

July 22, 2020

## Legal Alert: Key Decision in Employment Law in Uganda

### NEW! ALP Employment Law News

ALP Alerts is a free legal information service provided by ALP East Africa in respect of the firm's practice areas in its country presence in Kenya, South Sudan, Tanzania and Uganda.

The Alerts are also available on the ALP website [www.alp-ea.com](http://www.alp-ea.com)

Court of Appeal affirms requirements of notice and reasons in termination of an employment relationship and that an employee who rejects payment *in lieu* of notice is entitled to a hearing. Further, it upholds salary loan arrears as deductible from special damages and terminal benefits.

## An analysis of Court of Appeal decision in *Uganda Development Bank v Florence Mufumba, Civil Appeal No 241/2015*

### Background

This is an appeal arising from an award issued by the Industrial Court against the Appellant arising from a claim of unlawful termination that was lodged by the Respondent.

The facts of both the appeal—and the claim that is the subject of the appeal—are that the Respondent was employed by the Appellant as an internal auditor in August 1998. She rose through the ranks and eventually became the Principal internal auditor. In June 2011, the Respondent and other members of staff were advised to take all their pending leave for the year 2010 by June 30, 2011. The Respondent accordingly requested to take her leave from June 17, 2011 but was instead advised by her superior to take it on June 27, 2011, a request which she obliged to. However, she would report to the office whenever something urgent came up that needed her intervention. On July 5, 2011, she received an internal memorandum from the Chief Executive Officer of the Appellant asking her to, among other things, show cause why she should not be disciplined from absconding from duty. Even after explaining that she had taken her annual leave, she was terminated from work *vide* a letter dated July 8, 2011. The Respondent questioned the propriety of the termination and, as a result, she was invited for a meeting with the Appellant on July 20, 2011. However, on August 10, 2011, she was served with yet another letter confirming her

termination on grounds of retrenchment as opposed to abscondment from duty. She was informed that she would be paid UGX 114,291,500/=.

The matter was brought before the Industrial Court and two issues were raised as—

- (i) Whether the Respondent's contract was illegally and wrongfully terminated; and
- (ii) Whether the Respondent was liable to pay the salary loans advanced to her by the Appellant and, if so, by how much?

The Industrial Court held that the Respondent was unlawfully terminated because, when she was terminated, she was never given a reason why. The Industrial Court further held that the Respondent was discharged from her loan obligations having been unlawfully terminated and that, additionally, the only amount on the loan that she was liable to pay was the amount that she would have been obliged to pay after retiring from the services of the Respondent.

The Respondent in the matter before the Industrial Court, being dissatisfied with the said decision of the court appealed to the Court of Appeal on nine grounds. The following are the pertinent ones being considered in this Alert—

- That the chief judge, judge and panellists of the industrial court erred in law when they held that the claimant was wrongfully terminated.
- That the chief judge, judge and panellists of the Industrial court erred in law when

they granted the Respondent all the reliefs that she sought including but not limited to: relief from paying of the loan instalments up to the time she would have officially retired, severance allowance, general damages, aggravated damages, leave pay for the year 2011 and salary that she would have been entitled to from the date of unlawful termination up to the date of the award.

### Summary of the decision

The Court of Appeal decided as follows—

- (a) Before an employer ends its employment relationship with an employee, the employer is required to give notice to the employee regardless of whether the relationship is ended by a dismissal or a termination. The only exceptions are where the relationship is terminated summarily because of a fundamental breach by the employee of their employment contractual obligations or where the employee attains retirement age. As such, the Respondent who did not fall within the exceptions was unlawfully terminated since she did not concede to payment *in lieu* of notice.
- (b) The moment the Respondent rejected the payment *in lieu* of notice, she was entitled to a hearing which in this case was not accorded.
- (c) Whereas section 61 of the *Employment Act* requires that the reasons for termination be given in a certificate of service, this impliedly means a reason should not be given immediately if an employee is terminated. The said section of the Act should be read in correlation with section 65 which provides for what constitutes termination of an employment relationship. If the termination of the employment relationship does not fall within the parameters of section 65, it is deemed to be an unlawful termination and it therefore follows the employee is entitled to a reason for their termination before the same is effected.
- (d) In situations where a termination falls in the parameters of section 65 of the Act but the employee still asks to be given a reason for their termination before the same can be effected, then the employee is entitled to a reason.
- (e) The circumstances under which severance pay can be granted are clearly

spelt out in section 87 of the Act. In the instant case, the Respondent was not entitled to severance pay because her cause of action was, firstly, founded on unlawful/wrongful termination and secondly, the matter as decided by the industrial court was a reference from the High Court. Conversely, a claim for unlawful dismissal is lodged at the labour office within three months from the date of complaint and it is such a claim that attracts severance pay.

- (f) A successful party in a suit cannot be awarded both general and aggravated damages since aggravated damages are a higher amount of general damages.
- (g) In a claim for unlawful dismissal that is not founded on breach of contractual obligations, the only remedies available to an aggrieved employee are those founded on the principle of *restitutio in integrum* arising out of repudiation of a contract.
- (h) On the issue of salary loans, the arrears were deducted from the 66 months' salary that the Industrial Court had awarded to the Respondent. For the avoidance of doubt, the loan arrears deducted from the 66 months' salary were those that the Respondent was supposed to pay until the time that she retired. In post-retirement, the remaining loan arrears would be deducted from the terminal benefits that were due to her.
- (i) The Appellant was to pay its contribution for the Respondent in respect of any provident fund contributions.

### Implications of the decision

1. The Court re-affirmed the need for notice before the end of an employment contract, with the only exceptions being attainment of retirement age or breach of fundamental obligations in a contract.
2. It is important to give an employee a reason for their termination or dismissal unless they fall within the parameters of section 65 of the *Employment Act*. The Court however did not clearly explain whether, in cases under section 65, a reason is needed. This has created further confusion with regards to whether a reason is required or not.
3. An employer is required to always give a reason for termination or dismissal of an employment contract when an employee asks for it.

4. The Court introduced a new principle in employment law, whereby when an employee rejects payment *in lieu* of notice, they are entitled to a hearing.
5. The Court clarified on the issue of what happens to salary loans upon lawful termination or dismissal. The position is that the loan arrears are offset from any special damages awarded to the Claimant and further offset from terminal benefits in the event the Claimant is set to retire soon. This decision does not depart but is rather distinguishable from the recent Court of Appeal decision of *DFCU v Donna Kamuli*, CA No 121/2016, in which it stated that since the Claimant had not pleaded to be relieved from the salary loan, it followed that no evidence had been led so the learned Justice disallowed the relief that had been granted by the Industrial Court. In the present appeal before the Court of Appeal, the issue of relief from salary loan arrears was pleaded and clarity has now been offered with regards to the matter.
6. The Court clarified the distinction between remedies arising out of breach of contractual obligations and those arising from the principle of *restitutio in integrum* in relation to repudiation of a contract. Severance pay, leave pay, and other contractual remedies cannot be awarded in situations where an employee is claiming under *the restitutio in integrum* principle.
7. The Court clarified that both general damages and aggravated damages cannot be awarded since they are the same, save for aggravating circumstances.

### Concluding remark

In conclusion, the decision of the Court of Appeal in this matter is very instructive and offers clarity on many hitherto sticky issues, especially the issue of salary loans.

**Disclaimer:** No information contained in this alert should be construed as legal advice from ALP East Africa or ALP Advocates or the individual authors, nor is it intended to be a substitute for legal counsel on any subject matter.

For additional information in relation to this alert, please contact the following:

**Ann Namara Musinguzi**

*Head, Corporate & Commercial Law Department*

[anamara@alp-ea.com](mailto:anamara@alp-ea.com)

**Judith Maryanne Aboto**

*Associate, Corporate & Commercial Law Department*

[jaboto@alp-ea.com](mailto:jaboto@alp-ea.com)

**Rebecca Muheki**

*Associate, Corporate & Commercial Law Department*

[rmuheki@alp-ea.com](mailto:rmuheki@alp-ea.com)

### ALP East Africa

#### Who we are

ALP East Africa is a premier integrated legal and professional services firm. ALP combines high impact analysis, strategy and innovation to provide a single service point for clients' legal and professional services' needs. ALP has a deep understanding of Africa and in all assignments, the practice deploys a multidisciplinary and integrated approach using an extensive network of global and local partners to support our clients.

#### Our contacts

<p><b>ALP Advocates</b>            Lotis Towers, 5th floor            Plot 16 Mackinnon Rd            P.O. Box 28611            Kampala, Uganda            +256 414 671 997  <a href="mailto:info@alp-ea.com">info@alp-ea.com</a></p>	<p><b>ALP Kenya</b>            Trance Towers, 1st floor,            South B            Tsavo Rd (off Mombasa Rd)            P.O. Box 102942-00101            Nairobi, Kenya            +254 721 836 545  <a href="mailto:Kenya@alp-ea.com">Kenya@alp-ea.com</a></p>	<p><b>ALP South Sudan</b>            Old KCB Building, 3rd floor, Room No 204            Off Bilpam Rd (opp. Rainbow football field)            P.O. Box Private Bag            Juba, South Sudan            +211 922 908 002  <a href="mailto:SouthSudan@alp-ea.com">SouthSudan@alp-ea.com</a></p>	<p><b>ALP Tanzania</b>            Janqid Plaza, 1st floor            Ali Hassan Mwinyi Rd            (off Chambruma Rd)            P.O. Box 1652            Dar-es-Salaam,            Tanzania            +255 717 425 183  <a href="mailto:Tanzania@alp-ea.com">Tanzania@alp-ea.com</a></p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Website: [www.alp-ea.com](http://www.alp-ea.com)

Email: [info@alp-ea.com](mailto:info@alp-ea.com)

