

1. The plaintiff gained employment at the Faula Uganda Limited and now Opportunity Uganda Limited as Administrative Assistant on 5th June, 2003; she ascended to Teller Management on 7th October, 2004 and was confirmed as Teller Attendant on 6th May, 2005.
2. Afterwards, the plaintiff underwent two successive promotions, namely; Acting Branch Accountant and Acting Branch Manager.
3. The plaintiff was implicated in the loss of UGX 5,000,000/= following an inter-branch transaction between the defendant's Kawempe and Kira branches on 7th June, 2010.
4. On 17th June, 2010, the plaintiff was suspended from her employment and on 8th July, 2010, she was terminated from the same service by the defendant.

The agreed issues were;

1. Whether the plaintiff's dismissal from her employment was unlawful/wrongful.
2. Remedies available to the parties.

Determination of the Issues;

Whether the plaintiff's dismissal from her employment was unlawful/wrongful;

It was the Plaintiff's case that on 7th June, 2010, she requisitioned for UGX 50,000,000/= through email to the Head of Treasury of the defendant and the requisition was approved. The box containing the money was delivered when she was in the banking hall and those who delivered the box persuaded her to receive

the money in her office which she declined to do because it was unusual. The money was delivered but the people who delivered it immediately disappeared, and upon counting the money with another employee called Susan, she realized that the total amounted to UGX 45,000,000/= and not UGX 50,000,000/=. She further testified that since it was a busy day, she asked Susan to verify the money before they could call the sending branch, because it was not the first time a branch had sent less money. As soon as Susan got back to the plaintiff confirming the earlier position, she called Norah who was in charge of the sending branch (Kawempe Branch) confirming UGX 45,000,000/= had been sent instead of UGX 50,000,000/=.

It was the plaintiff's further testimony that the treasury form was not included or forwarded with the cash to help her know immediately exactly how much had been sent. Further, that after confirming that the money sent was UGX 45,000,000/=: the next day on the 8th June, 2010, she reversed the entry from UGX 50,000,000/= to UGX 45,000,000/= and declined to post UGX 5,000,000/= as a shortage on her side because she had not received UGX 50,000,000/= but UGX 45,000,000/=. It was her further evidence that reversals were very normal after a genuine mistake, and that is why there were forms to always write the reason for a reversal; and that as indicated in the auditor's report [EXH D5], the plaintiff promptly reported the loss. Failure to report the shortage to her supervisor immediately did not imply guilt on her part.

The plaintiff further testified that on 16th June, 2010, upon the sitting of the disciplinary committee, she was told to hand over the company property and leave the company premises; and on 17th June, 2010, she received a letter [EXH P9] informing her that she had been suspended for a period of one month pending further investigation, and the investigations would determine the next course of

action. Before the month could lapse, she was served with a dismissal letter dated 8th July, 2010 [EXH P10].

During cross examination, the plaintiff stated that from her experience, she was in agreement that a reasonable banker would exercise due diligence in handling of bank cash. She maintained that she observed the usual procedures of handling cash, but the money had been sent without a treasury form. She had posted the approved amount, but not the real cash at hand in the system and reversed the entry the next day. She further testified that upon employment, she agreed to be bound by the terms of service and one of the terms was that the employer could dismiss her summarily for misconduct.

The defendant on the other hand led a number of witnesses to show that the plaintiff's summary dismissal was lawful and justified.

DW1; Jomson Mukiza, the Head of Operations of the defendant Company, testified that on 7th June, 2010, at 12:15 hours, Kira branch made a cash requisition of UGX 50,000,000/= to the treasury unit. On the same day, an inter branch cash transfer of UGX 50,000,000/= from Kawempe branch to Kira branch was approved by the treasury unit. At around 21:00 hours, he received a phone call from the Branch Operations Manager of Kawempe branch, informing him that Kira branch had communicated a shortfall of UGX 5,000,000/= arising from the inter-branch cash transfer; and that whereas the cash was delivered to Kira branch at 15:33 hours as recorded by the plaintiff on the security Group's cash delivery Note [EXH D6], the Kawempe branch operations manager was only notified of the shortfall at about 18:00 hours by the plaintiff.

It was the further testimony of DW1, that on 8th June, 2010, at about 07:30 hours, upon checking the banking system, he noted that the plaintiff had posted UGX

50,000,000/= as money she had received, the previous day, 7th June, 2010. In the successive hours of 8th June, 2010, the plaintiff reversed the said entry from UGX 50,000,000/= to UGX 45,000,000/=; and the reversal in the banking system was made by the plaintiff without approval from him as the supervisor. That no satisfactory explanation was given by the plaintiff for the reversal in the system, without following the proper procedure. Further, that in instances where a shortage or an overage is made by a banking officer, it had to be adjusted / corrected on the same day to ensure that the Bank's books balance; and the shortage or an overage could not be corrected / adjusted without a general transaction form prepared by a banking officer requesting to make the adjustment. After an internal audit investigation, the plaintiff and other parties involved in the transaction were called for a disciplinary hearing on 16th June, 2010. At the disciplinary hearing, the plaintiff acknowledged receiving the money in the absence of another branch staff and did not furnish any satisfactory explanation for her negligence in receiving money without a treasury form or any other form of acknowledgment; neither did she furnish any satisfactory explanation as to why she entered UGX 50,000,000/= in the banking system contrary to the UGX 45,000,000/= which she had allegedly received.

It was DW1's further testimony that the disciplinary Committee recommended that the plaintiff be suspended, to allow the police investigation to be concluded and that another disciplinary hearing would be held to communicate any police findings from the investigation, but unfortunately, the investigation by police was never finalized and no report was ever issued. The above notwithstanding, the plaintiff's act of allegedly receiving UGX 45,000,000/= and entering UGX 50,000,000/= in the financial system resulted in a financial loss through fraud and this warranted disciplinary action. The plaintiff having been adjudged guilty of

fraudulently causing financial loss of UGX 5,000,000/= by the disciplinary committee was dismissed from employment.

During cross examination, he reiterated that the plaintiff reversed the entry without approval and without giving an explanation and that the posting is ordinarily done after verification of the amount received.

The defendant's next witness was Nakanwagi Solome (DW2), who testified that she had been an employee of the defendant for a period of five years from August 2008. She stated in her sworn statement that on 7th June, 2010, she was informed by the then Branch Operations Manager of Kawempe branch that the plaintiff, who was the then Acting Branch Operations Manager at Kira Road Branch, had requested for a sum of UGX 50,000,000/=. The amount of UGX 50,000,000/= was physically counted by the two of them and packed in a box that was placed aboard a bullion van in the company of a security group and the consignment was thereupon taken to Kira Road Branch.

It was DW2's further testimony that whereas the consignment was delivered at Kira branch at 15:33 hours, she and the Operations Manager received a call from the plaintiff at around 18:00 hours claiming that the money that was received by the plaintiff was less by UGX 5,000,000/=. DW2 and the Operations Manager accessed the vault and upon verifying that there was no discrepancy on their side, she called the plaintiff and advised her to immediately notify the Head of Operations about the shortfall as was the procedure, but when the plaintiff declined to do so, the Kawempe branch Operations Manager called the Head of Operations and reported the shortfall at about 21:00 hours.

DW3; Susan Nakyejwe, testified that she had been an employee of the defendant for a period of 5 years and at the time of the plaintiff's dismissal, she held the

position of a Teller. On 7th June, 2010, at about 15:30 hours, she was instructed by the plaintiff who was a supervisor at Kira branch to collect money from the bank and office for counting at the till and to check for any fake notes. She found that the seal on the box containing the money was already broken and the money was lying on the floor; and the deliverer of the box was on his way out. DW3 counted the money at the till and in total she counted UGX 45,000,000/= as money that was received from the plaintiff at the back end office. At 16:00 hours, the banking hall was closed and while DW3 was carrying out the end of day process, the plaintiff sought to know the amount of money that had been counted and she informed the plaintiff that she had counted UGX 45,000,000/=; it was then that the plaintiff mentioned that the branch was supposed to receive UGX 50,000,000/= and not UGX 45,000,000/=. It was DW3's testimony that the shortfall was brought to the attention of the Head of Operations by Kawempe Branch.

Counsel on either side filed written submissions in support of and against the claim respectively.

Counsel for the plaintiff relied on *Bank of Uganda Vs Betty Tinkamanyire SCCA NO.12 of 2007*, where the principles in determining whether a dismissal was unlawful or wrongful were summarized as follows:-

1. An employer has the right to terminate the services of an employee as long as the termination was done in accordance with the terms of the contract of the employment.
2. A dismissal was wrongful if it was made without justifiable cause and without reasonable notice. The notice required might be determined from the contract of service itself or custom or any written regulation(s) governing the employment of which the plaintiff was a party.

Counsel submitted that basing on the letter of summary dismissal [EXH P10], it appears that there were two reasons for the dismissal which according to the defendant violated its Business Ethics and Conduct Policy [EXH D2];

1. Confirming receipt of UGX 50,000,000/= by posting the said amount in the system, but later reversing it to UGX 45,000,000/=.
2. Causing the defendant financial loss of UGX 5,000,000/=.

Counsel made reference to the defendant's Human Resource Management Policy [EXH D1] where summary dismissal is provided for. It is stated that depending on the severity of the problem and the number of occurrences, there may be circumstances where one or more steps are bypassed. However, the defendant's Exhibit D2- Business Ethics and Conduct policy, under which the plaintiff was purportedly dismissed, does not make any mention of summary dismissal whatsoever. Clause 7.22 quoted on the plaintiff's dismissal letter is not provided by EXH D2, instead, it is a creature of the Human Resource Manual at page 37 on Frauds; and that therefore, EXH P10 is speculative on the cause for the plaintiff's summary dismissal.

Counsel contended that there was no evidence before the dismissal that anything akin to the procedure laid down by the Human Resource Manual Policy [EXH D1] for dismissing a staff was ever followed. Further, that the Disciplinary Committee proceedings were flouted and biased, and its findings fell short of a fair hearing. DW1- Jomson Mukiza had testified that he was the Head of operations to whom the plaintiff as acting Branch Manager was reporting to. He is the same person who requested for an internal audit investigation, and the same person who complained to police for an independent investigation. At the committee hearing, the same DW1 vehemently participated in the hearing and made an influence on the rest of

the Committee members. Further, that at the same hearing, whereas 7 members were listed to have constituted the Committee, only 3 of them were physically present. That the minutes of the disciplinary hearing was a mere creation of DW1.

Counsel relied on *Rose Mary Nalwadda Vs Uganda Aids Commission, Civil Suit No.45 of 2010*, where court, while citing *Cooper Vs Wilson & others [1937] 2 KB 309*, stated that;

“Dr. Kihumuro Apuuli had preferred charges against her. His presence on the Committee was unnecessary. In Cooper Versus Wilson & others [1937] 2 KB 309 the court observed that the presence of the chief constable, whose mind was made up in advance and who was in effect the respondent to the appeal, was fatal to the validity of Watch Committee’s decision. Scott L.J could not have put it better when he said (at p.344),

‘...the risk that a respondent may influence the court is so abhorrent to English notions of justice that the possibility is sufficient to deprive the decision of judicial force, and to render it a nullity.’

The same Dr. Kihumuro; the chairperson of the Committee , Ms Annette Biryetega; Dr. Jesse Kagimba and Ms Abbie Hope Kyoga, participated in the Board decision that terminated the applicant’s services. surely a person who previously chaired or participated in an investigation in which the aggrieved party was condemned, would obviously be perceived as biased in a hearing of the same victim to justify the result of the investigation,”

It was the further submission of Counsel that from the defendant’s evidence through its witness’s, the plaintiff was faulted on three aspects, namely;

1. Finding a shortage,
2. Delay to communicate the shortage,
3. Making a reversal of UGX 50,000,000/= to UGX 45,000,000/=.

Counsel made reference to DW2's sworn statement where she testified that upon the plaintiff calling the Kawempe branch notifying them of the shortage, she and the Kawempe Operations Manager accessed the vault again to verify whether there was any overage or shortage. Counsel invited court to treat this as a contradiction because if they were sure that UGX 50,000,000/= had been dispatched, then there was no reason for the two to re-access the vault to verify.

Counsel for the defendant was of a different view. He submitted that the plaintiff's dismissal was lawful as she breached her fundamental obligations under her employment contract. Counsel relied on *Barclays Bank of Uganda Ltd Vs Godfrey Mubiru SCCA No.1 of 1998*, to state that the standard of the duty of care and diligence expected from bank managers in the performance of their duties was more as compared to other businesses. Counsel made reference to the defendant's evidence through its witness's, and stated that the plaintiff's wrongs were;

1. Posting UGX 50,000,000/= in the system as money received by her, yet she claimed to have received UGX 45,000,000/=.
2. Not immediately reporting the alleged shortfall in the cash received to her supervisor.
3. Receiving the money delivered from Kawempe branch and breaking the seal in the absence of another staff member of the branch, contrary to the dual control procedures.

Counsel further contended that while Counsel for the plaintiff submitted that the Business Ethics and Conduct Policy [EXH D2] did not provide for summary dismissal and that the relevant document was the Human Resource Manual Policy [EXH D1], Exhibit D2 was the right document quoted and reference to 7.2 indicated the policy number not the clause invoked. Further, that Exhibit D2

provided for summary dismissal under clause 2.14 as one of the modes of disciplinary action that could be taken; and further provided for fraud as one of the instances where disciplinary action could be by-passed depending on the severity of the problem. Further, that clause 2.23 provides for fraud as one of the instances where disciplinary action can be taken and misrepresentation of the Company's financial situation or accounts would be considered a fraudulent act; from the plaintiff's own admission, she made misrepresentations in her reporting. The act of entering an amount of money which the plaintiff claimed she did not receive, was a serious breach of her duties as a bank official and such a breach was a fundamental one warranting summary dismissal. It would have been different if the plaintiff had under an honest but mistaken belief, counted the money, and believing that the same was UGX 50,000,000/=, input that figure in the system but upon further counting and verification, discovered that it was UGX 45,000,000/=. Counsel contended that the failure to immediately inform the supervisor of the alleged shortage and balancing and closing books of accounts for the day well aware that there was a shortage reflected an intention to deceive and create a different impression than what she alleged was the true position.

It was the further contention of Counsel that what the plaintiff did was wrong and illegal. He relied on *Belex Tours and Travel Ltd Vs Crane Bank Ltd, CACA No.71 of 2009*, for the proposition that fraud or illegality once discovered by a court of law could not be condoned; and *Makula International Vs His Eminence Cardinal Nsubuga & Another (1982) HCB 11*, for the proposition that illegality once brought to the attention of court overrides all questions of pleading including admissions, and that fraud is synonymous with illegality.

With regard to the disciplinary action, counsel submitted that the plaintiff was afforded a right to be heard; she was summoned to a disciplinary hearing wherein

her supervisor was not the only member present, but the panel was comprised of seven people. That while counsel for the plaintiff tried to discredit the minutes tendered by the defendant, the contents of the said minutes were in substance the same as the ones the plaintiff tendered and on both copies of the minutes, the plaintiff endorsed her signature thereon. The fact that only some of the members of the committee endorsed the minutes subsequently did not mean that the minutes did not reflect what transpired on the day of the hearing; and usually, notes are taken during the proceedings and minutes are prepared thereafter and attendees confirm the contents by endorsing on the same.

Counsel further contended that the standard of a disciplinary hearing as envisaged in employment matters is that the employee is given an opportunity to tell their side of the story. He relied on *Hon. Justice G.W Kanyaihamba Vs Kampala International University & 2 others Civil Suit No. 161 of 2011*, to state that what was required in affording an employee a right to be heard was to provide them with an opportunity to give their side of the story, at the bare minimum. Such hearing should not be given the very high standards and requirements like those of a court. See also *General Medical Council Vs Spackman (1943) ALL ER 627*.

Regarding the authority of *Rose Mary Nalwada Vs Uganda Aids Commission Civil Suit No.45 of 2010*, relied on by counsel for the plaintiff, Counsel sought to distinguish it from the present case. In the former case, the employment regulations of Uganda Aids Commission were clear that matters of termination or dismissal were to be handled by a duly constituted finance and administration Committee. Further, that in *Rose Mary Nalwada's case*, the plaintiff had issues with the chairperson of the committee. In the present case, the disciplinary action taken against the plaintiff was within the confines of the defendant's Human Resource Management Policy [EXH D1], and also, DW1 was not the chairperson of the committee and could not

influence a whole panel of seven people who were members of senior management of the defendant.

In his submissions in rejoinder, Counsel for the plaintiff reiterated the position that summary dismissal was provided for under the Human Resource Management Policy [EXH D1] and not Exhibit D2, and that under clause 7.22 of Exhibit D1, fraudulent acts were listed there under but none of them is cited as an occurrence, the breach of which called for summary dismissal. Further, fraud was not one of the occurrences highlighted as having been actually committed by the plaintiff and that *Rose Mary Nalwada's case (supra)* and the case of *Cooper Vs Wilson & others [1937] 2 KB 309*, were good law to the circumstances hereof and a person who previously chaired or participated in an investigation in which an aggrieved party was condemned, would obviously be perceived as biased in a hearing of the same victim to justify the result of the investigation.

I have carefully considered the evidence adduced and the submissions of counsel in support of and against the claim.

With regard to what amounts to unlawful dismissal, the court in *Jabi Vs Mbale Municipal Council [1975] HCB 191*, held that a dismissal was wrongful if it is made without justifiable cause and without notice. A wrongful dismissal occurs when the employer terminates the employment relationship with the employee in a manner that fails to comply with the requirements of the law.

It is trite law that an employment relationship is usually premised on the terms and conditions of employment as well as the employment law to regulate and define the relationship. In *Barclays Bank of Uganda Vs Godfrey Mubiru SCCA NO. 9 OF 1998*, court held that;

“Where a service contract is governed by written agreement between the employer and employee as in this case, termination of employment or services to be rendered will depend both on the terms of the agreement and on the law applicable.”

The plaintiff’s appointment letter [EXH P1], invites the plaintiff to familiarize herself with and to abide by the defendant’s personnel policies and any other policies specific to the defendant. During cross examination, the plaintiff affirmed that upon employment by the defendant, she was given an employment contract and that she agreed to be bound by the terms of service. It is, therefore, not in issue that the plaintiff was bound by EXH D1, which is the defendant’s Human Resource Management Policy, as well as EXH D2, which is the defendant’s Business Ethics and Conduct Policy.

The termination letter [EXH P10], written to the plaintiff partly reads as follows;

“This letter serves to confirm that you have been summarily dismissed from the service of opportunity Uganda with immediate effect. The dismissal follows the loss of Shs 5,000,000/= during an inter-branch transaction of Shs 50,000,000/=, between Kawempe and Kira Branch on June 7, 2010 and the hearings of the Disciplinary Committee where these findings were confirmed.

The reasons for your dismissal are as below;

- Breach of the Company’s “Business Ethics and Conduct” Policy No.7.22. On the above mentioned date you confirmed receipt of Shs 50,000,000/= by posting the said amount in the system, which you later reversed to Shs.45,000,000/=. This is a criminal offence and prosecutable in courts of law.”***

I have duly considered the evidence adduced of the events leading to and surrounding the defendant’s termination of the plaintiff’s employment; I find that the first primary question to be determined is whether the plaintiff’s employment was summarily terminated without justifiable cause.

Section 68 of the Employment Act, 2006, states;

1. Dismissal without notice or with less notice than the employee is entitled to and;
2. Summary dismissal is justified when an employee, by his/her conduct shows that he/she has fundamentally broken the contract of service.

The term “fundamentally broken the contract” is not defined in the **Employment Act, 2006**. Therefore “Fundamental breach” is a matter of fact and one branch can suffice to sanction a summary dismissal. In *Laws Vs London Chronicles [1959]1 WLR 698*, court laid down the test for misconduct sufficient to justify summary dismissal to be whether the conduct complained of is such as to show the servant to have disregarded the essential conditions of the contract of service.

From the evidence adduced by the plaintiff as well as the defendant’s witnesses, it is not in contention that on 7th June, 2010, the plaintiff posted/entered UGX 50,000,000/=in the plaintiff’s system; and on 8th June, 2010, she reversed the amount to UGX 45,000,000/=. It was the plaintiff’s explanation in her sworn statement that reversals are normal after a genuine mistake, and that is why there were forms called general transaction forms for one to indicate the reason as to why a reversal has been done. On the other hand, it was the defendant’s case, through the testimony of DW1 that the reversal/adjustment in the banking system was made by the plaintiff without approval from him as the plaintiff’s supervisor, and this was a contravention of the Operations procedure which resulted in a shortfall of UGX 5,000,000/=. Further, that where a shortage or an overage was made by a banking officer, it had to be corrected on the same day, before the daily end of day balancing of books and the adjustment must not be corrected without a general transaction form prepared by a banking officer requesting to make the

adjustment and having it approved by the supervisor. The plaintiff did not deny the fact that before the reversal, she had an obligation of obtaining approval from her supervisor which evidently, she did not do. She also did not deny the fact that she made the reversal a day after the shortfall, yet an adjustment/ reversal had to be done on the same day as the shortfall before balancing of the books, according to the banking procedures.

It is also not in dispute that the consignment was sent from Kawempe branch to Kira branch without accompanying treasury forms as was supposed to be the procedure. According to the Audit report [EXH P12], contrary to the practice and the treasury management procedures, there was no treasury form at the receiving branch which ought to have been prepared by the sending branch to accompany the cash such that it would be signed by the receiving branch to acknowledge receipt of the money. I find that both the sending branch, as well as the plaintiff who received the cash without a treasury form share the blame for failure to follow the procedure. While it was the duty of the sending branch to prepare treasury forms and to dispatch the same together with the cash, it was also the plaintiff's obligation to ensure that she received the form together with the money, and to sign the form in order to acknowledge receipt of the money, since she was well acquainted with the procedures as stated in her evidence. Basing on the evidence adduced, it is also my view that the plaintiff received the consignment and broke the seal of the box in the absence of any other employee at Kira branch, as was the procedure to be followed in such a transaction.

I have also considered the evidence adduced indicating that the plaintiff did not immediately report the alleged shortfall in the cash received by her, to her supervisor. I have looked at the audit report [EXH P12], where it was stated that the loss was promptly reported. However, from the evidence adduced, I find that it

was not the plaintiff who reported the loss, but the Operations Manager at Kawempe Branch.

Accordingly, I find that indeed, the plaintiff was negligent on the above mentioned date as alleged by the defendant. In Barclays *Bank of Uganda Vs Godfrey Mubiru SCCA No.1 of 1998*, it was stated that;

“Managers in the banking business have to be particularly careful than managers of most businesses. This is because banks manage and control money belonging to other people and institutions perhaps in their thousands and therefore are in a special fiduciary relationship with their customers whether actual or potential...moreover, it is my opinion that in the banking business, any careless act or omission, if not quickly remedied, is likely to cause great losses to the bank and its customers. Loose talk, irregular or unconditional banking acts or behavior could lead to speculation about and the undermining of the reputation of the appellant and therefore loss of customers and investors upon which the business of the bank depends.”

It is my opinion, that the plaintiff breached her duty to exercise care and diligence and the defendant was justified in commencing disciplinary action against her.

The next question that arises is whether, summary dismissal was the appropriate disciplinary action to be taken against her by the defendant in the circumstances of the case.

First, I would like to note and make it clear that the plaintiff was neither dismissed for fraud or misrepresentation; and from the pleadings in this case, no aspect of fraud or misrepresentation was raised or pleaded. I shall accordingly, disregard the submissions of Counsel on fraud and misrepresentation. If the defendant intended to impute fraud or misrepresentation on the plaintiff, the same should have been specifically pleaded with particulars given, and proved in order to give the plaintiff a chance to answer to the same.

It was the submission of Counsel for the plaintiff that the defendant's Business Ethics and Conduct [EXH D2], under which the plaintiff was purportedly dismissed did not make any mention of summary dismissal. From the reading of clause 2.14 of the defendant's Business Ethics and Conduct [EXH D2], summary dismissal is expressly provided for under bullet 7 as one of the possible outcomes after disciplinary action has been commenced. It is further provided under clause 2.14 of Exhibit D2 that depending on the severity of the problem and the number of occurrences, there may be circumstances when one or more steps could be bypassed.

My view is that the plaintiff's acts and omissions called for disciplinary proceedings. Not only did she open up a package of money in the absence of a treasury form, but she did input that the amount received was UGX 50,000,000/=, only to reverse it the next day. Further, she did not care to report the fault to the appropriate authorities as required. Further, the reversal was done the following day in contravention of the defendant's banking rules. I find that there was gross negligence on the part of the plaintiff.

Except for the mandatory right to be heard now reserved by Section 66 of the Employment Act, 2006, for every form of dismissal; a right not available in summary dismissals previously, (*Barclays Bank of Uganda Vs Godfrey Mubiru SCCA No.1 of 1998*), the rest of the common law meaning of summary dismissal was substantially left intact by the Act. Therefore, that conduct which fundamentally broke or disregarded the essential conditions of the contract of service is conduct that would be regarded under the Act as one that has fundamentally broken the contract of service, and therefore justifying summary dismissal. The question then would be whether in the instant case the plaintiff's conduct fundamentally broke, or disregarded the essential conditions of service.

The decisions in *Laws Vs London Chronicles [1959] 1 WLR 698*, to the effect that one isolated act of misconduct could justify summary dismissal; and in *Jupiter Vs Shroff [1973] 2 ALL ER 67*, to the effect that gross negligence is a ground for summary dismissal apply to this case. As stated in *Bank of Uganda Vs Godfrey Mubiru, (supra)*, managers in the banking business have to be particularly careful and exercise a duty of care more diligently than managers of most businesses, because banks manage and control money belonging to other people. As stated above, the plaintiff was grossly negligent thereby disregarding the essential conditions or fundamentally breaking the contract of service. The fact that she had a previous good record did not fetter the right of the defendant to dismiss her on this isolated instance of gross negligence.

However, it was the plaintiff's case that the Disciplinary Committee proceedings were flouted and biased, and its findings fell short of a fair hearing to the plaintiff while reaching the decision to terminate her employment summarily.

Section 73(1) of the Employment Act, 2006, stipulates that termination of employment is unfair, and therefore unlawful if the principles of natural justice and equity are not followed during the dismissal. A right to a fair hearing is one guaranteed by/or stated to be non derogable under the Constitution. Therefore, even if the plaintiff's conduct was envisaged by the defendant as calling for a summary dismissal, she was still entitled to a fair hearing before the summary termination. I agree with the submission of Counsel for the defendant that the standard of a disciplinary hearing as envisaged in employment matters is that the employee is given an opportunity to tell their side of the story. (*See Hon Justice G.W Kanyihamba Vs Kampala International University & 2 others Civil Suit No 161 of 2010 and General Medical Council Vs Spackman (1943) ALL ER 627*).

It is not in contention that the plaintiff was subjected to a disciplinary hearing on 16th June, 2010. However, the plaintiff contends that she was not accorded a fair hearing before the termination of her employment.

It was the plaintiff's case that DW1- Jomson Mukiza, who headed the investigation into the matter at hand, was the same person who presented the results of the investigation, participated in the disciplinary proceedings, took a record of the proceedings and signed the minutes of the proceedings. That he is the same person who raised a complaint against the plaintiff at police. In reply, Counsel for the defendant made reference to clause 7.13 of the defendants Human Resource Management Policy [EXH D1], where it is stated that responsibility of initiation of disciplinary action shall be with the immediate supervisor. Further, that DW1 was not the chairperson of the Committee and could therefore not influence a whole panel of seven people.

One of the elements of a fair hearing is that the plaintiff should be given a chance to appear and present her case before an impartial committee in charge of disciplinary issues of the defendant.(See *Ebiju James Vs UMEME Ltd Civil suit NO.0133 OF 2012*). I agree with counsel for the plaintiff that the authority of *Rose Mary Nalwadda Vs Uganda Aids Commission CS No.45 of 2010* is quite instructive in resolving the above complaint. It was held;

“...surely a person who previously chaired or participated in an investigation in which the aggrieved party was condemned; would obviously be perceived as biased in a hearing of the same victim to justify the result of an investigation.”

Apparently, DW1, who had been participating in the investigations pointing to the guilt of the plaintiff, was part of the disciplinary committee. The test in regard to bias is not whether in fact a bias has affected the judgment, but whether a person

could reasonably apprehend that a bias attributable to a member of the tribunal must have operated against him/her in the final decision of the disciplinary committee/administrative hearing. The test of likelihood of bias is whether a person in possession of relevant information would have thought that bias was likely and whether the person concerned was likely to be disposed to decide the matter only in a particular way. (*See PC Markanda, The law relating to Arbitration and Conciliation. Page 613*).

I find that indeed, there is a very high chance that DW1 who already had a predetermined view of the guilt or innocence of the plaintiff, was likely to influence the rest of the members of the committee; Further, his opinion and decision was individually relevant as part of the committee, and therefore the high probability of his having been biased was prejudicial to the plaintiff. As already stated above, it is enough that the plaintiff reasonably apprehended that a bias attributable to the defendant due to his role in the investigations, operated against her while reaching the final decision. His role should have ended at presenting the findings of the investigations to the Committee. He ought not to have sat as part of the Committee deliberating on the innocence or guilt of the plaintiff because by the time he took the matter for disciplinary action, he had already made up his mind that the plaintiff was guilty of the charges.

In addition, it was the plaintiff's testimony that at the disciplinary hearing, whereas 7 members were listed to have constituted the committee, only three of them were physically present, including DW1. While the plaintiff tendered into evidence the minutes of the meeting [EXH P7], with signatures of only three committee members, the defendant tendered the minutes of the meeting where all the Committee members as well as the plaintiff had appended their signatures, although the dates indicated as to when they signed were different. I have noted the

argument by counsel for the defendant that merely because some of the members of the committee endorsed the minutes subsequently did not mean that they did not reflect what transpired at the meeting; that usually, notes are taken during the proceedings and minutes are prepared thereafter and attendees confirm the contents by endorsing on the same. However, I find that this was also irregular; if the minutes were prepared later on after the meeting, then all the members should have endorsed their signatures on the minutes first, so that the plaintiff would be the last person to sign, thereby agreeing to contents, including the presence of all the committee members who had signed the minutes.

For the reasons indicated above, I find that the plaintiff was not subjected to a fair hearing during the disciplinary hearing. It is the position of the law that if principles of natural justice are flouted, like in the present case, it is immaterial that the same decision would have been reached in the absence of a departure from those principles.

For the above reasons, it is my finding that the plaintiff was wrongfully dismissed without notice or payment in lieu of notice, and unlawfully dismissed without being accorded a fair hearing.

It is my finding that the plaintiff was wrongfully and unlawfully dismissed without being accorded a fair hearing.

ISSUE 2

Whether the plaintiff is entitled to the remedies sought;

The plaintiff claims for payment of her two months' salary in lieu of notice, payment of outstanding terminal benefits, general damages and exemplary damages. An employee who is unlawfully or wrongfully dismissed as in the

present case is entitled to adequate compensation in accordance with the law. In *Barclays Bank Vs Godfrey Mubiru SCCA No. 1 of 1998*, it was held that;

“in my opinion, where any contract of employment, like the present, stipulates that a party may terminate it by giving notice of a specified period, such contract can be terminated by giving the stipulated notice for the period. In default of such notice by the employer, the employee is entitled to receive payment in lieu of notice and where no period for notice is stipulated, compensation will be awarded for reasonable notice which should have been given, depending on the nature and duration of employment.”

In the present case, it was the plaintiff’s testimony that the defendant terminated her employment without paying her salary arrears. It is also not in dispute that the defendant terminated the employment without notice or payment in lieu of notice. **Section 58(1)(a) of the Employment Act, 2006**, provides that a contract of service shall not be terminated by an employer unless he/she gives notice to the employee, except where the contract of employment is terminated summarily in accordance with Section 69. In the present case, I have found that the dismissal was unlawful for failure to accord the plaintiff a fair hearing. The plaintiff is therefore entitled to the requisite notice, or to payment in lieu of notice. It is not in dispute that the plaintiff’s employment commenced on 7th October, 2004, and was terminated on 8th July, 2010. Therefore, the plaintiff had been in the defendant’s employment for a period of seven years. Section 58(3)(c) of the Employment Act, 2006, provides that the notice required to be given by an employer or an employee shall not be less than two months, where the employee has been employed for a period of five, but less than ten years. I therefore award the plaintiff, two months’ salary as payment in lieu of notice. EXH P5, being a letter of salary increment addressed to the plaintiff from the defendant shows that the plaintiff was earning UGX 705,456/= per month while in the employment of the defendant. Therefore, the total amount awarded as payment in lieu of notice is UGX 1,410,912/=. However, the plaintiff

has not adduced any evidence to prove that the defendant owed her salary in arrears. Therefore the claim for salary arrears is declined.

General Damages.

It was the plaintiff's testimony that upon the termination of her employment by the defendant, her career was greatly undermined and she was psychologically and emotionally tortured. She was referred to as a thief after her many years of sacrifice and selfless service to the defendant. I agree with the submission of Counsel for the plaintiff that the summary dismissal by the defendant was indeed insensitive, given the considerable period of time the plaintiff had faithfully worked for the defendant and therefore calls for the award of general damages. It was the submission of counsel for the defendant that general damages should be the equivalent of the compensation in lieu of notice. However, the position of the law has changed, with regard to the award of general damages in employment cases for unlawful and wrongful dismissal. The award of general damages is not confined to an amount equivalent to the employee's salary or payment in lieu of notice as contended by counsel for the defendant. In *Bank of Uganda Vs Betty Tinkamanyire SCCA No.12 of 2007*, court held that;

“...the reasoning of the court of Appeal in Agbettah Versus Ghana Cocoa Marketing board (1984-86) GLRD 16 should be followed so that the courts were able to award damages which reflected the courts disapproval of a wrongful dismissal and the sum was not confined to an amount equivalent to the worker's wages.”

Taking that into account, and the fact that the plaintiff had worked with the defendant for a long period of time without any prior bad record, I shall award UGX 25,000,000/= as general damages.

Punitive damages;

I find that this is not a proper case for award of punitive damages. As stated above, the plaintiff acted with negligence in the execution of her duties and the defendant was justified in subjecting her to a disciplinary action; only that the summary dismissal is not justifiable in this case where due process was not followed.

In conclusion, the following claims of the plaintiff are hereby granted;

- a) Payment in lieu of 2 months notice - UGX 1,410,912/=.
- b) General damages - UGX 25,000,000/=
- c) Interest on (a) above at the rate of 15% per annum from the date of dismissal till payment in full and interest on (b) above at 10% per annum from the date of judgment till payment in full.
- d) Costs of the suit.

Orders accordingly.

Elizabeth Musoke

JUDGE

20/08/2015