



Analysing the Impact of Termination of Employment Contracts in Kampala, Uganda

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ABSTRACT

The article analyses the impact of termination of employment contracts in Uganda. The article revealed that the position of the Uganda's law is still the common law right of an employer to terminate a contract of employment with good, bad or no reason at all. This is notwithstanding the fact that about fifty-five countries of the world have moved away from this ugly trend and embraced the ILO standards on unfair dismissal provided in ILO Termination of Employment Convention 158 of 1982 which requires that every termination of contracts of employment must be based on valid reasons. It is on this noted that the article calls for the ratification of ILO conventions. Uganda is a member of the International Labour Organisation and by its membership of the agency Uganda has an obligation to ratify and apply the ILO Convention on unfair dismissal. It is therefore necessary that a domestic body be established to ensure that ILO Conventions are ratified by Uganda. This body should work in concert with trade union of workers in Uganda in gathering international labour treaties and conventions and transmit them to the Executive Arm of the Government of Uganda for ratification. The body and the trade union of worker in Uganda should sit at periodic times to consider conventions acceded to by Uganda, list them and ensure that they are ratified. More so, there is need for an affirmative constitutional provision removing requirement for domestication of labour treaties and conventions. Because of the impediment posed by the provision of the Constitution requiring domestication of international treaties and conventions, there is need for amendment of the provision of the constitution requiring domestication of labour treaties and conventions. This will achieve clarity and certainty in the application of international labour treaties and conventions under the Constitution.

Keywords: Contract of employment, Employee, Employer, Legal frameworks, Termination of employment

INTRODUCTION

In modern contract there could be no condition precedent to termination. However, the procedural formalities need be performed as and by way of fairness and in good faith [1]. Non compliance of formalities may put the Employer or the Contractor in bad light before adjudication Forum. There is no legal requirement to observe the rules of Natural Justice in terminating the Contract except that the party terminating must faithfully follow the procedure, if laid down in Contract. Termination of contract is an act occurring when the two parties break an agreement which was set between them showing relationship that they have either socially or economically meaning that there was agreement of provision of services from both parties to each other and now they decide that they will do that no more [2]. Remedies for dismissals can be found either in the breach of contract at common law or in unfair dismissals under the Sec 2. If a contract has been terminated, a party has legal recourse against the party in breach of the contract [3]. At this point, one should review the contract to check whether there are any notice requirements wherein one must notify the breaching party as a prerequisite to filing any claims or suits. The aggrieved party may file a law suit in civil court where the party may seek, among other items, monetary damages. In such a case, one should consult an attorney in order to review what rights one has in pursuing legal action [4]. Our law recognizes that the employer has the right to dismiss an employee based on misconduct, incapacity, and operational requirements [5]. While misconduct generally refers to wrongdoings or unwillingness to perform, incapacity refers to ill-health or poor work performance. Operational requirements refer to technological or structural changes in the company. The law prescribes that no employee may be dismissed unfairly by virtue of Sec 77 of the Employment Act [5]. Issues bordering on determination of contract of employment take domination position in labour and industrial relations. Termination of employment is one of the problems plaguing employees in developing countries like Uganda. Termination of employment practices have put

employees in Uganda in a beggar has no choice situation. Uganda has remained under the common law determination at the will of employer. This has vitiated harmonious labour relations, which necessitated the present article that analyses the impact of termination of contract in Kampala, Uganda.

The overview of contract of employment

The term 'contract of employment' is made up of two key words: 'contract and employment'. Apart from the definitions of the term in various labour law legislation and judicial definitions, one can still derive the meaning of the term contract of employment by looking at the meaning of these two words that make up the term. A contract is defined as an agreement which the law will enforce or recognise as affecting the legal rights and duties of the parties [6]. A contract is an agreement whereby a person undertakes for rewards (consideration) to perform an act for another [7]. From the above definitions, it is clear that in a contract, there must be two or more parties who will undertake to perform an act for another for purposes of receiving a reward called consideration and the agreement to do this must be such that is sanctioned by law. Where this agreement is recognised by law, one can safely say that the agreement with other elements in place has metamorphosed into a contract. That is while every contract must be an agreement but not all agreements are contracts. A contract as an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law [8]. The underlying principle in this definition is that any agreement which does not create obligations recognizable at law is not a contract. It is also pertinent to ascertain the meaning of the rest of the key word which is employment. Employment is defined as a relationship between a master and a servant [9]. From the foregoing therefore, contract of employment can then be defined as a relationship which exists between an employer and an employee which the law recognizes as giving rise to a legal obligation between the employer and the employee which said obligation is enforceable at law. The Employment Act [5] defines contract of employment to mean any agreement whether oral, or written, express or implied whereby one person agrees to employ another as a worker and that other person agrees to serve the employer as a worker. Implicit in this definition by the Employment Act is that a contract of employment may be entered orally without the necessity of writing. This is however subject to some statutory exceptions such as the requirements of writing in a contract of apprenticeship. The Act itself provides a statutory exception to the effect that a contract of apprenticeship cannot be oral but in writing. It is also worthy to point out here that a contract of employment may also be by implication of law, without parties agreeing on the terms and conditions of the contract but because they have acted overtime on an employment relationship exchanging the necessary indices of employment, the law will imply employment relationship between them. Kaggwa, Kalibbala and Ntale[10] are of the view that where the employer realizes that he or she has unfairly dismissed an employee and makes an offer to remedy the unfair dismissal by making an offer of reinstatement to which the dismissed employee refuses, that may leave the dismissed employee without the remedy at all. However, the employee has the right to refuse if the employer makes the offer in bad faith. Geldenhuys[11] opines that where the remedy of reinstatement is ordered, it does not automatically imply that it will be retrospective from the date of dismissal. The discretion granted to the arbitrator or the court must be exercised in consideration of factors like conduct of the termination employee after being dismissed, the period of litigation etc.

According to the Black's Law Dictionary[12], to terminate something (action or claims) without further hearing, to release or discharge a person from employment. Dismissal therefore entails termination of employment without hearing. According to Osborn's Concise Law Dictionary[13], an employee shall be treated as dismissed, if but only if, his contract of employment is terminated by the employer, whether with or without notice; or where a contract for a fixed term, expires without being renewed; or the employee terminates the contract, with or without notice, in circumstances such that he is entitled to terminate it without notice by reason of the employer's conduct. The above meaning of dismissal of employee is lifted from the English Employment Rights Act[14] which seems to make no difference between termination in its strict sense and dismissal simpliciter. The definition though in accord with the International Labour Organisation standards which will be treated in subsequent subchapters, does not represent the meaning of dismissal in Nigeria. The Oxford Dictionary[15] explains dismissal as a discharge from service or office. Again, this does not place any difference between termination and termination since both termination and termination eventually lead to a discharge of an employee from office or service. The above definitions are therefore not comprehensive and do not represent the position of Nigerian jurisprudence on the meaning of termination.

The legal frameworks on termination of contract in Uganda Constitution of the Republic of Uganda 1995

The Constitution of the Republic of Uganda [16] under the National Objectives and Directive Principles of State Policy, stipulates as follows:-

Objective VII: "The State shall make reasonable provision for the welfare and maintenance of the aged".

Objective XI (i): "The State shall give the highest priority to the enactment of legislation establishing measures that protect and enhance the right of the people to equal opportunities in development".

Objective XIV (b): "All Ugandans shall enjoy rights and opportunities and access to education, health services,

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clean and safe water, work, decent shelter, adequate clothing, food security and pension and retirement benefits". Chapter four of the Constitution provides for the protection and promotion of fundamental human rights and freedoms. In particular, the Constitution enjoins the State to take affirmative action in favour of marginalized groups, protect the unique and natural maternal function of women, the rights of children, persons with disabilities, ethnic minorities and economic rights of every Ugandan. The Constitution further provides that a public officer shall upon retirement receive such pension as is commensurate with his or her rank, salary and length of service [16].

Employment Act 2006

Section 68 (1) states that in any claim arising out of termination the employer shall prove the reason or reasons for the termination, and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of section 71 [5]. Section 71 (1) stipulates that an employee who has been continuously employed by his or her employer for at least thirteen weeks immediately before the date of termination, shall have the right to complain that he or she has been unfairly terminated [5].

The procedure for unfair termination of employee

The act stipulates that a termination shall be unfair for the purposes of this Part where, that the termination is for any of the reasons specified in section 75; or that it is found out that in all the circumstances of the case, the employer did not act in accordance with justice and equity in terminating the employee from service [5]. The act also emphasizes that in deciding whether it was just and equitable for an employer to terminate the services of an employee, a labour officer shall consider that the code of Discipline set out in Schedule 1 [5], that the procedures adopted by the employer in reaching the decision to dismiss that the employee, the communication of that decision to the employee and the handling of any appeal against the decision; that the conduct and capability of the employee up to the date of termination; that the extent to which the employer has complied with any statutory requirement connected with the termination, including the issuing of a certificate under section 61 and the procedural requirements set out in section 66; and that the previous practice of the employer in dealing with the type of circumstances which led to the termination.

The Contract Act

Death and incapacity to accept, lapse of time, revocation, failure to meet conditions of conditional offer and by counter-offer which effectively destroys the original offer which cannot thereafter be accepted [7]. Section 2 of the Contract Act [7] defines acceptance as an assent to an offer made by a person to whom the offer made. Acceptance is the consent by the offeree to contract within the terms of the contract. Immediately after acceptance a contract becomes valid and binding on both parties. Acceptance has four elements, it must be by the offeree, must be communicated to the offeror, must be in the EXACT terms of the offer without any variations, the terms of agreement must be certain. Sections (3) and (7) [7] state that acceptance should be effective and speedy. As a general rule is normally through the same medium as the offer. Silence does not constitute acceptance. Section 2[7] defines consideration means a right, interest, profit or benefit accruing to one party or forbearance, detriment, loss or responsibility given, suffered or undertaken by the other party. Section 8 [7], states that the performance of the conditions of an offer or the acceptance of any consideration for a reciprocal promise which may be offered with an offer, is an acceptance of the offer,

The policy frameworks of termination of contract

The country's long term development framework, Uganda Vision 2040, underscores the importance of social protection to address risks and vulnerabilities. The Government of Uganda recognises the need to provide assistance to people who are vulnerable either by age, social class, location, disability, gender, disaster or who do not earn any income [17]. The country's Vision 2040 envisages a social protection system that includes a universal pension for older persons, public works schemes for vulnerable unemployed persons and social assistance to vulnerable children, persons with disabilities and the destitute. The Vision also identifies universal health insurance as one of the key strategies for alleviating the high cost on health care by households and enhancing access to affordable health services for all. The National Development Plans (NDP) I & II - the first and second of six 5- year development plans to achieve the Vision 2040- also highlight social protection as one of the key strategies for transforming Uganda from a peasant society to a modern and prosperous Country [18].

Regional and International Frameworks

The East African Common Market Protocol (2010) permits workers to move freely within the territories of the partner states for the purpose of employment and guarantees them the rights and benefits of social security as accorded to the workers of the host partner state [19]. Uganda endorsed the Ouagadougou Declaration and Plan of Action on Employment and Poverty Alleviation in Africa (2014) [20]. The Plan calls for improvement and strengthening of the existing social protection schemes and extending it to workers and their families currently excluded. Uganda is also a signatory to the Livingstone Call to Action (2006)[21], which obliges African States to put in place plans for the implementation of Direct Income Support (DIS) programmes. The African Union Social Policy Framework (2008) [22] calls on member States to recognize that social protection is a state obligation,

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with provisions in national legislations. The Universal Declaration of Human Rights (1948) [23] provides for everyone's right to social security in the event of unemployment⁶⁷, sickness, disability, widowhood, old-age or other lack of livelihood in circumstances beyond ones control. Other international instruments that commit the Government of Uganda to provide social protection include the International Covenant on Economic Social and Cultural Rights (1966) [24], the Convention on Elimination of all forms of Discrimination Against Women (1979) [25], the Convention on the Rights of the Child (1989[26]), the Convention on the Rights of Persons with Disabilities (2006), the ILO Convention on Employment Policy No. 122 (1976), the ILO Convention on Public Contracts, the ILO Convention on the Prohibition of the Worst Forms of Child Labour No. 182 (1999).

CONCLUSION

The position of the Uganda's law is still the common law right of an employer to terminate a contract of employment with good, bad or no reason at all. This is notwithstanding the fact that about fifty-five countries of the world have moved away from this ugly trend and embraced the ILO standards on unfair dismissal provided in ILO Termination of Employment Convention 158 of 1982 which requires that every termination of contracts of employment must be based on valid reasons. This Convention has no place in Uganda yet as a result of some challenges posed to the application of the convention. These challenges are non-ratification of the convention by the Executive Arm of Government of Uganda, the presence of the constitutional provision requiring domestication, the seeming inconsistency in the Constitution as regards application of labour treaties and conventions and the passivity in the judiciary. The legislature also contributes by not creating a legal framework for effective application of ILO standards on unfair dismissal in Uganda. The above position has led to insecurity of tenure of employment in Uganda particularly in the private sector employment. However, if these findings and corresponding suggestions are considered and adopted, Uganda will achieve a hitch-free application of ILO Termination of Employment Convention containing ILO standards on unfair dismissal which will lead to a policy of fair dismissal in Uganda.

RECOMMENDATIONS

It is on this noted that the article calls for the ratification of ILO conventions. Uganda is a member of the International Labour Organisation and by its membership of the agency Uganda has an obligation to ratify and apply the ILO Convention on unfair dismissal. It is therefore necessary that a domestic body be established to ensure that ILO Conventions are ratified by Uganda. This body should work in concert with trade union of workers in Uganda in gathering international labour treaties and conventions and transmit them to the Executive Arm of the Government of Uganda for ratification. The body and the trade union of worker in Uganda should sit at periodic times to consider conventions acceded to by Uganda, list them and ensure that they are ratified. More so, there is need for an affirmative constitutional provision removing requirement for domestication of labour treaties and conventions. Because of the impediment posed by the provision of the Constitution requiring domestication of international treaties and conventions, there is need for amendment of the provision of the constitution requiring domestication of labour treaties and conventions. This will achieve clarity and certainty in the application of international labour treaties and conventions under the Constitution. Furthermore, there need for a supervisory body ensuring implementation of labour treaties and conventions. Uganda has various international labour treaties and conventions that are not implemented in the country as a result of administrative problems of the Ministry of Labour and Productivity and perhaps because of the generic nature of the functions of the office. But if suggestions one and two above are carried out, the need for a body whose role will be to supervise the implementation of international labour treaties and convention will become imperative. This body will ensure that employers administer labour treaties and conventions appropriately. The body when established must ensure that employers as well as employees are educated about their respective rights in the international labour organization treaties and conventions ratified by Uganda. Ugandan Government must ensure that this labour body is adequately funded in order to perform its roles as and when due. Finally, the subtle and seeming controversial distinction between termination and dismissal should be removed statutorily. Once a contract of employment is sought to be determined in whatever form, the employer or employee seeking to determine the contract of employment should be made to do so with valid reason in line with the provision of the proposed Unfair Dismissal Act. Similarly, the Unfair Dismissal Act to be enacted for purposes of regulating unfair dismissal situations in Uganda with respect to any kind of determination of contract of employment without reason should also have provision for fair hearing. This fair hearing provision should be available to all categories of employees. Both employees in contracts of employment with statutory flavour and employees in pure master servant relationship should be entitled to fair hearing in accordance with the provisions of the Uganda Constitution.

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