THE LAW RELATING TO UNFAIR TERMINATION OF EMPLOYMENT CONTRACTS IN UGANDA: ACRITIQUE OF LABOUR LAWS.

BY

EMEETAI RACHEAL

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DECLARATION

I **Emeetai Racheal**, declare that this research report is my own and that it has never been submitted before by any other researchers in any other higher learning institution or university for any purpose.

SIGNATURE.....

NAME..... EMEETAI RACHEAL

DATE..... 19 | 6 | 2015

APPROVAL

This research report has been submitted to the faculty of Kampala International University for academic purposes after being supervised and approved by

SIGNATURE.....

SUPERVISOR.....

MRS. LYDIA NABIRYO

DATE. 19/6/2015

H.O.D Commercial law
23/6/2015

DEDICATION

This work has been dedicated to my dearest parents; pastor Billy Ray and pastor Rachel Ray for their tireless support through the four years of law, their love, care and for making every step possible in difficult times and for being there for me big time. May God bless them abundantly.

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TABLE OF CONTENT

ACRONYMS

ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organizations
NEPAD	New Partnership for Africa's Development
UDH R	Universal Declaration of Human Rights
SAP	Structural Adjustments Programme

ABSTRACT

The study sought to establish the effectiveness on the legal framework of the law relating to unfair termination of employment contracts in Uganda: critique of labour law and was driven by three objectives: The first objective examined the efficacy of the legal framework on termination of employment contracts in Uganda, the second objective assessed the legal framework on termination of employment contracts in Uganda, the third and last objective identified the possible solutions of how to improve the legal framework termination of employment contracts in Uganda.

To achieve these objectives the researcher employed library research study of various secondary data such as books, thesis, dissertations, Government Policies, journals, Commission reports, Acts of the parliament, International treaties, articles consulted in various libraries ,equally various key respondents were interviewed. The study utilized qualitative research methods; two primary data collection instruments were used:

Structured Questionnaire and Interviews. The collected data was presented and analyzed to decipher findings.

The major finding of the study was that Employers frequently abuse the rights of their employees at will, Policies and strategies contained in the law documents require well- coordinated 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 hands of their employers.

CHAPTER ONE

1.0 Introduction

This study was focused on the law relating to unfair termination of employment contracts in Uganda: a critique of labour law

This presents the background of the study, problem statement, objectives of the study, research questions, scope of the study, significance of the study and chapetrisation.

1.1 Background of the study.

"A man's right to work is just as important to him as if not more important than his rights of property. These courts intervene everyday to protect rights of property they must intervene for the right to work." As per Lord Denning MR.[1] An employer has an obligation to pay the employee the remuneration for his/her services agreed under the contract. It cannot be doubted that this a Fundamental term of the contract of employment a breach of which entitles the employee to rescind the contract without notice and claim for damages.[2] The basis for the present applicability of the English common law[3] in Uganda was to be found in the provisions of the Judicature Statute 1996[4] [4]whose provisions are essentially a re-enactment of the provisions of the Judicature Act 1967[5] which the 1996 statute repealed and replaced. The only

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[1]See the case of Lee Showner's Guild of great Britain

[2] Konig vs Naranjee Karanjeel

[3] Act No.11 of 1967

[4] Statute No.13 of 1996

[5] Ibid (1)

significant difference was that the 1996 statute appears to have dropped the famous reception date of 11th august 1902[6].

This date which had its origin in the Uganda Order in Council of 1902 was incorporated in section 2(b) (i) of the Judicature Act 1962[7] which stated that the High Court of Uganda would exercise its jurisdiction inter- alia in conformity with the substance of the common law, the doctrines of equity and the statutes of general application in force in England.[8]

The Judicature Act of 1967 which repealed the 1962 Act not only continued the application of the English common law in Uganda. it also gave a further lease of life to the reception date when it provided that[9] the expressions 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, immediately before the commencement of this Act.

In general, a contract of employment is one whereby one person called the employee agrees to serve another called the employer by rendering personal services[10] to him/her or to others on his/her behalf and to obey his/her reasonable orders within the scope of the duty undertaken return for money remuneration. It is usually created by formal agreement between the employee and the employer and may last for a specific agreed period or as is more common. It continues indefinitely

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[6] When Uganda received its own legislation

[7] Cap 34 laws of Uganda 1964 vol.11

[8] 11th August 1902

[9] Section3 (5)

[10] For this reason a contract of employment cannot be assigned or subcontracted

until it is ended by one of several the modes of termination. During its continuance, the employee will work at regular hours, during which he/she is required to devote his/her full time to the employers business. He usually works at a set place of work such as an office or factory and is given a job description or title and receives regular wages usually weekly or monthly. This regular contract of employment, which under common law is known as a contract of hiring and service, does not in general present any problems of identification, for in the words of Lord Denning[11] you can recognize it when you see it. This is because it is really based on a socioeconomic phenomenon of all modern societies which necessitates the reciprocal sale and purchase of labour between employees and employers. In Teveli vs Pride (T)[12], the Court held that the company breached the principles to natural justice by not availing the applicant the right to be heard and hence the termination was unfair.

1.2 Background to 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 laws in Uganda. Labour law first made its appearance in English law and it was called the law of master and servant, which then was concerned with regulating the relationship between the parties to the agreement then known as the contract of hiring and service or in short the contract of service. These parties as the name itself suggests were called master and servant.

The adoption of the technology of master and servant was no doubt influenced by the historical fact that the institution of employment or wage labour of which the law

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[11] Harrisons limited vs Macdonald Evans (1952) I.T LR 101 at 111

[12] Civil case No. 47 of 2006 high court of Tanzania labour division (unreported)

of master and servant was a legal manifestation, was a transition from the institution of serfdom with which it initially co existed for sometime but which it eventually replaced.

This decree was the only legislation which contained some provisions on termination of contract of employment. Though enacted in 1975, it came into force in 1977.[13] It consolidated the provisions of the Acts which it repealed[14] namely, the Uganda Employment Act[15,] the Employment of Children Act[16] and the Employment of Women Act[17].

The fact that some of the provisions of the now repealed Uganda Employment Act[18] are re-enacted by the decree has apparently led to some un-certainty as to the extent of the application of the decree. This is because at the time the Uganda Employment Act was repealed. Practically all its provisions were restricted in application to only employees earning less than a certain specific amount of wages which amount was so low that it confined the application of the Act to manual labourers, domestic servants and other employees in similar types of employment[19]. This restricted application of the Act is explained by the fact that it was the last of a series of colonial legislation intended to apply to only what were during those colonial days referred to as natives.

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[13] Statutory instrument No.31 of 1977

[14] Section 67

[15] Cap 192 laws of Uganda

[16] Cap 183

[17] Cap 193

[18] Cap 192

[19] Statutory instrument 192-3

The ordinance remained in force until the enactment of the Uganda Employment Ordinance I946.[20] This later Ordinance departed from the earlier enactment in that not only did it substitute the terms master and servant with the terms employer and employee, it also dropped the method of limiting the application of the ordinance on the basis of race and type of employment and instead introduced a general limitation based on amount of wages.

However although the 1946 ordinance departed from the earlier ordinance such departure was only in letter and not in spirit. This is because the maximum monthly, weekly and daily rates of wages which were fixed by the governor to define the application of the Ordinance generally correspond with the maximum rates then payable to African manual labourers[21]

After independence, the Uganda Employment Ordinance by virtue of the provisions of the Laws Revised (Edition) Act 1965[22] was re-designated as the Uganda Employment Act[23] earlier by virtue of the public officers (transfer of functions) Order.[24] The power of the governing council to limit the application of the Ordinance became exercisable by the minister. It must be pointed out that the present Employment Act being largely a string of provisions from old colonial statutes, most of its provisions are of little relevance and need major overhaul to bring them into line with modern employment conditions.

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[20] Ibid

[21] Legal notice No. 34 of 1949

[22] Act 15 of 1965

[23] Cap 192 of 1964

[24] Legal notice No.161 of 1962

1.3 Statement to the Problem

Employment Act [25]2006 defines termination of employment to mean discharge of an employee from an employment at the imitative of the employer for justifiable reasons other than misconduct such as expiry of contract, attainment of retirement age.

A contract of employment was contained in a provision which enables either party to terminate the contract by giving notice. In most contracts that provision was to be by way of express term. Occasionally the contract was silent on notice and the courts may decide whether to imply a term.

There is now a substantial amount of legislation, which gives employees statutory rights, including rights to minimum notice on termination and protection against unfair dismissal.

In Kyobe v East African airways[26]. The trial judge, taking into account the position of Kyobe as general manger and such like factors, concluded that a notice period of six months would be sufficient. The court of appeal for East Africa refused to interfere with the judge's finding those six months was a reasonable notice period.

The result has also been that decisions subsequent to the reception date which in their effect modify the common law have been followed and applied by Ugandan Courts. 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

[25] Section 2
[26] [1972] EA 403

appropriate. It is this state of affairs that will enticed the researcher to research on the law relating to termination of employment contracts in Uganda.

There is range of national, regional and international norms and standards that are relevant to the question of state responsibility to provide affordable environment and rights to its subjects. One of them is the right to work. These standards and rights are contained in various international instruments such as Universal Declaration of Human Rights of 1948.[27] International Labour Organization on Termination of Employment Convention of 1982,[28] Article 6 of the ICESCR of 1966.[29] These have been associated with rights of everyone to gain his/her living by work and have opportunity to work which he/she freely chooses or accepts.

The UDHR[30] states that this right also includes protection against non-employment. It is due to this centrality that to terminate a person from his/her employment is much as depriving that person his/her right to survival; Lord Denning, M.R (as he then was) in the case of Lee v Showmen's Guild of Great Britain[31] remarked that: A man's right to work is just as important to him as if not more important than his right of property. These courts intervene everyday to protect rights of property. They must also intervene to protect the right to work.

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[27] Universal declaration of human rights of 1948 under Article 23 (1)

[28] See also Article 4 of international labour organization and termination of employment convention of 1982

[29] Article 6 of the International covenant on economic, social and cultural rights of 1966

[30] Ibid No.26

[31] [1952]2 QB 329. This was sharp remarks made by Lord Denning when he was deciding in the case of Lee vs Showmen's Guild off great Britain and the right to work and how the link with the right to life and employment needs legal protection.

1.4 General objective of the study

The study was examined in the electiveness on the legal frame work of the law relating to termination of employment contracts in Uganda.

1.4.1 Specific objectives:

It will specifically, be:

1. Examine the efficacy of the legal framework on termination of employment contracts in Uganda

2. Assess the legal framework on termination of employment contracts in Uganda

3. Identify the possible solutions of how to improve the legal framework termination of employment contracts in Uganda.

1.5 Research Questions

1. What is the efficacy of the legal framework on the termination of employment contracts in Uganda?

2. What is the legal framework on the termination of employment contracts in Uganda?

3. What is the possible solution of how to improve the legal framework on termination of employment contracts in Uganda?

1.6 Significance of the Study

i. The research findings will help organizations especially labour unions adopt more realistic approaches to termination of employment with regard to employees.

ii. The results of the study will be useful to future researchers who might be interested in a related field.

iii. There is no doubt the result will contribute to the existing laws on termination of employment.

iv. There is a greater hope also that the study will be a source of great experience and a contribution to the academic career of the researcher.

1.7 Existing Knowledge Gaps

Most of literatures which will deal with the labour laws have dealt with many rights of workers such as the right to form trade unions in the work place, the right to be paid for overtime work, sick leave, maternity 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

Conclaves R. E (1974),[32] the researcher will use this authority because it critically analyzed important rights which the employees/workers are entitled including the right to work as his/her means of survival not unfair termination of work instead. But the author of book has not discussed much on the right to work but rather on other employee's right such as formation of trade unions, right to favorable and fair gains through the work.

Angeret (1998),[33] the book portrays the real picture of the old labour laws which was repealed and replaced by the new Act and the book will help the researcher to make

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[32] Conclaves R. E (1974). The politics of trade unions and industrial relations in Uganda.

[33] Angeret (1998) trade unions in Uganda principles and cases on termination of contract of the employment.

comparison if there is any change in her area of the research. However the authors of the book have not discussed in details the rights of the employee/workers during the termination of employment contracts.

Simon Honey baJi and Bowers (2OO6),[34] the book discussed in details on termination of employment and the researcher finds the book to be valuable to her areas of the study. Although the authors of the book have not discussed the right to work hut rather termination of employment meaning ending of employment contract without regarding whether it is fair or not.

Robert Upex, Richard Benny and Stephen Havety; Labour Laws (2005),[35] the book is resourceful on the rights of employee and the book provides the remedies which the workers/employees are entitled but the author of the book has not shown what is the position. if the employee is terminated unfairly.

Uganda Human Rights Reports; the reports of year (2005), (2006), (2007) and (2008)[36] these reports has enlighten the researcher to discover that many Ugandans are not aware of Laws of the land including those which touch on their areas of work of which, the results of it is unfair termination of employment contract and are left with nothing. But the reports have not exhausted what has to be done to bring

[34] See Simon Honeyball and Bowers (2006) 4th edition

[35] Robert Upex, Richard Benny and Stephen Havety; Labour Laws (2005) 5th edition published in United States by Oxford University press inc NEWYORK at page229

[36] Uganda Hunan Rights Reports; the reports of year (2005), (2006) and (2007) and (2008)

awareness to the employees/workers to know their rights and duties in the work place.

Hugh Collins .[37] Labour Law Text and Materials: the book is useful to the researcher simply because there are detailed information about employment rights and entitlement to employees.

1.8 Review of Related Literature

In general, wrongful dismissal 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 the contract of employment. Dismissal was wrongful in all cases where an employee who has not committed a breach of the contract justifying summary dismissal, was dismissed without notice or insufficient notice.[38] In the case of an employee who is employed for affixed duration, unless the contract specifically provides for terminating by notice. He/she can only be dismissed for fundamental breach. Consequently in the absence of such a breach, termination by notice before the expiry of the period of the contract will amount to wrongful dismissal.

Summary dismissal of an employee for a breach which the employer has already condoned is also wrongful. Condonation of a breach by an employer refers to the situation where an employer with full knowledge of the break committed by an employee elects not to rescind the contract by an employee. Therefore, he/ she

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[37] Hugh Collins (2005) Labour Law Text and Materials: Hart publishing Oxford and Poland Oregon at page 494

[38] Lukenya ranching and farming cooperative society vs Karoloto (1979)

losses his/her right to summarily dismiss the employee for that particular breach. And if he/she does so, the dismissal was wrongful[39].

Some contracts of' employment provides disciplinary procedures to be followed in cases of breaches of the contract before the employee can be dismissed. Where such procedures are provided, they constitute a restriction on the exercise of the employer's right to summarily dismiss for breach in the sense that dismissal was wrongful unless the procedures are first complied with.[40] In *Jabi vs Mbale Municipal Council,*[41] Ssekandi J. held that an employee on permanent and pensionable terms cannot be lawfully dismissed summarily for an alleged breach without following the rules of natural justice and in particular of being informed of the charges against him and being afforded an opportunity to give any grounds on which he relied to exculpate himself. He took the view that where this is not done the dismissal would be wrongful.

The decision was revolutionary because under common law there appears to be no general requirement that rules of natural justice have to be followed in case of dismissal from employment. A part from legislative or contractual provision, common law only recognised such a right with respect to persons occupying a public office called office holder.

However, it is submitted that Ssekandi's decision is more reasonable than the present position under common law. The justification for this position at common law appears to be that an employee has no right of property in his/her job.

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[39] Jabi vs Mbale Municipal Council

[40] Ibid

[41] Ibid

This of course sounds unreal in a modem industrial context. The truth is that for many employees a job is probably the only property that they have the sense that it is their only means of livelihood. As already indicated an employee who is wrongfully dismissed cannot elect to affirm the contract. He/she has to treat the contract was terminated and sue for damages.

Where an employer suspends an employee in such a way that the employee is deprived of his/her remuneration he/she is entitled to under the contract whether by way of regular pay or by way of loss of opportunity to earn any bonus, commission, it amounts to a repudiation of the contract and the employee is entitled to rescind the contract and sue for damages. However, where the contract expressly[42] or impliedly[43] confers a right on the employer to suspend, then no breach is committed. Also at common law no breach will be committed if the suspension did not jeopardize the employees right to receive the agreed remuneration since it was considered that an employer had no obligation to provide work as long as he/she paid the contractually agreed remuneration.[44]

In general once a contract has been concluded, it cannot be materially altered unless such alterations are mutually agreed or are expressly or impliedly authorized by the contract. Thus unilateral alterations to any material terms of the contract of employment may amount to repudiation of the contract so as to entitle an employee to rescind it without notice. However the question whether an alteration amounts to a repudiation can only be answered after a careful examination o the provisions of

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[42] National trading cooperation vs Kitvo (1973)

[43] Ddmulira vs National insurance cooperation

[44] Turner vs Sawdon (1901)2 KB 653

the contract because an alteration which can be said to be authorized by the contract cannot amount to a breach or if in all the circumstances of the case it enroot he said to the material then it cannot give rise to a right to rescind the contract.

1.9 Research Methodology

The researcher was to employ library research study of various secondary data such as books, dissertations, Government Policies, journal, Commission reports. Acts of the parliament. International treaties, articles consulted in various libraries.

1.9.1 Data Collection Methods

The research data included both primary and secondary data. The data collection methods that were employed in the collection of relevant data were as follows: As source of primary data interviews were solicitated to key respondents with various organizations including labour union, and Kampala Human Rights Chapter. This work involved a study of various library materials such as books, journals, academic papers, articles, case law and research reports and also electronic data materials as source of secondary data. The following ne libraries were of great importance and were consulted: Kampala International University and Human Rights Centre Kampala

1.9.2 Field Research

The researcher conducted various face to take interviews in Kampala.

1.9.3 Time Schedule:

This research was expected to cover within Four months.

1.9.4 Synopsis

This research paper consists of five chapters;

- Chapter one introduced the problem stating some background and the literatures that are available, reviewing the problem and some other preliminary information.

- Chapter two included the general overview of the right to work under Ugandan legal system and international instruments and how they restrict the enjoyment of ones labour.

- Chapter three dealt with instances of termination of contracts.

- Chapter four dealt with research findings and analysis.

- And chapter five included summary of findings, recommendations, and conclusion.

CHAPTER TWO

OVERVIEW OF LEGISLATION ON WORKERS RIGHTS

2.0 Introduction

This chapter presents a review of literature relating to the variables under investigation. The related literature is presented with the objectives of the study and cited to suit the legal framework of the law relating to termination of employment contracts in Uganda. The researcher was to make a number of links that arise from the literature. The chapter therefore shed light on the right to work before providing instances of termination in the next chapter.

2.1 The Ugandan Legal System

The Ugandan legal system was to be 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 Appeal as a supreme court of 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.

2.1.1 Labour legislation in Uganda

The current position of labour laws and workers rights and working class in Uganda was only 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 contract could be terminated for no reason at all[45]. 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 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 Mwalusanya, J.[46]

Between the mid-1970 and early 1980's 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.[47] In that circumstance generally bore the connotation of government or something connected with government.[48] But later on the government changed from state owned economy to liberalized economy. These changes were contributed as a result of adopting SAPs,[49] but also the pressure from the World Bank.

Starting from the early 1990s the government effected its decision to open the economy to any interested investor from anywhere in the world. The doors for investment in Uganda by any interested person in the world were opened while

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[45] Supra note 15 at page4

[46] See the case of Mahona vs University of Dar es salaam [1981]TLR 55

[47] See S. Howard and H. Said (2005) The field research on the impact of globalization on the rights of workers at page21

[48] Ibid

[49] SAPs mean structural adjustment programme

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.

2.1.2 Economic and Social Rights in Uganda

Economic and social rights were provided under the provision of ICESCR[50] and some of them are under the Ugandan Constitution[51] 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[52]. Under the laws of Uganda, the right to work is enshrined under the Constitution of Uganda[53] as well as the Employment Act[54]. It is also recognized and provided for under the provision of international human rights Instrument which Uganda has ratified, for example ICESCR[55] 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

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[50] ICESCR

[51] It provides for the basic rights and duties to work and fair remuneration other social rights have not been included in the constitution as basic rights

[52] Helen Kijo- Bisimba and Chris Maina Peter (2005) Justice and rule of law in Tanzania

[53] Ibid

[54] 2006

[55] Article 6

his/her living by work which he/she freely chooses or accepts and states will take appropriate step to safeguard this rights".[56]

The right to development through work is an inalienable human right 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.

2.2 Employment Protection in Uganda

The advent of employment standards legislation altered and expanded the protection afforded to blue collar and low skilled workers. While the statutory notice periods are to be treated as minimal and do not pre-empt the right to longer reasonable notice periods, they have more relevance for the vast majority of employees than any rights they may have at common law.

In looking at termination of employment either by dismissal or resignation, there are two legal aspects, which must be considered. First whether the termination has been contractually lawful, that is without breach of any term in the contract of employment, secondly whether the termination contravenes by legislation.

Employment Act provides that termination shall be deemed to take place in the following instances.

a) Where the contract service is ended by the employer with notice.

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[56] Ibid

b) Where the contract of service being a contract for a fixed term or task, ends with the expiry of the specified term or the completion of the specified task and is not renewed within a period of one week from date of expiry on the same terms or terms not less than favourable to the employee.

c) 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.

d) Where the contract of service is ended by the employee in circumstances where the employee has received notice of termination of the contract of service from the employee, but before expiry of the notice.

Consequently a proper notice should not be retroactive or backdated. Once a notice is given it cannot be unilaterally withdrawn except with the consent of the other party[57] The contract of the employment terminates at the expiry of the notice. In the case of *Mahona v universitv of Dar es salaam,*[58] 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 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 the researcher found out that, many companies do not have voluntary agreement with their workers. Furthermore many people in different categories to companies did not even know what the voluntary

[57] Riordan vs War office (1959)1 W. L.R 1046

[58] [1981] TLR 55

agreement is. Voluntary agreement is important because they define the contractual rights and obligations of the parties.[59] 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.

2.2.1 Dissolution of Partnership and winding up of a Company

Where the employer is a partnership, dissolution of the partnership was a repudiation of the contract of employment unless there is a provision in the contract to the contrary.[60] Where the dissolution is permanent, the employee has no alternative but to rescind the contract but if the dissolution is not permanent but merely involves a change of membership of the partnership it seems that the employee can waive the breach and affirm the contract.

However the agreement to terminate was made after the commencement of the employment and it may be expressed or implied from the circumstances. An agreement to terminate a contract of employment was implied if parties enter into another contract which necessarily replaces the initial contract.

The death of an employee terminates a contract of employment although it does not prejudice the legal claims of his/her or personal representatives against the employer with respect to any accrued rights of the deceased employee such as unpaid wages. It is also true that if the employer is an individual his/her death also terminates the contract of employment.[61]

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[59] Voluntary agreement is an agreement reached between employee and employer stating their right and duties and must be in writings. This can be used as a tool by the employee to enforce their rights.

[60] Brace vs Calder (1895) 2 Q. B 253

[61] Farraw vs Wilson (1858) L.R. 4 CP 589

The principles of common law doctrine of frustration are well established[62] and apply equally to contracts of employment. An obvious example of a frustrating event is where an employee whether as a result of sickness or accident is rendered permanently incapable of performing his/her obligations under the contract. For example if a person who is employed as a driver has the misfortune of losing his/her sight or having both his/her legs amputated.

2.2.2 Promotion and Protection of Right to Work Under International Human Rights Instruments

The right which was associated with employment was 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 UDHR[63] which under article 23 (1) explains that everyone has the right to work, to free choice of employment and favorable condition of works and to protection against unemployment. Sub article (2) of the same instrument provides that everyone without any discrimination has the rights to equal pay for equal work and under sub article (3) it provides that everyone who works has the right to just and favorable remuneration ensuring for himself/herself and his/her family an existence worthy of human dignity.[64] The 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

[62] Chesire and fit foots Law of contract

[63] See Article 23 of UDHR of 1948

[64] Ibid

everywhere. It calls upon all the member states to put efforts to achieve the goals of realizing justice, liberty and human rights for all.[65]

Also these rights have been elaborated in the 1966 ICESCR[66] in which the rights to work includes; "The right of everyone to the opportunity to gain his/her living by work".[67]

International labour standards are first and foremost about development of people as human beings. in the ILO's Declaration of Philadelphia of 1944. The international community recognized that "*labour is not a commodity*"[68]Indeed, labour is not like an apple or a television set, an inanimate product that can be negotiated for the highest profit or the lowest price. Work is part 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. In short, economic development is not undertaken for its own sake but to improve the lives of human beings. International labour standards are there to ensure that it remains focused on improving human life and dignity.[69]

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[65] The statement of United Nations Secretary general 60 years of UDHR and dignity for all of us (special ed UN Newyork 2008)

[66] ICESCR

[67] Article 6 of ICESCR

[68] See http://www.wikipedia ILO/decent work/htm accessed 6:55GMT on 2nd June 2009 Note 4 of ILO: Descent work and the informal economy report vi International labour conference 9th session Geneva 2002 at page 39-54

[69] Still on 90th session Geneva 2002 page 39-54

2.3 An International Legal Framework for Fair and Stable Globalization In Relation To Right to Work

Achieving the goal of decent work in the globalised economy requires action at the national and international level. The world community responded to this challenge in part by developing international legal instruments on trade, finance, and environment, human rights and labour. The ILO 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. The ILO's unique tripartite[70] structure ensures that these standards are backed by governments, employers and workers alike. International labour standards therefore lay down the basic minimum social standards agreed upon by all players in the global economy.[71] 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.

[70] ILO has three involving group in eradication of unemployment that is government employer and employee

[71] International labour conference 90th session Geneva 2002, a fair globalization page 80-99

CHAPTER THREE

3.0 Introduction

This chapter of the study was systematically presented in the scenarios in which termination of employment contracts was effected. The chapter highlighted instances where the employer is by law warranted to effect termination, the court's opinion on termination of employment is also articulated to support this view.

3.1 Termination upon Fundamental Breach

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, that is, to ignore the breach and treat the contract as continuing or to rescind it by accepting the breach and this per se does not terminate the contract. The contract only comes to an end when the innocent party exercises the right of 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. However in general the court will have to consider such matters as the responsibility on status of the employee the nature of the business or industry of' the employer.

3.2 Absence from work

An employee has a continuing obligation to be personally available for work during working hours. A serious breach of this obligation will sufficiently justify summary dismissal. For example where an employee resigns without notice or otherwise unilaterally abandons his/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 was to be justified in summarily dismissing an employee if the absence is a single isolated act of negligence[72] 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.[73] 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. In *Konig v Karanjee Naranjee Properties,*[74] 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.

It seems that in some cases even involuntary absence may amount to a repudiatory breach. In *Hare v Murphy Brothers Ltd*[75] it was held that absence to serve a prison sentence was considered as a repudiation of the contract by the employee. However

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[72] Fillieul vs Armstrong (1837) 7

[73] East African trading Co. vs Bseth (1907) 101

[74] (1968) E. A 223

[75] (1973) CR 33

absence due to illness apparently cannot amount to repudiation[76] although at common law it may operate as frustration of the contract of employment.

3.3 Disobedience

An employee was under an obligation to obey all lawful and reasonable orders of the employer which are within the scope of his/her duties as defined by the contract. A refusal by the employee to comply with an employer's order may be a justification for summary dismissal. However, in order for disobedience to amount to a sufficient summary dismal several factors should be considered.

There seems to be a distinction between an order and a mere request or advice.[77] An employee is not under a legal obligation to comply with a mere request as opposed to an order,[78] but it may be observed that in practice the dividing line between the two will be a fine one. However an order need not be a verbal command as it may be embodied as well in written instructions or rules and it may be either a positive requirement to perform some act or an injunction to refrain from some specified act or course of conduct.

The employees' obligation of obedience extends to only lawful and reasonable orders.[79] 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

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[76] Except perhaps where it is self induced

[77] Lewis vs London Chronical newspapers (1959) W.L.R 698

[78] John Luing & sons ltd vs Best (1968)

[79] The burden of proof on the employee

perform an unlawful act.[80] 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 the employees duties as defined by the contract is not reasonable[81] and an employee is not under an obligation to obey it. Likewise an order given outside working hours and during the employees owns free time cannot be reasonable. In *East African Trading Co. V Seth*[82] 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.

The disobedience should be willful. This means that where there is reasonable excuse or justification for an employee's failure to comply with an order, summary dismissal is in general not justified. In *Lewis V London Chronicler Newspapers Ltd* [83] it was held that her 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. In *Olocho v City Council of Nyandarua,*[84] it was held that willful disobedience such as to justify summary dismissal without notice must be serious

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[80] Gregory vs Ford (1951) 1 ALL ER 121

[81] Ottoman Bank vs Chakarian (1930) A. C 277

[82] (1930) U.L.R 21`

[83] Ibid

[84] (1966) E. A 467

and not relatively minor or trivial in the circumstances of the case. It must also be a repudiation of the circumstances of the case.

3.4 Breach of the implied Duty of faithful Service and fidelity

It is not possible to give a precise definition of the scope of the implied term of faithful service and fidelity. Some of the duties of faithful service and this include the duty to work diligently and only for the employer during working hours, not to take or retain any secret profits obtained during the course of employment, to respect the employer's trade secret and other confidential information and not to willfully disrupt the employers business or affairs.

However, irrespective of the particular form in which the duty of faithful service and fidelity manifest itself, it has one basic characteristic which is that it is founded on trust and confidence. For this reason, where summary dismissal is did on a breach of this term, the alleged breach must represent significant and serious erosion of the trust and confidence that would reasonably be expected to be necessary to maintain the relationship.[85] No doubt the necessary level of trust and confidence will vary according to the circumstances of each case and will depend among other things on the nature of employment, the position or status of the employee and the nature of his/her duties.

In *Kiggundu v Barclays Bank of Uganda*,[86] it was held that a criminal conviction is not required in order to justify summary dismissal. In Sinclair V Neighbour[87] Sachs J. in coming to this conclusion stated that, "as between the employer and the employee

[85] Sinclair vs Neighbour (1967) 2 Q. B 279

[86] (1973) E. A 569

[87] (1967) 2 Q. B 279

where the former deliberately takes money illicitly behind the back of his employer and appropriates it even temporarily for his own use knowing the employer would disapprove, that is sufficient to my mind to establish that as between the employer and he employee that conduct is dishonest". In *Ladislaus Mukasa v Uganda Commercial Bank*,[88] it was held that banking duties call for a high standard of conduct from bank officials since their position in the bank is one of particular trust and responsibility. However, where an employee is prosecuted on a charge based on the alleged breach and is acquitted; the decisions in *Kalemera v Salaama Estates*,[89] *Mumira v National Insurance Corporation*,[90] and *Kirya v East African Railways Corporation*[91] seem to suggest that the dismissal would be wrongful.

3.5 Incompetence and negligence

A contract of employment was not to be a contract uberrimae fidei[92] and consequently an employee's failure to disclose his/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 employees concealment of incompetence is fraudulent.[93]

On the other hand where at the formation of the contract of employment, the employee represents or holds himself out as possessing certain skills, and it turns out that he/she will not in fact have those skills; the employer may rescind the contract

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[88] Ibid

[89] HCCS 157 of 1970 (unreported)

[90] (1985) HCB 110

[91] HCCS No.7 of 1974

[92] (1932) A C 161

[93] 33 Modern law review 694

for misrepresentation[94]Therefore summary dismissal for breach of this warranty can only justified where the employee is not reasonably competent to perform the duties under the contract but not otherwise. Where the employee is reasonably competent but the employer is not satisfied and expects higher level of performance he/she may of course terminate the employee's service by giving proper notice or by payment in lieu thereof.

[94] The normal contractual principles on misrepresentation

CHAPTER FOUR

PRESENTATION, ANALYSIS AND INTERPRETATION OF THE RESULTS

4.0 Introduction

This chapter of the study systematically presented the results that were obtained from the research that was conducted. This chapter as far as possible gave light to whether the labour legislation adhered to article 40(2) and (3)[95] of the 1995 Ugandan Constitution which protects the right to work. This was reviewed in tandem with the Labour legislation of Uganda.

4.1 A Critical Evaluation of Constitutional and Legal Rights on the Right to Work.

The entrenchment of the bill of rights and duties into the 1995 Ugandan constitution[96] 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. Despite such celebrating achievement of incorporation of the bill of rights, the right to work in Uganda is not enjoyed fully though it is enshrined under article 40(2) (3)[97] of the 1995 Uganda constitution. 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 has also been hampered by the lack of resources and lack of political will to implement policies put forward by the government.

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[95] Talks about the rights of every person in Uganda

[96] Chapter four

[97] Every person in Uganda has a right to pracuse his or her profession and to carry on any lawful occupation, trade or business

The jurisprudence behind the point of human right and human dignity is for all people regardless of any other consideration and must be respected by every individual.

Once there has been incorporation of the bill of rights, all laws must be compatible with it. This is the obligation of the state to enact laws compatible with the bill of rights; this is because it has the substantive weight of a constitutional document.[98] It is the one embodying fundamental principles of public policy which modifies and where necessary supersedes statutes incompatible with it.

However, the Ugandan constitution has stipulated these rights in a manner that does not reinforce them because the enjoyment of these rights is subjected to the ordinary laws. This is where it is stipulated that under circumstances and in accordance with procedures prescribed by law these clauses which are very common in the bill of rights are indeed an obstacle to the total enjoyment of the fundamental rights of individuals. It means that the enjoyment of those rights incorporated in the constitution must be validated by legislation passed by the parliament. That legislation establishes procedure for legitimate enjoyment of the rights and this enactment weakens the constitutions intention by making it to lose its status of constitutional document.

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

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[98] Friedmann W (2003) Law in a changing society. Universal law publishing Co. Pvt Ltd page 60 para 3

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 & Settlement) Act,[99] 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 twelve months wages due and other benefits from the date of unfair termination to the date of final payment'.

There are labour laws meant to provide a win-win situation for both parties at the work place. However, they are unknown to many Ugandan employers and employees. Major laws include the Workers Compensation Act[100], the Minimum Wages (Advisory Board and Wages Councils) Act[101], the Employment Act[102], the Labour Disputes (Arbitration and settlement) Act[103] and the Occupational Safety and Health Act.[104]

Under the Employment Act, [105]the conditions of employment in Uganda are stated. The aspects of employment covered here are contract of service, termination of contract, termination notices, protection of wages, hours of work rest and holidays, employment of women, Children and care of employees.

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[99] 2006. Act No. 8

[100] Act 2000 Cap 225

[101] Act 2000

[102] Act 2006 No. 6

[103] Act 2006 No. 8

[104] Act 2006 No. 9

[105] Ibid 103

The Employment Act[106] which protection of wages falls, gives workers a right to their pay which may be a salary or wage failure of which can result into the termination of a recruitment permit for an employer who does not pay. 'Wages should be paid promptly and in any case not later than the third of the following month. When he paid in local currency and un-authorized deductions cannot be made from the employees' wages. The authorized deductions include contributions to the National Social Security Fund" the Act further provides.

The Employment Act,[107] under which hours of work, rest and holidays fall, sets out an eight-hour working day and any overtime worked must be paid at one 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.

Actual service is deemed to include days of weekly rest, public holidays and days of absence from work due to sickness not exceeding 30 days per year, the Law further states. As for public holidays, it is stated, employees are entitled to resting on all public holidays as gazetted 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 gram hem a day off later with normal pa

[106] Section 29 and 37

[107] Section 38

Employers who frequently fire workers at their will are warned that it a violation of the law. The right procedure to be followed according to the Ministry of Labour is to

give a one week notice for service that has lasted for less than a year, 15 days notice for service that has lasted a year but is less than three years and one months notice for service that has lasted three years hut is less than five Years.

Two months notice should be given for service that has lasted at least five years but is less than ten years and three months notice if the service has lasted 10 years. Under the Workers Compensation Act,[108] it is stated that an employee is entitled to compensation for any personal injury from an accident arising out and in course of his/her employment even if the injury resulted from the employee's negligence. The Act provides that compensation is automatic and is to be paid by the employer whether the worker was injured as a result of his/her own mistake or not.

For an injury that leads to death, the compensation should be equivalent to an employer's monthly pay multiplied by 60 months. In case an employee fails to resolve a dispute with their employer, they can contact the Directorate of Labour in the Ministry of Gender from where the matter can be further resolved. The Ministry resorts to its last method of referring the matter to the industrial courts if all other methods including its intervention fail to resolve employer and employee dispute.

4.2 Court articulation on protecting the right to work

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

[108] Act 2000

principle of natural justice must be adhered.[109] In Uganda, the private sector has been the employer of many workers due to free market economy and globalization. Despite the financial success of a few companies and individuals, Ugandan employees have seen their human rights especially the right to 'work being sacrificed due to success of globalization. The researcher agrees that in order to globalization to be successful the process must contain a human rights initiative this includes respecting, promoting and protecting the right to work as the court has been working hard to protect this right.

The doctrine of freedom of contract on which the rule of termination by notice on the presumption of equality of bargaining power between the employer and the employee has become clearly questionable in the face of fundamental social, economic and political changes in society.

The ILO Recommendation 119 concerning termination of employment at the initiative of the employer embodies the principle that the termination of employment by the employer should not be arbitrary but should be exercised only for sufficient cause. It provides that the termination of employment should not take place unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirement of the undertaking establishment or service. However the instrument does not purport to exhaustively define what shall constitute a valid reason for termination leaving that as a matter of interpretation at the implementation level.

[109] See Wade R. W 2006.

The instrument indicates the grounds of termination which should not constitute valid reasons. Although the instrument recognizes the common law right of the employer to summarily dismiss an employee for fundamental breach of the contract of employment, it provides that a dismissed employee should have a right to be heard before being finally dismissed and after dismissal such employee should have a right of appeal either to courts of la or some other neutral body which should have the power to inter alia re-instate in the appropriate case. Apart from the question of job security, the instrument also contains detailed provisions intended to mitigate possible hardships on the employee as a result of termination due to redundancy.

4.3 Principle of Equality in Human Rights Law: The Status of the Right to Work

It is generally recognized that the concern for human rights is not confined to a particular society, continent or culture. The concern of human rights is necessarily linked with the history of development of man and society. Essentially human rights consists of demand or claims which individuals or group of individuals make on a society and the concern over the years has been the promotion and protection of the rights so demanded or Ounce. One being the right of person capable and willing to work availed to work according to his/her ability and gain through work for his/her existence.[110]

The prominence of the principle of equality or the standard of non-discrimination in legislation and other instruments concerning human rights is un-doubly underscored in the jurisprudence of international human rights law

[110] Robert H. Kisanga (1998): Fundamental rights and freedom in Africa. The work of African commission on Human and people's rights at page 25-36

The UDHR. 1948 in its preamble provides for 'the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world".[111]

Similarly, article 7 of the UDHR, clearly and in unambiguous terms provides that:

All people are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this declaration and against any incitement to such discrimination.[112] This means that both employer and employee are equal before them and employer should not exercise his/her position in whatever circumstance to impede or infringe on the right of an employee to work but rather each one should respect the right of one another.

This was also maintained by NEPAD[113] that the human right agenda must be entirely part of the campaign since the fundamental principle was to examine whether participating countries had played their role to make sure their citizens are enjoying their human rights including the right to work and the right to development. NPAD maintained that in order for the country to attain its development her people should have the chance to work for their life and for development of the country.

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[111] Adopted and proclaimed by general assembly resolution 217 A (111) of 10th December 1948

[112] See Article 7 of UDHR 1948

[113] See http://www.nepad.org/tz/ctry_brief.pdf accessed at 16:25 GMT on 2nd June 2009 NEPAD means new partnership for Africas developments, one of the main goals for NEPAD was to create the room for development through work in Africa respect of Human rights, transparency and accountability. All participating countries acknowledged that development is impossible without true democracy and the respect of Human rights, peace and good governance.

Also the ICESCR[114] in its preamble state that humans can be only free from fear and want if conditions are created where all individuals can enjoy their economic, social and cultural rights, in addition to civil and poetical rights. This instrument provides for the right to work and the right to social security and those rights are claimed on the state and they are among others, the right to work and free choice of employment, just and favorable conditions of work, protection against unemployment, equal pay for equal work and favorable remuneration.

4.4 Is the right to work under the Constitution an absolute Right?

Generally speaking the right to work forms cornerstone of the fundamental rights in human right volume, however in this juncture the researcher admits that this rights is not absolute right due to the fact that not every person willing to work is suitable for certain kind of work simply because also the work available sometime has it ns limitations. The right to work is not an absolute right but it is always subject to the relations of' the employment authority and availability of work. It does not impose a duty on any employer to employ or to continue employing any person demanding to be employed.

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 worksite 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 of that area.

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[114] Article 6 and 8 of ICESCR.

4.5 How far have we gone in promoting and protecting the right to work?

Unemployment is still a large problem in Uganda and many individuals are unable to find paid employment which affects their ability to development and enjoy life through the work and hence living below standards required by human rights activists. The law governing the termination of employment in Uganda is awfully out of date in many respects, in particular the common law that confers almost unrestricted freedom on the employer to unilaterally terminate the employment relationship by notice emerged as a consequence of the triumph of the ideas of laissez faire capitalism namely individualism and freedom of contract, over ideas of status which were held way before the industrial revolution. The courts persistent refusal to grant a specific performance for contracts of employments has been justified that the employment is personal in nature and should therefore be maintained by mutual confidence between the parties and not legal compulsion.

Therefore this is the challenge and both the government and employer have the role to play in ensuring that employment opportunities and jobs are available and working conditions and wages are fair. The issue of promoting and protecting work should be done by both government and employer in all sectors. The government has to adopt the affirmative measure to ensure all Ugandans who want to work can find employment such as working with policies as unless otherwise the right to work will remain as provided in the constitution without changing anything in real life of Ugandan citizen.

4.6 Conclusion

In this sub-section., the analysis made in this work wants to strive that depriving someone the opportunity to work may lead to the downgrading of social, economic and status of the employees because depriving his/her work has adverse economic effects not only to the employees well-being but also to the people depending on his/her income. The issue of terminating someone from his/her works means cutting the income/gains from work to that person hence exposing the said person to hardship in life which makes it almost impossible for him/her to enjoy life.

According to Karl Max [115] once he drew attention between natural and artificial poverty and according to him the latter is the results of individuals causative. What the researcher has extracted from this distinction of Max is that an employer who is terminating the employee from his/her employment is creating artificial poverty to that employee while the other creates an event which is beyond the human capacity/ability to control.

Therefore labour being one of the most treasured assets that human being has, purposeful labour does not only produce wealth but also guarantees the very survival of man and it is therefore important to protect and harness of some ones labour.[116]

The court has also played a great role in dispensing justice and interpreting the provisions of the constitution to march with desired need even 'there the legislation has not provided such right as it has been revealed in this work that under the labour laws there is no direct provision which provides for the right to work but the

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[115] Herman Goe (2006) Universal law series law, poverty and development, published by universal law publishing Co. PVT Ltd at page 3

[116] Ibid

constitution and the court has tried to interpret the law and make such right to be realized but also the researcher in testing the validity of the work found that sometime infringement of the right to work has been happening that way because of government policy and lack of political will.

CHAPTER FIVE

SUMMARY, CONCLUSION AND RECOMMENDATIONS

5.0 Introduction

In this last chapter the study presented the summary of the research findings, of the work recommendation and the conclusion 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 seen to be done.

5.1 Summary of Findings

This 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 sometime the approach of members of the bench. This research was conducted on the supposition that: Ugandan's unemployment rate is estimated at 32% (346,000) and is higher in the urban than rural areas. With more women compared to their male counterpart unemployed. Under-employment is more widespread affecting 65% of the employed people. Visible under-employment is estimated at 15% and is highest among the youth.

It was the finding of the research that the major challenges under this liberal market economy included how to control private company and business entities where most of the employees' related conflicts emanates. However the new labour laws address some of contemporary challenges/issues such as forms of discrimination in favorable working conditions and it provides that if the employer terminates the employee

unfairly and refuses to re-engage or reinstate the employee, the employer is obliged to pay only compensation.

Also it was the finding of the research that it has been a common practice that the courts and tribunal 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-ordinate actions and commitment from the government and all agencies in order for these employment policies in the 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.

5.2 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 so as to enable employees who may affected by termination to seek early steps and to consider possible alternative solution and if necessary find alternative employment elsewhere.

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 union the criteria to be applied in subjecting the employees for redundancy or termination. When a selection has been mace the employer shall consider the union whether the selection has been made in accordance with those criteria.

Whether or not an agreement 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 a representation or recommendation made to employee union.

5.3 Further Recommendation

It is further recommended that there is need to provide adequate facilitation and personnel to enforce the law to achieve the maximization of productive employment in all sectors of the economy. Equally there is need to strengthen the ministry in terms of human resources and equipment to perform its mandatory functions effectively and efficiently. The achievement of national employment objectives like enhancement of enterprise and full employment, which maintains industrial peace and accelerated modernization, be made a priority.

The National Union of Trade Unions and Federation of Uganda Employers need to strengthen their efforts to enable them fulfill their rightful mandate of upholding rights at the workplace and to promote harmony. For these policies to be realized there is need to sensitize workers on the basic rights and how to protect them. There is also the need for sensitizing the workers on work ethics and the necessity of cultivating a productive oriented culture

5.4 A Ove Recommendations

To sum up, in the 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 recommendation. The courts decisions present a consistent pattern with careful adherence to the common law, although there are some occasional awards which have ordered the re-instatement of' dismissed employees, Justice Mulenga stated that in the cases of *Kayondo Vs The Co-Operative Bank Civil Suit,*[117] 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 service are necessary to assist the court decide whether the termination was just and fair. He further stated that it is a general rule that courts would not in the normal circumstances order an employer to employ an employee whom he does not wish to. He submitted that the above as a general rule and that there are circumstances when the above rule cannot be held to apply, as was in the case of *Hill Vs Person &Co. Ltd*[118]

[117] Supreme court civil Appeal no. 10 of 1981
[118] (1972) ch 105

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.

5.5 Area of Further research

Statistics show that out of the 2.7 million child labourers in Uganda, 54% are domestic worker. However, the number of adult domestic workers is still unknown in Uganda, like elsewhere, domestic work is hardly recognized in labour statistics.[119] .The researcher therefore proposes further research on the need to adopt laws that recognize domestic work as formal employment and the efficiency of such laws.

[119] A report on Adult Domestic workers in Uganda launched by platform for labour action (PLA) and NGO (2008) Colline Hotel Mukono

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