THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(CIVIL DIVISION)

HIGH COURT CIVIL APPEAL NO. 66 OF 2020

(An appeal from the judgment and orders of the Grade One Magistrate of Nakawa Chief Magistrate's Court at Luzira; delivered by Her Worship Carol* Kabugo, *Magistrate Grade One, on the 14th June 2012 in Civil Suit No. 961 of 2008)

Wakiso District Local Government……....Appellant

versus

Serwada Joseph……..……..Respondent

Before: Hon. Justice Dr Douglas K Singiza

JUDGMENT

1 Introduction

In my previous decisions both at the lower bench and now in the High Court, I have characterised the conflictual nature of labour relations worldwide as class-based. Rationally speaking, those with the power to employ labour are focused on efficient output, while the interest of labour is usually geared towards reasonable pay and a good, safe working environment. Whenever these interests clash, disagreements are bound to happen that require resolution through a fair process. When employee-employer disputes arise in the context of a decentralised

system, the oversight role of court must always seek to balance one against the other variable – the need to not diminish the administrative autonomy of local governments.

A learned trial magistrate entered judgment for salary arrears at 20% interest p. a. from the date of termination of the respondent's employment on 30 April 2004 until payment in full. The magistrate also awarded damages of UGX 18,000,000/= at 20% interest p. a. from the date of judgment, retirement benefits and costs of the suit. The appellant was aggrieved and approached this court challenging the findings of the court.

1.1 Representation

During the appeal, and indeed before the trial court, the appellant/defendant was represented by Ms. Nambale, Nerima & Co Advocates while respondent/plaintiff was represented Ms. Kamulegeya Advocates. Even when, for the reason of space and time, I could not consider all their arguments, I must state that I found their input most useful.

2 Background

In the claim, the respondent during the trial indicated that he was employed by the defendant as Clinical Officer Grade 11 on 25 February 1994 on probation, and later confirmed in this position on 1 April 1996. He then received a letter from the defendant, dated 7 June 2006, retiring him in the public interest with effect from 30 April 2004. The respondent challenged the defendant's decision as illegal. The respondent contended that he was denied his salary benefits, having last been paid in 2005, for which he holds the defendant liable. He prayed for general and special damages for unpaid salary arrears for the months of June 2005 to July 2006 at UGX 455,360/= p. m. totalling UGX 6,375,040/=. The respondent sought a declaration that his retirement in public interest was illegal and an order of reinstatement with all his salary arrears and costs.

The appellant challenges the respondent's claim, stating that the latter absconded from his duties when he undertook studies without the requisite permission for one year. The respondent was invited by the Chief Administrative Officer (CAO) to show cause why disciplinary preceding should not be taken against him but he did not respond. As a result of the abscondment, the appellant suspended his salary and, after the respondent had taken employment with Uganda Medical Catholic Bureau, he was retired in the public interest. The appellant prayed for the dismissal of the claim.

2.1 Findings of the trial court.

Before the trial, issues were framed which were followed though by the trial magistrate:

1) *whether the respondent had proceeded on study leave without official permission;*
2) *whether the respondent had absconded from work;*
3) *whether the stopping of the respondent's (sic) [salary] was lawful;*
4) *whether the retirement of the respondent was lawful; and*
5) *whether the respondent was entitled to the reliefs sought.*

The appellant also raised a preliminary objection to the jurisdiction of the court, which was dismissed. It was also the finding of the court that since the respondent had taken up his studies without a response to his application for his study leave, he had had no study leave at all. The learned trial magistrate also held that since the appellant had retired the respondent in the public interest without according him a fair hearing on 30 April 2004, he could not have been accused of absconding from duty even before the actual abscondment. The learned magistrate found that his retirement in the public interest was unfair and unlawful and granted the following orders:

1) Recovery of salary arrears of UGX 6,375,040/=;
2) Damages of UGX 180,000,000/=;
3) Interest on (a) at 20% p. a. from the date of termination until payment in full;
4) Interest on (b) from the date of filing (sic) judgment; and
5) Costs.

Dissatisfied with the decision of the trial court, the appellant appealed on the following grounds:

1) The learned trial magistrate erred in law and fact when she held that the plaintiff's employment was terminated unlawfully.

2) The learned trial magistrate erred in law and fact when she held that the plaintiff went to study after his employment had already been terminated.

3) The learned trial magistrate erred in law and fact when she held that the plaintiff never absconded from work.

4) The learned trial magistrate erred in law and fact when she awarded the plaintiff excessive general damages.

3 The power of an appellant court

The duty of a first appellate court is to re-evaluate the evidence, both oral and affidavit evidence. However, the appellate court must make allowance for the fact that it has neither seen nor heard the witnesses.[1] Mulenga JSC (as he then was) summarises the six principles that an appellate court must always bear in mind:[2]

1) an obligation to re-evaluate the evidence is founded on common law rather than in our own statutes;

[1] See *Lovinsa Nankya v Nsibambi* 1980 HCB 81.
[2] *Narsensio Begumisa and Ors v Eric Tibebaga* (Civil Appeal No. 17 of 2002) [2004] UGSC 18 (22 June 2004).

2) an expectation on an appellate court by the parties to make inferences and make its own decisions;
3) a recognition that since an appellate court never sees or hears witnesses, there is a duty to weigh conflicting evidence and draw its own conclusion;[3]
4) an acknowledgement of the appellate court's own duty to rehear and consider the evidence as if it were the trial court;
5) the ability of the appellate court not to shy away from departing from the decision of the trial court if, upon consideration of the entire evidence, a conclusion emerges that the trial court's decision was in fact wrong; and
6) the appellate court must consider those witnesses that were more impressionable, in which case the demeanour of the witness becomes an important consideration.

It is a mistake however, not to subject the evidence at the trial court to a new and complete assessment.[4]

4 Submissions by the appellant on preliminary objections

The appellant argued three preliminary objections touching on the jurisdiction and invited the court to consider the entire proceedings an illegality. Citing numerous decisions of other courts, the appellant argued that an order of court made without authority to do so is of no consequence.[5]

4.1 The 3 preliminary objections

The first concern of the appellant related to the 3 preliminary objections, some of which were raised during the trial but overruled. The appellants categorised the arguments on jurisdictional objections in three strands: a) pecuniary, b) subject (sic), and c) geographical.

[3] The court relied on the case of *Coghlan v Cumberland* (1898) 1 Ch 704.
[4] *Pady v R* (1957) EA 336.
[5] *Mubiru & Others v Kayiwa* 1979 HCB 2012.

The appellant's first line of attack was that the learned trial magistrate was not empowered to hear and determine the dispute because of pecuniary jurisdictional limits.[6] It was then argued that, since the learned trial magistrate had awarded salary arrears of UGX 6,375,040/= plus interest from the date of termination (10 April 2004) until the time when the entire amount was paid, the total amount after 16 years would come to UGX 20,400,128/= plus UGX 18,000,000/= with 20% interest from the date of judgement, retirement benefits and costs. This amount, it was maintained, was beyond the pecuniary power limits of the court and hence an illegal award.[7] The appellant called upon the court to consider the principle that the learned magistrate could not by law award damages well beyond her limits to do so.[8]

Focusing on section 93 of the Employment Act, the appellant argued that the correct forum for any person whose rights have been infringed is the labour officer. It was the argument of the appellant that whereas by 2004 the provisions of section 99(2) of the EA had saved the completion of proceedings after the repeal of the Employment Act 6 of 2006, it was never contemplated that those proceedings should have been before a magistrate court. Thus, proceedings before magistrates' courts could not have been saved under the old law because these were never clothed with the power to hear labour disputes in the first instance.[9]

---

[6] See the section 4 of the Civil Procedure Act Cap 71.

[7] Reference was made to section 207(1)(b) of the Magistrates Courts Act which caps the limit of the magistrate Grade I's pecuniary power to hear and determine civil disputes to UGX 20,000,000/=.

[8] *National Medical Stores v Penguins Ltd* HCCA No. 29 of 2010.

[9] See *Concern Worldwide v Mukasa Kugonza* Soroti High Court Civil Revision No. 1 of 2013. See also *Justine Kasoz v Mpigi District Local Council & Wakiso District Local Government* High Civil Revision No. 48 of 2016 that discusses section 99 (2) of the LA whose saving provisions permitted the continuation and completion of the disputes in courts. According to the court's reasoning, a magistrate's court was not an envisaged 'court' under the saving provisions.

The last limb of the preliminary objection deals with geographical jurisdiction, the main argument being that the Chief Magistrate's Court Nakawa sitting at Luzira had not the authority to hear the matter. Instead, the appellant argued that the dispute should have been heard at the Chief Magistrate's Court Wakiso.[10]

4.2 Submission by respondent

In the respondent's submission, the approach was that since these objections were raised at trial, it was unnecessary to raise them before this court on account of *res judicata*.[11] The respondent nonetheless explained the history of the suits which began in the High Court, *vide* Nakawa Civil [suit] No. 167 of 2006, but was instead referred to the magistrate's court for trial. In a rather irritated tone, the respondent suggested that it was out of pure stubbornness that the same objections were being raised in this appeal.

The respondent also argued that the preliminary objection on pecuniary jurisdiction was weak because jurisdiction is determined at filing and not at the time of judgment. Thus, it would be wrong to raise execution of the decree after the award had accumulated. Finally, the respondent argued that the sections of the Employment Act which the appellant quoted on transitional provisions dealt with the new Act, yet the provisions under the repealed Act clearly had clearly vested jurisdiction in magistrates' courts. He braggingly indicated he would therefore not spend a lot of time arguing this very objection because it was not properly contextualised. Furthermore, while counsel had referred to the geographical

---

[10] Reference was made to [the] Magistrate's Court (Magisterial Areas) Instruments, 2017, Statutory Instrument No. 11 of 2017 and section 216 of the Magistrates Courts Act (MCA). Section 216 provides that '[n]o objection as to the place of suing shall be allowed on appeal unless the objection was taken in the court of the first instance and unless there has been a consequent failure of justice'. It was the argument of the appellant that this objection was raised but the learned trial court ruled against the objection.

[11] Authorities were cited on this argument, which I think was unnecessary because in my view the respondents misapplied the principle of *res judicata*. I will not reproduce those authorities here.

jurisdiction, it was the respondent's argument that the Wakiso Chief Magistrate Court had not yet been gazetted at the time of the dispute.

4.2.1 Determination

The term 'jurisdiction' has been defined variously in many judgments and statutes. The term 'jurisdiction' is defined with reference to legal power and the authority of a court of law to competently adjudicate a dispute.[12] It is now acceptable that pecuniary, status or geographical jurisdictional limits are intended to ensure certainty and orderliness in the adjudication process.[13] Indeed, it is legally impermissible for a magistrate's court to hear and determine a matter when the subject matter is above his or her pecuniary jurisdiction. The power of a magistrate's court may indeed be limited when subject matter under dispute can be tried before a specialized court or when there is evidence that the dispute arose from a different geographical area from that of the local court that purports to sit in judgment.[14]

That said, the position remains that an award of damages and costs (mainly discretionary) does not form part of the subject matter.[15] There is neither any legal provision nor any precedent of the court that seems to cap the amounts in taxed bill costs that may be executed by a magistrate's court. It is also wrong to factor in interest on the awarded damages to determine whether a magistrate's court had pecuniary jurisdiction or not. This is because the percentage of interest that ultimately accrues on the award of damages varies and depends largely on market forces.

---

[12] See Bryan G (ed) *Black's Law Dictionary* West: Thomson Reuters 1999.
[13] See *Rose v Jumo* HCT (Arua) C.Rev No. 0006 of 2015 Per Mubiru J.
[14] *UKI Uganda Ltd v Makoya* HCT C.Rev. No. 04 of 2015.
[15] *Uganda Commercial Bank Ltd v Twala* HCC 16 of 1998; *National Medical Stores v Penguins Ltd* HC CA 20 of 2010.

Further, it is noted that before the establishment of the Industrial Court, there was a structural vacuum raising questions as to which other adjudication body would then deal with labour disputes. The Supreme Court held that in the absence of the Industrial Court at the time, only the High Court was clothed with the power to hear and determine labour disputes.[16] In my view, the decision of the Supreme Court catered for the vacuum that had been created by the delay to establish the specialized court under the LA. It is probably wrong to consider the decision in a way that seemed to affect the transitional provisions on all disputes (before labour officers and magistrates) which had not been completed under the repealed Employment Act. Since the appellant acknowledges that at the time of the filing of the dispute the Chief Magistrate's Court of Wakiso had not been established, I propose not to make any further comment.

5 Arguments on the grounds of appeal

Grounds 1 and 2 were argued together, while grounds 3 and 4 were argued separately. I will summarise the arguments in each of the grounds and the counterarguments as presented by both counsel.

5.1 Grounds 1 and 2

As already stated, these grounds are concerned with the fact that the learned magistrate erred in law and fact by holding that the respondent's employment was terminated unlawfully and that he had in fact gone to study after his employment was terminated.

The thrust of the appellant's argument is that once a person is employed in government, the understanding is that his or her entire time is dedicated to the service of the government. Thus, it is wrong, and an affront of the standing orders,

[16] *Former Employees of the G4S Security Services v G4S Security Services Ltd* Supreme Court CA No. 18 of 2010 per Kisaakye JSC.

for a government employee to be absent from work without the requisite permission.[17]

Reference was then made to para 4 of the respondent's witness statement, where he admits that his study leave was never granted and that the study leave was in fact declined. The reasons for the above conclusion, it was argued, are found in the appellant's DE5, which outlines the reasons for declining to grant the leave as follows: the respondent did not seek advice before applying; he was always absent from work; he had already undertaken a degree in Environment Management which had affected his work schedule; and that he had a mere a craving for training.

Detailing the history of the respondent's work attitude, his immediate supervisor, in a letter dated 21 July 2005 (ED4) to the CAO, described him as a 'failure' and 'useless', with a 'negative attitude to clinical work'. Thus, the respondent was rejected back into the directorate of health services as a deterrent. In a further submission on this ground, the appellant cited a letter, dated 4 October 2005 (DED6), initiating disciplinary proceedings, with the following charges outlined:

1) taking study leave for one year without official permission;
2) attending a course not related to his core profession or function that would not benefit the department; and
3) abscondment from duty and insubordination.

It was then argued that these allegations were in fact admitted by the respondent's lawyer (DE7) and that the above evidence was presented to him and he was given an opportunity to respond before a final decision was made.

It was the argument of the appellant that the learned magistrate made a mistake when she took the view that by the time the respondent went on study leave in 2004, he had been in fact retired. In coming to this conclusion, the argument went

[17] See Chapter 1 F-c section 1 and 2 of the *Public Service Standing Orders*.

on, she had misconstrued the appellants letter of retirement dated 7 June 2006 (DED 8). The appellant then argued that the fact that the letter retiring the respondent operated retrospectively did not mean that the decision to retire him was as a result backdated. The appellant referred to the evidence of DW1 Mathias Katamba, the Senior Human Resource Officer, who justified the backdating of the decision to retire the respondent which coincided with his date of abscondment. Thus, the decision was tinkered with with good motives, to ensure that the respondent did not in fact lose his retirement benefits.[18]

5.2 Respondent's submissions

The respondent's submissions on ground 1 of the appeal were anchored on the right to be heard as a constitutional imperative. This includes a fair trial, quick justice, open justice and unbiased judicial process in the determination of administrative decisions, among others.[19] Relying on Mubiru J, the respondents argue that the effect of the infringement of constitutional imperative particularly invalidates the outcome of any administrative decision.[20] Furthermore, the repealed Public Service Act Cap 28, read together with Regulations 36(4), (5) and (6) made thereunder, provides for appearance before the disciplinary committee so that a person can be heard.

In addition, provision is made for a right to legal representation before an officer can be penalised. As it turned out, and to the dismay of the respondent, he was only informed of the decision to dismiss him (PED 14) effective 30 April 2004. He then makes a point that the fact that he had all along been dismissed while still in employment, makes the dismissal on available precedents null and void.[21] The respondent also points to the evidence of the instant suspension of his payment (PED 19) when the rules required that he should have been interdicted first

[18] See Chapter 1 section 9 (2) of the *Public Service Standing Orders*.
[19] See articles 28 and 42 of the Constitution.
[20] *Eberuku Pius v Moyo District Local Government* Misc. Application No. 5 of 2016.
[21] *Kamba Saleh v Attorney General* Constitutional Petition No. 38 of 2012.

without necessarily suspending his salary, to make a case for his right to a fair trial.[22] While submitting on ground 2, the respondent quickly dismisses the contention that he took on studies without permission by wondering how he could have sought permission when in fact he had already been dismissed.

In my view, the first two grounds can be determined better when discussed together with the third ground, whose extent and arguments are discussed below.

5.3 Ground 3

The third ground deals with the purported error in law and fact when the learned trial magistrate held that the respondents never absconded from work.

It is a given that any government officer 'may not be absent from duty without the permission of the officer to whom he or she is responsible',[23] a position not contradicted by the respondent. Relying on the decision of court, the appellant clarifies that in determining what amounts to an abscondment, the contract of service must subsist and an employee must have absented himself or herself without good reasons.[24] It was the argument of the appellant that since para 4 of PW1's statement (the respondents) confirms that his study leave was never granted, his decision to go on study leave without permission was evidence of his abscondment from duty.

5.4 Submission by the respondent

The respondent insists that he never absconded from duty and referred to the letter of transfer dated 23 January 2004 transferring him to another unit (PED5). He argues that he had even been assigned duties to carry out a household local quality survey (PED6). Furthermore, he had developed reports which were commented upon by his supervisor (DED3). He then made a point that he could not have

[22] Regulation 29.
[23] See Chapter 1 section 2 of the *Public Service Standing Orders.*
[24] *Byamugisha Joseph v Board of Governors St Augustine College* Labour Dispute 62 of 2016

absconded from duty at the time of forced retirement on 6 August 2004 (PED 14) when he had been in active employment before then.

5.4.1 Determination

The learned trial magistrate's finding[25] was that it was a given that the respondent had taken leave without permission, but took the view that the respondent could not have absconded from duty since at the time he took leave, he had in fact, retrospectively been dismissed by the appellant.[26] In my view, the reasoning adopted by the learned trial magistrate is too problematic to comprehend. The commonly held view is that an order of dismissal with retrospective effect is, in substance, '[a]n order of dismissal as from the date of the order – with the superadded direction that the order should operate as from an anterior date'.[27] The argument that the respondent was no longer in the appellant's employment at the time he allegedly absconded from duty is therefore not born out of evidence.

This court is alive to the fact that local governments in this country continue to grapple with challenges of human resource management.[28] Given the poor oversight systems in place, many of the local government staff usually absent themselves without being easily detected.[29] In my view, the evidence of abscondment from duty by any local government staff, requires a firm response from local government human resource managers, if the administrative autonomy and integrity of local governments are to be protected.[30] Courts of law must never shield, and therefore incentivize, local government staff who illegally absent themselves from duty. Any protection that is extended to any local government

---

[25] See pp 5–6 of the judgment.
[26] See pp 7–8 of the judgment.
[27] *R. Jeevaratnam vs The State of Madras* 1966 AIR 951.
[28] Singiza D *Constitutional Law, Democracy and Development: Decentralisation and Governance in Uganda* London: Routledge 2019 pp 64–65.
[29] Singiza D 2019 pp 197–208.
[30] See also Report on the Commission of Inquiry into the Local Government System 1987: 75.

staff who abscond from duty without reason, may in fact discourage other employees who choose to stay on their jobs and deliver crucial services such as health care to local communities.[31] It is the finding of this court that the learned trial magistrate misconstrued the law on retrospective dismissal and thus came to an erroneous conclusion.

5.5 Procedural unfairness of the dismissal

The learned trial magistrate faulted the appellant for infringing the respondent's constitutionally guaranteed right to a fair and impartial administrative decision.[32] In rejoinder, the appellant invited this court not to overstretch the above-stated rights when what was envisaged under the EA was not holding a mini-court but rather a semblance thereof.[33] Arguably, it is not necessary to define the right to a fair hearing to mean conducting a mini-court; it is sufficient always, however, to expect that employees are treated fairly in all disciplinary processes. A one-off procedural shortfall, such as, the suspension of an employee's salary instead of an interdiction cannot amount to a violation of one right to a fair hearing *per se*.

In my view, the appellant's decision to 'suspend' the respondent's salary when the option of an interdiction at half the pay was available, was probably intended to ensure that the respondent comes back to check on his employment status with the appellant, after a long period of abscondment from duty.[34] Even when the use of some words such 'failure' and 'useless' by the respondent's supervisor were strong, the fact that the respondent had absconded from work remains unchallenged. This court fails to imagine any other remedy other than to agree

---

[31] Kakumba U *External Control Systems in Enhancing Accountability in Local Governments: the case of Uganda* (Unpublished) PhD thesis, University of Pretoria 2008: 99.
[32] See pp 7–8 of the judgment. The learned trial magistrate referred to articles 28 and 42 of the Constitution which call for according fair and impartial treatment to every person in administrative decisions.
[33] *DFCU v Doona Kamuli* CASA No. 121 of 2016.
[34] See Part F-S of the *Public Service Standing Orders, 2010.*

with the appellant's decision to dismiss the respondent in public interest, notwithstanding the dismissal's retrospective effect.

It is true that the right to a fair trial is non-derogable, indicating that it cannot be suspended no matter the circumstances.[35] As early as 1943 Lord Viscount Simon warned:

> If the principles of natural justice are violated in respect of any decision, it is indeed immaterial whether the same decision would have been arrived at in absence of the departure from the essential principles of natural justice. That decision must be declared to be no decision.[36]

It remains however, that employees who abscond from duty without good reasons should not automatically expect every local government staff disciplinary process to 'throw' at him all the above listed rights. Very frankly, the appellant had no idea where the respondent was (for the duration of his abscondment) to avail him these rights. It is unrealistic to expect that all these 'procedure fairness' bundle of rights should have 'followed' the respondent wherever he was for the duration of his abscondment. Some of these rights could not, and indeed did not follow him. Overall, grounds 1, 2 and 3 succeed.

5.6 Ground 4

> *The last ground of appeal is concerned with the fact that the learned trial magistrate erred in law and fact when she awarded the respondent damages.*

The argument of the appellant questions the decision of the learned magistrate to award damages to a person who had been retired in the public interest, yet the circumstances of his retirement in fact should have warranted a forfeiture of all his privileges. The suggestion then is that after the appellant had mitigated the

---

[35] See article 44 of the Constitution of Uganda as amended, which includes the right to a fair hearing as one of the four rights that are especially protected.
[36] *General Medical Council v Sparkman* (1943) 627 at 644.

respondent's injury, the appellant should not have been 'penalised' with damages. Furthermore, the evidence of the respondent's indiscipline (DE5) demonstrates that the respondent had not suffered any loss warranting the award of general damages. Further argument was made that the 20% interest on damages was higher than the court's own rate of 6%, a decision that was wrong in law.

5.6.1 Determination

It is always almost true to state here that the grant of general damages is a discretionary.[37] In determining the nature and extent of damages, the courts are called upon to consider the value of the subject matter and the economic inconvenience suffered.[38] In a way, damages are restitutive in nature such that the injured person can be put in the position that he or she was in before the wrong. Arguably, it is preferred that the court considers whether the plaintiff ever attempted to mitigate the wrong.[39]

The idea that damages are a 'form of costs' for litigation is now well accepted in determination of the reliefs in cases of this nature. The consensus of the courts is that damages are intended to give the wronged person compensation for the loss or injury suffered, underscoring the restitutive nature of such reliefs.[40] Thus, where evidence demonstrates that an employer was heartless in dismissing an employee, then aggravated damages should be considered.[41] Justice Kasule's guidance is succinct and apposite:

> [I]n cases of unlawful dismissal [the] courts … in exercise of their discretion, may award damages which reflect the court's disapproval of a wrongful dismissal of an

---

[37] *Fred Kamugira v National Housing & Construction Company* CS No. 127 of 2008 per Bashaija J;
[38] *Uganda Telcom v Tanzanite Corporation* [2005] 351.
[39] In *Bank of Uganda v Betty Tinkamanyir*e (SCCA No. 12 of 2006) the view of the court was that 'the party unlawfully dismissed was entitled to monetary value of the period that was necessary to give proper notice of termination which is commonly known in law as compensation in lieu of notice and that party is also entitled to damages for breach of contract'.
[40] *Robert Cuosesens v Attorney General* SCCA No. 08 of 1999.
[41] *Bank of Uganda v Betty Tinkamanyire op. cit.*

> employee. The sum that may be awarded under this principle is not confined to an amount equivalent to the employees' wages.[42]

It is also important that before granting any damages as a form of a relief, especially in cases of summary dismissal, the evidence of the mitigation of the loss incurred is usually considered.[43] That said, the principle remains that an employee who is wrongfully dismissed is entitled to be compensated fully for the financial loss that may be suffered because of the dismissal.[44]

While it is legally problematic for this court to appreciate the argument of the appellant that the respondent's dismissal was in fact a favour, for which no award of damages could be considered, it would be moot, for the reasons already given in grounds 1, 2 and 3 to make any further findings on this ground.

5.7 Arguments not in the grounds of appeal

The contention here touches on the award of costs, with the argument being that where a district council employee in a labour dispute elects to bypass the district council's disciplinary process, he or she loses the right to an award of costs.

Although the question of costs was never raised as a ground, it was extensively argued and therefore presents valid questions to which this court may hazard an answer. It was argued that since there were freely available and quick appeal mechanisms within the Public Service Commission (PSC), it was wrong to have escalated the dispute to the courts of law first. Thus, the longer route of litigation

---

[42] See *Issa Baluku v SBI INT Holdings (U) Ltd HCCS NO.792 OF 2005*.

[43] *R Sutton et al Sutton & Shannon on Contract* (7th Ed.) London: Butterworths (1970) p 45 discusses the need for an injured party under a contract to ensure that efforts have been taken to mitigate the loss. Thus, a party who decides to sit back and, so to speak, 'chill' cannot blame a defendant for all the injury he or she experiences when the very extent of the injury could have been limited.

[44] See *Esso Standard (U) Ltd v Semi Amanu Opio* Civil Appeal No. 3 of 1993.

preferred by the respondent was unnecessary and, so to speak, self-inflicted, for which no costs should be awarded.[45]

The suggestion seemed to be that had the respondents pursued his appeal to the PSC, costs would not have been considered. The respondents did not reply to the question of why he never explored the appeal mechanisms in the PSC. In the paragraphs below, I will make a few comments considering the decisions already made on grounds 1, 2 and 3.

5.7.1 Comment (*Obiter dictum*)

Writers on Uganda's local government system define administrative autonomy with reference to a power or discretion to appoint local government staff. Local government administrative autonomy also presupposes the capacity to harness human resources for the purposes of improved service delivery in local communities. It is therefore generally understood that a district council's administrative autonomy is both a discretionary power that vests in a district council capacity and a question of resources which it has to manage independently of the central government institutions.[46] The argument is that local government administrative autonomy is possible only when a district council has the leverage and discretion to appoint and dismiss its employees.[47]

Three types of personnel systems in Uganda's decentralised system have been discussed extensively elsewhere and require no detailed repetition here,[48] except

[45] See section 59 (2) of the LGA. Regulations 23–25 of the Public Service Standing Orders provide 'if a public officer subjected to disciplinary action has reasonable ground to believe that the due process of the law and the principles of natural justice have not been followed, he or she may appeal in accordance with the Grievance Procedure for public officers in section G-c … . A public officer aggrieved by the decision of the District Service Commission may appeal to the Public Service Commission within one (1) year'.
[46] Kakumba U *opcti* 2008: 99.
[47] Stanton A *Decentralisation and Municipalities in South Africa: An Analysis of the Mandate to Deliver Basic Services* Unpublished PhD thesis, University of KwaZulu-Natal, Pietermaritzburg 2009: 47
[48] Singiza D *opcit* 2019: pp 161–177.

to reiterate the three types here as follows: the separate, the unified and the integrated personnel system.[49] Given the difficulties that were encountered at the inception of decentralisation programmes in Uganda in applying either of the first two personnel systems in their purest form, the consensus seemed to emerge favouring a preference for the integrated personnel system, sometimes referred to as the 'hybrid system'.[50] Arguably, the hybrid system vests the PSC with an oversight function over the staff disciplinary decisions of the district councils.

The fact that several of the District Service Commissions' (DSCs') disciplinary decisions are upheld by the PSC is indicative of the fact that the DSCs are conducting themselves reasonably and responsibly. It accentuates the need by the courts to allow the adjudicative system within the district council hybrid personnel system to take root. It remains problematic for any court, where good reasons exist, to deny costs to a party with a valid claim simply because there was an option to first appeal to the PSC.

In total, this appeal succeeds on grounds 1, 2 and 3. However, for the reasons discussed in section 5.7 of this judgment (in response to the appellant's arguments on costs) I make no orders as to costs.

Dated at Kampala this 2nd day of August 2023

Douglas Karekona Singiza

Acting Judge

[49] Kumar 2011: 54.
[50] Lubanga F 'Human Resource Management Under Decentralisation' in Nsibambi A (ed.) *Decentralisation and Civil Society In Uganda: The Quest for Good Governance* Kampala: Fountain Publishers1998: 70.