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Legal Alert: Key Decision in Employment Law in Uganda

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Industrial Court finds *informal discussions* about an employee's performance not to amount to a disciplinary hearing and called for minimum standards of natural justice in disciplinary procedure. The Court held a termination based on such *discussions* to amount to unlawful dismissal and awarded Shillings One Billion in damages.

Grace Tibihikirra Makoko v. Standard Chartered Bank (U) Ltd: The Industrial Court's Billion Shillings Award!

Brief facts

In 2015, a former employee of Standard Chartered Bank (U) Ltd, Grace Tibihikirra Makoko instituted proceedings against the financial institution in the Industrial Court for unlawful dismissal (vide *Labour Dispute Reference 315/2015*). She contended that she had been terminated without a hearing and before her formal assessment and implementation of a performance improvement plan which she had been forced to take on. It was argued that her dismissal was in contravention of Uganda's employment law and the bank's internal human resource policy. Further, that the way she was terminated reduced her employability and she was still unemployed at the date of the judgment by court. Two issues were framed for the court's determination as follows:

(a) Whether the employee's dismissal was lawful.

(b) Whether there were any remedies available to the parties.

Decision of the Industrial Court

In awarding the employee Uganda Shillings One Billion as general damages for unlawful termination and USD 108,750 in unvested shares at a 15% interest from the date of the award until payment in full, the Industrial Court held as follows:

(a) Informal discussions about an employee's poor performance do not amount to a disciplinary hearing. Any termination based on such informal discussions amounts to unlawful dismissal.

(b) Although an administrative disciplinary procedure need not conform strictly to the standards of a court of law, they must apply the minimum standards of natural justice as envisaged in Article 28 of the Constitution of Uganda. It was not the intention of the Court of Appeal in *DFCU v Donna Kamuli,* Labour Dispute Claim No 2/2015 to disregard the principles of natural justice.

(c) Section 66 and 68 of the *Employment Act*, 2006 make it mandatory for an employer contemplating dismissal due to misconduct or poor performance, to accord the employee a hearing and give them reasonable time within which to prepare their defence and further, should they still desire to terminate, give a justifiable reason for their decision.

(d) The remedy for a person who is unlawfully terminated is a payment in *lieu* of notice, a measure of damages for wrongful dismissal at the discretion of court, and payment of other benefits stipulated in the contract for employment and other remedies prayed for provided under the *Employment Act*, 2006.

(e) The Industrial Court has unlimited original jurisdiction on the question of remedies it can lawfully award and therefore they cannot award additional compensation under Section 78 of the *Employment Act,* 2006 since it is capped to three months.

(f) Although court is empowered to order a reinstatement where it considers it

reasonable to do so, it would be wrong to force an employer to keep an employee who the employer no longer wants.

Implications of the decision of the Industrial Court

(a) The Court strongly re-emphasised the need for a hearing before dismissal on grounds of poor performance. It clearly showed that the facts in this case were distinguishable from those in *DFCU v Donna Kamuli* where the Court of Appeal stated that the hearing contemplated by Section 66 of the *Employment Act*, 2006 does not require an employer to hold a mini-court and it can be conducted either through correspondences by letter or email or face-to-face hearing. In the *Dona Kamuli case*, there were a series of correspondence between the employer and the employee in regard to her performance and Court held that they could amount to a hearing. In the instant case, there was no series of correspondence; only a unilateral decision arrived at by the employer without giving the employee the right to be heard and this amounted to unlawful dismissal.

(b) The Court emphasised the importance of management and leadership teams following lawful processes and the provisions of Human Resource Policies prior to effecting any termination of an employee. In the instant case, the employer's Policy provided for termination as the very last resort after all informal measures of resolving the matter had been taken. The policy in this case was their greatest undoing because it was blatantly violated. In following the policies and the *Employment Act*, the employer will be saved from avoidable liability arising from unlawful dismissal of termination and its associated financial consequences.

Conclusion

In awarding Uganda Shillings One Billion to the employee—a seemingly exorbitant sum—the Industrial Court clearly and emphatically reiterated the need for employees to be dismissed or terminated fairly and with honour. And that cannot be done without the employees being given a chance to tell their side of the story or to improve on their performance.

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ALP East Africa

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