

EMPLOYMENT: IS IT ‘ A till death do us part vow’?

Introduction

An Employment Relationship is initiated by the Employer who capitalizes an establishment and makes the decision to seek services of an employee. Thus, the well settled principle of law that an employer who has a right to hire, also has the right to fire.

However, whilst the employment relationship is initiated by the Employer, the Law had to come in to regulate such a relationship. Quite similar to a marriage. Whilst parties meet, undergo courtship without the assistance of the law, upon marriage, the Law comes in to govern the relationship and set rules on how such a relationship can be dissolved.

Our humble view is that whilst the Law governs these relationships, the parties therein should not be forced onto each other. Thus, the unfettered right of either party, in the employment relationship, to terminate the employment relationship with notice or payment in lieu of notice. The rationale behind this principle of law is that a servant, though willing, should not be imposed upon an unwilling master. And likewise, a master, though willing, should not be imposed upon an unwilling servant. It is a risk to force parties to remain in a relationship that has broken down. Indeed, even with marriages which have “*the till death do us part vow*”, the Law provides an option for parties to dissolve the same upon proving the grounds for such dissolution.

Therefore, the question which raises the big debate is “*If parties, have by their employment contract agreed that either party may terminate the same with notice, should there be any other reason other than the right of either party to terminate.*”

An answer to that question is found in our Law, both the repealed Employment Act Cap. 219 under Section 25 and the Employment Act, 2006. The right of either party to terminate with notice was not changed by the Employment Act 2006. **Section 65** provides for the circumstances where an employment relationship would be legally terminated. One of such circumstances include termination with notice or payment in lieu of notice. Indeed, even when a contract of employment does not provide for termination with notice, the Law provides for the minimum notice periods that must be complied with prior to termination. And these are provided for under Section **58, Employment Act**.

The Big Debate:- Why then, is there the debate of Reason Vs Notice?

Whilst the Legislature enacts laws in Uganda, the Courts have the mandate to interpret, apply and enforce the laws. Consequently, the Industrial Court of Uganda, the Court mandated to handle labour dispute resolution, interpreted the provision under **Section 68 of the Employment Act 2006** and has since created the jurisprudence that in all cases, termination is not lawful unless an employee is provided with a reason for the said termination. That the right to terminate with notice is not a reason since the employee was engaged for a reason and therefore there must be a reason for the termination. One of such cases is Labour claim No.138 of 2014, Florence Mufumba vs Uganda Development Bank. Whilst the jurisprudence established by the Supreme Court of Uganda prior to the enactment of the Employment Act 2006 was that an employer had the right to terminate an employment contract with notice or payment in lieu of notice, this position changed post the Florence Mufumba case. Further, whilst the Supreme Court had guided on the quantum of general damages in the event of unlawful termination, being payment of the equivalent of the notice period, this position too changed post the Florence Mufumba case.

Consequently, Labour/Employment Dispute Resolution practitioners have been in confusion on how to advise Clients, both Employers and Employees regarding termination of employment contracts. Further, amicable settlements of employment disputes arising out of termination of contracts have been a challenge with employees seeking hefty damages from employers or else the Courts would award them. Termination of employment disputes have therefore become good retirement packages for employees.

Whilst the debate of *Reason Vs Notice* still remains, the Court of Appeal of Uganda recently delivered a decision that has reinstated the principle that a termination of an employment contract with notice or payment in lieu of notice is legal without further ado. No other reason needs to be provided. So, what did the Court of Appeal say?

Bank of Uganda Vs Joseph Kibuuka & 4 others:- Court of Appeal Civil Appeal No. 281 of 2016;

In this case, five (5) Respondents, all being former employees of Bank of Uganda, filed a labour claim at the Industrial Court challenging their termination from employment with notice on the ground that no reason was given to them for their termination. The Industrial Court decided the case in their favor. The industrial Court's decision was informed by among others the fact that the Applicants were not given a reason for their termination.

Being dissatisfied with the decision of the Industrial Court, the Bank appealed to the Court of Appeal based on 4 (four) grounds among others that; The Learned Trial Judges and panelists of the Industrial Court erred in holding that the Appellant cannot in law terminate the Respondent's

employment whether by “notice” or payment in lieu of notice unless it gives a justifiable reason for the termination.

The Court of Appeal agreed with the Appellants in respect to the aforementioned ground and held among others that; there is no support for a finding of the trial Court that in every situation where an employer terminates employment under section 65 (1) (a) and subsection 2 of the Employment Act, and/or the terms of the contract of employment, reasons have to be provided to the employee.

Significance of the Decision

Court of Appeal has re-affirmed the settled legal principle that the Employer has the unfettered right to terminate the employee’s employment as long as notice or payment in lieu of notice thereof is observed. No reason may be provided by the employer. This confirms that employment is not a matter of ‘*till death do us part*’ vow like marriage! Both parties are free to exit at will without having to provide reasons. This underscores the principle of freedom of contract that our laws have cherished for long which is to the effect that parties have the liberty to provide terms and conditions that will govern their relationship.

[Why did the Industrial Court depart from the previous position to require justifiable reason?](#)

The Court interpreted Section 68 of the Employment Act 2006 in line with principles of the International Labour Organization (ILO) Convention 158 of 1982. The rationale behind upholding the ILO principles by the Court is to ensure security of employment for employees, who form the bulk of Uganda’s working class. The perception is that Employers are in a more privileged position than employees and if they be allowed to terminate employment contracts at their whim, with payment in lieu of notice, people’s livelihoods would be affected. *How then do we balance the boat?* That is the question we should all ponder on? How do we ensure a secure labour market without necessarily constraining the right to freedom of contract?

Trends in other Jurisdictions

In the **United Kingdom**, an employer can terminate an employee for any reason, provided appropriate notice is given but statutorily, if an employee has a qualifying length of service, he or she may be terminated only for a potentially fair reason. It would appear that the longer an employee works for an employer, the more stringent it would be to terminate.

In **Nigeria**, prior to 2016, an employer was not obliged to give reasons for terminating an employee’s contract where such termination is with notice or payment in lieu of notice. However, that position was changed by the **National Industrial Court (“NIC”)** when it delivered judgements in *Duru v. Skye Bank Plc [2015] 59 NLLR (Pt. 207) 608*, and *Ebere Onyekachi Aloysius v Diamond Bank Plc. [2015] 58 N.L.L.R 92*. In the above cases, while relying on International Labour Organization standards, NIC held that an employer is bound to give reasons for terminating an employee’s contract.

Conclusion

The Decision in Civil Appeal No.281 of 2016 has shed the much-needed light in the area of termination. It has restored the equality of the employer and employee at contracting and at termination. Since an Employee may terminate his or her contract with notice without giving reasons, equality before the law as enshrined in the Constitution of the Republic of Uganda, 1995, would require that the Employer too enjoys such a right.

Nonetheless, parties should be fair to each other while separating in such employment relationships. We hope Employers fairly apply their right to terminate with notice or payment in lieu of notice and do not abuse it to the detriment of the Labour Market.

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