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**UGANDA DEVELOPMENT BANK VS.
FLORENCE MUFUMBA COURT OF APPEAL
CIVIL APPEAL No 241 OF 2015**

INTRODUCTION

The Industrial Court is a specialized court established to determine employment and industrial matters in Uganda. Whereas the laws putting the court in place were passed in 2006, for one reason or the other, the court was only empaneled in the second half of 2014. Once empaneled however, the court got off to a running start delivering various instrumental awards that dramatically reshaped the employment landscape in Uganda.

Key among these decisions was the case of **Florence Mufumba vs. UDB Labour Dispute Claim 138 of 2014.**

This case set down various fundamental principles in the employer employee relationship including; the distinction between dismissal and termination, the need to give an employee reasons upon their dismissal or termination, the need for a fair hearing before a dismissal, the need for employers to repay salary loans for employees who have been unfairly dismissed, the payment of salary arrears for employees who have been terminated to represent the “notional” period that they would have served until the end of the contract or the retirement age, among others.

INTRODUCTION

BACKGROUND:

Florence Mufumba was an employee of Uganda Development Bank. In June 2011, the HR Department of Uganda Development Bank asked all staff, to take their outstanding leave for the previous year, in order to reduce the overall leave liability.

To that end, Florence applied for leave and went on her annual leave. From time to time, she would go to the office to attend to urgent matters. One such day, she was handed a memorandum from the Chief Executive Officer of Uganda Development Bank to show cause why she should not be dismissed for abscondment.

She wrote back and explained that she was on official leave. The next time she went to the office, she was handed a letter of termination from the CEO. She queried the propriety of the termination and the Board of Uganda Development Bank consequently purported to alter the termination into a redundancy. She instituted a claim against the Uganda Development Bank for wrongful termination.

The Industrial Court decided the case in favour of Florence noting that the employer had terminated Florence without notice and without cause. The Industrial Court reasoned that before an employer could terminate or dismiss an employee, they had to give the employee reasons for the termination or dismissal and in the case of a dismissal to hold a hearing.

The court awarded Florence various remedies including a declaration that her termination was unlawful, an order that the sums payable from her wages as payments for her loans to UDB should be recovered by Florence for the period between her termination and retirement, notice pay of 3 months, salary for her last month of employment, her provident fund contributions, salary from her unlawful termination until the date of the industrial court's award, severance allowance of UGX 83,215,239/-, general damages of UGX 150,000,000/-, aggravated damages of UGX 200,000,000/= costs for the claim, leave pay for 2011 and interest of 25% on all claims from the date of the award.

Following the award of the industrial court, the Respondent, Uganda Development Bank was dissatisfied and lodged an appeal with the Court of Appeal of Uganda. On Friday, 3rd July, 2020, the Court of Appeal of Uganda delivered its 66-page judgment in the appeal of the matter of Uganda Development Bank Limited [Hereafter, "UDB"] vs. Florence Mufumba [Hereafter, "Florence"].

COURT OF APPEAL

Uganda Development Bank lodged an appeal with the Court of Appeal by wherein challenged the decision of the Industrial Court in respect to their holding that that Florence was wrongfully terminated, their holding that an employer must give reasons before dismissing or terminating an employee and the reliefs given to Florence.

The Court of Appeal upheld parts of the appeal in a few significant areas and dismissed the others. In its decision, the Court of Appeal was emphatic that an employer could not terminate an employee without notice except for summary dismissals or retirement. In this case, that made the termination wrongful.

The court however, set aside the awards of severance allowance, general damages, leave pay and reduced the interest payable from 25% p.a to 18% on salary arrears and 8% on aggravated damages. The court also upheld the Industrial Court's award of salary for the remainder of Florence's contract as "loss of income" due to the unlawful discharge.

The decision is broadly in line with the other decisions of the Court of Appeal but there were a few critical developments that arose from the judgment that are summarized hereunder.

KEY TAKE-AWAYS:

1. **An employer must give an employee reasons for dismissal but not necessarily reasons for termination:**

The Court of Appeal in this case found that in the case of a dismissal, an employee is entitled to reasons for his dismissal as an integral part of the process of conducting a disciplinary hearing. However, for a termination, there is no obligation upon an employer to give reasons for the termination of an employee's service prior to or even at the point of termination. The employee could however, exercise their right to request a certificate of service indicating the reason for termination of his employment after his termination.

2. **There is a difference between common law claims and statutory claims.**

The Court of Appeal distinguished between the claims for unfair dismissal and unfair termination in the Employment Act 2006 and the common law claim of wrongful/unlawful dismissal or termination. While a labour officer can only receive complaints based on the Employment Act 2006, the Industrial Court may receive both common law and statutory claims.

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3. Common law reliefs and statutory reliefs.

The Court of Appeal reasoned that person who brings a claim rooted in statutory claims can only receive the statutory reliefs in the Employment Act and similarly someone who brings a claim rooted in common law claims can only receive common law reliefs. There is nothing that stops a party from including both claims in their complaint.

4. Salary loans.

The Court of Appeal held that where an employee with a salary loan is unlawfully dismissed/terminated, they are entitled to receive relief from loan repayments from the employer for the period of time for which they would have remained employed by the employer if they had not been unlawfully terminated. This relief is however not paid to the employee but to the lender by way of direct deduction on the amount paid to the employee as "salary arrears" or compensation for "loss of income". If there is no award of loss of income, then the employee is duty bound to repay their loan.

5. Aggravated damages and General damages.

The Court of Appeal opined that a person who has been wrongfully dismissed/terminated may either be granted general damages or aggravated damages but not both since these are both compensatory. This was premised on the reasoning that aggravated damages are merely general damages that have been enhanced by the court. It remains to be seen if this position shall be adopted in later employment appellate decisions since even the Court of Appeal has awarded both aggravated and general damages in other matters.

6. Loss of income and Salary arrears from termination until the date of the award or natural end of a contract:

The Court of Appeal reasoned that under a common law claim for wrongful dismissal, an employee is entitled, if they prove their case to receive a sum of money representing lost wages for the period of service "left" on their contract at the point of termination. This could be up to retirement for an open-ended/permanent contract (as was the case in this matter) or up to the end of a fixed term contract.

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