot Loaf Bakery worked for over 48 hours a week, they ought to have been entitled to over time for the time over and above the normal

working hours. A look at the employment contract does not say anyway where that part of their pay included overtime pay. The trial Judge correctly found that the appellant did not meet the requirement for overtime pay.

Payment in Lieu of Notice

Payment in lieu of notice allows an individual's employment to be terminated immediately without them needing to complete or work their notice period. Instead, the employer pays the exiting employee the amount they would have earned had they worked their full notice period. Some worker's contracts contain an express clause on payment in lieu of notice also known as a PILON clause. However, where the contract does not contain a PILON clause and the employer chooses to terminate the employment, he or she will have to pay the worker the equivalent of what they have earned and received in benefits during the notice period or risk facing a breach of contract claim in the court otherwise known as a wrongful dismissal claim as indeed has transpired in this case. The question in this case is whether the employees of Hot Loaf were given notice prior to termination or whether they were paid in lieu of the notice.

Counsel for the appellant contended that the respondents were lawfully and summarily dismissed without notice and that this was justified. It was his submission that the appellant had demonstrated that the respondents were accorded a fair hearing when the appellant's Acting General Manager, Mr. Nzeyi, met and held meetings with the

intention of addressing any grievances that the respondents might have had. It was therefore the contention of the appellant that there the trial judge had erred in law and in fact, when she awarded the respondent payment in lieu of notice amounting to you UGX 6,621,491/=

Counsel for the Respondents opined that, having been dismissed unlawfully and without notice, the respondents were entitled to payment in lieu of notice under the provisions of the Employment Act. Counsel invited this court to uphold the decision of the trial Judge.

Upon giving a careful scrutiny of the issue of payment in lieu of notice, I find that this payment is closely related with the issue whether the workers were dismissed lawfully. I did find earlier that the dismissal of the respondents was not lawful for reason that they were not given notice under section 58 and when they were summarily dismissed, they were not paid in lieu of notice. Even where employees had committed misconduct, the employer should have cited then for misconduct and arraigned them before a disciplinary committee and them time to prepare to defend themselves before and should have allowed them to be supported at the hearing by allowing them to be accompanied by a person of their choice to the hearing.

The circumstances under which the workers were terminated did not amount to a fair hearing. They were not paid for notice in lieu. I therefore would find that the trial judge did not err in law and in fact,

when she awarded the respondent payment in lieu of notice amounting to you UGX 6,621,491/=.

Severance Pay

87. When severance allowance is due Subject to this Act, an employer shall pay severance allowance where an employee has been in his or her continuous service for a period of six months or more and where any of the following situations apply—

(a) the employee is unfairly dismissed by the employer;

The law, as partly stipulated above, provides for situations that may precipitate the calculation of a severance pay in order to terminate the services of an employee. They include the termination resulting from unfair dismissal, where an employee dies in the service; the employee terminates his or her contract because of physical incapacity not occasioned by his or her own serious and wilful misconduct; the contract is terminated by reason of the death or insolvency of the employer or the contract is terminated by a labour officer following the inability or refusal of the employer to pay wages.

A severance package offer is usually made with the condition that employees enter into a settlement agreement which will require them to give up all their legal rights to pursue their employer for a claim or claims in an employment tribunal, including any claim for contractual entitlement etc. In more executive roles a severance pay may include entitlement to bonus, shares, commission, accrued holiday, and

unlawful deduction of wages. Section 89 of the Employment Act of Uganda provides for negotiation of severance pay between the employer and the employees. Briefly, severance pay normally refers to a payment made to an employee by an employer in return for them agreeing to leave without pursuing a claim against the business.

Counsel for the appellant was critical with the manner in which the issue of severance pay was handled. Counsel argued that the respondents in their submissions made a prayer to be awarded severance pay equivalent to two months gross pay per employee per year worked, which would essentially translate to UGX 1,680,000. Counsel was concerned that in her judgement, the trial Judge granted this prayer without giving any justification as to how she arrived at a two months consolidated severance pay and that this was erroneous.

Counsel submitted the standard award for severance pay as determined by the Industrial Court, is one month per year worked. He gave an example of this computation in the decision of **Johnson Ojok and others v Torres Industrial Court Labour Reference No. 24 of 2015**. Counsel then prayed that the severance pay as awarded by the trial court be maintained, although it was a conservative award.

Where there is no provision for severance pay in the employment contract, the law regulating severance pay is section 89 of the Employment Act which provides as follows:

89. Calculation of amount of severance allowance

> The calculation of severance pay shall be negotiable between the employer and the workers or the employer and the labour union that represents them.

The question of severance pay in cases of unlawful dismissal becomes a matter for adjudication because of the fractured relationship between the employer and the employees. This would not arise if both parties sat down to negotiate and arrive at amicable ways to end the employment relationship.

In her Judgment the trial Judge found that in the present case negotiations were no longer tenable and therefore the court had to use its discretion to award severance pay. The court awarded severance pay equivalent to two months gross pay per employee per year worked.

Counsel for the respondents relied on **Johnson Ojok and others v Torres (supra)** in which severance pay was calculated at payment of the equivalent of salary for one month per year worked. The trial Judge awarded severance pay for two months of each year worked. The law is silent on what should amount to severance pay. I am persuaded that the market rate of one month per year worked is the more reasonable calculation for severance pay. I would therefore set aside the amount set by the trial Judge and calculate severance pay at one month per year worked. This would partially reduce the award accordingly.

General Damages

Counsel for the appellant submitted that the lower court awarded each of the respondents you UGX 3,000,000 as general damages for the embarrassment of being portrayed as incompetent people, as well as the resultant inconvenience and suffering. Counsel submitted that this was erroneous because there was no justifiable evidence adduced before such an award could be made. For the respondent it was argued that once it was decided that the respondent had been lawfully unlawfully terminated, it followed that they would be entitled to general damages. The trial judge was correct when she awarded UGX 3,000,000 (Uganda Shillings Three Million) per respondent. The learned trial Judge in her decision relied on the principle that where appropriate, in exercise of their discretion, courts may award damages which reflect the court's disapproval of a wrongful dismissal of an employee. The sum that may be awarded is not confined to an amount equivalent to the employees' wages see **Bank of Uganda v Betty Tinkamanyire SCCA No. 12 of 2007**; see also **Charles Lwanga v Centenary Rural Development Bank Court of Appeal Civil Appeal No. 30 of 1999**.

Upon scrutiny of the law and the circumstances of this case I find that more could have been done by the employer to avert the situation that resulted into unlawful dismissal of the respondents. I also noted that it appeared unreasonable to send off workers who were already on minimum pay without any form of payment whether in lieu of notice or as severance pay. The law regarding award of general damages is

that an appellate court does not alter damages assessed by the lower court, simply because it would have awarded a different amount if it had tried the case at first instance. An appellate court may lawfully interfere in the assessment of damages only in one of the following circumstances. First it may intervene where the trial court in assessing the damages, took into consideration an irrelevant factor, failed to take into account a material factor or otherwise applied a wrong principle of law. Secondly, it 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 damage sustained. **See Impressa Ing. Fortunato Federice v Irene Nabwire - (Suing by her next Friend Dr. Julius Wambete S.C.C.A No.3 of 2000.**

In **Impressa Ing. Fortunato Federice v Irene Nabwire** the Supreme Court held thus, "Clearly, in the instant case, the Court of Appeal had no lawful justification in reducing the general damages assessed by the trial court. The learned trial judge, in assessing the damages, did not take into consideration any irrelevant factor, nor did he overlook any material factor."

As also decided in **Twaiga Chemicals Ltd. v. Viola Bamusede t/a Triple B Enterprises. S.C.C.A No. 16 of 2006,** an appellate court will not interfere with exercise of discretion unless there has been a failure to take into account a material consideration or taking into account an immaterial consideration or an error in principle was made. In my view, this should put to rest the issue of general damages.

Consequently, this court will not disturb the award of general damages and interest as granted by the learned trial Judge while exercising her discretion. Except for the slight variation in severance pay, this court upholds all the orders, awards and interest as settled by the learned trial Judge.

The appeal is largely unsuccessful and is dismissed with costs in this court and in the court below.

The hearing and full disposal of this appeal puts to rest Miscellaneous Application No. 13 of 2022 and Civil Application No. 787 of 2022. The two applications have now been overtaken by events.

Signed and dated at Kampala this 17th day of March 2023

Catherine Bamugemereire
Justice of the Court of Appeal

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO. 154 OF 2015

HOT LOAF BAKERY LIMITED ..... APPELLANT

VERSUS

NDUGUTSE XAVIER & 28 OTHERS ..... RESPONDENTS

[*CORAM: Buteera, DCJ, Bamugemereire & Musota, JJA*]

JUDGMENT OF RICHARD BUTEERA, DCJ

I have had the benefit of reading in draft the Judgment prepared by my learned sister, Lady Justice Catherine Bamugemereire.

I agree with her findings and reasoning and have nothing useful to add.

Since all the members of the Panel agree with her judgment, it is, therefore, the unanimous decision of this Court that this Appeal is unsuccessful and it is dismissed with costs in this court and in the court below.

Dated at Kampala this ....12th.... day of ....March.... 2023

Richard Buteera
Deputy Chief Justice

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA

CIVIL APPEAL NO. 154 OF 2015

(Arising from the Judgment of Elizabeth Musoke, J, as she then was, in High Court Civil Suit No. 133 of 2009)

HOT LOAF BAKERY LIMITED :::::::::::::::::::::::::::: APPELLANT

VERSUS

NDUNGUTSE XAVIER AND 28 OTHERS :::::::::::: RESPONDENT

CORAM: HON. JUSTICE RICHARD BUTEERA, DCJ

HON. JUSTICE CATHERINE BAMUGEMEREIRE, JA

HON. JUSTICE STEPHEN MUSOTA, JA

JUDGMENT OF HON. JUSTICE STEPHEN MUSOTA, JA

I have had the benefit of reading in draft the judgment by my sister Hon. Justice Catherine Bamugemereire, JA.

I agree with her analysis, conclusions and the orders she has proposed in the lead judgment and have nothing useful to add.

Dated this 17th day of March 2023

Stephen Musota

JUSTICE OF APPEAL