AN EXAMINATION OF UNFAIR TERMINATION IN THE LABOUR INDUSTRY IN UGANDA

BY

AKITENG IMMACULATE

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KAMPALA – UGANDA

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DECLARATION

I Akiteng Immaculate, declare that this research report is my own work and that it has never been submitted before by any other researchers in any other higher learning Institution or University for any purpose.

Signature:..... Date: 1st July 2019

AKITENG IMMACULATE

APPROVAL

This research dissertation titled "*an examination of Unfair Termination in the Labour Industry in Uganda*," has been done under my supervision and is ready for submission with my approval to the school of Law, Department of Commercial Law of Kampala International University.

Signature:..... Date: 18th July, 2019

DR. HANAFI ADEKUNLE HAMMED

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LIST OF LEGISLATIONS

i. The Constitution of the Republic of Uganda 1995 (As Amended).
ii. Uganda Employment Ordinance Act,1965.
iii. Employment Act, NO,6/ 2006.
iv. The Labour Unions Act,NO,7/2006.
v. The Workers' Compensation Act, CAP,225.
vi. ILO Conventions and Recommendations.
vii. The Charter of The United Nations,1945
viii. The Universal Declaration of Human Rights, 1948.
ix. Occupational Safety and Health Act, 2006.
x. Labour Disputes (Arbitration And Settlement) ACT, 2006.
xi. Judicature Act NO.13 OF 1996.
xii. Judicature Act NO. 11 OF 1997.
xiii. Uganda Employment Ordinanace Act, 1965.
xiv. East African Community Common Market Protocol, 2009 and Annexure on Free Movement of Labour
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iii) Adrian Jjuuko v AG (2016) November 10th at the Constitutional Court.

iv) MC Govern v Maize Marketing Board (1968) EA 40.

v) Elatu v Uganda Airlines Corporation (1984) HCB 39.

vi) Tommy Otto v UWA 208/2002 HCT CS

vii) Barclays Bank of Uganda v Godfrey Mubiru SCCA N0.1(1998).

viii) Stanbic Bank of Uganda v Kiyemba Mutale SCCA N0.2/2010.

ix) Konig v Kanjee Naranjee Properties (1968) EA 233

x) Laws v London Chronicles Newspapers Ltd (1959) 1 WLR 698.

xi) Dr. Paul Kagwa v Plan International, Industrial Court Labour Dispute Claim N0. 175/2014.

xii) Bank of Uganda v Betty Tinkamanyire SCCA N0. 12/2007

xiii) Namatone Annet v M/S Great Seas (U) Ltd HCCS N0.103/2009.

xiv) Birch and Humber v The University of Liverpool (1985) IRLR 165

xv) AM. Jabi v Mbale Municipal Council (1975) HCB 191

xvi) Dr. Omona Kizito v Marie Stopes Uganda, Industrial Court Labour Dispute Claim N0.033/2015.

xvii) Omunyokol Akol Johnston V Attorney General SCCA 06/2012.

xviii) Atgwu v Utc Ltd Industrial Court Labour Dispute Claim N0. 19 /1971.

xix) Donna Kamuli v DFCU Bank Industrial Court Labour Dispute Claim 002/2015

xx) Kayonda v The Co-operative Bank SCCA N0 10. /1991

xxi) Hill v Person & Co Ltd (1972) Ch 305.

LIST OF ABBREVIATIONS

UDHR	: Universal Declaration of Human Rights
UN	: United Nations
ILO	: International Labour Organisation
ILS	: International Labour Standards
ICESCR	: International Covenant of Economic, Social and Cultural Rights.
AC	: African Charter
EAC	: East African Community
EA	: Employment Act
MGLSD	: Ministry of Gender, Labour and Social Development
JA	: Judicature Act.
NOTU	: National Organisation of Trade Unions
ACHPR	: African Charter on Human and People's Rights.
LUA	: Labour Union Act
COFTU	: Central Organisation of Free Trade Unions
I.C.L.D.C	: Industrial Court Labour Dispute Claim

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ABSTRACT

The study is sought to establish the general introduction, statement of the problem, scope of my study, objectives, literature review, methodology ,findings ,organizational layout, conclusion and recommendations; In regards to the legal frame work of the law relating to unfair termination in the Labour Industry in Uganda and is driven by three objectives. The first objective is to give a

general over view on the rights to work under the legal and institutional framework in Uganda, second objective is to identify how the courts have tried to enforce and implement the legal framework on unfair termination in the Labour Industry in Uganda, and thirdly to find the possible solutions way forward and conclusion of how to improve the Legal Framework on Unfair Termination in the Labour Industry in Uganda.

CHAPTER ONE

GENERAL INTRODUCTION

1.1. BACKGROUND TO THE STUDY

The study is focused in an examination of Unfair Termination in the Labour Industry in Uganda. The chapter presents the background to the study, statement to the problem, general objectives of the study, research questions, and scope of the study, significance of the study, literature review, methodology, and organizational layout.

"A man's right to work is just as important to him as if not more important than his right of property. Thus courts intervene every day to protect rights of property; they must also intervene for the right to work." [1]

An employer has an obligation to pay the employee for his /her services as agreed under the contract of employment and this is a fundamental term of the contract of employment and breach of which entitles the employee to rescind the contract without notice or with notice and claim for damages.

The basis for the present applicability of the English common law in Uganda is to be found in the provisions of the judicature act of 1996[2], whose provisions are essentially a re- enactment of the provisions of the judicature 1967 which the 1996 statute repealed and replaced. The judicature act of 1967[3] which repealed the 1962 act not only continued the application of the common law in Uganda, it also gave a further lease of life to the reception date when it provided that the

[1] As per lord Denning M.R
[2] Statute no. 13 of 1996 section 16 of the Judicature Act
[3] Act No. 11 of 1967 of the Judicature Act

expressions of common law and doctrines of equity means those parts of the law of Uganda other than the written law, the applied law or customary law observed and administered by the high court as the common law and doctrines of equity respectively.

Employment law first made its appearance in English law. It was called the law of master and servant which then was concerned with regulating the relationship between the parties to the agreement known as the contract of hiring and service or called contract of service. In Uganda the development of wage labor arose from the need of the colonialists to maintain a strong and viable economy. The colonial government created a monetary economy and by so doing tried to create a working class. In 1913 the colonial government introduced labor laws and passed the master and servant ordinance, the ordinance applied to all contracts of employment including those with the government and private individuals. It is most significant provisions laid down penal sanctions for breach of contract.

In general a Contract of Employment (service) is one where by one person called the employee agrees to serve another person called the employer by rendering him services in return for money / remuneration[4]. The contract of employment falls in two categories; contract of service and contract for services. The basic division is between those who are employed persons and those who are self-employed, and the distinction between these categories is that the employed person works under a contract of service whereas the self-employed person works under a contract for services. It is usually created by formal or oral agreement between the employer and employee and in most times last for a specific period of time and it is ended by one or several modes of termination.

[4] See section 2 of the Employment Act, 2006

During its continuance, the employee works at regular hours, during which he/she is required to devote his/her full time to the work at the specific place of work and receives regular wages usually weekly or monthly in the case of ***Teveli v Pride T.***, the court held that the company breached the principles of natural justice by not availing the applicant the right to be heard and hence the termination was unfair.

1.2 STATEMENT OF THE PROBLEM

In order to know the legal framework of Uganda Labour Law it was imperative to study this from its historical perspective so that we could have a clear understanding of Labour Law in Uganda. Its first appearance was from English law which brought the law of master and servant which concerns itself with regulating the relationship between the parties to the agreement.

After independence, the Uganda employment ordinance by virtue of the provisions of the laws revised (edition) act 1965 was re- designated as the Uganda Employment Act earlier by virtue of the public officer's order[5]. It must be pointed out that the present employment act being largely a string of provisions from the old colonial statutes, most of its provisions are of little relevance and nee major overhaul to bring them into line with modern employment conditions.

The Judicature Act of 1996 re- enacts the provision of section 3(5) of the 1967 Act but with those words omitted. This should therefore put to an end the academic arguments as to whether or not Ugandan courts can legally apply post reception date to English decisions. The qualification that the common law shall be in force only so far as the circumstances of Uganda and its people permit and subject to such qualifications as circumstances may render necessary

[5] See the Uganda Employment Ordiance Act ,1965

does not conform to the legal practice on the application of common law where both the judges and legal practitioners don't take cognizance of the reception date.

Many of the rules of the common law of employment are a product of social and economic conditions which are perhaps far removed from the circumstances of Uganda and therefore the application of some of them in Uganda may not be quite appropriate. It is this state of affairs that has enticed the researcher to research on the law relating to unfair termination in Ugandan Labour Industry. This is a range of national, regional and international norms that are relevant, one of them is the right to work; they are contained in various international instruments such as the Universal Declaration of Human Rights of 1948, International Labour Organization on Termination of Employment Convention of 1982[6].

The Universal Declaration on Human Rights states that this right also includes protection against non- employment[7]. It is due to this centrality that to unfairly terminate a person from his /her employment is much as depriving that person his/her right to survival. This was remarked in the case of Lee V Showmen's Guild of Great Britain[8], a man's right to work is just as important to him as if not more important than his right to property.

Despite the fact that courts always intervene to protect the right to property, they should also intervene to protect the right to work.

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[6] See Article 4 of the International labour organization on termination of employment convention of 1982,"... *this instrument prohibits unfair termination of employment and restricts the employer to exercise his/her power in whatever way to oppress the subordinate or his/her employees.*

[7] UDHR of 1948 under Article 23(i) *it provides that everyone has a right to work to, to free choice of employment, to just and favorable conditions of work and protection against unemployment.*

[8] See the case of Lee V Showmen's Guild of Great Britain (1952)2 Qb 329

1.3 OBJECTIVES OF THE STUDY

The objectives of the study is divided into two, general objective and specific objectives.

1.3.1. General Objective

The study generally examined the effectiveness of the law relating to unfair termination in the labour industry in Uganda.

1.3.2. Specific Objectives

The following are the specific objectives;

i. To discuss the efficacy of the legal and institutional framework on the rights to work.

ii. To examine how the termination of employment in the labour industry is conducted unfairly.

iii. To identify how the courts have tried to enforce and implement the legal framework on unfair termination in the Labour Industry in Uganda.

1.4. RESEARCH QUESTIONS

i. What is the efficacy of the legal and institutional frameworks on the rights to work?

ii. How has the termination of employment in the Labour Industry been conducted unfairly in Uganda?

iii. How have the courts tried to enforce and implement the legal framework on unfair termination in the Labour Industry in Uganda?

1.5. SIGNIFICANCE OF THE STUDY

i) The research may help Organisations especially labor unions to adopt a more realistic approach to unfair termination of employment in the Labour Industry.

ii) This research will be helpful to future researchers in the related field

iii) This research would be of help to me to broaden my mind and find other remedies possible for the courts to solve the issues of unfair termination in the Labour Industry in Uganda.

1.6. SCOPE OF THE STUDY

This study aims at examining the Unfair Termination in the Labour Industry in Uganda, it covers the rights to work and how the courts have tried to implement the legal and institutional frameworks, taking into account the geographical study area being in Uganda.

1.7. METHODOLOGY

The methodology employed to achieve the thrust of this work is doctrinal or desktop research method. This is a method where a researcher relies on literature based materials. The researcher employs both Primary and Secondary Sources; the Primary Sources are International, National and Local instruments, Inventions and Treaties on Unfair Termination of Labour in Uganda and Constitution of the Republic of Uganda (as amended).

The Secondary Sources used by the researcher are textbooks, articles in journals, conference proceedings, newspapers and internet facilities.

These will help the researcher to validate and revalidate existing works to accomplish the objectives of her work.

1.8. LITERATURE REVIEW

Wrongful dismissal or unfair termination means the unilateral termination by an employer of the services of an employee who is willing and able to work which is in breach of contract of employment. In general termination is the discharge of an employee from an employment at the initiative of the employer for justifiable reasons other than misconduct, expiry, attainment of retirement age etc.

Hugh Collins[9], in his book gave well detailed information about employment rights and entitlement to employees. This will be a guide to my research and help me understand in details the rights of employees in their struggles of work both in the future generations and present.

Angeret,[10] in his book portrays the real picture of the old labour laws which was repealed and replaced by the new act and the book will help in my research to make a comparison, however the authors of the book have not discussed in details the rights of the employees during the termination of employment contracts. Despite the fact that e authors didn't spell out the real rights of employees in the termination of their contract, my research will still be conducted and it will emphasize that employees still have a right and they can enforce their rights even when the contract is being unfairly terminated.

Simon[11], in his book has discussed in details on unfair termination /dismissal, the authors of the book discussed in details in termination of employment and I find this book valuable to my area of study. Though the authors of the book did not discuss the right to work but rather their

[9]H. Collins, *labour law texts and materials*, (2nd edition) Hart Publishing Oxford and Portland, Oregon, (2005) page 294.
[10]Angeret. *Trade Unions in Uganda, principles and cases on the termination of contract of employment*, (1998)
[11] S. Honeybal and Bowers, *the labour law has discussed in details unfair dismissal of employment*, (4th edition) (2006), page 147-148.

emphasis was rather on termination, meaning ending of employment contract without regarding whether it is fair or not.

Most of the literatures which deal with the Labour Law have dealt with many rights of workers such as right to form trade unions in the work place, the right to be paid, sick leave etc. however the literature have not discussed in details on the right to work, in Uganda the right to work has been like nightmare, only the court has tried to do much in this area through case law.

Selwyn[12], he discussed in details where an employer has a legal right to dismiss, though not summarily, the employee will be entitled to the period of notice specified by or implied into his contract of employment. If this is not done, then the employment will be termed as unfairly conducted. Once it has been established that a dismissal has taken place, it must then be determined whether or not the dismissal was unfair but the author didn't give the rights to work.

1.9. ORGANISATIONAL LAYOUT

The study consists of five chapters; Chapter one contained background to the study, statement of the problem, scope of the study, objectives of the study, research questions, significance of the study, literature review, methodology, and organizational layout, of unfair termination of employment in the Labour Industry in Uganda. Chapter two discussed the Legal and Institutional Frameworks on the Rights to Work. Chapter three examined the instances how the termination of employment in the Labour industry is conducted unfairly. Chapter four dealt with how the courts have tried to enforce, examine and implement the legal frameworks on unfair termination of employment in the Labour Industry in Uganda. Chapter five gave the discussion of the Findings, Conclusion and Recommendations on unfair termination of employment in the Labour Industry in Uganda.

[12] S. Norman M, *Law of Employment* (3rd edition) London Publishing Butter worths, (1980) page 180 & 204

CHAPTER TWO

EFFICACY OF THE LEGAL AND INSTITUTIONAL FRAMEWORKS ON THE RIGHTS TO WORK

2.1. INTRODUCTION

This chapter shed light on the right to work before providing instances of termination in the next chapter.

2.2. INTERNATIONAL LEGAL FRAMEWORKS ON THE RIGHTS TO WORK

The right to work is the concept that people have a human right to work, or engage in productive employment, and may not be prevented from doing so.

The right to work is enshrined in the Universal Declaration of Human Rights and recognized in international human rights law through its inclusion in the international economic, social and cultural development.

2.2.1 The Universal Declaration of Human Rights States, 1948

Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment (Universal Declaration of Human Rights, United Nations General Assembly)[13].

2.2.2 The international Covenant on Economic, Social and Cultural Rights states, 1966

The states parties to the present covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts and will take appropriate steps to safeguard his right.[14]

Article 2 of the ICESCR stipulates that the steps to be taken by a state party to the present covenant to achieve the full realisation of this right shall include technical and vocational

[13] Article 23(11) of the Universal Declaration of Human Rights
[14] Article 2 of the international Covenant on Economic, Social and Cultural Rights states, 1976

guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual[15].

2.2.3 Universal Declaration of Human Rights (UDHR), 1948

The Universal Declaration on Human Rights (1948) to which Uganda is a signatory, is one of the initial international human rights instruments that recognised workers' rights. The Universal Declaration on Human Rights recognises, among others, the right of every person to work, free choice of employment, just and favourable conditions of work and protection against unemployment. The right of workers to form and join trade unions for the protection of their interest. The right of workers to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay[16].

2.2.4 International Covenant in Economic, Social and Cultural Rights (ICESCR), 1966

The International Covenant on Economic, Social and Cultural Rights (ICESCR) was adopted in 1966 with the aim of addressing socio-economic rights in general. The International Covenant on Economic, Social and Cultural Rights (ICESCR) defines the right to work to include the right of everyone to have an opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.[17] The Covenant calls upon states to ensure equal rights for men and women in the enjoyment of all economic, social and cultural rights[18]. General Comment No. 18 also calls for a comprehensive system of protection to combat gender discrimination and to ensure equal opportunities and treatment between men and women in relation to their right to work by ensuring equal pay for work of equal value.[19] In a bid to ensure non-discrimination on grounds of gender, there are attempts to offer protection to expectant workers. In particular, the International Covenant on Economic, Social and Cultural Rights

[15] Part III of Article 6 of the International Covenant on Economic, Social and Cultural Rights
[16] Article 23(1), 23(4)& 24 of the Universal Declaration of Human Rights (UDHR)
[17] Article 8(2) of the ILO Convention No. 87.
[18] Article 3 of International covenant on Economic , Social and Cultural Rights (ICESCR)
[19] Article 6(1) of the ICESCR.

(ICESCR) requires that pregnancies should not constitute an obstacle to employment and should not constitute justification for loss of employment.[20]

The right of everyone to the enjoyment of just and favourable conditions of work, in particular the right to safe working conditions. It includes remuneration, fair wages, equal remuneration for work of equal value without distinction of any kind, equal pay, decent living for the workers and their families, safe and healthy working conditions, equal opportunity for everyone to be promoted, rest, leisure and reasonable limitation of working hours[21]. The right of everyone to form trade unions and join the trade union of their choice as well as the right of trade unions to function freely[22].

Uganda as a signatory to the International Covenant on Economic, Social and Cultural Rights (ICESCR) has made efforts to domesticate the provisions of the Covenant through the enactment of laws, including the Employment Act[23].

2.2.5 The Convention Concerning Freedom of Association and Protection of the Right to Organise (ILO Convention No. 87)

Uganda ratified the Convention Concerning Freedom of Association and Protection of the Right to Organise, on 2nd June 2005. The Convention aimed at recognising the principle of freedom of association as a means of improving conditions of labour and of establishing peace.[24] The Convention guarantees the right of workers and employers, to establish and join Organisations of their own choice without previous authorisation.[25] The Convention also provides for workers to affiliate their Organisations with International Organisations of Workers and Employers.[26]

The Convention requires workers and employers and their respective Organisations to respect the law of the land; and that the law of the land should not be one that impairs, or is applied in a

[20] Para 13 General comment No. 18 on the Right to work.
[21] Article 7 of the International Covenant on Economic, Social and Cultural Rights
[22] Article 8 of the ICESCR
[23] *Ibid.*
[24] List of countries that have ratified the ILO Convention No. 87 as accessed from http://www.ilo.org/ilolex/cgi-lex/ratifce. pl?C087 (accessed on 27th December 2011).
[25] Preamble to the ILO Convention, accessed at www.ilocarib.org.tt/projects/cariblex/conventions (accessed on 12th December, 2011).
[26] Article 2 of the ILO Convention No. 87.

manner that impairs the guarantees in the Convention.[27] Worth noting is that this freedom of association has been interpreted to mean the freedom to form and join trade unions[28].

2.2.6 International Labour Standards (ILS)

This refers to conventions agreed upon by international actors, resulting from a series of value judgments, set forth to protect basic worker rights, enhance workers' job security and improve their terms of employment on a global scale[29].

The intent of such standards, then, is to establish a worldwide minimum level of protection from inhumane Labour practices through the adoption and implementation of said measures from a theoretical standpoint. It has been maintained, on ethical grounds, that there are certain basic human rights that are universal to human kind. Thus it is the aim of international labour standards to ensure the provision of such rights in the workplace, such as against workplace aggression, bullying, discrimination and gender inequality on the other hands for working diversity, workplace democracy and empowerment[30].

While the existence of International Labour Standards (ILS)[31] does not necessarily imply implementation or enforcement mechanisms, most real world cases have utilized formal treaties and agreements stemming from international institutions. The primary international agency charged with developing working standards is the International Labour Organisations (ILO)[32] the ILO advocates international standards as essential for the eradication of Labour conditions. It is also a specialized agency of the UN (United Nations) consisting of 187 member countries that deals with Labour issues[33].

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[27] Article 5 of the ILO Convention No. 87.
[28] http://www.who.int>ilo.
[29] https:// en.m.Wikipedia.org.> Wikipedia.Org/wiki/International Labour Law.
[30]" International Labour Standards & Trade: A Theoretical Analysis." Fair Trade and Harmonisation: Prerequisties for free trade? Cambridge, MA.MIT Press, 1996.227-272.
[31] ILS (International labour Standards)
[32] International Labour Organisation '' was established in 1919''
[33] *Ibid.*

The International Labour Organisation, International Labour Conference adopted the Declaration on fundamental principles and rights at work defining certain rights as fundamental[34].

The right to work is the first of the specific rights recognized in the International Covenant on Economic, Social and Civil Rights. The right to work deals exclusively with access to work, and hence persons who do not have access to work are the main concern[35].

2.2.7. Promotion and Protection of Rights to Work under International Human Rights Instruments.

The right associated with employment is among the rights that have occupied a special place in the history of human rights. In the first place the United Nations instrument of human rights, includes the Universal Declaration of Human Right which explains that everyone has the right to work to free choice of employment and favourable condition of works and to protection against unemployment [36]. Clause (2) of the same Article provides that everyone without any discrimination has the rights to equal pay for equal work and under Clause (13), it provides that everyone who works has the right to just and favourable remuneration ensuring for him/herself and his/her family an existence worthy of human dignity. Universal Declaration of Human Rights (UDHR) calls upon member states to ensure that the rights contained in that instrument are a living reality and these rights are known, understood and enjoyed by everyone and everywhere.

Also, those rights have been elaborated in the 1966 International Covenant of Economic, Social and Cultural Rights (ICESCR)[37] in which the rights to work includes "the right of everyone to the opportunity to gain his/her living by work.

International Labour Standards are first and foremost about development of people as human beings. The international community recognized that "Labour is not a commodity work is part

[34] 1998 the International Labour Organisation '' adopted the Declaration on fundamental principles and rights at work which was held at the International Labour Conference
[35] Article 6 of the International Covenant on Economic, Social and Civil Rights
[36] Article 23 of Universal Declaration on Human Right
[37] Article 6 of the International Covenant of Economic, Social and Cultural Rights 1966

of everyone's daily life and is crucial to a person's dignity, well-being and development as a human being". Economic development should include the creation of jobs and working conditions in which people can work in freedom, safety and dignity[38].

In short, economic development is not undertaken for its own sake but to improve the lives of human beings. International labour standards are therefore to ensure that it remains focused on improving human life and dignity.

2.3 An International Legal Frameworks for Fair and Stable Globalisation in Relation to Rights to Work

Achieving the goal of decent work in the globalised economy requires action at the national and international levels. The world community is responding to this challenge in part by developing international legal instruments on trade, finance, environment, human rights and labour[39]. The International Labour Organisations (ILO)[40] contributes to this legal framework by elaborating and promoting International Labour Standards aimed at making sure that economic growth and development goes along with the creation of decent work and fighting unemployment.

International labour standards therefore laid down the basic minimum social standards agreed upon by all players in the global economy. Numerous countries have ratified international treaties which apply automatically at the national level.

The courts are thus able to use international standards to decide cases on which national law is inadequate or silent or to draw on definitions set out in the standards such as the right to work. International Labour Standards, provide guidance for developing national and local policies such as employment and work policies[41].

[38] ILO'S Declaration of Philadelphia of 1944.
[39] Ibid
[40] ILO: Decent work and the informal economy report VI International Labour Conference, 90th session, Geneva 2002, page 39-54
[41] Ibid.

2.4.1 CONTINENTAL AND REGIONAL LEGAL FRAMEWORKS ON THE RIGHTS TO WORK.

The African Charter on Human and People's Rights (ACHPR) also recognizes the right, emphasizing conditions and pay for example Labour Rights.

Every individual shall have the right to work under equitable and satisfactory conditions and shall receive equal pay for equal work[42].

The African Charter on Human and People's Rights (also known as the Banjul Charter).

Is an international human rights instrument that is intended to promote and protect human rights and basic freedoms in the African Continent.

On the right to work, the African Charter on Human and People's Rights states that; every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work[43].

2.4.2. African Charter on Human and Peoples' Rights (AFRICAN CHARTER)

The African Charter is the main regional human rights instrument aimed at protecting human rights in Africa[44]. Uganda ratified the African Charter on 10th May 1986[45]. The African Charter provides for the enjoyment of rights and freedoms without discrimination[46] as well as the right of workers to work under equitable and satisfactory conditions and the right to receive equal pay for equal work.[47]

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[42] Article 15 of the ACHPR
[43] Article 15 of the African Charter on Human and People's Rights
[44] African Charter o Human and People's Rights.www.achpr,Org.
[45] List of countries that have ratified the African Charter accessed from, http://www.africa-union.org/root/au/Documents/
Treaties/ List/African%20Charter%20on%20Human%20and%20Peoples%20Rights.pdf, (accessed on 19 December 2011).
[46] Article 2 of the African Charter.
[47] Article 15 of the African Charter.

2.4.3. Right to Work under EAST AFRICAN COMMUNITY (EAC)

EAC Common Market Protocol allows workers from any partner state to accept employment within any other EAC country[48]. They cannot be discriminated against on the basis of their nationality[4950].

Furthermore, a worker will have the right to Social Security benefits and can be accompanied by a Spouse and Children[51].

A citizen of a partner state, who seeks to enter or exit the territory of another state (partner) state as a worker, shall do so at entry or exit points designated in accordance with the national laws of the partner state and shall comply with the established immigration procedures[52].

A worker who has a contract of employment of a period of more than 90 days in the territory of another partner state shall apply to the competent authority for a work permit within 15 working days from the date of entry into the territory of the host partner state.

Where a worker secures employment for a period of not more than 90 days, the worker shall apply for, and be issued with a special pass.

Partner State shall issue residence permits to Citizens of other Partner States who qualify in accordance with the provisions of this Article[53]. Where the competent authority rejects an application for a work permit, the competent authority shall in writing, notify the applicant, stating the reasons for the rejection.

NB: The Republic of Kenya and Rwanda have abolished work permit fees for East African nationals working in the two countries.

The partner states provide for regular Labour Inspections and any other appropriate measures to ensure that the same treatment is accorded to the workers from other partner states as is accorded

[48] See Article 7(1) of the EAC Common Market Protocol, 2009.
[49] See Article 10(1) of the EAC Common Market Protocol, 2009
[50] Articles 3(2)(a) and 7(2) of the EAC Common Market Protocol, 2009
[51] See Articles 10(3)(f),10(4),(5)(A).of the EAC Common Market Protocol,2009
[52] See Article 39 of the EAC Common Market Protocol, 2009
[53] See Article 14(3) of the EAC Common Market Protocol,2009.

to the nationals of the partner state with regard to terms and conditions of employment, equal opportunities for both men and women and in particular, access to employment, and other right accruing to a worker under the provisions of the national laws of the partner state.

East African Community citizens have the right to establish their business in any partner state and pursue economic activities in accordance with the national laws of the partner state. Self-employed persons are able to carry out their work across the region, and be entitled to social security scheme in the host Country[54].

Workers who are Citizens of a Partner State employed in the territory of another Partner State are allowed to remain in that territory for the purpose of taking up economic activities as Self-employed Persons[55].

The protocol requires partner states to remove all restrictions on the right of establishment based on the nationality of the companies, firms and self-employed persons of the partner states and shall not introduce any new restrictions on the right of establishment in their territories , save as otherwise provided in this Protocol[56].

2.5. NATIONAL LEGAL FRAMEWORK

The Ugandan legal system is based on the English common law system and the judicial functions are administered through different ranking from the subordinate courts to the Supreme Court. The courts functions are administered from the top, that is the court of Supreme Court as the court that is supreme in the land.

The rights associated with employment are among the rights that have occupied a special place in the history of human rights and therefore courts of law are bound to take judicial notice of constitutional and legal matters including issues related to employee's rights which include the right to work.

[54] Articles 12(2),13(3)(a)(i),13(b) of the EAC Common Market Protocol,2009
[55] Article 13(11)(c) of the EAC Common Market Protocol, 2009
[56] Article 13(5) of the EAC Common Market Protocol, 2009

Uganda has enacted a number of laws as well as set up institutions mandated to safeguard workers' rights. Uganda has also ratified various international instruments that make provision for workers' rights. At the international level the conventions include the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic Social and Cultural Rights (ICESCR), the Convention Concerning Minimum Age for Admission to Employment[57] and the ILO Convention on Forced Labour[58] which all target various abuses of workers' rights in the course of employment. The State is obliged to put in place a legal and institutional framework to ensure the protection of workers' rights and to afford workers an opportunity to work in a decent and safe environment.

This chapter examines the efficacy and adequacy of the legal and institutional framework in the protection of workers' rights. The analysis on the legal framework considers instruments at the international, regional and national level.

Uganda has increasingly sought to attract investors in order to boost its economic growth; it has also maintained the need to guarantee protection of workers through the enactment of laws and policies[59].

2.5.1. Constitutional and Legal Frameworks on the Rights to Work.

The Constitution is the Supreme Law of the land and provides for the protection of workers' rights under the bill of rights. It requires Parliament to enact laws that, among others, provide for the right of persons to work under satisfactory, safe and healthy conditions[60] and to ensure equal payment for work without discrimination.[61]

[57] Convention Concerning Minimum Age for Admission to Employment No. 138 of 1973
[58] Convention on Forced Labour No. 105 of 1957.
[59] Emphasised mine.
[60] Article 40 (1) (a) of the Constitution of Uganda.
[61] Article 40 (1) (b) of the Constitution of Uganda.1995 (as amended)

The Constitution further recognises the right of every worker to form or join a trade union of his or her choice for the promotion and protection of his or her economic and social interests;[62] to collective bargaining and representation;[63] and to withdraw his or her Labour according to law.

The Constitution accords female workers protection during pregnancy and after birth.[64] The Constitution also recognises that the rights, duties, declarations and guarantees relating to fundamental and other human rights and freedoms mentioned in the Constitution do not exclude others not specifically mentioned. [65] The Constitution further provides for avenues for enforcement of rights and freedoms by competent courts.[66]

The entrenchment of the Bill of Rights and duties into the 1995 Ugandan Constitution after a long struggle by human rights activists ushered a new development on the jurisprudence of human rights which is now widespread in the world.

The right to work in Uganda is enjoyed fully in the constitution[67]. This is due to the inability of the government to give practical effects to the right to work as set out by the constitution.

This right to work is given by one hand and is taken away by the other, by the constitution and judicially. The constitutional assertion in one hand has always given the right to work to any person capable and willing to do work but the ordinary legislations have already taken it away, the good example of the provisions which take such rights of the person to work can be found in the Labour Disputes (Arbitration and Settlement Act)[68] where it provides that where an order of reinstatement or re-engagement is made by an arbitrator or court and employer decides not to re-instate or re-engage the employee, the employer shall pay compensation of 12 months wages due and other benefits from the date of unfair termination to the date of final payment.

Under the Employment Act, the conditions of employment in Uganda are stated. The aspects of employment covered here are contract of service, termination of contract termination notices,

[62] 25 Article 40(3) (a) of the Constitution of Uganda.
[63] Article 40(3) (b) of the Constitution of Uganda.
[64] Article 40(4) of the Constitution of Uganda.
[65] Article 45, 1995 Constitution of Uganda.
[66] Article 50, Constitution of Uganda.
[67] Every person in Uganda has the right to practice his/her profession and carry on any lawful occupation, trade or business
[68] 2006 Act No. 8

protection of wages, hours of work, rest and holidays. The Act gives workers a right to their pay which may be a salary or wage and wages should be paid promptly and paid in local currency.

The Employment Act, under which hours of work, rest and holidays fall, sets out an eight-hour working day and any overtime worked must be paid at once and a half times the normal rate of pay. It is further stated that, an employee whose hours of work exceed six a day, is entitled to at least an hour's break or more so that he/she does not work continuously for more than five hours. An employer is required to give his/her employee holidays with full pay at the rate of at least one and a half working days for every month of actual service. It should be noted that the law does not allow any agreement to forego holidays.

As for public holidays, it is stated, employees are entitled to resting on all public holidays as gazette under the Public Holidays Act otherwise, an employer is obliged to pay an employee who works on a public holiday double the normal rate or grants them a day off alter with normal pay.

Generally speaking the right to work forms cornerstone of the fundamental rights in human right volume, however this right is not absolute due to the fact that not every person willing to work is suitable for certain kind of work simply because also the work available sometimes has its own limitations.

The right to work is not an absolute right but it is always subject to the regulations of the employment authority and availability of work[69].

Also it is subject to the availability of work suitable to the person involved and it certainly does not mean that one can walk into an office, factory or any work site and demand to be given work as provided for in the constitution on the right to work nor does it mean that one can demand to be employed even when he/she is old and senile or has no expertise on that area.

[69] Section 38

2.5.1.1. The Right to Work under the National Laws of Uganda

The right to work is provided for in the Ugandan Constitution as follows: "...parliament shall enact laws to provide for the rights of persons to work under satisfactory, safe and healthy conditions, to ensure equal payment for equal work without discrimination[70].

Most work places however don't have human resource policies that ensure non-discrimination on the basis of sexual orientation and gender identity, which leads to unfair treatment and no protection at the work place.

In the case of Adrian Jjuuko V A.G[71], that argued that section 5(6)(d) of the Equal Opportunities Act breaches the right to fair hearing guaranteed in Articles 28 and 44 of the Constitution. Court held that a law that precludes a group of people from adjunction on violation of their rights and does not create an alternative forum to hear them out breaches the right to fair hearing. Court also held that this limitation on the right to a fair hearing is not acceptable and demonstrably justifiable in a free and democratic society.

That parliament shall enact laws to provide for the right of persons to work under satisfactory, safe and healthy conditions[72]. (b) to ensure equal payment for equal work without discrimination and (c) to ensure that every worker is accorded rest and reasonable working hours and periods of holidays with pay as well as remuneration for public holidays[73].

2.5.2. Employment Act 2006

The Employment Act governs employee-employer relationships, in particular, for employment under contracts of service. The Employment Act, 2006, provides for protection from forced labour,[74] protection from discrimination in employment,[75] and protection of employees from

[70] Article 40 0f the Constitution of Uganda 1995(as amended)
[71] November 10th 2016 in the case of Adrian Jjuuko V A.G at the Constitutional court
[72] Article 40 of the Constitution of Uganda 1995 (as amended)
[73] ibid
[74] Section 5 of the Employment Act.
[75] Section 6 of the Employment Act.

sexual harassment by the employer[76]. The Act also provides for regulation of working hours,[77] annual leave and holidays,[78] and paternity

leave of four days.[79] The Employment Act provides for the right to written particulars of the contract,[80] the right to fair hearing before dismissal,[81] and the right to reinstatement or compensation in case of unfair dismissal.[82] The Act creates the office of the labour officer and gives the officer powers to inspect places of work for purposes of securing enforcement of legal provisions relating to conditions of work.[83] The Act also gives the labour officer powers to investigate and dispose of complaints,[84] prosecute civil or criminal matters before the Industrial Court.[85]

The Act, however, does not apply to employers and their dependent relatives in family undertakings, or to the Uganda People's Defence Forces other than their civilian employees.[86]

2.5.3 Labour Union Act 2006

The Labour Union Act seeks to maintain and improve working conditions and raise the economic status of the workers through the creation of unions. The Act recognises the right of workers to organise themselves in Labour Unions[87] and also requires employers to refrain from interfering with Union Organisation.[88]

The Act provided for the creation of Unions that could advocate for the observance of workers' rights. The Act also makes it an offence for an employer to contravene provisions in the Act.[89]

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[76] Section 7 of the Employment Act.
[77] Section 53 of the Employment Act.
[78] Section 54 of the Employment Act.
[79] Section 57 of the Employment Act.
[80] Section 59 of the Employment Act.
[81] Section 66 of the Employment Act.
[82] Section 71(5)of the Employment Act.
[83] Section 10 of the Employment Act.
[84] Section 13 of the Employment Act.
[85] Section 14 of the Employment Act.
[86] Section 3(2) of the Employment Act.
[87] Section 3 of the Labour Union Act.
[88] Section 4 of the Labour Union Act.
[89] Section 5 of the Labour Union Act.

2.5.4. Workers Compensation Act Cap 225

The Workers' Compensation Act provides for a mechanism of paying workers for damages or injuries incurred in the course of employment[90] and caters for compensation of injured employees.

The Act provides that an employer is liable to pay compensation if personal injury by accident arises out of and in the course of the worker's employment[91]. The Act also absolves an employer from liability in the event that the injury does not result in permanent incapacity or incapacitate the worker for at least three consecutive days from earning full wages at the work for which he or she was employed.[92]

2.5.5. Occupational Safety and Health Act, 2006

It is estimated by the International Labour Organisation that two million workers die as a result of occupational accidents and work related diseases every year.[93] Consequently, countries like Uganda have enacted the Occupational Safety and Health Act as a means to safeguard workers' health and safety rights. This law generally provides for the right of persons to work under satisfactory, safe and healthy conditions. The Act makes it a duty for employers to protect workers[94] and to, among other things, monitor and control the release of dangerous substances into the environment,[95] provide protective gear[96] and supervise the health of workers.[97] The Act also imposes on workers a duty to take reasonable care for the health and safety of themselves or any other person that may be affected by their acts or omissions.[98]

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[90] Agnes Kyotalengerire, *'Making workers' safety a priority'*, The New Vision, accessed from http://www.enteruganda.com/brochures/labourpage01.html (accessed on 9 January 2012).
[91] Section 3(1) of the Worker's Compensation Act
[92] Section 3(2) Workers Compensation Act.
[93] Patrick Katabaazi Kiconco, 'Occupational safety and health issues in Uganda', accessed from http://pkatabaazi.blogspot.com/2008/02/occupational-safety-and-health-issues.html (accessed on 30 December 2011).
[94] Section 13 Occupational Safety and Health Act.
[95] Section 18 Occupational Safety and Health Act.
[96] Section 19 Occupational Safety and Health Act.
[97] Section 21 Occupational Safety and Health Act.
[98] Section 35(1) (a) Occupational Safety and Health Act.

2.5.6. Labour Disputes (Arbitration and Settlement) Act 2006.

The Labour Disputes (Arbitration and Settlement) Act was enacted against the backdrop that there would be fast resolution of labour disputes through the Industrial Court.[99] The industrial court has the mandate to arbitrate on labour disputes referred to it by the Labour Officer[100] and adjudicate upon questions of law and fact arising from references to Industrial Court by any other law.[101]

The Act provides for the right of an employee to be involved in lawful industrial action without hindrance and, the right of access of union officials to employees or their representatives (shop stewards) in a workplace.[102] Further, the Act prohibits the interference with a worker's right of association and makes it a criminal offence for an employer to obstruct this right.[103] The Act also prohibits employers from discriminating against unionised employees and also recognises the right to strike.[104]

2.5.7. Labour Legislation in Uganda

The current position of labour laws and workers rights and working class in Uganda can only be understood when examined in a historical perspective. Rights associated with employment are perhaps the most drastically affected human rights in the wake of globalization.

The situation changed after attainment of independence where Uganda became an independent state and Ugandan parliament enacted their labour laws. However, such labour laws had colonial elements and hence there was no full security of employment. The right to work is the most important civil right in the labour law and its ideological basis is the need and necessity of the

[99] Section 8(2) Labour Disputes Act.
[100] Sections 6 & 8(1)(a) of the Labour Disputes Act.
[101] Section 8(1)(b) of the Labour Disputes Act.
[102] Section 30(1), of the Labour Disputes Act.
[103] 58 Section 32 of the Labour Disputes Act.
[104] 59 Section 28-32 of the Labour Union Act.

survival of the working class. It aims at securing the possibility of continued employment. It is not an empty slogan but a survival for existence as was stated by Mwalusanga J.[105]

Between the mid 1970 and early 1980s there was a decline in emphasis from capitalist globally directed economy to a locally directed one under the policy of self reliance. This policy made the government to take control over all major means of production. Almost all formal employment was provided by the state or state owned / controlled corporations. But later on the government changed from state contributed as a result of adopting SAPs[106], but also the pressure from the World Bank. The doors for investment in Uganda by any interested person in the world were opened while nothing has been done to review labour laws which would reflect the new position of industrial relations law, matching with trade liberalization that is from state controlled economy to private one. As such, private employers took the advantage of a number of oppressive employment laws to curtail the people's rights connected with the employment[107].

2.5.8. Economic and Social Rights in Uganda

Economic and social rights are provided under the provision of International Covenant on Economic, Social and Cultural Rights (ICESCR) and some of them are under the Ugandan Constitution and other principal and subsidiary legislations have been provided clearly. The economic and social rights include the right to work and fair remuneration.

It is arguably stated that the right to work is important as it relates to the very survival of individual and Society in general, it is close to the rights to life itself and thus requires legal protection. Under the laws of Uganda, the right to work is enshrined under the constitution of Uganda, as well as the Employment Act. It is also recognized and provided for under the provision of international human rights instrument which Uganda has ratified for example ICESCR[108] provides that "the state parties to the present covenant recognize the right to work which includes the rights of everyone to have the opportunity to gain his/her living by work

[105] The case of Mahona Vs University of Dar es salaam (1981)TLRSS where Justice Mwalusanga made that remarkable word in relation to work.
[106] SAPs means Structural Adjustment Programme
[107] See S. Howard and H. Said (2005) the field research on impact of globalization on the rights of workers , at P. 21
[108] Article 6, International Covenant on Economic Social and Civil Rights

which he/she freely chooses or accepts and states will take appropriate step to safeguard this rights".

The right to development through work is inalienable human rights by virtue of which every human being and all people are entitled to participate in and contribute to and enjoy economic, social, cultural and political development in which all human rights and fundamental freedom can be fully realized. The right to work is "inalienable" it means it cannot be bargained away.

2.5.9. Employment Protection in Uganda.

The effect of the statutory periods of notice is that they automatically override any provision in the contract providing for a shorter period of notice but they do not affect any provision for a longer period of notice. Contractually agreed periods of notice are usually fixed either on the basis of the seniority of the employees appointment in such a way that the junior the appointment the shorter the period of notice while the senior the appointment the longer the period of notice, or on the basis of the employees length of service or to both seniority and length of service.

On the one hand, it is open to a court of law to use the common law rule of reasonable notice or custom to arrive at a period of notice shorter than notice the employee would be entitled to receive under the provisions of the law. It is important that the notice should be in writing as per the requirement of the Act[109]. The notice must be clear and specific as any ambiguity will be interpreted against the person giving it. In particular it should state the duration of the notice and if necessary how such duration is to be computed. However, it should be noted that the duration of the notice starts running from the date the notice is communicated to other party but the day the notice is given is not to be counted. Once a notice is given it cannot be unilaterally withdrawn except with the consent of the other party. The contract of the employment terminates at the expiry of the notice. In the case of Mahona V University of Dar es salaam[110], where Kisanga J, (as he then was) had this to say; the termination of the applicant from his employment was not valid because there was breach of natural justice because the minister of labour by then

[109] Employment Act, 2006
[110] (1981)TLRSS

determined the matter without availing the applicant the right to be heard or to give his side of the story in his case and hence termination was null and void.

On the issue of protection of employment, many companies do not have voluntary agreement with their workers. Voluntary agreement is important because they define the contractual rights and obligations of the parties. The labour laws provide for the rights to work but the problem which many Ugandans are facing is serious implementation of labour law and their effectiveness.

2.6. INSTITUTIONAL FRAMEWORKS.

In a bid to ensure the protection of workers' rights in Uganda, institutions were created as a mechanism of giving life to the laws that are in principle aimed at ensuring protection of workers' rights.

These institutions include the Ministry of Gender, Labour and Social Development (MGLSD), the Industrial Court and labour unions. The mandate of these institutions in the protection of workers rights are discussed below:

2.6.1. Industrial Court

The Industrial Court was established under the Labour Disputes (Arbitration and Settlement) Act, 2006[111] to settle unresolved disputes between employers and trade unions over terms and conditions of employment. The role of the Industrial Court is to adjudicate on labour disputes filed by aggrieved parties whose complaints have not been settled by either the District Labour Officers (DLO) or a conciliator.[112]

The Court has the same status as a High Court since appeals from the court are heard by the Court of Appeal. These appeals to the Court of Appeal are either on a point of law or to determine whether the Industrial court had the jurisdiction to hear a case.[113] The court can sit as often as is necessary[114].

[111] Section 7 Labour Disputes (Arbitration and Settlement) Act.
[112] Section 5 Labour Disputes (Arbitration and Settlement) Act.
[113] Section 22 Labour Disputes (Arbitration and Settlement) Act.
[114] Section 7(2) Labour Disputes (Arbitration and Settlement) Act.

The rationale behind the creation of the Industrial Court is that if disputes are not resolved, they can lead to strikes and lock-outs thereby causing a decline in production and national income.[115]

This could lower the standard of living and lead to unemployment for affected workers.[116] The presence of the court, therefore, contributes to industrial harmony and peace with consequent economic growth and improved standards of living.[117]

The Industrial Court is, however, not functional. A judge was appointed to head the court but the court is not yet operational. As such, once a labour officer fails to resolve a complaint, the resolution process comes to a halt. This is bearing in mind that it is the labour officer or the commissioner for labour, in the event that an issue is likely to turn into a national disaster, that have the mandate to handle labour disputes.[118] In the event that orders made by labour officers fail, the Industrial Court is the last resort to seek enforcement. However, with a non-functional Industrial Court, the efforts of labour officers to have certain disputes resolved would be futile.

2.6.2 Ministry of Gender, Labour and Social Development and Rights to Work in Uganda

The Ministry of Gender, Labour and Social Development (MGLSD) is the lead ministry responsible for labour administration in the country. The department of labour, industrial relations and productivity is responsible for formulating implementing and enforcing labour policies and laws related to working conditions.

Labour officers in Uganda are legally employed to engage in labour inspection activities including securing the enforcement of legal provisions relating to conditions of work, supplying technical information and advice to employers and employees. According to the National Employment Policy for Uganda 2011, labour officers also arbitrate between workers and employers on undesirable working conditions.

All workers deserve to be treated fairly and respectfully at their place of work, with full labour rights and protections given to them. The law generally recognizes a notice period and hence the

[115] 'The Industrial Court' accessed from http://www.mglsd.go.ug/?p=711 (accessed on 4th August 2011).
[116] *ibid.*
[117] *ibid.*
[118] Sections 3 (1) & (2) Labour Disputes (Arbitration and Settlement) Act.

ministry provides that every employee has a right to work in a favourable and comfortable workplace.

The Ministry is mandated to cater for the interests of all workers in the country. In line with this mandate, it has a Directorate of Labour, Employment and Occupational Safety and Health which also has three departments: Labour, Industrial Relations and Productivity; Occupational Safety and Health; and Employment Services. It is within this directorate that the labour office is catered for.

Labour officers have the role of inspecting work places to ensure enforcement of legal provisions relating to conditions of work and the protection of workers while engaged in their work.

It is in the event of finding defects or abuses of workers' rights that are not covered by existing legal provisions that the minister is notified. Inspection reports are forwarded to the Commissioner for Labour under the Ministry of Gender, Labour and Social Development (MGLSD) for action. Labour officers are also mandated to receive complaints and mediate labour issues.

Much as labour officers generally operate under the Ministry of Gender, Labour and Social Development (MGLSD), their activities are decentralized and funded under the District Local Governments budget. As such they are heavily constrained financially and are not in a position to effectively carry out their activities. Furthermore, labour officers are not in all the districts of Uganda which, therefore, limits their ability to protect workers' rights in the whole nation. It is estimated that there are less than forty (40) labour officers in the country and yet there are over 100 districts. The labour officers are not only inadequate to protect workers' rights, but their effectiveness is also affected by their limited national coverage.

2.6.3. THE UGANDA HUMAN RIGHTS COMMISSION AND RIGHTS OF WORKERS.

Workers in Uganda are guaranteed rights and freedoms for their protection in employment. Workers rights are provided for, in international human rights instruments, including the

Universal Declaration of Human Rights (UDHR)[119] . The right of every person to work, to have a free choice of employment, to just and favourable conditions of work and to protection against unemployment.

Furthermore, the right of a worker to rest and leisure, including the limitation of working hours and periodic holidays with pay.

The right to work imposes three obligations on state parties, to respect, protect and fulfill. The obligation to respect the right to work requires states parties to refrain from interfering directly or indirectly with the enjoyment to that right.

The obligation to fulfill includes the obligations to provide, facilitate and promote that right. It implies that state parties should adopt appropriate legislative, administrative, budgetary, judicial and other measures to ensure its full realization.

Uganda is estimated to have a labour force of 13.4 million people, 50% of whom are female[120]. In a bid to protect this labour force, there are core labour standards guaranteed internationally to promote opportunities for women and men to obtain decent work, in conditions of freedom, equity, security and dignity. These include:

i) Freedom of association which enables workers to join trade unions that are independent of government and employer influence.
ii) The right to collective bargaining which makes it possible for workers to negotiate with their employers collectively.
iii) The prohibition of all form of forced labour, which among other things, includes prevention of workers from being, forced to work under duress.

In view of the foregoing, the system investigations into workers' rights were indeed respected and protected in Uganda. The investigations examined the level of enjoyment of the right to

[119] Articles 23&24 of the UDHR
[120] Uganda is estimated ''to have a labour force of 13.4 million people, 50% of whom are female ''

work, join and form trade unions, work in safe conditions and whether workers had protection including social security and pension rights for the time they would leave employed.

The objectives of the commission were undertaken to establish the situation on the ground with regard to realization of workers' rights in Uganda.

i) To analyse the efficacy of legal and institutional mechanisms aimed at ensuring protection of workers' rights.
ii) To establish whether workers are afforded adequate protection in the course of their work.
iii) To identify the challenges and hindrances towards the enjoyment of workers rights.

2.6.4 Trade Union Associations

The National Organisation of Trade Unions (NOTU) is one of two national trade union centres in Uganda; the other being the Central Organisation of Free Trade Unions (COFTU). NOTU was established by Decree No. 29 of 1973. NOTU represents millions of Ugandan workers and has 20 labour union affiliates, including, Amalgamated Transport and General Workers' Union, Uganda Building, Construction, Civil Engineering, Cement and Allied Workers' Union and National Union of Plantation and Agricultural Workers.[121] It aims at promoting and defending workers' interests in the country.

Unfortunately, trade unions do not seem to have a very strong presence in the country. The estimated total number of unionised workers is less than 1,000,000 (one million) in Uganda.[122]

Furthermore, trade unions are preoccupied with internal wrangles which essentially stemmed from the creation of COFTU as a break away from NOTU.[123] It is such wrangles and failure to expand their network that could impede the ability of trade unions to ensure strict observance and protection of workers' rights in the country.

[121] Accessed from NOTU website at http://www.notu.or.ug/index.php (accessed on 23rd September 2011).
[122] Vincent Nuwagaba, 'Labour Unions in Uganda, a Threat to Workers' Rights', The African Executive, accessed from http://www. africanexecutive.com/modules/magazine/Articles.php?Article=4374 (accessed on 26th September 2011).
[123] Nuwagaba, Labour Unions in Uganda, a Threat to Workers' Rights, *ibid.*

CHAPTER THREE

EXAMINE HOW THE TERMINATION OF EMPLOYMENT IN THE LABOUR INDUSTRY IS CONDUCTED UNFAIRLY

3.1. INTRODUCTION

An employee is said to have been dismissed if the employee's employment is terminated by the employer or if the employee resigns because they were forced to do so because of the conduct of the employer (known as constructive dismissal)[124].

For employment to be terminated unfairly, the employee should have been fired illegally. Although many employees are at will employees and can be fired or terminated at any time without cause.

If an employee is fired for reporting wrongful activities or for filing a worker's compensation claim, these can constitute unfair termination. Although the firing may not strictly be illegal, "it is a violation of public policy, which means that it is bad for society as a whole. In those cases, courts have the power to hold the employer liable[125].

3.2 INSTANCES HOW TERMINATION HAS BEEN CONDUCTED UNFAIRLY UNDER THE INTERNATIONAL LEVEL

The International Labour Organisation (ILO) was established as an agency of the League of Nations at the Paris Peace Conference in 1919. Since 1946, the organisation has been operating as a United Nations specialized agency. Its main activity is to establish Labour Standards in the form of conventions and recommendations[126].

The recommendation which articulates the necessity of providing valid reasons and justification for termination of employment.These justifications are[127]:

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[124] Ephasised mine
[125] Ibid
[126] http://www.who.int>ilo
[127] Convention N0.158 of the ILO

i) The employment of a worker shall not be terminated unless there is a valid reason for such termination.

ii) The employer is required to provide justification for the dismissal of a worker.

iii) Hence instances where an employer does not give reasonable notice or have valid grounds for termination, it will be held to be unfairly conducted[128].

However, the new labour code of Georgia, which was adopted with its third reading by the Parliament on 12 June 2013, provides the part of recommendation No. 166 of the ILO which regulates the termination of an employment contract.

The new labour code regulates the termination of employment:

iii) The employer is required to terminate employment of a worker based on the reasons provided by the law.

iv) An employer is required to provide written justification of the termination of an employment contract within seven (7) days of receiving the request from an employee[129].

However, according to the Convention, the employer is required to provide justification, in the case of failure to comply with this rule, the basis for legal dispute between an employer and an employee can become an unjustified termination of employment[130].

In the United States, there is no single "wrongful termination" law, rather there are several state and federal laws and court decisions that define this concept. In all US states except Montana workers are considered by default to be at will employees, meaning that they may be fired at any time without cause.

Some employees have contracts of employment that limit their employer's ability to terminate them without cause. Other employees may be members of unions and benefit from a collective bargaining agreement that defines disciplinary proceedings and limits when an employee may be terminated.

[128] Articles 4&5 of the Convention NO. 158 of the ILO.
[129] Article 38 of the New Labour Code of Geogia
[130] Ibid.

Employees who work for government agencies normally benefit from civil service protections that restrict termination. Those employees, if terminated may attempt to bring wrongful termination claims under the terms of the contract or agreement or civil service law.

Although at will employees are protected from termination by civil rights laws and other laws that prohibit retaliatory termination, in the absence of a contract of employment or collective bargaining agreement. In some situations an at-will employee may be able to claim wrongful/unfair termination. These include the following;

i) Implied contract: In some situations a court might find an implied contract of employment that restricts the employer's ability to terminate an employee without cause for example, the terms of an employee manual may support an employee's claim that the employer must follow a defined disciplinary process prior to termination and hence failure to follow the defined disciplinary process will amount to unfair termination of employment contract.
ii) Public policy: It is possible to argue that the employer's reasons for terminating an employee, although not in violation of a statute, violated the state's public policy such that a wrongful termination claim should be allowed. For example a court might allow a claim by an employee who was fired for refusing to take an action that was in violation of the law for reporting a violation of the law to an enforcement agency, or for otherwise exercising the employee's rights under the law.
iii) Covenant of good faith and fair dealing: In what is in many senses an extension of public policy doctrine, some states allow an at-will employee to pursue a wrongful termination claim if the cause for the termination is deemed to reflect bad faith on the part of the employer.

3.3. HOW TERMINATION OF EMPLOYMENT IS BEING CONDUCTED UNFAIRLY IN AFRICA

Your contract of employment is unfairly terminated if it is based on the following reasons:

i) That the worker has joined or intends to join a trade union or takes active participation in a trade union.

ii) That the worker has filed a complaint or participated in proceedings against the employer involving alleged violation of this Act.

iii) The worker's gender, race, colour, ethnicity, origin, religion, creed, social, political or economic status has been discriminated against.

iv) In case of a worker with a disability, due to the worker's disability.

v) That the worker refused or indicated an intention to refuse to do any work normally done by a worker who at the time was taking part in a lawful strike unless the work is necessary for the maintenance of plant and equipment.

vi) Termination without notice given to the employee or worker.

vii) Discrimination[131]

You may lay a complaint at the National Labour Commission. If it is established that the employment was unfairly terminated, the commission may order the employer to re-instate the worker from the date of the termination of the employment. The commission may order the employer to re-employ the worker, either in the work for which the worker was employed before the termination or in other reasonably suitable work under the same terms and conditions enjoyed by the worker before the termination.

So instances where adequate notice has not been given to the employee and the employer goes ahead and terminates the employee from work, this will be taken to be unfair termination[132].

There are many instances when it becomes unfair and illegal when employment is being terminated. In Ugandan laws,

a) Discrimination

When an employee is terminated because of their race, colour, national origin, gender, religion, age, disability, pregnancy. The Constitution of Uganda states : that all people persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law[133],

[131] African Charter on Human and People's Rights www.achpr.Org.
[132] Emphasised mine
[133] Article 21 of the Constitution of the Republic of Uganda (as amended)

(2) without prejudice to clause (1) of the article, a person shall not be discriminated against on the ground of sex, race, colour, ethnic origin, tribe, birth, social or economic standing, political opinion, or disability.

b) Retaliation

When an employee is terminated because they filed a complaint against the employer with the Equal Employment Opportunity Commission.

c) Termination is said to be unfair in cases where an employee hasn't committed a breach of contract and he is dismissed without notice or with insufficient notice or no payment in lieu of notice. For example where an employee serving under a fixed term contract which does not specifically provide termination by notice is terminated, the employee may be said to be unfairly dismissed because such an employee can only be dismissed for a fundamental breach of the employment term.

MC Govern V Maize Marketing Board[134]

The contract provided that the employee was to work for an initial minimum period of 3 months after which may subsequent period may be terminated by one month's notice. The employer served a notice of termination of the employee after only 2 months of service. It was held that the contract could not be terminated by notice during the first three months. Consequently the notice of termination was invalid and the termination was wrongful or unfair.

d) Where the employer has not exercised his or her right to rescind the contract on the occurrence of a repudiatory breach and with full knowledge of the breach he or she loses the right to summarily dismiss the employee for the particular breach and subsequent dismissal will be unlawful.

e) Where the employment contract provides for disciplinary proceedings to be followed in the case of breach of contract before an employee can be dismissed. A failure to comply

[134] (1968) E.A 40

with those procedures will amount to unfair termination. Elatu Vs Uganda Airlines Corporation[135]

Manjindo J as he was, held that by considering the absence of sufficient cause, failure to follow the disciplinary procedure set out for the dismissal of an officer of the council and the failure to give the plaintiff adequate notice, the termination of the plaintiff's services was unfair for which he was entitled to damages.

All Organisations set up in accordance with this Act shall have disciplinary rules, and the form and content of the rules may vary according to the size and nature of the Organisation[136].

Disciplinary rules shall be non-discriminatory and applied irrespective of race, colour, sex, religion, political opinion, national extraction, nationality, social origin, marital status or affiliation or intended affiliation to a union.

Tommy Otto Vs UWA[137]

Elatu's case was cited with approval and Justice Lameck Mukasa held that the plaintiff's summary dismissal by the management committee instead of the authorized board of trustee under the provisions of the terms and conditions of service of senior officers was unlawful for not following the proper procedures.

3.4. EMPLOYMENT ACT, 2006 OF UGANDA

An employee who has been continuously employed by his or her employer for at least 13 (thirteen) weeks immediately before the date of termination, shall have the right to complain that he or she has been unfairly terminated[138].

2) A complaint made under this section shall be made to a labour officer within three months of the date of dismissal or such later period as the employee shall show to be just and equitable in the circumstances.

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[135] (1984)HCB 39.
[136] See the First Schedule Disciplinary Rules of the Employment Act, 2006.
[137] HCT Cs 208/2002
[138] See Section 71 of the Employment Act, 2006

3) No complaint under this section may be made by an employee whose services have been terminated or who has been dismissed.

1) A termination shall be unfair for the purposes of this part where-
   b) It is found out that in all the circumstances of the case, the employer did not act in accordance with justice and equity in terminating the employee from service

   Summary termination shall take place when an employer terminates the service of an employee without notice or with less notice than that to which the employee is entitled by any statutory provision or contractual term[139].

   c) Subject to this section, no employer has the right to terminate a contract of service without notice or with less notice than that to which the employee is entitled by any statutory provision or contractual term.

The employee should make a formal complaint to the labour officer within three months after the date of dismissal. Otherwise if three months passes without the formal complaint being lodged with the labour officer, it will be considered that the employee was convinced that the dismissal was justifiable.

An employee who has been summarily dismissed without justification may within six months after the date of dismissal present a complaint to a labour officer who shall seek to settle the matter in the first instance by mediation.

3.5 INSTANCES WHERE AN EMPLOYER CAN TERMINATE AN EMPLOYEE FROM WORK.

i) Termination upon Fundamental Breach of Contract

It is now a well established principle of common law that when a party commits a fundamental breach of a contract, it amounts to a repudiation by that party of the contract and that such a repudiator breach confers on the innocent party an immediate right to elect to affirm the contract,

[139] Section 69(1) of the Employment Act, 2006

that is, to ignore the breach and treat the contract as continuing or to rescind it by accepting the breach and this perse does not terminate the contract. The contract only comes to an end when the innocent party exercises the right to election by rescinding the contract. Therefore the matter will always depend on the circumstances of each case and decisions in other cases of little value.

ii) Absence from Work

An employee has a continuing obligation to be personally available for work during working hours. A serious breach of this obligation may be sufficient to justify summary dismissal. For example, where an employee resigns without notice or otherwise unilaterally abandons his or her duties without any intention of ever resuming them in the future. In other cases, the question as to what absence would be considered as sufficient to justify summary dismissal is one of fact to be decided having regard to such matters as the duration of the absence, the nature of the business of the employer, the status or role of the employee.

An employer may not be justified in summarily dismissing an employee if the absence is a single isolated act of negligence or mistake. For example if an employee fails to attend work on a day on the mistaken belief that it was a public holiday, an employer would perhaps not be entitled to dismiss such an employee summarily. However, a record of persistent absenteeism would probably be sufficient in most cases courts would also be more prepared to hold summary dismissal justified if the absence is deliberate and contrary to an express order of the employer. Konig V Kanjee Naranjee Properties, the plaintiff was informed that it was not convenient to the company for him to take his local leave at that time and was ordered to return to work, the employee stayed away from work. His summary dismissal was held to be justified[140].

It seems that in some cases even involuntary absence may amount to a repudiatory breach. In Hare V Murphy Brothers Ltd. It was held that absence to serve a prison sentence was considered as a repudiation of the contract by the employee. However, absence due to illness apparently can't amount to repudiation although at common law it may operate as frustration of the contract of employment.

iii) Insubordination to Authority.

[140] (1968)EA 233

An employee is under an obligation to obey all lawful and reasonable orders of the employer which are within the scope of his or her duties as defined within the contract. A refusal by the employee to comply with an employer's order may be a justification for summary dismissal.

The employees' obligation of obedience extends to only lawful and reasonable orders. An order which is clearly unlawful for example, if it involves the commission of an illegal act may be disregarded by the employee. Indeed, it is an implied term of a contract of employment that the employee shall not be required by an employer to perform an unlawful act. The reasonableness of an order is always a question of fact in each case but in general it depends on the scope of the employees' duties under the contract. Thus an order that does not relate to the nature of employees' duties as defined by the contract is not reasonable and that an employee is not under an obligation to obey it. Likewise an order given outside working hours and during the employees own free time cannot be reasonable. In East African Trading Co. V Seth, it was held that a private employer was entitled to require his employees to work on public holidays and that an order to work on a public holiday was reasonable.

In Laws V London Chronicles Newspapers Ltd, it was held that has summary dismissal for disobeying the managing director's order was held to be unjustified as there was a reasonable excuse for her disobedience in the circumstances.

Great care should be taken to avoid the erroneous impression that very willful disobedience of any lawful and reasonable order is sufficient to justify summary dismissal[141].

iv) Incompetence and negligence

A contract of employment is not a contract of *uberrimae fidei* and consequently an employee's failure to disclose his or her own shortcomings or incompetence to the employer during the formation of the contract does not of itself entitle the employer to rescind the contract unless perhaps where the employee's concealment of incompetence is fraudulent. On the other hand where at the formation of the contract of employment, the employee represents or holds himself out as possessing certain skills, the employer may rescind the contract for misrepresentation.

[141] (1959)1WLR 698

Therefore summary dismissal for breach of this warranty can only be justified where the employee is not reasonably competent to perform the duties under the contract but not otherwise.

v) Summary Dismissal

This is the dismissal of an employee on the spot and without notice. For instance, dismissal of an employee caught stealing. An employer is entitled to dismiss summarily, and the dismissal is justified, where the employee has by his or her conduct indicated that he or she has fundamentally broken his or her obligations arising under the contract of service[142]. In the case of Barclays Bank of Uganda v Godfrey Mubiru ,were the learned Judge stated that dismissal without notice or Summary dismissal to mean that the respondent could be dismissed without being heard if he breached the Contract of Service ,. where the employee is guilty of Sufficient Misconduct in his Capacity as an employee, he may be dismissed Summarily without notice and before the expiration of a fixed period of Employment. Then the Judge went on to hold that," lam satisfied that the respondent was liable to Summary dismissal if the appellant established unsatisfactory Conduct which to me is the same thing as misconduct[143].

Dr. Paul Kagwa v Plan International, the Court held that whereas under Summary dismissal an employer may not give notice to the employee, the reason for dismissal should be spelt out as the employee having fundamentally broken his /her obligation which reason must be proved in Court. That dismissal without notice is not synonymous with dismissal without being heard[144].

3.6. CIRCUMSTANCES UNDER WHICH A CONTRACT OF EMPLOYMENT CAN BE TERMINATED.

Termination of Employment is the discharge of an employee from an employment at the initiative of the employer for justifiable reasons other than misconduct, such as expiry of contract, attainment of retirement age[145].

The following are the justifications :

[142] Section 69(3) of the Employment Act , 2006
[143] SCCA N0.1/1998.
[144] Industrial Court Labour Dispute Claim N0. 175/2014.
[145] See section 2 of the Employment Act, 2006

i) Agreement

The Employment Contract can come to and end through the agreement of the parties. This agreement can be embodied in the Contract itself or it can be reached at any time after the Commencement of the Contract.

Birch and Humber V Univeristy of Liverpool, academic staff who had volunteered for early retirement under what was in effect a redundancy Scheme were held to have terminated their Contract by mutual agreement[146].

ii) Termination by Notice

Contracts of Employment are usually drawn up to last indefinitely. But people cannot be tied to each other forever, and at Common Law the rule grew up that either party could lawfully terminate the Contract of Employment provided that reasonable notice was given.

Termination shall be deemed to take place where the Contract of Service is ended by the employer with Notice[147].

The notice required to be given by an employer or employee shall be

a) Not less than two weeks where the employee has been employed for a period of more than six month's but less than one year.
b) Not less than one month , where the employee has been employed for a period of more than 12 months but less than 5 years.
c) Not less than two months, where the employee has been employed for a period of five , but less than ten years.
d) Not less than three months where the service is ten years or more[148].

At Common Law it is true that if reasonable notice to terminate is given, then the Contract is terminated lawfully and it follows that the employee has no claim for wrongful dismissal[149].

[146] (1985) IRLR 165.
[147] Section 65(1)(a) of the Employment Act, 2006
[148] Section 58(3) of the Employment Act, 2006
[149] Empasised mine.

iii) Termination on Unreasonable Conduct

Where the Contract of Service is ended by the employee with or without notice, as a consequence of unreasonable conduct on the part of the employer towards the employee[150].

iv) Termination on Attaining Retirement Age.

An employee's attainment of retirement age terminates an employment contract. The law does not deem it necessary for the employer to inform in advance the employee that the latter is about to a have his employment contract terminated because of attaining retirement age. Thus, notice requirement is excluded incase an employer is terminating the services of an employee upon attaining retirement age[151].

v) Termination on the Death of the Employer.

Where the employer's personal or legal position formed the basis of the Employment relationship with the employee, the death of the employer shall cause the Contract of Service to terminate one month from the date of the employer's death, unless it is otherwise legally terminated within that period[152].

vi) Death of the Employee.

In case an employee dies during the term of the Contract of Service, his or her heirs or legal representatives shall be entitled to the wages and any other remuneration due to the employee at the date of death[153].

[150] Section 65(1)(c) of the Employment Act, 2006
[151] Section 58(b) of the Employment Act , 2006.
[152] Scetion 29 of the Employment Act, 2006.
[153] Section 42 of the Employment Act , 2006

vii) Insolvency of the Employer[154].

The bankruptcy or winding up of the employer's business shall cause the Contract of Service of any employee to terminate one month from the date of the bankruptcy or the winding up orders.

In conclusion therefore incases where an employer terminates the Contract of Service without following the Proper procedures , the employer will have terminated then Contract of Employment unfairly, and it will be upon the employee to seek redress from then Courts of Law[155].

[154] Section 30 of the Employment Act, 2006.
[155] Emphasised mine.

CHAPTER FOUR

HOW THE COURTS HAVE TRIED TO ENFORCE, EXAMINE AND IMPLEMENT THE LEGAL FRAMEWORK ON UNFAIR TERMINATION OF EMPLOYMENT IN THE LABOUR INDUSTRY IN UGANDA

4.1. INTRODUCTION

One of the basic principle of natural justice is the right to be heard which is to be conducted with fairness. This means for fairness and justice to prevail in the society, the principle of natural justice must be adhered to[156].

The courts have tried to enforce and find ways forwards towards ending the unfair termination of employment in the Labour industry.

4.2. COURTS HAVE BASED THEIR IMPLEMENTATION THROUGH THE EMPLOYMENT ACT, 2006 OF UGANDA AND CASE LAW.

If court finds that a dismissal or termination is unfair, the courts may in its own discretionary powers-

a) Order the employer to re-instate the employee.
b) Order the employer to pay compensation to the employee[157].

The Courts have tried to provide remedies and implement strategies to see how an employee who has been unfairly terminated can be rewarded or Compensated[158]. The Courts have implemented the following remedies to an employee who has been unfairly terminated by the employer:

i) Damages.

[156] The principle of Natural Justice includes nemo judex insua causa "*...that no person can be the judge on his own cause.(see Wade R. W 2006) and other principle is audi alterem partem that is fundamental principle of fair procedure that both parties should be heard to present their case.*"
[157] See section 71(5) of the Employment Act, 2006.
[158] Emphasised mine

If court finds that a dismissal is unfair, the Courts may order the employer to Compensate the employee. This is illustrated in the case of Bank of Uganda v Betty Tinkamanyire, Kanyeihamba JSC held that Court will confine the Compensation for unlawful /unfair termination of employment of the appellant to the monetary value of the period that was necessary to give proper notice of the termination which is commonly known as Compensation in lieu of notice. That the contention that an employee whose Contract of Employment is terminated prematurely or illegally should be Compensated for the remainder of the years or period when they would have retired is unattainable in Law. Secondly that the acts of the plaintiff were not only unlawful but were degrading and callous (insensitive) and that a good case shown for the respondent to be eligible for the award of aggravated damages. That the evidence shows that she would have continued to serve the appellant faithfully, diligently and in an exemplary manner. Consequently the Court awarded the respondent aggravated damages in the sum of 100 million(one hundred million)[159].

Stanbic Bank of Uganda v Kiyemba Mutale, the employee expects to be protected from unfair and unwarranted Breaches of Contract of Employment by the employer. When an employee is wrongfully terminated, the Courts should use its powers to award adequate Compensation. There were no adverse reports about him, dismissing him in such a manner is inequitable and Court of Law should not allow it to go on without compensation[160].

Hence the Courts have tried to enforce this unfair termination by making the employer to pay damages inform of Compensation to the aggrieved party or employee[161].

In the case of Omunyokol Akol Johnston v Attorney General, the impression we get is that damages are limited to the value of the notice that the employee is entitled. The impression we get is that damages are assessed by the Court depending on the circumstances of a given case and in the discretion of the Court. As a result of the Courts disapproval of the manner of dismissal of the employees, Courts have generally granted general damages[162].

[159] Supreme Court Civil Appeal (SCCA) N0. 12/2007.
[160] SCCA N0.2/2010.
[161] Emphasised mine.
[162] SCCA 06/2012

ii) Reinstatement

If Court finds that the dismissal is unfair the Court may order the employer to reinstate the employee[163].

The Court shall order reinstatement unless the employee doesnot want to be re-employed or reinstated[164]. Such that the continued employment relationship will be intolerable, it is not reasonably practicable for the employer to reinstate the employee or the dismissal is unfair simply because the employer did not follow the right procedure.

The Couts have stated time and again that it cannot order reinstatement of any employee of any Company even iif he may be wrongfully terminated , the only alternative remedy in such circumstances is to order payment of Compensation.

Jabi v Mbale Municipal Council , the learned Judge held that where the dismissal was wrongful by whatever reason, the appropriate reparation for such dismissal was compensation and not reinstatement on the job for an employer had unfettered right to dispense with the services of an employee[165].

Dr. Omona Kizito v Marie Stopes Uganda, claim arising from a memorandum of claim filed in this Court alleging that the respondent unlawfully terminated the employmenty of the claimant.we find that the claimant was not accorded a fair hearing before a competent disciplinary committee and because of this fact and the finding of this court that in fact the claimant was sick during the period in question and the respondent was aware, the termination of the employment in our considered opinion was unlawful and hence the claimant was compensated for general damages for the unlawful termination[166].

Severance Allowance.

The employer is required to pay severance allowance to the employee who has been in a continuous service of six months or more under the following situations:

[163] See section 71(5) (a) of the Employment Act, 2006.
[164] See subsection 6 of section 71 of the Employment , Act,2006.
[165] (1975) HCB 191.
[166] Industrial Court Labour Dispute Claim N0. 033/2015

a) The employer is unfairly dismissed by the employer
b) Employee dies in service other than an act of serious and willful conduct.
c) Employee terminates his Contract due to physical incapacity
d) Contract is terminated by insolvency or death of the employer
e) The Contract is terminated by the Labour Officer following the employer's refusal to pay wages[167].

However no Severance allowance is due to an employee who has been summarily dismissed. The amount payable is negotiable between the employer and the Labour Union/ Workers and any bonus or other payment paid to the employee is taken into account[168].

In Donna Kamuli v DFCU Bank , the industrial Court held that the respondent's submission that the prayer for severance allowance does not arise since the termination was not unfair has already been defeated by the Courts holding that the termination was unlawful. That however Section 89 of the Employment Act, 2006 provides for calculation of Severance pay shall be negotiable between the employer and the worker or the Labour Union that represents them. That the intention of the legislature was to allow the workres and the employers in a given Organisation to employ a method of calculation across the board and indeed every other employer in compliance with this provision already has a system of calculation in place. That it is the Courts' decision therefore that should such a method be in existence by the time of the award, the same should be applied to reach at the allowance payable to the claimant.

In the event that there is no negotiated method of calculation by the time of the award, the respondent would have been in breach of section 89 of the Employment Act.

In case the discretion of the Court would come into play in accordance with Article 126(2)(c) of the Constitution. That the claimant claimed severance pay of one month for every year worked which is reasonable, that subject to the verification of the years the claimant worked for the respondent, the value of severance allowance is granted[169].

[167] See Section 89 of the Employment Act,2006.
[168] Ibid.
[169] Industrial Court Labour Dispute Claim N0.002/2015.

CHAPTER FIVE

DISCUSSES THE FINDINGS, CONCLUSION AND RECOMMENDATIONS ON UNFAIR TERMINATION OF EMPLOYMENT IN THE LABOUR INDUSTRY

5.1. INTRODUCTION

In this last Chapter the study presented the Summary of the research findings of the work. Conclusion and recommendations therewith. Under this perspective the paper helped the researched problem on the administration of justice to meet the principle that justice need not only be done to the employees in Uganda but it must also be seen to be done.

5.2. SUMMARY OF THE FINDINGS

The work examined the position of Labour Laws in Uganda and in so doing it looked upon the Statutes , Judicial System and the Interpretation of the procedural provisions and sometimes the approach of members of the bench..

It was the finding of the research that the major challenges under the Liberal Market Economy included how to control private Company and business entities where most of the employee's related conflicts emanate. However the new Labour Laws address some of Contemporary challenges or issues such as all forms of discrimination, favourable working conditions and so on and it also provides that if the employer terminates the employee unfairly and refuses to re-instate the employee, the employer is obliged to pay compensation.

Also it was the finding of the research that it has been a Common practice that Courts and tribunals apply an intuitive test of their own as to what a reasonable employer might do but the trouble with such test is that it tends to have regard to what employers commonly do rather than the Standard of Common practice in the Law of Negligence. It is difficult to reverse this trend without saying that most employers are acting unreasonably.

Employers frequently abuse the rights of their employees at will. Policies and strategies contained in the Law documents require well co-ordinated actions and Commitment from the Government and all agencies in order for these employment policies to be fully adhered to.

Thus , the failure of enforcing the Law has resulted into situations where workers are left at the mercy of employers. Workers are not aware of their rights and continue to suffer at the hands of their employers[170].

5.3. CONCLUSION

To sum up , in the International, African Region in general and Uganda in particular there appears to be no Legislation whether Principal or Subsidiary which has been passed directly to implement the provisions of this important findings. The Courts decisions present a consisitent pattern with careful adherence to the Common Law, although there are some occasional awards which have ordered the re-statement of dismissed employees.

Justice Mulenga stated that in the case of Kayonda v The Co-operative Bank, he contended that while an employer is not under duty to give reasons for terminating the services of his employee, the evidence showing the circumstances which led to the terminations of the employees services are necessary to assist the court decide whether the termination was fair . He further stated that it is a circumstances order an employer to employ an employee whom he does not wish to , he submitted that the above was a general rule and that there are circumstances when the above rule cannot be held to apply[171], as was in the case of Hill v Person &Co ltd[172].

The government should provide a conducive environment by making all appropriate measure to its citizens. This includes providing education to citizens including the worker because during the study of this research. It was found out that employees were not aware of the Law especially the Laws touching on their areas of work.

5.4. RECOMMENDATIONS

Following the conducted research, the researcher is hereby suggesting the following recommendations which are likely to give efficiency in due course. It is recommended that during termination of employment contract the employer should seek to give as much warnings and as early as possible for impending redundancy or termination as to enable employees who

[170] Emphasized mine.
[171] Supreme Court Civil Appeal No. 10(1991).
[172] (1972)Ch 305.

may be affected by termination to take early steps and to consider possible alternative solutions and if necessary find alternative employment elsewhere.

However, there is an exception to this , for example those works which by nature need the person to be careful and very keen do not need much warning due to nature of the work[173].

The employer should consult the Union as to the best means by which the desired management results can be achieved fairly and with little hardship to the employee as possible. In particular if it is the case of redundancy the employer shall seek to agree with the Union the criteria to be applied in selecting the employees for redundancy or termination. When a selection has been made the employer shall consider the Union whether the selection has been made in accordance with those criteria[174].

Whether or not an arrangement as to which criteria to be adopted has been agreed with the Union, the employer should seek to establish criteria for selection but can be objectively checked against such things as attendance record, efficiency at job, experience or length of service.

The employer should ensure that the selection is made fairly in accordance with the criteria and they will consider any representation or recommendation made by Employee Union. The employer should seek to see whether instead of terminating an employee he/she could offer him/her alternative employment so as to keep his/her work and gain for his/her life.

It is further recommended that there is need to provide adequate facilitation and personnel to enforce the law to achieve the maximisation of productive employment in all sectors of the economy. Equally there is need to strength the Ministry in terms of human resources and equipment to perform its mandatory functions effectively and efficiently[175].

The National Union of Trade Unions and Federation of Ugandan Employers need to strengthen their efforts to enable them fulfill their rightful mandate of upholding rights at the workplace and to promote harmony.

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[173] Emphasised mine
[174] ibid
[175] Ministry of Gender, Labour and Social Development.

For these policies to be realised there is need to sensitise workers on the basic rights and how to protect them. There is also the need for sensitising the workers on work ethics and the necessity of cultivating a productive oriental culture.

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