Court of Appeal for Saskatchewan
Docket: CACV4577

Citation: *Nakihimba v Zawryucka*, 2026 SKCA 26
Date: 2026-02-18

2026 SKCA 26 (CanLII)

Between:

Waboshi Nakihimba

Appellant
(Plaintiff)

And

Darren Zawryucka, Madazen Foods Inc.

Respondents
(Defendants)

Before:	Tholl, Kalmakoff and Kilback JJ.A.
Disposition:	Appeal dismissed
Written reasons by:	The Honourable Justice Keith D. Kilback
In concurrence:	The Honourable Justice Jerome A. Tholl The Honourable Justice Jeffery D. Kalmakoff
On appeal from:	2025 SKKB 66, Regina
Appeal heard:	December 3, 2025
Counsel:	Waboshi Nakihimba appearing on his own behalf Jason M. Clayards for the Respondents

Kilback J.A.

I. INTRODUCTION

[1] The central issue in this appeal is whether a judge of the Court of King's Bench erred in striking a statement of claim under Rule 7-9 of *The King's Bench Rules*.

[2] Waboshi Nakihimba was hired by Madazen Foods Inc. on December 20, 2022, to work in its commercial kitchen. There was no written employment agreement. He worked three shifts for a total of 19 hours before the company closed for the Christmas break. On January 16, 2023, Mr. Nakihimba was dismissed for failing to attend work after he did not return on January 3 as scheduled.

[3] Mr. Nakihimba then filed a claim with the Employment Standards Division of the Ministry of Labour Relations and Workplace Safety and was paid all outstanding wages (approximately $300) through that process. He also filed a discrimination complaint with the Saskatchewan Human Rights Commission that was unsuccessful.

[4] Representing himself, Mr. Nakihimba then sued Madazen Foods and its principal, Darren Zawryucka, for wrongful dismissal. He also advanced other causes of action and claimed various remedies, including $400,000 in punitive damages and $75,000 in compensation for mental distress. On May 31, 2025, a judge of the Court of King's Bench sitting in Chambers struck the claim under Rule 7-9 on the basis that it disclosed no reasonable cause of action and was frivolous, vexatious, and an abuse of process (*Nakihimba v Zawryucka*, 2025 SKKB 66 [*Decision*]).

[5] The judge found aspects of the statement of claim disclosed no reasonable cause of action. He determined that some claims were frivolous because they were groundless and could not succeed and that others were vexatious because they were unknown in law. The judge also concluded the statement of claim in its entirety was an abuse of process because it was a collateral attack on the Employment Standards decision. On this point, the judge held that Mr. Nakihimba's entitlement to payment of wages and notice of termination had been resolved by Employment Standards and that the Court of King's Bench therefore had no jurisdiction over his claims except through judicial review.

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[6] Mr. Nakihimba appeals from the *Decision*. Although he advances at least 25 separate grounds of appeal, the issues he raises may be addressed by answering the following questions:

(a) Did the judge err by failing to strike parts of an affidavit sworn by Mr. Zawryucka?

(b) Did the judge make a palpable and overriding error of fact?

(c) Did the judge err by striking the statement of claim?

(d) Were the judge's reasons sufficient?

(e) Was the judge biased?

(f) Did the judge err in awarding costs?

[7] In my respectful view, the judge erred in determining the statement of claim was a collateral attack on the Employment Standards decision and that it was an abuse of process for that reason. However, as an appeal is from the result and not the reasons, I would dismiss the appeal because the statement of claim was properly struck as frivolous and vexatious and as disclosing no reasonable cause of action. I am also not persuaded the judge erred in any of the other ways alleged by Mr. Nakihimba.

II. ANALYSIS

A. No error in not striking affidavit evidence

[8] The judge did not err by failing to strike parts of the affidavit of Darren Zawryucka sworn September 11, 2024.

[9] Mr. Nakihimba applied to strike three paragraphs of the affidavit because they were contrary to what he had asserted in the statement of claim and his own affidavits. The judge dismissed the application, concluding that was not a reason to strike the paragraphs in issue:

> [39] The fact that a party disagrees with a factual assertion in an affidavit is no reason to strike that paragraph. The parties may have different perceptions of what occurred. The court may later reconcile apparently divergent views or determine that an assertion is factual or false. But that is no reason to strike part of an affidavit.
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> [40] I find that paras. 6, 7 and 8 of the Zawryucka Affidavit are proper content for an affidavit. The plaintiff's application is dismissed.

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[10] In this Court, Mr. Nakihimba reiterates the same arguments he advanced before the judge.

[11] Rulings with respect to the admissibility of evidence are generally reviewable for correctness (see: *Grandel v Government of Saskatchewan*, 2024 SKCA 53 at para 49; *Mosiuk v BASF Canada Inc.*, 2025 SKCA 90 at para 42). Here, the judge did not err in dismissing Mr. Nakihimba's application to strike parts of Mr. Zawryucka's affidavit. The paragraphs in issue set out Mr. Zawryucka's personal knowledge of relevant facts and were admissible. The judge was alive to the need to be sensitive to differences in the evidence provided by Mr. Nakihimba and Mr. Zawryucka, and his decision to dismiss the application does not disclose reversible error.

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B. No palpable and overriding error of fact

[12] Mr. Nakihimba contends the judge made a key factual error that was determinative of his decision to strike the statement of claim. Findings of fact made by a Chambers judge based on affidavit evidence are reviewable for palpable and overriding error (see: *S.G. v K.B.*, 2021 SKCA 133 at para 26; *Inglis v Inglis*, 2022 SKCA 82 at para 31; *Wilk v Martin-Wilk*, 2023 SKCA 64 at para 23; *Levesque v Klarenbach*, 2025 SKCA 38 at para 15). I see no such error in the judge's determination of the facts relevant to the application to strike the statement of claim.

[13] It is helpful to briefly review what happened after Madazen Foods closed for the Christmas break. Mr. Nakihimba deposed that he did not return to work on January 3, 2023, at 9:00 a.m. as scheduled because he was ill. He said he sent a text message to Mr. Zawryucka on the afternoon of January 3 notifying him of this.

[14] Mr. Nakihimba was diagnosed with a urinary tract infection on January 6. Eight days later, on the evening of January 14, he sent an email to Mr. Zawryucka apologizing for not returning to work and explaining that he had to take a course of antibiotics to clear the infection.

[15] On January 16, while Mr. Zawryucka was on vacation in Central America, he sent an email to Mr. Nakihimba advising that his employment was being terminated. Mr. Nakihimba responded by email, stating he had notified Mr. Zawryucka the first day he became ill and that his dismissal was inappropriate.

[16] Mr. Zawryucka deposed that he had no record of any communication from Mr. Nakihimba regarding his absence until receiving his email of January 16, by which time Madazen Foods had already advised Mr. Nakihimba that his employment was terminated for failing to attend work. Mr. Zawryucka stated that he was not aware of Mr. Nakihimba's medical condition and that it had no impact on the decision to dismiss him, which he said was based exclusively on the fact that Mr. Nakihimba was absent from work for an extended period of time.

[17] The judge found that Mr. Zawryucka was likely out of the country and, for that reason, did not receive Mr. Nakihimba's text message of January 3 (*Decision* at para 9). Mr. Nakihimba challenges this factual finding. As I understand the argument, he says it was a palpable and overriding error because he had exhibited to his affidavit a photograph of his phone showing that the text message was sent. In light of this evidence, he argues that the judge could only have concluded that Mr. Zawryucka received his text message but simply ignored it.

[18] I am not persuaded by this submission. Where the standard of palpable and overriding error applies, "an appellate court can intervene only if there is an obvious error in the trial decision that is determinative of the outcome of the case" (*Salomon v Matte-Thompson*, 2019 SCC 14 at para 33; see also *Ledingham v Ledingham*, 2026 SKCA 4 at para 10; *Saskatchewan (Highways and Infrastructure) v Venture Construction Inc.*, 2020 SKCA 39 at para 34). It was open to the judge to accept Mr. Zawryucka's evidence that he had not received the text message, and it was not palpably wrong to conclude that the message had been sent by Mr. Nakihimba but not received.

[19] Mr. Nakihimba's argument reduces to the proposition that the judge should have accepted his evidence that he sent the text message and rejected Mr. Zawryucka's evidence that he did not receive it, without regard to the possibility that both parties were being truthful in their affidavits and that the message was sent but not successfully delivered. However, the possibility that an alternative factual finding could have been made on the evidence does not establish a palpable and overriding error (see *Salomon* at para 33; *MacKay v Law Society of Saskatchewan*, 2021 SKCA 99 at para 57). Mr. Nakihimba also does not explain how a different finding on this point would have led to a different outcome. Given the applicable standard of review, I see no basis to intervene on this ground of appeal.

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C. No error in striking the statement of claim

[20] Mr. Nakihimba submits that the judge erred in striking the statement of claim. As noted above, I have concluded the judge erred in striking the statement of claim as an abuse of process, but I see no error in his decision to strike the claim for other reasons. Before addressing the specific arguments raised by Mr. Nakihimba as I understand them, it is convenient to first review the allegations raised in the statement of claim against both respondents.

[21] I begin with Madazen Foods. The judge found that wrongful dismissal was the main cause of action (*Decision* at para 42). However, Mr. Nakihimba also advanced claims against Madazen Foods for: (i) breach of a duty not to dismiss him in a bad faith manner; and (ii) breach of a duty not to lie or knowingly mislead him by not honouring its commitment to employ him. Mr. Nakihimba sought numerous remedies against Madazen Foods, including:

(a) $6,379 in lost wages he would have received between the date of dismissal and the date when he was first paid after finding a new job;

(b) $50,000 in damages for mental distress;

(c) $25,000 in aggravated damages for mental distress;

(d) $400,000 in punitive damages;

(e) orders requiring Madazen Foods to issue a record of employment at the conclusion of the action; and

(f) although he was not seeking reinstatement, rectification of the oral employment contract to include a term that if he became ill, he could not be dismissed without notice.

[22] Mr. Nakihimba also sought damages for various losses and expenses he claims to have incurred between his dismissal on January 16, 2023, and approximately March 10, 2023, when he was first paid after securing new employment on February 28, 2023. These claims are somewhat difficult to understand, but appear to include: (i) $6,602 in personal living expenses; (ii) $1,755 in compensation for contribution room to his tax free savings account that he says was lost when he redeemed some shares to fund those expenses; (iii) $1,000 for inconvenience caused by Madazen

Foods' failure to immediately issue a record of employment; and (iv) $284 for a loss incurred and a financing charge paid when he pawned a video game console.

[23] Although Mr. Nakihimba did not dispute that Madazen Foods was his employer during his two and a half day tenure, he also advanced claims against Mr. Zawryucka for: (i) breach of a duty of honesty in contractual performance by lying about not receiving the January 3 text message; (ii) breach of a duty not to dismiss him in a bad faith manner; and (iii) breach of a duty not to lie or knowingly mislead him in performing his contractual obligations. The latter allegation is a claim that Mr. Zawryucka did not honour a note he wrote in a Christmas card welcoming Mr. Nakihimba to the company and inviting him to try $50 worth of free food products that he never received.

[24] Mr. Nakihimba sought various remedies against Mr. Zawryucka, including the same orders compelling the issuance of a record of employment and rectification of the oral contract of employment that were sought against Madazen Foods. Mr. Nakihimba also claimed $50 in damages for breach of the Christmas card promise.

[25] As I interpret Mr. Nakihimba's written submissions and oral argument, he contends that that the judge erred in the following ways:

(a) by striking the entire statement of claim as an abuse of process because he advanced claims that had not been resolved by Employment Standards and were within the jurisdiction of the Court;

(b) by striking the bad faith claims against Madazen Foods and Mr. Zawryucka as scandalous; and

(c) by striking the claims against Mr. Zawryucka because it was not plain and obvious he would not be personally liable for the dismissal if the corporate veil was pierced.

1. The statement of claim was not an abuse of process

[26] The judge determined that the statement of claim must be struck as an abuse of process under Rule 7-9(2)(e) because it was a collateral attack on decisions made by Employment Standards and the Human Rights Commission. He concluded that "the entire claim must be struck because it seeks to relitigate matters previously addressed by statutory tribunals. The claim, in its

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essence, is a collateral attack on those decisions and therefore an abuse of process" (*Decision* at para 41).

[27] The judge reasoned that the claim offended the rule against collateral attack because Mr. Nakihimba's entitlement to wages and proper notice of termination had already been addressed by those bodies. He stated that the dispute had to be resolved by those tribunals and that the Court of King's Bench had no jurisdiction except through judicial review:

> [55] As a short-term, non-union hourly wage earner, Mr. Nakihimba had no security of tenure. His employment was governed by *The Saskatchewan Employment Act*, SS 2013, c S-15.1 [*Act*]. Section 2-43 of that Act requires more than 13 consecutive weeks service to be entitled to employment leave. His only right on dismissal without cause was to notice as established by s. 2-60 of the *Act*. As set out above, his entitlement to payment of wages was determined by the Employment Standards Branch and he was paid accordingly. That should have been an end to the matter.
>
> [56] Instead, Mr. Nakihimba made a complaint to the Saskatchewan Human Rights Commission. That was his right. That complaint was dismissed.
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> [57] Mr. Nakihimba then commenced this action. *But the fact is that the question of his termination and entitlement to payment of wages and proper notice have already been settled under the statutory framework and through the statutory tribunals provided for such disputes. The Legislature, having provided for resolution of such dispute through those tribunals, has removed the Court's jurisdiction, except through judicial review. The Amended Statement of Claim therefore offends the rule against collateral attack. Mr. Nakihimba seeks to relitigate what has already been resolved. That amounts to an abuse of process*.
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> (Emphasis added)

[28] As I understand the argument, Mr. Nakihimba says the judge erred in striking the entire statement of claim as an abuse of process because he had advanced claims and sought remedies that were not within the jurisdiction of Employment Standards and had not been decided in that forum. He also argues the judge erred in concluding that the Court of King's Bench had no jurisdiction over his claims except through judicial review. The Human Rights Commission's decision to dismiss Mr. Nakihimba's discrimination complaint is not implicated in this ground of appeal.

[29] Determining whether a claim should be struck under Rule 7-9(2)(e) as an abuse of process involves the exercise of discretion (*Soldan v Plus Industries Inc.*, 2024 SKCA 29 at para 25). However, "where the finding that a claim is an abuse of process rests on the interpretation of statutory provisions, that raises a question of law, reviewable for correctness" (*Tarasoff v Saskatoon (City)*, 2025 SKCA 77 at para 17; see also the cases cited therein).

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[30] In my respectful view, the judge erred in finding that the question of Mr. Nakihimba's termination and his entitlement to payment of wages and proper notice had been resolved by Employment Standards and that the Court of King's Bench therefore had no jurisdiction over his claims except through judicial review.

[31] The judge correctly observed that Mr. Nakihimba was not entitled to any notice of his dismissal under s. 2-60 of *The Saskatchewan Employment Act*, SS 2013, c S-15.1. Under that section, in the absence of just cause for dismissal, an employee is only entitled to a minimum period of one week's notice after working more than 13 consecutive weeks, and Mr. Nakihimba had only worked 19 hours. However, it was not correct to state that "[Mr. Nakihimba's] only right on dismissal without cause was to notice as established by s. 2-60 of the *Act*" (*Decision* at para 55). While Mr. Nakihimba was not entitled to any statutory notice, in the absence of a determination that Madazen Foods had just cause for dismissal, he retained the right to pursue pay in lieu of reasonable notice at common law in accordance with the well known principles set out in *Bardal v Globe and Mail*, 1960 CanLII 294, 24 DLR (2d) 140 (ONSC) (see also: *Keays v Honda Canada Inc*., 2008 SCC 39 at para 28). Entitlement to statutory notice under employment standards legislation and entitlement to reasonable notice under a contract of employment at common law are distinct rights (see *Lingelbach v James Tire Centres Ltd.*, 1994 CanLII 4590, 120 DLR (4th) 456 at para 17 (Westlaw) (SKCA)).

[32] The only issue determined by Employment Standards was Mr. Nakihimba's claim for payment of wages he had earned but not been paid. In the statement of claim, Mr. Nakihimba pleaded that his claim for payment of outstanding wages for his 19 hours of work plus holiday pay was resolved through Employment Standards. He also adduced evidence establishing this. However, there was no evidence that his wrongful dismissal claim for pay in lieu of notice at common law had been determined by that office, nor was there any evidence that his claims based on allegations of bad faith had been resolved. As such, there was no basis for the judge's finding that "Mr. Nakihimba seeks to relitigate what has already been resolved" and his determination that the entire claim was an abuse of process for that reason (*Decision* at para 57). Mr. Nakihimba was not seeking to relitigate his claim for payment of earned wages, and his other claims had not been considered or decided by Employment Standards.

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[33] There was also no basis for the judge to conclude that the Legislature had provided for the resolution of Mr. Nakihimba's claims through statutory tribunals and that the Court of King's Bench had no jurisdiction over them except through judicial review (*Decision* at para 57). Although Mr. Nakihimba's claim for payment of outstanding wages was appropriately addressed through Employment Standards, the existence of a statutory process for resolving unpaid wage disputes under *The Saskatchewan Employment Act* did not remove the Court's jurisdiction over his common law wrongful dismissal claim and the other causes of action Mr. Nakihimba was advancing in the statement of claim (see, generally: *Kolodziejski v Auto Electric Service Ltd*., 1999 CanLII 12264 at para 17, 174 DLR (4th) 525 (SKCA)).

[34] A claim may only be struck under Rule 7-9(2)(e) where "it is 'plain and obvious' that allowing an action to proceed would amount to an abuse of process" (*Nelson v Teva Canada Limited*, 2021 SKCA 171 at para 4, citing *Hunt v Carey Canada Inc.*, 1990 CanLII 90, [1990] 2 SCR 959 (SCC)). Here, it was not plain and obvious that the entire statement of claim was an abuse of process because it was seeking to relitigate matters addressed by Employment Standards and was, for that reason, a collateral attack on the decision of that office. Where there is an arguable issue as to whether a claim constitutes an abuse of process, it is an error in principle to strike it under Rule 7-9(2)(e) (see *Nelson* at para 17).

[35] In my respectful view, the judge erred in striking the entire claim as an abuse of process. However, as discussed below, the claim was properly struck on other grounds.

2. The bad faith claims were scandalous

[36] Mr. Nakihimba also submits the judge erred by striking the bad faith claims against Madazen Foods and Mr. Zawryucka because they were not scandalous. A determination that a claim is scandalous, frivolous, or vexatious is reviewable for correctness (see *Hope v Gourlay*, 2015 SKCA 27 at para 16; *Harpold v Saskatchewan (Corrections and Policing)*, 2020 SKCA 98 at para 21). I see no such error.

[37] Early in the *Decision*, the judge reviewed Rule 7-9(2)(b), which permits all or part of a pleading to be struck if it is scandalous. He reproduced a passage from *Abrametz v Allen*, 2024 SKKB 159 at para 13, in which the Court stated that "[a] pleading is scandalous if it levels

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degrading charges or baseless allegations of misconduct or bad faith against an opposite party" (*Decision* at para 30). The judge then addressed the bad faith claims in the following terms:

> [47] The Amended Statement of Claim is scandalous in that it makes baseless claims against the defendants of "bad faith" in paras. 30 and 32 and that the defendant Darren Zawryucka "lied or knowingly misled" in para. 33 and engaged in "egregious conduct, high-handed misconduct and oppression" in para. 35. Pleadings are not intended as a free forum for gratuitous insult and slander.

[38] Paragraph 30 of the statement of claim alleged that Madazen Foods had breached a duty not to dismiss Mr. Nakihimba in a bad faith manner, and paragraph 32 advanced the same claim against Mr. Zawryucka. Paragraph 33 alleged that Mr. Zawryucka had breached a duty not to knowingly mislead Mr. Nakihimba by failing to honour the Christmas card promise to provide $50 worth of company food products. Paragraphs 32 and 33 were also struck on the basis that they disclosed no reasonable claim (*Decision* at para 45).

[39] Mr. Nakihimba says that these allegations were not scandalous because they were supported by his affidavits. I am not persuaded by this argument.

[40] There was nothing in the evidence before the judge supporting the inference that Mr. Nakihimba was dismissed in a bad faith manner. Mr. Nakihimba learned he was dismissed when he received an email from Mr. Zawryucka on January 16, 2023. That email simply communicated that the employment relationship was not going to work out; there was nothing in it suggesting bad faith. In his affidavit, Mr. Zawryucka explained he was not aware of Mr. Nakihimba's medical condition and that it had no impact on the decision to terminate his employment. He also stated he had no intention to cause Mr. Nakihimba any mental distress and that their communications were amicable. There is nothing in Mr. Nakihimba's evidence contradicting this or otherwise supporting the proposition that he was dismissed in a bad faith manner.

[41] Similarly, there was nothing in the evidence supporting the assertion that Mr. Zawryucka had breached a duty not to knowingly mislead Mr. Nakihimba by failing to honour the Christmas card promise. Although this "promise" is perhaps better understood as a gift given the context, even assuming it was legally binding, there was no evidence that Mr. Zawryucka knowingly misled Mr. Nakihimba by making the promise. Mr. Zawryucka signed the Christmas card before the company closed for the Christmas break. At that time, there was no indication that

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Mr. Nakihimba would not return to work in January or that he would eventually be dismissed and not receive the free food.

[42] In the absence of any evidence of bad faith, the judge correctly concluded that the pleadings in the identified paragraphs were scandalous because they levelled baseless allegations of misconduct or bad faith against Madazen Foods and Mr. Zawryucka. I see no basis to intervene on this ground of appeal.

3. The claims against Mr. Zawryucka were properly struck

[43] Mr. Nakihimba also argues the judge erred by striking the claims against Mr. Zawryucka because he could have been personally liable for the conduct of Madazen Foods. I understand Mr. Nakihimba to say the judge should not have struck the claims against Mr. Zawryucka because it was not plain and obvious that he would not be liable if the corporate veil was pierced. I am unable to accept this argument.

[44] As noted, Mr. Nakihimba did not dispute that his employer was Madazen Foods. The judge recognized that there are circumstances when the corporate veil may be lifted but found those principles had no application in this case (*Decision* at para 58). He determined that "[t]here is nothing in the Amended Statement of Claim which would extend liability to Mr. Zawryucka as either manager of the company or as an officer, director and shareholder of the company" and that this was a reason to strike the claims against him (*Decision* at para 59). I see no error in this conclusion. There were no pleaded facts or evidence of any conduct by Mr. Zawryucka raising the possibility that he could be personally liable for Mr. Nakihimba's dismissal by Madazen Foods.

4. The statement of claim was properly struck as frivolous and vexatious and as disclosing no reasonable claim

[45] Although I have concluded the judge erred in striking the entire statement of claim as an abuse of process, I am persuaded that the statement of claim was properly struck for the other reasons given by the judge.

[46] After reviewing the legal principles relevant to striking a claim under Rule 7-9(2)(b) as being scandalous, frivolous, or vexatious earlier in the *Decision*, the judge concluded that "[t]he Amended Statement of Claim is frivolous in that it advances claims which are groundless and

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cannot succeed, as discussed above" and that "[t]he Amended Statement of Claim is vexatious in that it advances claims that are not known to law, as discussed above" (*Decision* at paras 48-49). Notably, the judge held that the "Amended Statement of Claim" was frivolous and vexatious. As I read the *Decision*, this finding was not limited to specific aspects of the statement of claim or to a single defendant.

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[47] As already observed, the judge determined there was no basis in the statement of claim for Mr. Zawryucka to be personally liable for Mr. Nakihimba's dismissal by Madazen Foods. Although this finding was made in a part of the *Decision* where the judge was addressing abuse of process, it can be understood as a determination that the claims against Mr. Zawryucka were groundless and could not succeed, which are characteristics that define a frivolous pleading (see: *Solgi v College of Physicians and Surgeons of Saskatchewan*, 2022 SKCA 96 at para 55; *Harpold* at para 63; *Hope v Pylypow*, 2015 SKCA 26 at para 32; *Paulsen v Saskatchewan (Ministry of Environment)*, 2013 SKQB 119 at para 47). Although the judge did not specifically address the allegation that Mr. Zawryucka breached a duty of honesty in contractual performance by lying about not receiving Mr. Nakihimba's text message of January 3, 2023, it was unnecessary to do so given his conclusion that there was no basis pleaded for Mr. Zawryucka to be personally liable.

[48] Despite that determination, the judge also addressed the other claims against Mr. Zawryucka on additional grounds. The allegations that Mr. Zawryucka breached a duty not to dismiss Mr. Nakihimba in a bad faith manner and breached a duty not to knowingly mislead Mr. Nakihimba in performing his contractual obligations by failing to honour the Christmas card promise were both found to be scandalous and to disclose no reasonable claim (*Decision* at paras 45 and 47).

[49] Similarly, the plea that Madazen Foods breached a duty not to dismiss Mr. Nakihimba in a bad faith manner was found to be scandalous (*Decision* at para 47). The allegation that it breached a duty not to knowingly mislead Mr. Nakihimba by dismissing him and not honouring its commitment to employ him was found to be scandalous and to disclose no reasonable claim (*Decision* at paras 44 and 47).

[50] This leaves Mr. Nakihimba's claim against Madazen Foods for wrongful dismissal, which was not specifically addressed. Reading the *Decision* as a whole, the judge must be taken to have

struck this claim for the three reasons he found the "Amended Statement of Claim" should be struck – because it was frivolous, vexatious, and an abuse of process. Although I have concluded the statement of claim should not have been struck as an abuse of process, I am not persuaded the judge erred by determining this claim was vexatious.

[51] The judge concluded the statement of claim was vexatious because "it advances claims that are not known to law" (*Decision* at para 49). To the extent this conclusion applies to Mr. Nakihimba's claim for wrongful dismissal, it is in error. As noted, the judge correctly found that Mr. Nakihimba was not entitled to statutory notice under *The Employment Standards Act*, but he was still entitled as a matter of law to pursue a claim for pay in lieu of notice at common law.

[52] The existence of this legal right, however, does not mean that his claim in these circumstances was well founded. A pleading is also vexatious if it is commenced for an ulterior motive, other than to enforce a true legal claim, or if it is instituted maliciously for the purposes of causing trouble or annoyance to the defendant (see *Solgi* at para 55). There were several indications that Mr. Nakihimba was not seeking to enforce a true legal claim and that the statement of claim could be characterized as vexatious for that reason.

[53] Mr. Nakihimba had worked only 19 hours over two and a half days before his employment was terminated. Even assuming he was dismissed without just cause, he was seeking remedies that were inconsistent with a true legal claim for pay in lieu of reasonable notice. In addition to lost wages, Mr. Nakihimba was also claiming compensation for numerous losses and expenses he says he incurred before finding a new job. For example, he was seeking compensation for lost dividend income on shares he redeemed from his TFSA and damages for the associated contribution room he allegedly lost. He was also claiming recovery of money he spent on rent, an Airbnb, a hotel, internet and cell phone costs, banking and financial services fees, household items, hygiene products, bedding, groceries, and transportation. He also claimed compensation for losses incurred when he pawned a video game console and reimbursement of $250 that he borrowed from his sisters. In addition, Mr. Nakihimba was claiming $400,000 in punitive damages and $75,000 in general and aggravated damages for mental distress, in circumstances where he was notified of his dismissal in a polite email. In total, he was seeking damages of over $490,000 after working for only 19 hours.

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[54] The judge remarked on the unusual nature of the relief sought, characterizing the punitive damages claim as "simply absurd" and observing that many of the claims were not compensable in a wrongful dismissal action:

> [60] While not necessary to do so, I will briefly comment on the relief sought in the Amended Statement of Claim at para. 39. Paragraph 39 lists 13 separate items as relief, including in clause 39(k) "$400,000 as punitive damages". This is simply absurd. Keep in mind that Mr. Nakihimba worked 19 hours for $16 an hour. His total earnings, leaving aside any right to additional notice, would be $304.
>
> [61] The Amended Statement of Claim in paras. 21 to 27 claims damages for a variety of losses supposedly resulting from his loss of employment. These are not compensable damages. The defendants argued correctly that the plaintiff employs a "but for" test. But for the loss of his employment, he might not have made many other decisions which adversely affected his finances. That is not the test the Court would apply. The concepts of proof of damages, causation and remoteness of damages would apply to bar these claims.

[55] Reading these comments about the remedies claimed by Mr. Nakihimba in the context of the pleaded facts, the judge's finding that the statement of claim was vexatious is best understood as including the wrongful dismissal claim.

[56] As he had framed the action, Mr. Nakihimba was not seeking to enforce a true legal claim for pay in lieu of reasonable notice. Instead, he was seeking damages that bore no relationship to the nature and length of his tenure or the manner and circumstances of his dismissal having regard to the *Bardal* factors. The mere fact that a damages claim could be characterized as optimistic, excessive, or even unrealistic will not, on its own, necessarily support the conclusion that the statement of claim in which it is advanced is vexatious. However, the judge found that many of the damages claimed by Mr. Nakihimba were not compensable because they did not flow from the loss of his employment. Viewed in the context of Mr. Nakihimba's other claims that were not properly constituted or without any pleaded or evidentiary foundation (such as those alleging bad faith, that the respondents lied and knowingly misled him, and the claims advanced against Mr. Zawryucka personally), the entire action can be characterized as vexatious on the basis that Mr. Nakihimba was not seeking to enforce a true legal claim for wrongful dismissal by claiming these damages.

[57] Every appeal is from the result and not the reasons for judgment (see *R v Sheppard*, 2002 SCC 26 at para 4; *Prince Albert Right to Life Association v Prince Albert (City)*, 2020 SKCA 96 at para 39; *Boardwalk General Partnership v Olson*, 2016 SKCA 135 at para 14). Although the

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judge determined that the claim was vexatious for a different reason, he arrived at the correct result (see, generally: *Boardwalk* at para 14; *Thomas v Quinlan*, 2020 SKCA 82 at para 37). In my view, the judge did not err in striking the statement of claim for reasons other than as an abuse of process.

D. The judge's reasons were sufficient

[58] Mr. Nakihimba contends the judge's reasons were insufficient because he did not explain why he could not grant what Mr. Nakihimba describes as the "equitable remedies" he was seeking (such as his request for $75,000 in compensation for mental distress). I see no basis to intervene on this ground of appeal.

[59] In his written submissions, Mr. Nakihimba states that "[a]side from the punitive damages, [the judge] failed to delineate between the different damages I claimed and how those damages can be proven." He says that "[w]hile equitable remedies are discretionary, courts still have a duty to provide adequate and sufficient reasons for granting (and refusing) them."

[60] Where the adequacy of reasons is challenged, "[t]he question is whether the reasons are sufficient to allow for meaningful appellate review and whether the parties' 'functional need to know' why the trial judge's decision has been made has been met" (*Hill v Hamilton-Wentworth Regional Police Services Board*, 2007 SCC 41 at para 100). In making this determination, an appellate court must apply a functional approach "that takes into consideration the context giving rise to the decision, the record and the purpose of providing reasons, which includes giving an explanation to the unsuccessful party, allowing for meaningful appellate review and enabling the public to satisfy itself that justice has been done" (*Scobie v Thiessen*, 2021 SKCA 47 at para 33; see also *Hoedel v WestJet Airlines Ltd.*, 2023 SKCA 135 at para 43).

[61] Here, the judge was considering an application to strike the statement of claim; he was not determining whether to grant or refuse the remedies sought by Mr. Nakihimba. It was, therefore, not necessary for the judge to explain why the requested remedies were refused because that was not the issue before him. The judge's reasons explained why the statement of claim was struck and were sufficient for that purpose.

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E. The judge was not biased

[62] Mr. Nakihimba contends the judge was biased against him as a self-represented litigant. On this ground of appeal, Mr. Nakihimba's arguments reduce to the proposition that the judge was biased because he accepted the submissions of counsel for the respondents. I am unable to accept this contention. The judge understood and appreciated the need to afford some latitude to Mr. Nakihimba as a self-represented party when considering the adequacy of his pleading (see *Decision* at paras 16-18). The mere fact that the judge agreed with the respondents does not, on its own, demonstrate judicial bias (see *CPC Networks Corp. v Miller*, 2022 SKCA 95 at para 21).

F. No error in awarding costs

[63] Finally, Mr. Nakihimba argues the judge erred in ordering him to pay costs. The judge noted that Mr. Nakihimba was unsuccessful in his application to strike parts of Mr. Zawryucka's affidavit and that the respondents were successful in their application to strike the claim. He ordered Mr. Nakihimba to pay a single set of costs to the respondents calculated under Column I of the Tariff of Costs, payable forthwith (*Decision* at paras 65-66).

[64] As I understand his arguments, Mr. Nakihimba says the judge erred by (i) failing to grant a *Sanderson* order requiring payment of costs by the respondents; and (ii) failing to order costs against the respondents' counsel personally. There is no merit to these arguments.

[65] A *Sanderson* order may be granted where a plaintiff commences an action against two defendants and is successful against one. Such an order compels the unsuccessful defendant to pay the costs it would normally be required to pay to the plaintiff, directly to the successful defendant (see M.M. Orkin & R.G. Schipper, *Orkin on the Law of Costs*, 2nd ed (Thomson Reuters, 2020) (updated to release 2025-08) at s 2.53; *Sanderson v Blyth Theatre Co.*, [1903] 2 KB 533 (CA) (UK)). This was not the situation before the judge. As both defendants were successful in obtaining an order striking the statement of claim, there was no basis to grant a *Sanderson* order, and the judge did not err by failing to do so.

[66] There was also no basis to grant an order of costs against the respondents' counsel personally. Although Mr. Nakihimba argues such an order was necessary to sanction counsel for "sharp practice", this argument is entirely without merit. There is no indication in the record of

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any concern about counsel's conduct, let alone anything remotely approaching sharp practice that would make a personal award of costs appropriate.

[67] The judge's order of costs was entirely proper in the circumstances, and I would not interfere with that order.

III. CONCLUSION

[68] I would dismiss the appeal, with one set of costs to the respondents fixed at $2,000.

"Kilback J.A."
Kilback J.A.

I concur. "Tholl J.A."
Tholl J.A.

I concur. "Kalmakoff J.A."
Kalmakoff J.A.

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