

IMPACT OF CONFLICTING COURT DECISIONS ON BUSINESS PLANNING IN UGANDA: UNDERSCORING LEGAL PRINCIPLES FOR TERMINATION OF EMPLOYMENT

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Business revolves around existing systems of governance. The key determinants of business direction in Uganda are therefore the three arms of Government i.e. Executive, Legislative and Judiciary in their respective roles. Under the Doctrine of separation of powers, the Judiciary is mandated to administer justice, implement, and interpret laws and promote the rule of law among other functions.

Fundamentally, decisions of higher courts (Courts of Record) form judicial precedent which is also referred to as judge made law and the same are binding on lower courts across the hierarchy.

On this basis, the courts are the lighthouse for legal direction in every common law country including Uganda.

Further, courts play a leading role in shaping the business environment of any given country because business planning is carried out with due regard to relevant laws and legal trends.

When it comes to human capital, various employers tailor their employment contracts including human resource manuals and internal policies to conform to the applicable legal regime, including judge made law.

Where the courts' positions on key issues are inconsistent, it creates uncertainty in the legal regime which adversely affects human capital development and business planning in the short run and economic development in the long run.

Employment and labour relations is a critical issue on global social economic development. According to the World Bank,

“Labor market regulations are important determinants of productivity and labor market outcomes. They can protect workers’ rights, enhance job security, and improve working conditions. However, overly-restrictive regulations can also increase business costs, becoming barriers to creating formal employment and thus, can undermine productivity growth in the economy.”¹

Further, the World Bank is of the considered view that, the impact of employment termination procedures on the labor market can be either positive or negative. While restrictive employment termination regulations may lengthen job tenure and reduce employee turnover, this may have the counter effect of hindering new employment opportunities.²

In the wake of technology advancement where businesses are increasingly migrating to digital alternatives, employers may adopt artificial intelligence to replace human capital in certain processes

on grounds of increased productivity.

Furthermore, stringent employment protections could mean that unemployed people have to wait longer periods before they get jobs as well as contend with lower wage offers when they eventually get the job.³

Nonetheless, countries with more protective dismissal regulations tend to have more durable or stable jobs, contributing to investments in human capital.⁴

The looming uncertainty and divergent Court decisions on employment termination procedures

Owing to the aforementioned benefits of having a consistent and robust employment protection regime, the courts in Uganda are far from a harmonized position. This is reflected in the recent decisions from Courts of Record on the issue of giving reasons for termination.

In the latest decision of the Court of Appeal on termination of employment, Ugandan employers must give reason for termination of the employment contract.

The above position was reached by the Court of Appeal of Uganda in the case of *Adam Kafumbe Mukasa, Herbert Gilbert Egesa, George Kawemba (For and on behalf of 21 other former UBL employees) v Uganda Breweries Limited, Civil Appeal No. 115 of 2018* (herein after referred to as “*The Adam Kafumbe Appeal*”) on 15th July 2022.

In this case, the Appellants (the employees) were declared redundant by the Respondent (the employer) upon which they executed a termination agreement. The Employees unsuccessfully challenged their termination before the Industrial Court on account that there was no redundancy situation. The Court decided the matter on the basis of the termination agreement and dismissed the employees’ Labour Complaint.

The employees successfully appealed to the Court of Appeal which specifically found that there was no redundancy situation, and that the termination agreement was illegal.

In the absence of a valid or justifiable reason for termination therefore, the Appellate Court found

that the employees’ contracts were unlawfully terminated.

The *Adam Kafumbe* judgment signifies that the Court of Appeal has overturned its decision in *Bank of Uganda vs. Joseph Kibuuka & 4 Ors, Civil Appeal No.281 of 2016, [11/05/2021]* where it held that the employer did not have to give reasons for termination of employment provided that notice of termination was duly given or payment in lieu thereof made under the Employment Act.

By emphasizing the need to give a reason for termination, the Court reverted back to its earlier decision in *Uganda Development Bank vs Florence Mufumba, Civil Appeal No. 241 of 2015 [03/07/2020]* and concurred with the Industrial court decision in *Ojok & 87 Others vs. Torres advances Enterprises Solutions LLC [14/05/2021]*.

The relevance of the decision

The Court reaffirmed that the employer is required to give reason for termination and where no reason is given; the termination is deemed unfair under Section 71 of the Employment Act.

The decision also conforms to Uganda's obligations under Article 4 of the International Labour Organization (ILO) Termination of Employment Convention, 1982 which requires that reasons be given for termination of employment.

The legality of termination agreements

In the above case, the Court of Appeal further rendered Termination Agreements illegal. We are of the considered view that this decision applied to the unique nature and peculiar circumstances of the matter at hand. While termination Agreements which curtail the employee's terminal benefits may be rendered void under Section 17 (1) of the Employment Act, if the same offers the employee more benefits than the law offer, the same would be valid under Section 17 (2) of the Act.

Defining a redundancy situation

The decision also streamlined the law on redundancy. Thus, an employer can only terminate a contract of employment on account of redundancy if there is in fact a redundancy situation. A dismissal for redundancy occurs inter alia

when the job for which the employee was hired is no more. This means that where redundancy is improperly carried out, the same results into unfair termination.

The challenge posed by the decision

The decision in the Adam Kafumbe case poses a challenge where one panel of the Court of Appeal overrules the decision of another panel of the same court.

In the case of *Attorney General vs. Uganda Law Society, Supreme Court of Uganda Constitutional Appeal No. 1 of 2006*, the Court observed that a panel of an appellate court is bound by previous decisions of other panels of the same court. That to permit one panel of the court to overturn a precedent set by another would lead to the antithesis of the doctrine of stare decisis and would be a recipe for uncertainty, instability, and unpredictability of the law that the courts have the responsibility to interpret and apply.

The National Employment Policy recommends that 'eradication of poverty requires continued macro-economic stability coupled with high rates of investment to create new and more productive employment.'

With inconsistent court positions on the central point of reasons for termination of employment, the labour market is bound to face instability in decision making processes.

For instance, employment decisions that were made on the basis of the *Kibuuka* judgment may result in big trouble for affected employers. However, this is not a blanket assertion as the peculiar circumstances of the case are

fundamental considerations in deciding employment cases.

Nonetheless, the disposition of the courts on key concerns like termination of employment makes for important considerations in organizational policies. The courts are therefore called upon to harmonize this position in light of the general business environment with respect to employment relations.

¹ Maho Hatayama, "Too strict? A stocktaking of labor regulations in the Middle East and North Africa (MENA) region" World Bank Blogs, March 28, 2022.

² Arvo Kuddo, David Robalino, Michael Weber, "Balancing regulations to promote jobs: From employment contracts to unemployment benefits." World Bank Group.

³ Ibid.

⁴ ibid