



THE UGANDA COURT OF APPEAL REASSERTS THAT THE EMPLOYER HAS A RIGHT TO TERMINATE AN EMPLOYEE WITHOUT A REASON BY ISSUING NOTICE OR PAYMENT IN LIEU OF NOTICE

**Court of Appeal Civil Appeal No. 281 Of 2016;
Bank of Uganda Vs Joseph Kibuuka & 4 Others.**

The Court of Appeal of Uganda (the “Court”) has reasserted the unfettered right of an employer to terminate an employment relationship without a reason by either giving the employee notice or paying in lieu of notice.

Timothy Masembe Kanyerezi and Alex Samson Ntale of M/s MMAKS Advocates represented Bank of Uganda (the “Bank”) in this matter.

Whilst the Court dealt with various legal principles in the case, our legal alert is restricted to the question whether “*termination*” as distinct from “*dismissal*” requires a reason to be lawful which had remained in flux since the operationalization of the Industrial Court in 2014.

Background

The five (5) Respondents were all former employees of the Bank whose employment was brought an end on 5th August 2010. They challenged their separation before the Industrial Court which held *inter alia* that in all cases of termination and dismissal, reasons have to be prescribed by the employer. The Industrial Court relied on its own decision of

Labour Claim No. 138 of 2014, Florence Mufumba vs Uganda Development Bank in which it had held that whether the employer chooses to “*terminate*” or “*dismiss*” an employee, such an employee is entitled to reasons for “*termination*” or “*dismissal*” and that in employing the employee, the employer had reasons to employ and in “*termination*” or “*dismissal*”, the employer ought to have reasons for the decision.

Court of Appeal’s Judgment.

On the question whether “*termination*” as distinct from “*dismissal*” requires a reason to be lawful, the Court held that:

- i) there is no requirement for a reason to be given by an employer for termination of services of an employee provided that the requisite notice is given or payment in lieu of notice made. The Court stated that the Supreme Court decisions on this point in *Barclays Bank vs Godfrey Mubiru, SCCA No. 1 of 1998, Stanbic Bank vs Kiyemba Mutale, SCCA No. 2 of 2010* and *Hilda Musinguzi vs Stanbic Bank (U) Ltd, SCCA No. 5 of 2016* still reflect the correct position of the law on the matter notwithstanding the promulgation of the Employment Act, 2006 (the “Act”) and the Industrial Court decision in *Labour Claim No. 138 of 2014, Florence Mufumba vs Uganda*

Development Bank was wrongly decided

- ii) Whilst the Industrial Court may (in having held that there needs to be a reason put forward by an employer for termination of the employee) have been influenced by the principles set out in the International Labour Organization Convention 158 of 1982, under which Convention reasons for termination are countenanced, such reliance would be erroneous as no such provision was enacted in the Act, notwithstanding that Parliament drew important principles from the Convention in the promulgation of the Act.

Relevance of the Decision.

- i) The court has reasserted the long

standing position of the law that an employer can end an employment relationship by termination with notice in accordance with the period prescribed in the employment contract or the period stipulated in Section 58 (3) of the Act or payment in lieu of notice and in such a case, an employer need not prescribe a reason for the termination or a fortiori, hold a hearing

- ii) The Court has accordingly settled the uncertainty that had been created by the Industrial Court's prior holdings that for termination of employment, an employer in addition to issuing a notice of termination or payment in lieu thereof, is required to stipulate a justifiable reason for termination

Should you require more information, please do not hesitate to contact **Timothy Masembe Kanyerezi** or **Alex Samson Ntale**



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