



## CASE SUMMARY

### STANDARD CHARTERED BANK Vs GRACE TIBIHIKIRA MAKOKO (CIVIL APPEAL NO. 307 OF 2020)

BRIEF FACTS	ISSUES	COURT DECISION	LESSONS LEARNT
<p>Between 1995 and 2015, the Appellant Bank employed the Respondent in Uganda and Kenya. Between 2011 and 2015 she served as the Respondent's Regional Head of Financial Markets and wholesale Banking for East Africa, based in Nairobi. According to her, she performed excellently in 2014 and based on the Bank's internal rating scale, she was given a good performance rating. In 2015, she was terminated, without a hearing and before her formal assessment and implementation of a performance improvement plan. She contended that her dismissal was harsh, unacceptable, and high-handed and was in breach of the law and the Appellant's Internal Human Resource Manual. The way she was terminated reduced her employability and led to her suffering. The issues for determination by the trial court were whether the claimant's dismissal was unlawful and whether there were any remedies available for the claimant. The trial court found for the Claimant/ Respondent, holding that the claimant was unlawfully dismissed. The court went ahead and awarded the Claimant/ Respondent general damages to the tune of UGX.1,000,000,000, payment of USD, 108,750 (401,445,186/) in unvested shares, and interest of 15% per annum on the above awards.</p> <p>The appellant filed a cross appeal to this court. The Respondent filed a cross appeal.</p>	<p><b>Appeal</b></p> <ol style="list-style-type: none"> <li>Whether the award of general damages given by the industrial court was reasonable and justifiable in the circumstances of this case or not?</li> <li>Whether the quantum of entitlement had a basis in law or amounted to a double Recovery?</li> <li>Whether the learned Justices and the Honorable members of the panel of the Industrial court erred in law and fact when they awarded excessive interest of 15% per annum on both the award for general damages and share options?</li> </ol> <p><b>Cross Appeal</b></p> <ol style="list-style-type: none"> <li>Whether the industrial court erred in law in holding that the respondent was not entitled to compensation as provided for under Sections 78(1)</li> <li>The learned Trial Judges and the Honourable Panelists of the Industrial Court erred in law when they failed to award the Respondent four weeks' compensation as provided for under Section 66 (4) of the Employment Act 2006.</li> <li>Whether the award of interest on the unvested shares, which was referred to as special damages ought to have been from the time of dismissal and not the time of judgment.</li> <li>Whether the learned trial Judges and the Honourable members of the Industrial Court erred in law when they awarded low amount of as general damages so as to amount to erroneous estimate of the economic injury sustained by the respondent.</li> <li>Whether the learned trial Judges and Honourable members of the panel of Industrial Court erred in law when they held that the respondent was not entitled to aggravated damages.</li> <li>Whether the trial Judges and the Honourable members of the panel of Industrial Court erred in law in holding that reinstatement of the respondent could not succeed.</li> <li>Whether the trial Judges and Honourable members of the panel of the Industrial Court erred in law in holding that the respondent was not entitled to the amount outstanding on her contract of employment.</li> </ol>	<p>The court held that there would have to be circumstances in the termination of the employee rising to the standard of an aggravated nature for the court to award damages that exceed the income of the employee.</p> <p>The award puts her in a much better position than she would have been had she not been unlawfully terminated.</p> <p>The court held that there was no finding of an aggravating factor rising to such a standard for the court to award excessive damages that double the fixed income of the Respondent and therefore the 1st ground of appeal succeeded.</p> <p>The lower court did not interrogate whether the Respondent was entitled to unvested shares worth US\$108,750. The Industrial Court relied on the submission of the Respondent in the lower court, to award the above sum as due to the Respondent, without making its own finding as to whether the shares were available and/or due or not. Court having looked at the evidence, concluded that the Respondent's unvested shares were only USD 20,000 and set aside the award of USD 108,750.</p> <p>Interest is awarded at the discretion of the court, but like all discretions it must be exercised judiciously taking into account all circumstances of the case. Court held that an award of interest of 15% per annum on general damages is excessive where a party has not been kept out of their money from the time a cause of action arose like is the case for special damages especially where disposal of cases takes long. An interest of 10% of 500,000,000 was awarded.</p> <p><b>Cross Appeal</b></p> <p>Court held that having awarded the cross appellant general damages, it would be a double recovery to grant compensation under sections 78(1) and 66(4). These awards are awarded by the Labour officers because they do not have the jurisdiction to grant general damages.</p> <p>Court held that Interest on the unvested shares / runs from the time of the unlawful dismissal and not from the time of judgement.</p> <p>Court upheld the decision of the Industrial court to decline the award of aggravated damages because the cross-appellant did not adduce any evidence to show that there was callousness or lack of compassion on the respondent's part before dismissal.</p> <p>The court referred to decisions in Bank of Uganda vs Betty Tinkamanyire &amp; Stanbic Bank vs Kiyimba Mutale that termination is effective even when wrongful because courts cannot force an Employer to keep an employee forever. However, depending the circumstances, an employee who is unfairly or unlawfully dismissed, should be compensated adequately in accordance with the law.</p> <p>An employee who has their contract terminated is not entitled to anything out of the contract.</p>	<p>General damages are assessed by the Court based on the injury, suffering, and inconvenience caused to the plaintiff/claimant.</p> <p>An award of general damages is always based on the principle of restitutio in integrum-restore the plaintiff/claimant to the position there were in before the unlawful termination took place.</p> <p>The award of compensation under sections 78 and 66(4) Employment Act cap. 226 is restrictive to the Labour officers.</p> <p>Where the dismissal was unfair only because the employer did not follow the proper procedure, the Court is not required to make an order for reinstatement of an employee.</p> <p>An employee whose contract has been terminated is not entitled to anything from the employment contract. An employee whose contract of employment is terminated prematurely or illegally cannot be compensated for the remainder of the years or period they would have retired.</p>