

**THE REPUBLIC OF UGANDA**

**IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA**

**LABOUR DISPUTE NO. 016/2014**

**ARISING FROM MGLSD AC/L 220/2014**

**MARGARET KAGENDO ..... CLAIMANT**

**VERSUS**

**CIVIL AVIATION AUTHORITY ..... RESPONDENT**

**BEFORE**

- 1. THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE**
- 2. THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA**

**PANELIST**

**1. MS. HARRIET NGANZI MUGAMBWA**

**2. MR. MATOVU MICHEAL**

**3. MR. EBYAU FIDEL**

**AWARD**

**BRIEF FACTS**

On the 2/10/2012 two aircraft AF 639 and AF 329 had a near midair collision which the Respondents called an “Airprox.” It was alleged that the collision was caused by the Claimant’s negligence when she failed to provide the aircrafts with the required “standard separation” as the Senior Air Traffic Management Officer in charge. Her “validation” was withdrawn on 4/10/2012 and she was suspended from work on 1/11/2012. On 28/3/2013, she was invited to

discuss the issues related her alleged negligence and on 4/11/2013, she was terminated for negligence and outright denial of an error.

She contended that her termination was unlawful because the disciplinary process was flawed and the punishment meted against her was excessive yet she had not committed any offence.

The respondents on the other hand contended that she had been lawfully dismissed and she had been accorded a fair hearing.

## **ISSUES**

- 1. Whether the claimant's termination was lawful?**
- 2. Remedies due to the Claimant, if any?**

## **REPRESENTATIONS:**

The Claimant was represented by Mr. Sebina Muwanga of Muwanga and Company Advocates and the Respondent by Mr. Cornelius Mukiibi of Mukiibi Sentamu and Company Advocates.

## **RESOLUTION OF THE ISSUES**

### **1. Whether the claimant's termination was lawful?**

It was submitted for the claimant that contrary to the 4 weeks provided for, by her contract of employment and the collective bargaining Agreement Marked "CCCC" to her statement, she was suspended for a period of 12 months from the 1/11/2012 to 4/11/2013. She also contended that the suspension had not been communicated to the Union as provided for under Article 30(a) of the collective bargaining Agreement, thus rendering it illegal.

Counsel for the Claimant further contended that the investigations conducted by the Respondents into her case were not done in accordance with the provisions laid down under Section 6 of the Civil Aviation Authority Act (Cap 354 laws of Uganda) and that the investigators were not competent. He argued that contrary to regulation 6 of the Civil Aviation (Investigation of Accidents) Regulations Statutory Instrument No 23 of 2012 none of the Respondents witnesses had proved that they had been authorized to carry out an investigation against the claimant by the Minister ,therefore the investigations were void and of no legal effect. He also cited Lord Denning's dictum in **Mcfoy vs united Africa Company Limited (1961) 3 ALLER 1169.**

He argued that the respondents had not proved that the claimant had been negligent as was defined by Bamwine J, in **Kiga Lane Hotel vs Uganda Electricity Distribution co. Ltd** in which he adopted the definition in **Blyth vs Birmingham water works (18560 11 EX )781** as follows:

***“Negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would do,”***

He insisted that 3 ingredients of negligence had not been proved as follows;

- I. The party alleged to be negligent owed a duty of care
- II. The duty of care was broken
- III. As a result, loss has been occasioned.

**i) Duty of care**

According to Counsel, the planes in issue, AF639 and AF 329 were flying Visual Flight Rules (VFR). He refuted the testimony of one Okot Geoffrey RW1 who said that the planes in issue AF639 and AF 329, were operating at 5500 and 5000 feet above sea level which was below the minimum sector altitude of Entebbe Flight Information Region, yet according to regulation 78 of the **Civil Aviation (Rules of the Air and Air Traffic Control Regulations, Statutory Instrument No. 58 of 2006**, which he read in court, instrument flight rules (IFR) were prohibited from operating below minimum sector altitude, unless they were coming in for landing or taking off. According to him AF 329 and AF 639 were operating below the minimum sector altitude but they were governed by the Visual Flight Rules. He cited regulation 69 which provides that;

***“a person shall conduct a VFR flight so that the aircraft is flown in conditions of visibility and distance from clouds equal to or greater than those specified in Table 8.”***

The table is reproduced at page 103 marked “FF” to RW1s witness statement.

Counsel further noted that according to RW2, Amoni Clay, flight visibility for VFR flights must be between 5-8kms , 1500m from cloud horizontally and 300m from cloud vertically and the

pilots were expected to ***“see and avoid”*** other aircraft /obstructions while flying and were not expected to come into close proximity with other aircraft. Counsel noted that Regulation 14 and 15 of the **Civil Aviation (Rules of the Air and Air Traffic Control Regulations , Statutory Instrument No. 58 of 2006** provided that under VFR, Pilots were solely responsible for avoiding any action. He noted that according to “DD” at page 261 of the trial bundle,

***“In controlled airspace VFR flights are provided with flight information service, but there exists no specific requirement on ATS to provide such flights with information on collisions hazards based on the understanding that pilots will be available to avoid collisions with other aircraft by applying the “see and be seen concept.”***

It was Counsels submission that AF 639 and AF 329 were not in controlled airspace at the time of the incidence and no clearances had been issued to them and therefore it was not mandatory for the claimant to give traffic information to them.

Counsel set down the definition of controlled flight and controlled airspace at page 32 of the Manual of Air Navigation Service Operations (MANSOPS) marked as “EE” as follows:

A controlled flight is ***“Any flight which is subject to an Air traffic Control clearance.”***

Controlled airspace is ***“Airspace of defined dimensions within which air traffic control service is provided in accordance with airspace classification.***

He made reference to “LL” which categorized controlled airspaces as follows:

***“The airspace around our globe is divided into Fight Information Regions (FIRs) within which states are responsible for providing Air Traffic Services (ATC). Each FIR is divided into controlled and uncontrolled airspace. ATC service is provided for aircraft within airspace classes A to E.”***

He stated further that according to the claimant’s paragraph 84 of the claimants evidence in chief, Flights AF 639 and AF329 were flying in class G which was not part of the controlled airspace therefore the aircraft could not be controlled. According to him this was corroborated by RW1, Okot in cross examination.

He further submitted that flights in class G only received flight information services from ATC on request. He cited page 109 of “FF” which states that ***“In class G airspace, radio***

**communication with Air Traffic Control is not a requirement, no separation is provided for VFR flights and the said flights are not subject to ATC clearance.”** Counsel opined that at 19 miles southwest of Entebbe Airport, the aircraft were operating in class G .It was his submission that there was no evidence that AF 639 and AF 329 had requested for flight information and since they were flying in class G where radio communication between the pilots and air traffic control was not a requirement, the claimant was not obliged to provide the aircraft with any information.

He noted that the claimant had only advised AF639 to avoid the military training zone (HUD) 7 because there was a military jet fighter training at the time. According to RW2, Amoni’s testimony the claimant owed no duty to AF 639 to give such information although what she had done was considered a good gesture.

Counsel further submitted that according to “EE” **Air traffic control service for arriving or departing controlled flights**, the claimant was only responsible for controlled flights arriving or departing from one or more aerodromes and was only required to provide separation between all controlled flights within the terminal control area/control zone. Therefore she did not owe AF639 and AF 329 any duty of care at the point of the alleged incident.

It was counsel’s submission further that according to paragraph 10 of the claimant’s evidence in chief, the Monopulse Secondary surveillance radar System that she used to carry out her work could only detect an aircraft by a symbol called a radar blip if it was transponder equipped. According to her AF 639 was transponder equipped as seen in “HHH”, the “AIRPROX” report written by Major Hussein Wasswa, the Pilot in its command of AF 639. However AF329 was not transponder equipped and she only got to know about it from her supervisor one Madina Ndagire.

He also stated that CW2, Daniel Wanjala the Senior Air Traffic Management Inspector, had corroborated the fact that AF 329 was not transponder equipped in his report which stated that:

***“Helicopters AF639, a M117 transponder equipped from Rwakitura to Entebbe estimated at Entebbe at 1423 hours. Helicopter AF329 B206 not transponder equipped was from Kampala to Masaka at 1455 hours. The helicopters crossed each other at approximately 19 mile west of Entebbe at about 1414 hours.”***

Counsel was therefore of the view that the claimant could not be faulted if the 2 helicopters came within close proximity. He insisted that the claimant was not duty bound to control flights under Visual Flight rules (VFR), a fact he stated had been corroborated by the DSSER's report that ***"Both flights were operating Visual flight rules in good weather maintained their own separation"*** and therefore the respondents were not justified to suspend the claimant for failing to provide standard separation when she did not owe AF 639 and AF 329 a duty of care. He concluded that the respondents had not established a breach of duty and resultant damage.

With regard to the alleged error caused by the claimants, Counsel submitted that the respondents had not proved that the claimant had occasioned any error and their witness one RW3, Fred Bamwesigye had not proved that standard procedure required a person to admit a mistake before retraining could be undertaken.

Counsel submitted that according to the Manual of Air Navigation Services marked as "EE" under VFR, a pilot was responsible for avoiding collisions with other aircraft and had a duty to conduct their flights safely. Therefore the alleged near collision in mid-air between AF 639 and AF 329, was a violation of regulation 15(2) of the Civil Aviation (Rules of the Air and Air traffic Control) Regulations Statutory instrument 58 of 2006 attributed to the Pilots and not the claimant. The regulations provide that;

***A pilot operating an aircraft shall maintain vigilance so as to see and avoid other aircraft..."***

And regulation 14 which provides that;

***"A person shall not operate an aircraft in such proximity to the other aircraft as to create a collision hazard."***

Counsel also doubted that an **AIRPROX** had occurred because of the use of different terms by different Officers. He submitted that according to the Pilot's "Airprox" report the Pilot had stated that the aircraft "passed" each other, yet the supervisor Madina Ndagire had said that the air craft "crossed" each other and the DSSER's report stated that "AF 329 reported passing 19 miles and sighted the crossing of AF 639." Counsel argued that the Pilot had not followed the laid down procedure on reporting an "Airprox", as provided on pages 145 to 151 of attachment "FF" and pages 138 to 142 of attachment "DD", nor was any evidence adduced to show that an

“Airprox” had been reported via radio by either of the Pilots. He concluded therefore that there was no “Airprox” because there was no evidence to prove that it had actually occurred. According to Counsel, RW1s testimony confirmed that the planes were flying within the internationally permitted separation of between 300 to 500 meters which was about 1000 feet of vertical separation.

In Counsel’s view there was no danger to both aircraft, therefore the claimant had been terminated only because she denied any culpability and negligence.

In reply, it was submitted for the respondents that the claimant services had been lawfully terminated for her negligence and outright denial of an error and retraction of her hand written statement regarding the same and the matter should be dismissed with costs.

Counsel stated that the claimant could not be revalidated because she had refused to own up to her very careless mistake and negligence that caused a near midair collision between AF639 and AF 329. According to him the respondents had paid the claimant all that was due to her including the outstanding balance of her benefits amounting to Ugx.42, 993,035/= which she had failed and or refused to pick from the respondents.

He contended that on the date the 2 aircraft had an “airprox” the claimant as Air traffic Controller (ATC) had been negligent and careless, contrary to Article 29(i) (g) and (v) of the collective bargaining agreement between the respondent Authority and the workers union marked “CCC” and all internationally accepted standards. He argued that the claimant in a handwritten report on the incident titled SITREP dated 2/10/2012 had admitted to AF 639 and AF 329 passing in close proximity at about 20 nm due to an oversight on her part.

He quoted her as stating that:

***“... due to an oversight, I forgot that the tracks were likely to be in close proximity until I noticed AF 639 was at 19 nm... on cross checking with AF 329 for position the pilot reported 19nm on radial 270 and had a visual traffic whom they had passed”( his emphasis).”***

Counsel also quoted Major Hussein Wasswa's the Pilot in command of AF 639 as stating in his report that;

***“... pilot for VIP helicopter from Rwakitura to Entebbe contacted centre and was handed over to Radar at an attitude of 5500 – 5000 feet, I saw traffic in a distance ... after crossing each other flight route, the controller warned us about the traffic ... I thought we passed so close to one another and since AF 639 is a bigger helicopter, the rotor down was could have caused the smaller helicopter (AF 329) below to lose control thus endangering lives...”***

Counsel contended that the report corroborated the Claimants negligence and she had admitted that she had written a SITREP in which she stated that she had put the two planes in danger because of her negligence, lack of concentration and situational awareness. He further stated that the claimant in her report dated 19/12/2015 had stated that she had erroneously assumed that the 2 aircraft were operating in class E airspace which was negligent of her.

Counsel argued that the claimant had denied wrong doing because according to her the aircraft were flying Visual Flight Rules (VFR). He refuted CW2 Mathew Roberts testimony in support of the claim that the flights were VFR on the grounds that he had not interviewed any one on ground including the respondents. According to counsel the Respondent's witnesses RW1 Okot and RW2, Amone had testified that all flights in Entebbe must comply with and fly in accordance with Semi Circular Rules (SCR) and Rule 14 of the Civil Aviation (Rules of the Air and Traffic Control regulations SI 58/2006. He noted that the semi- circular rules were contained in table 1 at page 1740 of the trial bundle. Counsel asserted that according to the Manual of Air Navigation Services Operations (MANSOPS) part 1 marked “EE” to the claimant's evidence in chief, all flights to Entebbe operate under Semi Circular Rules (SCR) including Visual Flight Rules (VFR). He emphasized that RW1 and RW2 stated the SCR were intended to avoid conflict of Air craft when airborne.

Counsel further stated that RW1 had testified that AF 639 from Rwakitura to Entebbe West to East bound was at 5500 feet and below hence flying contrary to the SCR and AF 329 to Masaka was at about 5000 feet which was dangerous. Counsel insisted that according to RW1, it was the role of the Air Traffic Controller (ATC) to ensure that the aircraft complied with the SCR and the claimant had failed to ensure that the aircraft in issue complied.



He insisted that the claimant was expected to give clearance to the planes notwithstanding that they were flying VFR. He refuted her assertion that the Pilots were solely responsible to “see and avoid.” According to him the claimant was careless, lacked concentration and was reckless to the extent that she had not even established under which rules the aircraft were flying and according to him this was contrary to the SCR and a fatal mistake.

Counsel contended that the respondents had complied with the Employment Act when they terminated the claimant, because in her termination letter dated 4/11/2013, the reason for termination had been stated as negligence and outright denial of an error made in an airprox and as a result of the denial and outright refusal to own up there would be no basis for revalidation.

Counsel argued that the acts for which the claimant was terminated fell within the ambit of the definition of negligence as referred to in the case of **KIGA LANE HOTEL** (supra). He argued that the claimant as an Air Traffic Controller, was duty bound and responsible for air traffic within Entebbe Air space. He insisted that she had failed in her duty when she did not ensure that AF 329 and AF 639 complied with the SCR by not providing traffic information to both aircraft and by acting after they had already passed each other. He submitted that her failure had paused a risk to the aircraft and the passengers on board.

He argued that she ought to have been aware that AF 639 from Rwakitura to Entebbe was a VVIP aircraft and she should have detected this because of the security presence at the airport and the mere fact that it had departed from Rwakitura should have rang a bell to the claimant. He concluded that it had not because she lacked concentration and situational awareness while at radar approach hence the airprox. He insisted that the Claimant owed a duty to the aircrafts and the passengers on board but she had failed in this duty when she did not ensure that the planes complied with the Semi Circular Rules(SCR) in accordance with rule 60 of SI 58 Of 2006(Supra).

He contended that according to the transcript, it was clear that the claimant had consistently communicated with AF 639 to avoid Tiger 045 flying in Zone B and with AF 329 regarding its position, but the information regarding the crossing of AF 639 and AF 329 had been given late. He refuted the claimant’s assertion that she was not able to communicate with AF 329 because it was not transponder equipped, on the grounds that according to RW1, Controllers could apply non- radar procedures and control to detect aircraft and that was why in her transcript she was

able to detect AF 329 using radials and DMEs (Distance measuring equipment) rather than the transponder. He further stated that RW2 Amoni's testimony revealed that at 11.04 AF329 was communicating with Air Traffic Controller (ATC) as being 40 DME NN maintaining 55 and below (P2) who at 11.06 reported "we are now 10 nm out of Entebbe from Kampala to Masaka crossing radial 330 at 050(5000 feet). Counsel insisted that the claimant could not therefore deny responsibility because she had communicated with AF 329 using radial and DME. He noted that at 11.14 the claimant had advised AF 329 about the presence of AF 639 around the same position and yet she had earlier advised AF639 to maintain radial 265. He quoted the communication between the claimant and AF329 at 11.04 as follows; ***"we are now 10nm out of Entebbe to Masaka crossing radial 330 at 050 (5000 feet)..."*** and at 11.14 she stated ***"... be advised AF 639 around same position"*** yet earlier she had advised AF639 to maintain 265. He insisted that in view of this communication she could not deny responsibility.

He further refuted the claim that the pilots were negligent because they vigilantly tried to avoid collision and to communicate with her. He also argued that the supervisor had been diligent because she identified the airprox even before the claimant which in his view further pointed to the claimant's lack of concentration, situational awareness and negligence.

He refuted the Claimants evidence on the grounds that she had given untruths when she retracted her first report in which she admitted that she had erred and when she claimed she had been denied access to the transcript yet she had attached it to her statement as "BB" and she had been given access to the recording system.

Counsel argued further that according to "HH" where a system error occurred due to human element resulting in less than appropriate separation minima the ATC involved are relieved of their operational duty immediately following discovery of the error to prepare for investigations, followed by:

- 1. A discussion with the employee including a detailed review of the incident.***
- 2. Re- evaluation of the employee to determine necessity of additional training with emphasis on the weakness which revealed during the investigation of error.***

He further argued that RW3, the Director Human Resources testimony showed that the incident of the 2/10/2012 was not the first near fatal accident that the claimant had caused as a result of

her negligence, carelessness and lapses. He pointed out several situations where she had exposed aircraft to risk and on one such occasion on 16/04/2007, her station validation had even been withdrawn. Counsel insisted that RW3 had cordially engaged her to accept her error in order for her to undergo retraining for revalidation but she refused.

With regard to the legality of the investigations, counsel asserted that they had been carried out in accordance with the laws, rules and regulations. He refuted the claim that the respondent had apportioned blame because according to the **Aircraft Accident and Incident Investigation – annex 13 to the convention of the International Civil Aviation Annex 11( 9<sup>th</sup> edition July 2001) ICAO Article 3.1**, “...*the sole objective of the investigation of an accident or incident is prevention of accidents and not to apportion blame or liability.*” Counsel emphatically refuted the assertion that the respondents had apportioned any blame. He cited the Safety Management System Manual for air Navigation services marked JJ , appendix 1-page 11 which defined an incident as an occurrence other than an accident , associated with the operation of an aircraft which affects or could affect the safety of operation and according to Article 1.2.1 internal / incident investigations are done under the authority of the Director Air Navigation services, with a view to establish the underlying causes and adequacies in the safety management system. He also cited the civil Aviation (investigation of accidents) Regulations SI 23/2012 which authorizes the CAA to provide a manual of minor details of aircraft accident and incident investigations. Counsel was of the view therefore that the framers of SI 23/2012 did not envisage that the Minister would be the appropriate person to appoint investigators in such circumstances.

He noted that Section 6 of the CAA Act was not mandatory and Section 6(2) was to ensure that the chief investigator was chosen from the persons the Minister may have appointed. It was his contention that the personnel that were appointed to undertake the various investigations were competent to do so and although CAA was not statutorily empowered to investigate incidents and accidents under the CAP 354, under Section 5 of the Act, it was allowed to support such investigations in a bid to promote safe, regular secure and efficient use and development of CAA within and outside Uganda. Therefore all investigations were done in compliance with the law and therefore the dicta in the case of **MCFOY VS U NITED AFRICA CO. LTD [1961] 3 ALLER** was not applicable to this case.

Counsel found the claimants denial of any incident after she reviewed the transcripts and her insistence on having been told by the SATMO confirmed her incompetence and a retraction of what she had admitted in the SITREP. According to him this cast doubt to her evidence which he asked court to disregard. He further argued that the claimant had not sought to impeach the report of the investigations or for an order for it to be declared null and void.

He concluded that her validations, privileges and license in aerodrome radar approach had been withdrawn due to a summation of acts she had committed and because she had failed to own up she could not be revalidated.

He insisted that because of her continuous denial of wrongdoing in accordance with international practice, the respondent could not revalidate the claimant hence her termination on 30/9/2013. Counsel stated that RW3 Mr. Bamwesigye the Human resources Director had testified that according to MANSOPS PART 1 Article 1.5.3, before a certificate of validation could be issued or renewed, an assessment had to be done on the proficiency of the controller to gauge the candidates practical ability and knowledge of general and local procedures and although it was not provided for in writing, before revalidation, the controller had to own up to what they had done to avoid recurrence of that error. In his opinion the claimant's denial of wrong doing amounting to her refusal to own up and therefore recurrence was highly likely.

## **DECISION OF COURT**

After carefully analysing the evidence on the record, Counsels submissions and the relevant law we find as follows:

### **1. Whether the claimant's termination was lawful?**

From the pleadings and evidence on the record it was not disputed that the claimant was employed by the Respondents as an Air Traffic Controller (ATC) and she was terminated on the grounds that she had been negligent, when on 2/10/2012, she failed to provide standard separation leading to the near collision of 2 aircraft AF 639 and AF 329.

Before we resolve this issue, we think it is important to first understand some of the technical terms relating to Air Traffic navigation and the role of an Air Traffic Controller in ensuring the safety of air craft. The Civil Aviation Authority Act Cap 354 and regulations made thereunder

governs all aircraft in Uganda Air Space, including foreign aircraft and Uganda aircraft operating outside Uganda. The Act takes cognizance of the international standards set by ICAO which oversees the functions of the CAA. Section 35 (1) (b) of the Act, provides for the provision of aeronautical Information services which include Air Traffic Control Services and facilities. According to regulation 2 of the **Civil Aviation (Rules of the Air and Air Traffic Control Regulations, Statutory Instrument No. 58 of 2006, “air traffic control service”**, means a service provided for purposes of preventing collisions between aircraft; and on maneuvering area between aircraft and obstructions and expediting and maintaining an orderly flow of air traffic.

**“Air traffic service”** means a flight information service, alerting service, air traffic advisory service or air traffic control service. According to the Aeronautical Information Publication, Air Traffic Services include Flight Information Services (FIS), Alerting Services (ALRS), Area/Airways Control Service (ACC), Approach Radar Services (APP)-non radar, Aerodrome Control (TWR). According to the Manual of Air Navigation Services Operations (MANSOPS), **“Air traffic control unit”** is a generic term meaning variously area, control center, approach control unit or aerodrome control tower.

By inference therefore an Air Traffic Controller is responsible for providing air traffic services within an air traffic control unit.

According to the Claimant’s memorandum of claim at the time of her termination, she was a Senior Air Control Traffic Control officer, with an aerodrome control and approach procedural control rating, Approach radar control rating marked “C”, “D”, “E” and an aviation English instructor certificate and Air traffic Control licence marked “F” and “G” and therefore she was a qualified ATC. However her Certificate of validity marked “G” showed that at that time her certifications had expired. The Aerodrome Control certificate had expired on 27/12/2007, Approach on 07/11/2008 and Approach Radar on 11/06/2010. There was no evidence of renewal of any of them. The reason as to why there was no renewal was not disclosed by both parties although we found it had nothing to do with the reason for her termination.

It was not disputed that on the 2/10/2012 the claimant was on duty when 2 air crafts AF 639 and AF 329 were alleged to have been involved in a near collision. She was alleged to have caused this near collision because as an Air Traffic control officer she owed a duty to give advisory and

to provide the necessary standard separation which she filed to do at the time, because of her carelessness, lack of concentration and recklessness.

**Did the Claimant owe a duty of care to AF 329 and AF639?**

Evidence on the record included the Respondents Investigation reports whose authenticity was refuted by Counsel for the Claimant, on the grounds that the investigations and the investigators had not been commissioned by the Minister. He however relied on the same reports in his submissions. We therefore saw no reason why we should not rely on them to determine this case.

Regulation 31 of SI 58 of 2006 provides that a Pilot in Command of an aircraft is expected to be familiar with all available information appropriate for the intended flight before commencing any flight. Regulation 32 provides that the pilot must submit a flight plan, to Air Traffic Services at least 60 minutes before departure and the format of the flight plan is provided under regulation 34. Which states in part that; ***“34(1) A person filing an instrument flight rules or visual flight rules flight plan shall include the following-***

- a) Air craft identification***
- b) Flight rules and type of flight***
- c) Number and type of aircraft and wake turbulence category***
- d) Equipment***
- e) Departure aerodrome***
- f) Estimated off-block time route to be followed***
- g) Cruising speed***
- h) Cruising level***
- i) ...”***

The regulations also make provision for the submission of the said plan during the flight at least 10 minutes before entry into a control area, or of crossing an air way or advisory route. According to the manual of Air navigation Services Operations, **“A control area”** is a controlled airspace extending upwards from a specified limit above the earth.” It is also a requirement for the pilot in command of an aircraft to communicate the rules under which he or she is flying the aircraft.

In the instant case, it was not disputed that the flights in issue were flying under Visual Flight Rules (VFR). Regulation 69 of SI 58 of 2006 provides that; ***“... a person shall conduct a VFR flight so that the air craft is flown in conditions of visibility and distance from clouds equal to or greater than those specified in table 8...”*** the ICAO, Air traffic services Manual 1984, on page 261 of exhibit “DD”, states that ***VFR flights in controlled airspace are provided with flight information service but there exists no specific requirement on ATS(Air traffic Services) to provide such flights with information on collision hazards based on the understanding that pilots will be able to avoid collision with other aircraft by applying the “ see and be seen” concept.***

According to the Aeronautical Information Publication of the Republic of Uganda 4<sup>th</sup> Edition, marked as “FF” at page 105, it is a requirement for the Pilot to report a VFR flight. It states as follows;

***“9. Report by VFR flights***

***An aircraft operated in accordance with VFR shall make RTF contact with the appropriate ATS unit on en-route frequency in accordance with the following procedures:***

- a) As soon as possible after departure***
- b) When changing frequency***
- c) When destination is in sight***
- d) On flights of sufficient duration an “operation normal” call or position report shall be made at intervals of not more than 1 hour***
- e) In the event of failure to establish contact pilots should broadcast their reports”***

The claimant testified that she had only seen one AF 639 blipping on the radar because it had a transponder. She had not been able to identify AF 329 because it was not transponder equipped and the radar used at Entebbe International Airport was a Mono Pulse Secondary Surveillance Radar(MSSR) therefore it could not detect a non transponding flight. However according to paragraph 24 of her statement, she admitted to being given information about the flight AF 329 from Kampala to Masaka, by one of her colleagues one Mr. Musuuza Xavier. She admitted that

she had eventually communicated with AF 329 via radio although she had not given it clearance because it was flying VFR. She also said that both pilots had not submitted their flight plans as was required of them under VFR.

According to RW1 Okot's testimony, AF 639 from Rwakitura to Entebbe west to east bound was at 5500 feet and below hence flying contrary to the Semi Circular Rules and AF 329 to Masaka was at about 5000 feet which was dangerous. According to him all aircraft had to fly Semi Circular Rules (SCR) irrespective of whether they were flying VFR or IFR in accordance with rule 14 of SI 58/2006 and it was the role of ATC to ensure that they complied.

The respondents argued that because of the claimant's carelessness, lack of concentration and recklessness she had not given the planes the necessary clearance leading to a near collision which he termed an "airprox." Counsel for the respondents insisted that according to the transcript of AF639 and AF 329 marked "BB", the claimant had communicated with AF 329 at 11.04 as being 40 DME NN maintaining 55 and below and the Pilot in Command had reported back at 11.06 as being 10NM out of Entebbe from Kampala heading to Masaka crossing radial 330 at 050 (5000) feet. At 11.14 the claimant had advised AF 329 about the presence of AF 639 around the same position yet she had advised AF 639 to maintain radial 265, therefore she could not deny responsibility for the near collision.

#### **Was it her responsibility to give an aircraft flying VFR standard separation?**

According to Regulation 14 of SI 58 of 2006, ***"A person shall not operate an aircraft in such proximity to other aircraft as to create a collision hazard."***

Regulation 15 made it mandatory for the pilot to exercise due diligence to avoid any collision or hazard. It provides that ; ***"A pilot in command of an aircraft that has the right of way shall maintain the aircraft's heading and speed, but nothing in this regulation shall relieve the PIC from the responsibility of taking such action, including collision avoidance manoeuvres based on resolution advisories provided by airborne collision avoidance system (ACAS) equipment, as will best avert collision."***

These regulations in our opinion placed the responsibility of avoiding collision of aircraft when airborne on the pilot in command of an aircraft flying VFR. It was the responsibility of the Pilot to ensure that he or she took precautions to avoid collision with other aircraft.



It was not disputed that the claimant was aware of both air craft although they were both flying VFR. She said; “... ***I was aware the AF 329 and AF 639 was in the air space I was controlling.***” She did not deny that she had communicated with both of them and that she given both information. The information she provided in our view made the 2 pilots aware of each other flying in the same position. The pilots were both flying VFR and therefore they were expected to apply the concept of “**See and be seen**’. According to the definition of negligence as cited in **KIGA LANE HOTEL ....** which both counsel cited, Bamwine J, defined negligence according to the Oxford dictionary of Law 6<sup>th</sup> edition (edited by Elizabeth A Martin and Jonathan Law) at page 353 as,

***“A tort consisting of the breach of duty of care resulting in damage to the claimant. Negligence in the sense of carelessness does not give rise to a civil liability unless the defendant’s failure to conform to the standards of a reasonable man was a breach of a duty of care owed to the claimant, which caused damage to him. Negligence can be used to bring a civil action when there is no contract under which proceedings can be brought. Normally it is easier to sue for a breach of contract, but this is only possible when a contract exists.”***

In the instant case, the claimant admitted that she was the Air Traffic Controller in charge when the flights in issue were airborne. She admitted to giving them information and notifying them that they were in the same position. Although the respondents through RW1 testimony insisted that the ATC was responsible for ensuring that the pilots complied with the Semi Circular Rules, it is clear to us that Regulations 14 and 15 places the primary responsibility of ensuring the safety of the aircraft flying VFR in the hands of the Pilot in Command. We do not think that her responsibility extended to commanding the aircrafts.

Counsel for the respondents also insisted that that the claimant was culpable because she had admitted her error in the SITREP she made on the 2/10/2012 the same day the incident is alleged to have occurred, although she had retracted from it after she was given an opportunity to review the transcript. We had an opportunity to review a printout of the transcript of AF 639 and AF 329 marked “BB” and indeed the claimant communicated to both pilots and issued both with advisories. We also established that the pilots had not submitted their flight plans to ATC prior to take off as was required under the Manual of Air Navigation Services Operations (MANSOPS)

marked “EE” at pages 136 and 137, under 4.1.2. Which provides that; a pilot requests a clearance by submitting a flight plan. The clearance can be issued directly to the aircraft or through air traffic service unit. E.g. Tower. From the record AF 639 only communicated after the claimant had advised it to avoid the fighter plane, having identified it on the radar because it was transponder equipped. AF 329 communicated when it was already air borne and it was at that point that she was made aware of its presence because it was not transponder equipped. Both had not given her any information in any form.

Even if we applied the rule on good neighborliness in law as set out in **DONOGHUE VS STEVENSON (1932) AC 562 cited in KIGA LANE** (supra) to this case,

*“...that you must take reasonable care to avoid acts or omissions which you can foresee would be likely to injure your neighbour. Who then in law is my neighbour? The answer seems to be- persons who are closely and directly affected by my act that I ought to be reasonably to have them in contemplation as being so affected when I was directing my mind to the acts or omissions which are called in question.”*

The Claimant had given both Pilots information that they were in the same position and the onus was on them to ensure that they avoided collision given that they were flying VFR. Although counsel for the respondents insisted it was contrary to the requirements of a standard separation, from the transcript and the Airprox report Marked “Y” filed by the Pilot in command of AF639 it was clear to us that the Pilots ought to have used this information to avoid each other. The AIRPROX report stated that;

*“On the 2<sup>nd</sup> October, 12, I was pilot in command of VIP helicopter AF 639. We took off from Rwakitura (radial 263NN) to Entebbe at around 1039 UTC.*

*We contacted center (128.5 MHZ) and we were handed over to Radar (126.60). Our flight attitude was between 5500-5000 feet. After establishing radio contact with Radar we were told to route via radial 265 to Entebbe (HUEN) due to other traffic from Kampala to Masaka which had contact with radial. We were within 19-16 Nm from NN. I was the traffic in a distance about 200 meters but ... each other at a separation of 300-500”*

*After crossing each other's flight route, the Controller warned us about traffic but we had already seen and passed it. After landing the VIP, reported it to the liaison officer Lt. Mike Obera because I thought we passed so close to one another and since AF 639 is a bigger Helicopter the rotor down wash could have also caused the smaller helicopter below to lose control, thus endangering lives. Since we (AF 639) was transponder equipped I thought there was some laxity from the controller for the safety of our skies, I thought it would be imperative to inform you about that incident so that in future you take some more precautions to ensure safety and security in your control.*

**Major Hussien Waiswa**

**Pilot MI-17, AF639”**

The report clearly indicates that the pilot in command of AF 639 from Rwakitura to Entebbe was made aware of AF 329 from Kampala to Masaka. The Pilot had seen the traffic at about 200, meters. He did not demonstrate how and what he had done to avert collision with this traffic yet he was flying VFR and he was supposed to abide by regulations 14 and 15 of SI 58/2006 to avoid collision. Similarly AF 329 was flying VFR and was expected to do the same. There was no evidence on the record to show that AF 639 was a special flight with a VVIP alleged by the respondents to require the claimant to apply the special VFR rules.

We respectfully disagree with counsel for respondents that the claimant should have attributed the deployment of security personnel at Entebbe to flight AF 639 simply because it was coming from Rwakitura with a VVIP on board yet she had not been given prior information about the VVIP on board or the air crafts flight plan. No evidence was adduced to show that she was aware of a VVIP being on board AF 639. There was no evidence that flight plans with such details had been filed. According to the claimant her supervisor only informed her about it after the 2 flights had passed each other at around 4.00pm that day. This was corroborated by the minutes of the meeting held on the 4/04/2013, where it was reported that the claimant's supervisor had been informed about AF 639 having a VVIP on board via telephone, but no evidence was adduced to show that the claimant was made aware about it. No evidence was adduced to the contrary.

It is our considered opinion therefore that the claimant owed no duty to the Pilots to apply the information she had given to them, to avoid an airprox, given that they were flying VFRs. She could not have been able to apply the special procedures required of ATC in cases of VVIP flights, because she had not been given prior information that there was a VVIP on board AF 639.

It is our considered opinion that both Pilots were well versed with what was required of them when flying VFR and that they had the primary responsibility to abide by the requirements, but they did not do so. The claimant's role was limited to giving advisory/information whenever it was requested for by either of them. From the evidence we are satisfied that she had done so. According to the **ICAO, Air traffic services Manual 1984**, (supra), it was not mandatory for ATC who in this case was the claimant ***“to provide such flights with information on collision hazards based on the understanding that pilots will be able to avoid collision with other aircraft by applying the “see and be seen” concept”*** but even then she had provided the information. Therefore she had not breached her duty of care expected of an Air Traffic Control Officer VFR and therefore in accordance with section 68 of the Employment Act the Respondents had not proved the reason for her dismissal.

### **Was the claimant accorded a fair hearing?**

Counsel for the claimant, discredited RW3 Bamwesigye's testimony on the grounds that he had stated that he had authorized the claimant's suspension to allow for investigations yet she had been suspended after 2 investigations had already been carried out. He argued that it was illegal to suspend the claimant for more than a month.

He also refuted the disciplinary procedure against the claimant on the grounds that she had not been given a fair hearing as provided under Section 66 of the Employment Act, the other Air Traffic Controllers on duty and the Pilots of the aircraft in issue had not been involved in any of the investigations that had been carried out against her. In addition she had not been availed copies of the pilot's reports or transcripts of the communications between the pilots and the other Air traffic controllers nor was she given an opportunity to scrutinize the evidence in the Respondents possession regarding the allegations against her, before she could make her response. Counsel further contended that there was no evidence that the Pilots reports had been considered in the investigations and no evidence was adduced to prove poor performance or

misconduct, on her part, she had been denied the right to bring a controller of her choice to the hearing, she had not been given adequate opportunity to file her defence and no disciplinary hearing was ever conducted therefore she was condemned unheard. He further contended that no reasons were given for her dismissal.

In reply Counsel for the respondents contended that the claimant had been given a fair hearing contrary to her claim. He insisted that in accordance with **GRACE MATOVU VS UMEME LTD LDC No. 004/2014**, the claimant had been given a fair hearing. He reiterated that she had admitted her error on the 2/10/2012 when she made the SITREP although she later retracted it. On 1/11/12 she was suspended pending investigations. After the investigations, on 28/03/2012 she was invited for a disciplinary meeting scheduled for 4/4/2013 and the letter Marked “D”, clearly stipulated the issues to be discussed and the alleged offence she had been charged with.

According to counsel the minutes of the meeting marked “E” on Bamwesigye’s witness statement, showed that she had attended the meeting on the 4/4/12, although she insisted it was a discussion and not a hearing. The minutes also show that she had made a written defence on the 9/11/2012 in which she had denied any wrong doing and the meeting had recommended that; her suspension is lifted and she is reinstated, although she was to forego the half pay that had accrued during her suspension, she undergoes validation and legal department gives further advice on the matter. Counsel refuted the claim that the Director Human Resources had denied the claimant the right to appear at the meeting with a UGATCA member because she had not proved so.

Section 66 of the Employment Act spells out the procedure to ensure a fair hearing and specifically Section 66 (1) and (2) provides that;

***“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 a 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.***

This court in many cases, has already defined a fair hearing to mean the process where an employee is informed about the infractions or allegations levied against him or her, he or she is given notice of the hearing, he or she is given time to prepare for a response to the infractions or allegations and advised on his or her right to be accompanied to the hearing by a person of his or her choice, he or she is given the opportunity to physically appear before an impartial tribunal or disciplinary body to present his or her response and adduce any other evidence after which the tribunal or disciplinary body then makes a decision.

Although the minutes referred to, marked “E” did not explicitly report what had transpired in the meeting held on the 4/4/2013, the last sentence of the background statement of the minutes stated that it was a meeting held with the claimant before any further disciplinary action could be taken against her. However the letter of invitation dated 28/03/2013, indicated that the claimant was invited to discuss issues relating to her alleged negligence of duty, the letter did not inform her about her right to prepare for a response for the meeting or about her entitlement to come to the meeting with a person of her choice as provided under Section 66 (1) and (2) of the employment Act 2006. The minutes of the meeting did not show that she had been accompanied by a person of her choice or that anyone else had been allowed to make any representations concerning her case. It is not clear what she had stated during the meeting. Minute 3.0 bullet 4 stated that:

***“After a productive analysis and discussions in the meeting Ms. Kagendo gradually came to realise her error during the course of her work on 2/10/2012 when handling AF 329 and AF 639.”***

Although in **GRACE MATOVU VS UMEME LTD**(supra) and other cases, this court held that the disciplinary hearing needn’t follow the procedure at the standard of a hearing in a Court of law, we think that the requirements of the standard of a disciplinary hearing were not met in the instant case for the following reasons. In the first instance the minutes did not show that the members were constituted as disciplinary committee, the minutes did not detail the analysis and discussions that led to the claimant’s purported acceptance of her error as alleged and the

findings and decisions of the committee. The minutes did not show how the claimant had accepted culpability without recording the proceedings on that matter. The minutes in our view did not show that the claimant was given an opportunity to answer to the allegations against her, that she was given an opportunity to seek representation of a person of her own choice to challenge the allegations and how she had actually accepted culpability. It is our considered opinion that the tenets of a fair hearing were not met.

We also fault the Respondents for suspending the claimant for more than 4 weeks contrary to Section 63 of the employment Act. In the circumstances we find that the disciplinary process was flawed and was contrary to Section 66 of the Employment Act 2006.

In conclusion given that the respondents suspended the claimant for more than 4 weeks contrary to Section 63 of the Employment Act, given that the Respondent did not prove the reasons for terminating the claimant as provided under Section 68 of the Employment Act and given that the disciplinary hearing was contrary to Section 66(1) and (2), we find that the claimant was unlawfully terminated.

## **ISSUE 2. REMEDIES AVAILABLE TO THE CLAIMANT IF ANY?**

Having found that the claimant was unlawfully terminated, she is entitled to remedies.

### **1. DECLARATION THAT HER TERMINATION WAS UNLAWFUL**

We have already found that the claimants was unlawfully terminated. In the premises she is entitled to general damages. It is trite law that damages are compensatory in nature and are intended to put the injured party as near as possible in monetary terms to the same position as he or she was before the injury complained of was occasioned (**see HADLEY VS BAXENDALE (1894)9 Exch.341**) General Damages are suffered by the claimant at the instance of the respondent. In the instant case the claimant served the respondents for 12 years, the respondents did not prove the reason for terminating her. She was not given a plausible reason for being denied revalidation. We are of the considered opinion that Ugx. 100,000,000/ is sufficient for general damages.

#### **1. Special Damages**

The claimant prayed for the following:

**a) Unpaid/ un refunded travel allowances to Montreal- USD2451.44**

Although the evidence “TTT”, “UUU”, “VVV” and “WWW” on the record shows that the claimant did travel to Montreal and got recommendation to process the travel Visa to Canada. There was nothing to show that she had been authorized to travel. We are inclined to believe with counsel for the respondents based on her evidence in “YYY” that there was a specific format through a travel order form which one had to use to seek authorisation which she did not produce in the case of her travel to Montreal. We are therefore not satisfied that she incurred this cost with authorisation therefore it is denied.

**b) Balance on unpaid terminal benefits**

According to counsel for the claimant, the Respondent owed the claimant Ugx. 44,066.697/= instead of Ugx.42,933,035/=. Counsel refuted the deductions for utility payments for UMEME and National Water and Sewerage Corporation amounting to Ugx.1,911.965/= that the respondent’s claimed they had paid whereas not. He insisted that according to M1, M2 and M3 the claimant made the payments. We carefully examined M1, M2 and M3 and found nothing to show that the claimant made this payment. There was no evidence of any payments made personally by the claimant. In the absence of such evidence it is our considered opinion that the claimant should be paid the outstanding balance of UGX. 42,933,035/- as computed by the respondents in “ZZZ”.

**c) NSSF remittances for 3 months**

Counsel for the claimant contended that the respondents had not remitted the claimants NSSF entitlements during the 3 months’ notice period amounting to Ugx, 1,543,061/=.

Section 11(1) of the NSSF Act obliges every contributing employer to the fund a standard contribution of 15% calculated on the total wages paid during the month of an eligible employee. Section 12 provides that the employer may deduct from his or her employee the employees share of a standard contribution of 5% computed from the total wages paid to the employee. We believe this means the employee contributes 5% out of the 15% to be remitted.



According to section 43 of the NSSF Act, the claimant has no locus to claim NSSF on behalf of NSSF. The roles of the inspector are outlined therein and include among others questioning the employer, the employee or any other person on any matter pertaining to the compliance with the Act. He may require the production of a register, accounts receipt or other documents relating to the contribution or liability to register or contribute under the Act. The claimant therefore has no locus to personally claim her NSSF contributions from her Employer as provided under Section 44, 46 and 48 of the NSSF Act.

That notwithstanding however, the question remains whether the claimant was entitled to NSSF when she was on notice for the termination of her employment. It is our considered view that when an employee is given notice of termination, he or she remains in employment until the end of the notice. During this time therefore the employee continues to earn his or her salary and any other entitlements including NSSF as provided under the contract of employment. In the same vain if the employer so chooses to pay in lieu of notice then the pay shall comprise of the employee's salary and entitlements, including NSSF as provided under the contract of employment in lieu of notice. The claimant in the instant case is therefore entitled for the remittance of the NSSF accrued during the 3 months' notice period.

**d) Fees paid to former lawyers**

We agree with counsel that this prayer is redundant, therefore it is denied.

**e) Aggravated Damages**

The claimant prayed for aggravated damages for the unfair, vindictive, high handed, callous, unlawful actions of the respondents that caused her humiliation and embarrassment.

She made reference to her suspension for more than 4 week, conducting investigations against her without her input and ignoring relevant regulations such as the safety management system manual for air navigation services, the unfair disciplinary hearing, discrimination when she was singled out for termination when she worked with other ATCs, refusal to revalidate her Air traffic management license, evicting her from the official residence before she was paid her terminal benefits, failure to provide a certificate of service and long service award.

Aggravated damages are awarded for a tort as compensation for a plaintiff's mental distress, where the manner in which the defendant has committed the tort or his motive in so doing or his conduct subsequent to the tort, has upset or outraged the plaintiff. Such conduct or motive aggravates the injury done to the plaintiff and therefore warrants a greater or additional compensatory sum (see **ROOKES VS BARNARD [1964] AC 1129**. We did not find any aggravating circumstances to warrant the award of general damages.

It was not disputed that a near collision of aircrafts AF639 and AF 329 happened when the claimant was the ATC on duty. It is our considered opinion that the respondents actions were intended to establish whether the claimant was the cause of the near collision although their disciplinary process was flawed. We did not think their actions were aggravating.

Before departing from this issue we thought it was important to discuss the contention that the claimant was denied revalidation because she refused to own up to her mistake. We found the argument that a validation could only be done if the ATC admitted culpability superfluous. According to Appendix B under part IV of the Air Traffic Services Planning Manual of ICAO at page 371, the qualifications for revalidation of an ATC do not include the admission of any error on the part of the ATC. It seems to us that it depended on the ATC meeting the knowledge and medical fitness which have to be established by a specialist in accordance with the guidelines outlined in Appendix A at page 364 of the same manual.

According to Counsel for the respondent's under "HH" where a system error occurred due to human element resulting in less than appropriate separation minima the ATC involved are relieved of their operational duty immediately following discovery of the error to prepare for investigations, followed by:

- 1. A discussion with the employee including a detailed review of the incident.***
- 2. Re- evaluation of the employee to determine necessity of additional training with emphasis on the weakness which revealed during the investigation of error.***

We found no evidence that the ATC had to admit error before being considered for revalidation. That notwithstanding however, we believe that the refusal to revalidate the claimant at the time did not amount to an aggravation.

**f) A certificate, long service award and certificate of appreciation.**

Counsel for the claimant argued that the claimant was entitled to a certificate of service in accordance with section 61 of the Employment Act 2006. **Section 61 provides**

**61. Certificate of Service**

- 1) On termination of a contract of service an employer, if so requested by the employee, shall provide the employee with a certificate indicating-**
  - a) The names and addresses of the employer and employee**
  - b) The nature of the employer's business**
  - c) The length of the employee's period of continuous employment with employer**
  - d) The capacity in which the employee was employed prior to termination**
  - e) The wages payable at the date of termination of the contract and**
  - f) Where the employee so requests, the reason or reasons for the termination of the employee's employment.**
- 2) The certificate referred to in subsection(1) shall not contain any judgement on or evaluation of the employee's work, but where it is requested by the employee, the employer may provide it in a separate document**
- 3) The certificate referred to on subsection (1) shall so far as is practicable, be written in a language the employee may reasonably be expected to understand.**

The issuance of a certificate of Service on request of an employee is mandatory. The claimant is entitled to a certificate of service and it should be issued to her.

Article 73.2 of the collective bargaining agreement marked "AAAA" provides that;

**73.2 Long Service Award**

**a) Upon attainment of ten (10) continuous years of service with the Authority. An Employee will be entitled to a benefit hereinafter described as a 'Long Service Award', which shall be paid as follows-**

**b) ...**

**c)...**

*d) In addition to the monetary award the Authority shall, at each stage issue the employee a certificate of appreciation mentioning the period of service attained*

*e) The foregoing awards shall be given to the employee at the time they become due. However if they are not yet given to the employee y the time his/her services with the Authority are being terminated the awards will form part of the employees terminal package.”*

According to counsel the claimant was entitled to 2 return economy air tickets or equivalent in Uganda Shillings. There was no evidence to the contrary. The computation of her terminal benefits marked “ZZZ” did not include it, therefore it should be paid to the claimant and a certificate of appreciation should be issued to her accordingly.

**g) Severance allowance under section 87 of the employment Act.**

Counsel argued that the claimant was entitled to Severance pay in accordance with section 87 of the Employment Act and **FLORENCE MUFUMBOVS UGANDA DEVELOPMENT BANK LDC No. 138 OF 2014 and DONNA KAMULI VS DFCU BANK LIMITED, LDC No.002/2015** in which this court decided that an employee who was unlawfully terminated would be entitled to severance pay at the rate of 1 month’s pay per year served.

Section 87 (a) which provides that:

*“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*

*(b) .....”*

According to him the claimant worked or 12 years therefore she was entitled to 3,429,000/= for each year served amounting to Ugx. 37,890,770/-. The respondents did not controvert this claim and we have no reason not to order that it is paid. It is so ordered.

**h) Interest**

Counsel asserted that because of the Respondents conduct the claimant should be awarded an interest of 25% per annum on all her claims. He Cited **OMUNYOKOL JOHNSON AKOL VS ATTORNEY GENERAL (SCCA NO.6 OF 2012)** and **FLORENCE MUFUMBO (supra)**.

We think an interest rate of 20% per annum on the claims awarded from the date of award till full and final payment is sufficient.

In conclusion an award is entered in favour of the claimant in the following terms:

- a) A declaration that her employment was unlawful**
- b) An order for the payment of Ugx, 100,000,000/- as general damages for unlawful termination.**
- c) An order for the payment of the outstanding balance on the terminal benefits amounting to Ugx. Ugx.42, 933,035/=.**
- d) An order for the payment of Ugx. 37,890,770/- as Severance Allowance.**
- e) Payment of Long Service Award in accordance with Article 73.2(a) and (d) of the Collective Bargaining Agreement of 2 Economy Air tickets or their equivalent in Uganda shillings and issuance of a certificate of Appreciation respectively.**
- f) Issuance of a certificate of Service in accordance with Section 61 of the Employment Act 2006.**
- g) Remittance to the National Social Security Fund of the NSSF accrued during the claimants 3 months' notice of termination.**
- h) Interest of 20% per annum on (a) – (e) from date of judgement until full and final payment.**
- i) Each party to bear their own costs.**

**It is so ordered.**

**Delivered and signed by**

**1. THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE**

**2. THE HON. JUDGE, LINDA LILLIAN TUMUSHIIME MUGISHA**

**PANELISTS**

**1 MS. HARRIET NGANZI MUGAMBWA**

**2. MR. MATOVU MICHEAL**

**3. MR. EBYAU FIDEL**

**DATE 23<sup>RD</sup> FEB 2018**