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

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Court of Appeal affirms need to give literal and ordinary meaning in interpreting terms of *contracts of employment*. Further, it upholds the necessity for fairness in the proceedings of *disciplinary committees* while noting they are not expected to adopt strict rules of evidence applied in courts of law.

## *Eseza Catherine Byakika v. National Social Security Fund,* Civil Appeal No. 193/2017

### Brief facts

On June 6, 2013, the Appellant accepted an offer of employment with NSSF, the Respondent, and started work on July 1, 2013. On May 28, 2015, the Managing Director of NSSF wrote to the Appellant stating that he had received information that the Appellant gave an interview to the media where she spoke about proceedings of the NSSF board. The Managing Director then suspended the Appellant from employment and commenced investigations into her alleged misconduct.

On closure of investigations, the Appellant was told that she was to face the staff disciplinary committee to defend herself against two offences—(i) flagrant disregard of fund policies, procedures, regulations, or rules; and (ii) breach of confidentiality.

After the hearing, the disciplinary committee found that the Respondent had made a case against the Appellant who was subsequently summarily dismissed in a letter dated June 22, 2015.

The Appellant challenged the dismissal by instituting a claim in the Industrial Court on August 27, 2015 which was dismissed on the ground that the Appellant had been lawfully dismissed. The Appellant appealed this decision and raised seven grounds of appeal, with the most pertinent being that the learned trial judges erred in law when they— (a) held that the Appellant had breached the duty of confidentiality; (b) held that violation

of the Appellant's right of appeal against decision of Disciplinary Committee was inconsequential; and (c) relied on hearsay evidence and unauthenticated newspaper reports and audio-clips that was not subject to cross-examination at the disciplinary hearing. Accordingly, she contended that she was unlawfully dismissed.

### Decision of the Court of Appeal

In upholding the decision of the Industrial Court, the Court of Appeal made several determinations as follows:

- (a) The proper construction of a contract of employment is to give the words their *literal* and most *ordinary* meaning. In this case, words used in the Appellant's employment contract (in terms of the *confidentiality clause*)—coupled with the wording of the Respondent's Communication Policy—show that the Appellant was strictly forbidden from giving interviews to the media without the consent of the Managing Director of the Respondent.
- (b) The disciplinary committee was entitled to rely on evidence of newspaper report and audio-clip since it was not hearsay evidence because it was evidence of fact and not the truth.
- (c) Although it is bound to observe the principles of *natural justice*, a disciplinary committee is not expected to adopt strict rules of evidence applied in a court of law; and, in that regard—

- (i) the strict rules of hearsay were not applicable to disciplinary hearings.
- (ii) there is no legal entitlement for a person facing a disciplinary hearing to cross-examine each witness who may possibly testify where fairness of the disciplinary process can be said to be guaranteed (and there was therefore no need to call the journalists to be cross-examined where the evidence adduced in newspaper reports and audio-clips spoke for itself).
- (d) There is no requirement under the *Employment Act 2006* to put in place an *internal appeals mechanism* in the context of decisions of a disciplinary committee, with section 66 of the Act only envisaging hearings at first instance by disciplinary committees and, with no statutory obligation under the Act, the practice of internal appeals was a favour by the employer.
- (e) The doctrine of freedom of contract extends to contracts of employment, with parties in an employment relationship expected to abide by the contract they sign regardless of how unreasonable certain terms are or the other party's motivation.
- (f) No costs were awarded to underscore the fact that it was necessary for employees, especially of statutory bodies, to exercise their right to seek legal redress without fear of being fettered by the possibility of payment of costs in the event that court ruled in favour of the employer.

### Key implications of decision of the Court of Appeal

- (a) The decision re-emphasizes the fact that a contract of employment is still an agreement governed by the law of contract. Employees therefore must still adhere to the terms of their contracts of employment and where an employee has breached their contractual obligations, they cannot claim to have been unfairly terminated.
- (b) The Court of Appeal further reiterates the necessity for observance of principles of natural justice in procedures of disciplinary committees. In effect, the decision is in line with its decision in *DFCU Bank v Donna Kamuli*, CA No. 121/2016, where the Court held that a disciplinary committee is not a mini-court but is only called upon to follow the rules of natural justice in arriving at a decision.
- (c) The Court rightly clarified that internal appeal mechanisms are not legally mandatory but are set up at the discretion of the employer.

### Conclusion

In upholding the decision of the Industrial Court that the employee was lawfully dismissed, the Court of Appeal addresses employers' concerns and misconception that the employee is always legally protected at the expense of the employer by showing that indeed if an employer has followed all the tenements of the law and natural justice before dismissing an employee, then the employer will not be penalized by the employment Court.

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

**Ann Namara Musinguzi**  
*Head, Corporate & Commercial Department*

**Judith Maryanne Aboto**  
*Associate, Corporate & Commercial Department*

**Rebecca Muheki**  
*Associate, Corporate & Commercial Department*

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

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

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



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### *Our contacts*

#### **ALP Advocates**

Lotis Towers, 5th floor  
Plot 16 Mackinnon Rd  
P.O. Box 28611  
Kampala, Uganda  
+256 414 671 997  
[info@alp-ea.com](mailto:info@alp-ea.com)

#### **ALP Kenya**

Westpark Towers, 5th  
floor,  
Mpesi Lane (off  
Parklands Rd)  
P.O. Box 102942-00101  
Nairobi, Kenya  
+254 721 836 545  
[Kenya@alp-ea.com](mailto:Kenya@alp-ea.com)

#### **ALP South Sudan**

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

#### **ALP Tanzania**

Janqid Plaza, 1st floor  
Ali Hassan Mwinyi Rd  
(off Chambruma Rd)  
P.O. Box 1652  
Dar-es-Salaam,  
Tanzania  
+255 717 425 183  
[Tanzania@alp-ea.com](mailto:Tanzania@alp-ea.com)

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

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

