CRITICAL ANALYSIS OF THE LAW RELATING TO UNFAIR TERMINATION OF EMPLOYMENT CONTRACT IN UGANDA

BY

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LLB

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DECLARATION

I MWIISI EDIRISA hereby declare that this dissertation is original and has never been presented in other institutions. I also declare that any secondary information used has been duly acknowledged in this dissertation.

Signature: .....

Date: 22/06/2019

APPROVAL BY SUPERVISOR

I certify that I have supervised this study and that in my opinion it confirms to the acceptable standards of scholarly presentation and is fully adequate in scope and quality as a dissertation in partial fulfillment for the award of Degree of Bachelors of laws of Kampala International University.

Supervisor: .....Tuhairwe Herman.....

Signature: _____

Date: 22/June/2019

DEDICATION

I dedicate this book to my entire family, mother, father, brothers, sisters, friends, relatives and my beloved lecturers; NAMAMBWE NAMPIINA ZIDINAH, MWIISI MANISULI, ISABIRYE YAKUTI, MWIISI FALUKU, MWIISI ISAH, MWIISI AMISI, KASU LATIFU, ALIMAH, NAMUSUSWA ZUBEDAH MUKAMA MAHADI, BUDUGHO AYBU, MUPERE HAMIDU, HADIJJA YAHYAH, EMMA SSALI, KALENDE MUBARACK KYAZZE JOSEPH and TUHEIRWE HERMAN whose support has been unconditional to make this struggle successful.

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LIST OF ACRONYMS

In this research the researcher used the following abbreviations:

UDHR: United Declaration on human rights

CAP: Chapter

HCB: High Court Bulletins

E.A: East Africa

ALLER: All England Law Reports

QB: Queen's Bench

ICESCR: International Convention on Economic, Social and Civil Rights.

ILO: International Labour Organization

NEPAD: New Partnership for African's Development.

NSSF: National Social Security Fund.

ABSTRACT

The study was sought to establish the effectiveness on the legal framework of the law relating to unfair termination of employment contracts in Uganda and was driven by three objectives: The first objective examined the efficacy of the legal framework on unfair termination of employment contracts in Uganda, the second one assessed the legal framework on unfair termination of employment contracts in Uganda, the third and last objective identified the possible solutions of how to improve the legal framework on unfair 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 parliament, International treaties and articles consulted in various libraries. The study utilized quantitative research method.

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 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.

In this research however, the researcher recommended that during termination of employment contract the employer should seek to give as much warnings and as early possible for impending redundancy or termination, as to enable employees who may be affected by the termination to take early steps and to consider possible alternatives and if necessary find alternative employment elsewhere.

In the study the researcher recommended that the employer should consult the labour officer as to the best means by which the desired management results can be fairly and with little hardship to the employee as possible. Also recommended that the employer should also ensure that the selection is made fairly in accordance with the criteria and that they should consider any representation or recommendation made by employee labour officer. Therefore, as seen from the content of this document it is evident that this abstract rhymes with the objectives.

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CHAPTER ONE

1.0. Introduction

The study was focused on the law relating to termination of employment contracts in Uganda. This chapter will present the background of the study, research questions, scope of the study, significance of the study and a synopsis.

1.1. Background of the study

The employers' right to discipline their employees is presented on the failure of the workers to fulfill their duties and responsibilities under the contract of employment which involves giving honest and faithful service by using relevant skills, care and all reasonable orders and not otherwise. Employers are not always right; sometimes they can act unreasonably just because of over ambitions toward their worker's performance, and behaviors. It is during this time they can act and take awkward decisions of dismissing employees without considering the formal procedures and the provision of laws on the fair termination grounds.

An employer has an obligation to pay the employee the remuneration for his/her services as agreed under the employment contract. It cannot be doubted that this is a fundamental term of the contract of employment a breach of which entitles the employee to rescind the contract without notice and claim for the damages.

In general, a contract of employment is one whereby one person called the employee agrees to serve another called the employer rendering personal services[1] to him/her or others on 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 in definitely until it is ended by one of several the modes of termination[2]. According to **Employment Act**[3] defines termination of employment contract to mean the discharge of employee from employment at the initiative of the employer for justifiable reasons other than misconduct, such as, expiry of contract, attainment of retirement age, and son.

[1] For this reason, a contract of employment cannot be assigned or subcontracted
[2] Employment Act 2006, s 65
[3] Employment Act 2006, s 2

During its continuance, the employee works at regular hours, during which he/she is required to devote his/her full time to the employer's 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 receive 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 in the case of **Harrisons Limited v Macdonald Evans**[4], you can recognize it when you see it. This is because it really based on a socio-economic phenomenon of all modern societies which necessitates the reciprocal sale and purchase of labour between employees and employers. In **Teveli v Pride (T)**[5] 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.

Under common law the right to terminate a contract of employment is absolute and arbitrary in the sense that subject to notice requirement, the right may be exercised at any time and reason for its exercise are irrelevant as it was said by Lord Reid in the case of **Ridge Vs Baldwin**[6].

In the case of **Stanbic Bank v Kiyemba Mutale**[7], the Supreme Court stated that the position of the law is that an employer may terminate the employee's employment for reason or for no reason at all. However, the employer must do so according to the terms of the contract otherwise he would suffer the consequences arising from failure to follow the right procedure of termination as they are provided for by the Employment[8].

1.2. Background to the problem

Most employees are still in the battle of fighting for their own rights towards management. Their hopes remain in Trade unions hands. They believe that it is from trade unions where they can get greater bargain power to bargain for the increment of their low salary, to minimize discrimination in promotions, transfer, pay, or by being unfairly dismissed, to win participation in discussing matters affecting their interests and maintain peace of mind by acquiring freedom of self-expression and better relationship with management. But in contrary all the efforts and hopes end up in vain. Employees' rights are still infringed, they have acquired very low power of

[4] (1952) I.T LR 101, 111
[5] Civil case 2006, High Court of Tanzania Labour Division, 47
[6] (1964) A.C 701
[7] SCCA 2010, 2
[8] (2006), 6

collective bargaining, their freedom of self-expression has been taken away and they are left with their grievances and complaints. In Australia there was a very interesting case whereby an employee who was dismissed for breaching the non-smoking policy won her job back because, although the company had a nonsmoking policy, the consequence of breaching was not known nor was the policy adhered to (Industrial relations, 2011). This gives employers lesson that the introduction of any workplace policies, must be compatible with efforts to enforce them.

In Uganda dismissal from employment means the discharge of an employee from employment at the initiative of his/her employer when the said employee has committed verifiable misconduct. It is not possible to enumerate all grounds on which dismissal can be based, but **Rule 3 (5) of the Disciplinary Code** under the first schedule of **Employment Act** provides that in case of the serious conduct or persistence in committing less serious acts, the appropriate penalty shall be a dismissal, especially where the infringement consists of;

a) Theft of or willful damage of property from the employer
b) Willful endangering of the property of the employer, a fellow employee or a member of the public
c) Physical assault of the employer, or a fellow employee or member of the public
d) Inability to perform work by reason of voluntary intoxication whether by drink or drugs or other misconduct of similar gravity

Where decision to dismiss is taken, the dismissal shall be with notice, or wages in lieu of notice and summary dismissal shall be reserved for only most extreme cases where dismissal is the appropriate penalty.

In the case of **Mrs. Mary Pamela Ssozi v Public Procurement and disposal** of public assets Authority[9], the Judge held that termination of employment contract doesn't mean dismissal from employment under **the Employment Act**[10]. That an employer cannot unreasonably and without justification terminate the contract of employee simply because there is a clause in the employment contract that allows for payment in lieu of notice.

In order to know the legal frame work of Uganda labour law it is imperative to study this from its historical perspective so that Uganda could have a clear understanding of labour laws.

[9] (2012) HCCS, 63
[10] S 2

Labour relations in Uganda are by the **Constitution of the Republic of Uganda 1995 as amended**[11] the employment act[12], replacing the **Employment Act**[13]. The **Labour Unions Act**[14] replacing the **Trade Union Act**[15] and providing for the right to form belong to a Trade Union Act and providing for the right to form or belong to a Trade Union as enshrined in the Constitution of the Republic of Uganda[16], the **Labour Dispute (Arbitration and settlement) Act**[17] which provides for resolution of labour disputes, the **Occupational Safety and Health Act**[18] replacing the factories Act and providing for the working conditions at work places and the workers compensation Act which regulates compensation to workers for disease and injuries sustained in the course of employment, the **National Social Security Fund Act**, that obliges employers to deduct 5% of salary of employees and 10% contribution towards the employees savings with **NSSF**, the **Pension Act** that provides for remuneration on termination of services of local Government employees, the **Public Standing Orders**, the **Minimum Wages and Advisory Board Acts**, **International Labour Organization Oonventions** to which Uganda is a signatory and so on.

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. The adoption of the terminology of master and servant was no doubt influenced by the historical fact that the institution of employment or wage labour of which the law of master and servant was a legal manifestation, was a transition from the institution of serfdom which it initially co-existed for some time 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[19]. It consolidated the

[11] 1995 as amended
[12] (2006), 6
[13] CAP 219
[14] (2006), 7
[15] CAP 233
[16] (1995) Art 29
[17] (2006), 8
[18] (2006), 9
[19] 31 Statutory instrument

provisions of **Uganda Employment Act** which it repealed[20] namely, the **Uganda Employment Act**[21] and the **Employment of Children Act**[22] and the **Employment of Women Act**[23].

The fact that some of the provisions of the now repealed Uganda **Employment Act**[24] 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 that 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 servants and other employees in similar types of employment[25]. This restricted application of the Act is explained by the fact it was the last of a series of colonial legislation intended to apply to only those during colonial days referred to as natives.

The ordinance remained in force until the enactment of the Uganda **Employment Ordinance 1946**[26]. This later ordinance departed from the earlier enactment in that not only did it substitute the terms masters and servants with the employers and employees, 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 corresponded with the maximum rates then payable to African manual laborers[27].

After independence, the Uganda Employment Ordinance by virtue of the provisions of the laws revised (edition) **Act 1965**[28] was re-designated as Uganda **Employment Act**[29] earlier by virtue of the public officers (transfer of functions) orders[30]. The power of the governing council to limit the application of the Ordinance became exercisable by the minister. It must be pointed out that

[20] S 67
[21] CAP 192 laws of Uganda
[22] CAP 183
[23] CAP193
[24] CAP 192
[25] Statutory instrument 192-3
[26] Ibid
[27] (1949), 34 Legal notice
[28] Act 15
[29] (1964), CAP 192
[30] (1962), 161 Legal notice

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.

1.3. Statement of the problem

Unfair termination of employment refers to the process of dismissing employee in the absence of a substantial reason. It is the removing of someone from a work for reasons which are not legally. Unfair dismissal claims normally cannot be valid in the grounds where an employee is dismissed for genuine redundancy, incapability, or misconduct (Economics Dictionary, 2011). Salamon (2008) added that the employers have the legal authority in the utterance of commands and the operations of restrictions or sanctions to ensure enforcement and compliance with those rules. Normally employers expect their employees to comply with general society and managerial work rules and be away from unacceptable behaviors like fighting, stealing, drunkenness, sexual and racial discrimination, insubordination and poor performance[31]. However, offices witness a lot of unfair grounds in applying these disciplinary rules which employers acquire legal possession over employees. It is for that reason of injustice and unfair termination of employment that this paper seeks to redress. In the case of **Bank of Uganda v Betty Tinkamanyire,**[32] Kanyeihamba JSC held that court will confine the compensation for unlawful dismissal of the appellant to the monetary value to period that was necessary to give proper notice of termination which is commonly known in law as compensation in lieu of notice. That the contention that an employee whose contract of employmeny is terminate prematurely or illegally should be compensated for the reminder of the years or period when they would have retired is unattainable in law. Therefore, this research intends to analyse the law relating to unfair termination of employment contract in Uganda.

1.4. General objectives of the study

The study generally examined the effectiveness on the legal framework of the law relating to termination of employment contracts in Uganda.

1.4.1. Specific objectives of the study

To examine the efficacy of the legal framework on unfair termination of employment contracts in Uganda.

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[31] Ibid
[32] SCA (2007), 12

To assess the legal framework on unfair termination of employment contracts in Uganda.

To identify the possible solutions of how to improve the legal framework on unfair termination of employment contracts in Uganda.

1.5. Research question

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

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

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

1.6. Significance of the study

a) The research findings will help organizations especially labour unions adopt more realistic approaches to termination of employment with regard to employees.
b) The results of the study may be useful to future researchers who might be interested in a related field.
c) There is no doubt that the result of this study will contribute to the existing law on termination of termination of employment.
d) There is greater hope also that the study will be a source of great experience and a contribution to the academic career of the researchers.

1.7. Justifications of the Study

1 To examine the efficacy of the legal framework on unfair termination of employment contracts in Uganda.

2 To assess the legal framework on unfair termination of employment contracts in Uganda.

3 To identify the possible solutions of how to improve the legal framework on unfair termination of employment contracts in Uganda.

4 This study will aid those researchers and academicians to dwell more and expound on critical analysis on the law on termination of employment contract and its admission before the courts of law which will help them get academic awards.

5 This study is a requirement for a student to be marked and then awarded her transcript after completion of the academic discipline. Therefore, it is important that he carries out this research as a partial fulfillment of her academic program at Kampala International University.

1.7. Research methodology

The research is majorly qualitative in nature; and included use of both secondary and primary sources of information. These included reference to various written materials relating to the research topic. Such information included, reports, statutes, Acts of parliament, international treaties, among others. The methodology included a descriptive design. The researcher therefore analyzed existing information and relates it to the research objectives.

The researcher therefore analyzed existing information and relate it to the research questions.

The researcher therefore read some of the court proceedings, notice and cases in both sentenced and ongoing cases. This is crucial to inform his study on critical analysis on the law on termination of employment.

1.7.1. Data collection methods

The researcher included both primary and secondary data. The data collection methods that was employed in the collection of relevant data included; observation, and analyzing existing data.

1.7.2. Synopsis

The researcher included the five chapters in his study. These included; chapter one where he introduced the problem stating some background and literatures that are available, reviewing the problem and some other preliminary information.

Chapter two included, the general overview of the right to work under Uganda legal system and international instruments and how they restrict the employment of one's labour.

Chapter three dealt with instances of termination of contracts.

Chapter four will deal with research findings, analysis, summary of findings, recommendations and conclusion.

CHAPTER TWO

2.0 Introduction

This chapter presented the analysis of the legal regime, international law, domestic law and others as discussed below relating to the investigation. This chapter 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 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 is based on the English common law system and the judicial functions are administered through different ranking from the subordinate courts of the Supreme Court. The courts functions are administered from the top, that is the Supreme court. 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 Labor legislation in Uganda

The current position of labor 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 labor laws. However, such labor laws had colonial elements and hence there was no full security of employment. The contract could be terminated for no reason at all,[33] The right to work is the most important civil right in the labor 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 Mwalusanya, .J, See the case of **Mahona v University of Dar es salam** [34] where Justice Mwalusanya made that remarkable word in relation to the right to work

Between the mid-1970 and early 1970 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

[33] Supra note 15 at p. 4

[34] Mahona v University of Dar es salam (1980) TLR 55

government to take control over all major means of production. Almost all formal employment was provided by the state or state-owned/controlled corporations, See **S. Howard and H. Said (2005) the field Research on Impact of Globalization on the rights of workers at p. 21**[35]. In those circumstance the term •employer' generally bore the connotation of government or something connected with government.[36] But later on the government changed from state owned economy to liberalized economy. These changes were contributed as a result of adopting SAPs,[37] SAPs mean Structural Adjustment Programmes 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.

2.1.2 Economic and Social Rights in Uganda

Economic and social rights are provided under the provision of **ICESCR** International Covenant on Economic, Social Civil Rights and some of them are under the **Ugandan Constitution**[38] it provides for the basic rights and duties enshrined only the rights to work and fair remuneration other social rights have not been included in the constitution as a basic rights 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[39]. Hellen Kijo – Bisimba and Chris Maina Peter (2005) Justice and Rule of Law in Tanzania: selected judgment and writing of Justice James L. Mwasanya and commentaries. Under the laws of Uganda, the right to work is enshrined under the **Constitution of Uganda**[40], as well as the **Employment Act**[41]. It is also recognized and provided for under the provision international human rights Instrument which Uganda has ratified, for example **ICESCR**[42]provides that; "The state parties to the present covenant

[35] S. Howard and H. Said (2005) the field Research on Impact of Globalization on the rights of workers at p. 21
[36] Ibid
[37] SAP means structural adjustment programme
[38] It provides for the basic rights and duties enshrined only the rights to work and fair remuneration other social rights have not been included in the constitution as basic rights.
[39] Hellen Kijo-Bisimba and Chris Maina Peter (2005) Justice and Rule of Law in Tanzania: Selected Judgment and writing of Justice James L. Mwalusanya and Commentaries.
[40] Ibid
[41] (2006) Ibid
[42] International Covenant on Economic, Social and Civil Rights.

recognize the right to work includes the rights of everyone to have the opportunity to gain his/her living work which he/she freely chooses or accepts and states will take appropriate step to safeguard this rights"[43]

2.2 Employment Protection in Uganda

The effect of the statutory periods of notice is that they automatically override any provision in a contract providing for a shorter period of notice but they do not affect any provision (or a longer period of notice see, **John v Mbale Municipal Council**[44]. Contractually agreed periods of notice are usually fixed either on the basis of the seniority of the employee's 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 employee's length of service or to both seniority and length of service.

The common law rule of reasonable notice is similarly affected by these statutory provisions. On the one hand, it is open to a court of law to use the common 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. The notice must be clear and specific as any ambiguity will be interpreted against the person giving it. In particular, it states 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. 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 as in the case of **Riordan v War Office.**[45] The contract of the employment terminates at the expiry of the notice. In the case of **Mahona v University of Dar es salaam.**[46] where Kisanga J, (as he then was) had this say: the termination of the applicant from his employment was not valid because there was breach of natural justice because the minister of

[43] Ibid
[44] (1975), 191 HCB
[45] (1959), I.WLR 1046
[46] (1981), 55 TLR

labour by then determined the matter without availing the applicant the right to be heard or to live 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 agreement is. Voluntary agreement is important because they define the contractual and obligations of the parties.[47] The labour laws provide for the rights to work hut the problem which many Ugandans are facing is serious implementation of labour 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 is a repudiation of the contract of employment unless there is a provision in the contract to the contrary like in the case of **Brace v Calder**.[48] Where the dissolution is permanent the employee has no alternative but to rescind the contract but if the dissolution is not permanent 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 may be made after the commencement of the employment and it may be expressed or implied form the circumstances. An agreement to terminate a contract of employment will be 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 see case **Farraw v Wilson**.[49]

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[47] Voluntary agreement is an agreement reached between employee and employer stating their eight and duties and must be in writings; this can be used as tool by the employee to enforce their rights, this occurs if employees and trade unions do not know that such contractual rights exist and if employers do not adhere to them.

[48] (1895), 2 QB253

[49] (1858) L.R.4 cp589

The principles of common law doctrine of frustration are well established[50] and apply equally to contracts of employment. An obvious example of a frustrating event is where an employee whether as a result sickness or accident is rendered permanently incapable of performing his/her obligations under the contract. For example, if a person who is employed as driver has the misfortune of losing his/her sight or having both his/her legs amputated.

2.2.2 Promotion and Protect ion of Right to Work under International Rights Instruments

The right association, employment is among the rights that have occupied a special place in the history of human rights. In the first place the United National instrument of human rights, includes the **UDHR** of 1948[51] which under **Art 23 (l)**[52] explains that everyone has the right to work, to free choice of employment and favorable condition of works and to protection against unemployment. **Sub Art (2)**[53] of the same instrument provides that everyone without any discrimination has the rights to equal pay for equal work and under **sub Art 35** it provides that everyone who works has the right to just and favorable remuneration ensuring for himself/herself and his/her family an existence won by of human dignity **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 It calls upon all the member states to put efforts to achieve the goals of realizing justice liberty and human rights for all.[54]

Also these rights have been elaborated in the 1966 **ICESCR**[55] in which the rights to work includes: "The right of everyone to the opportunity to gain his/her living by work as per **International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR).**[56]

International labour standards are firstly and foremost about development of people as human beings. In the **ILO**'s Declaration of Philadelphia of 1944, the international community

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[50] Chesire and fit foots Law of Contract
[51] Art 23
[52] Art 23 (l)
[53] Sub Art (2)
[54] Statement of the United Nation Secretary General, Mr. Ban Ki-moon in United Nation, 60 years of the Universal Declaration of Human Rights: justice and dignity for all of us (special ed. UN New York, 2008), available at http://www.wikipedia United Nations web-report of Secretary General accessed at 16:25 GMT On 2nd June 2009 at p. (iii).
[55] International Convention of Economic, Social and Cultural Rights
[56] Art 6

recognized that "labour is not a commodity,[57] 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.[58] 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.[59]

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 globalized economy requires action at the national and international level. The world community is responding to this challenge in part by developing international legal instruments on trade, finance, environment, human rights and labour. rights and labour. The **ILO** contributes to this legal framework by elaborating and promoting international labour standards aimed at making sure that economic and development goes along with the creation of decent work and fighting unemployment.

The **ILO**'s unique tripartite[60] structure ensures that these standards are backed by governments, employers and workers alike. International labour standards therefore lay the basic minimum social standards agreed upon by all players in the global economy.[61] 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 in the standards such as the right to work. International labour standards provides guidance for developing national and local policies such as employment and work policies.

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[57] See http://www.wikipedia_ILO/decent work/htm accessed at 16:55 GMT on 2nd June session Geneva 2002, pp39-54.

[58] Ibid

[59] See http://www.wikipedia_ILO/decent work/htm accessed at 16:55 GMT on 2nd June 2009 Note 4 of ILO: Decent work and the informal Economy Report VI International Labour Conference, 90th session Geneva, pp 39-54.

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

[61] http://www.wikipedia_ILO/decent work/_htm accessed at 16:55 GTM on 2nd June 2009 Note NO 4- ILO Decent work and the informal economy, Report VI, International Labour Conference, 90th Session, Geneva 2002; A fair Globalization, pp. 80-99

CHAPTER THREE

PRESENTATION, ANALYSIS AND INTERPRETATION OF THE RESULTS

3.0 Introduction

This chapter of the study systematically presented the scenarios in which termination of employment contracts were effected. The chapter highlighted instances where the employer is law warranted to effect termination, the court's opinion on termination of employment also articled to support this view. This chapter of the study systematically presented the results that were obtained from the research that was conducted, chapter as far as possible gave light to whether the labour legislation adhered to **Article 40 (2) and (3)[62] of the 1995 Ugandan Constitution** which protects the right to work. This was realized in tandem with the labour Acts of Uganda.

3.1 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** 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 3 of the 1995 Uganda constitution** [63]. 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.

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.

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[62] (2) Every person in Uganda has the right to practice his or her profession and to carry on any lawful occupation, trade or business
(3) Every worker has a right
(a) 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
(b) to collective bargaining and representation; and
(c) to withdraw his or her labour according to law

[63] Every person in Uganda has the right to practice his or her profession and on any lawful occupation, trade or business

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 law; compatible with the bill of rights; this is because it has the substantive of a constitutional document.[64] 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 weakens 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 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 good example of the provisions which take such rights of the person to work can be found in the **Labour Disputes (Arbitration & Settlement) Act**,[65] 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 due and other benefits from the date unfair termination to the date 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**,[66] the **Minimum Wages Act**[67] the **Employment Act**[68] the **Labour Disputes (Arbitration and settlement) Act**[69] and the **Occupational Safety and Health Act.**[70]

[64] Friedmann W. (2003) Law in a changing society, Universal Law Publishing Co. Pvt. Ltd. Para 3
[65] (2006), 8 Act
[66] Act (2000). Cap 225
[67] Act (2000)
[68] Act (2006),6
[69] Act (2006), 8
[70] Act (2006), 9

Under the **Employment Act,**[71] the conditions of employment 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.

The **Employment Act**[72] 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. Wages should be paid in local currency and till-authorized deductions cannot be made from the employee's wages. The authorized deductions include contributions to the "**National Social Security Fund**" the Act further provides.

The **Employment Act**[73] 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 due to sickness not exceeding thirty (30) days per year, the 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, and an employer is obliged to pay an employee who on a public holiday double the normal rate or grant them a day off later with normal pay.

Employers who frequently fire workers at their will are warned that it is violation of the law. The right procedure to be followed according to the ministry of labour is to give not less than two (2) weeks' notice for a service that has lasted for six (6) months but less than a year, not less than

[71] Ibid 103
[72] S 29 and 37
[73] S 38

one(1) month where the employment has lasted for a period of more than twelve(12) months but less than five(5) years, and not less than three(3) months where the service is ten(10) years or more. This is provided under the **Employment Act**[74].

Under **Workers and compensation Act,**[75] 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 employer's monthly pay multiplied by sixty (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.

3.2. 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 principle of **Natural justice** must be adhered.[76] In Uganda, the private sector has employer of many workers due to free market economy and globalization. Despite the financial success of few companies and individuals, Ugandan employees have seen their human rights especially the light to work being sacrificed due to success of globalization. The researcher agrees that in order for globalization to be successful the process must contain 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

[74] S 58 (3), (2006)

[75] Act (2000)

[76] The principle of natural justice includes nemo judex in suu causa that no person can be the judge on his own cause (see Wade R. W 2006) and the other principle is alterem partem: that is fundamental principle of fair procedure that both parties should be heard to present their case.

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 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.

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 employee should have right of appeal either to courts of law or some other neutral body which should 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 the employee as a result of termination due to redundancy.

3.4 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 consist 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 claimed. 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.[77]

[77] Robert H. Kisanga (1998): fundamental rights and freedom in Africa. The work of Africa commission on Human and peoples' rights at page 25-36

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

The **UDHR**. 1948 in its preamble provides for "'the recognition of the inherent dignity and the equal and inalienable rights of all members of human family is the foundation of freedom, justice and peace in the world.[78]

Similarly, Art 7 of the **UDHR** clearly and in unambiguous terms provides that:
All people are equal before the law and are entitled without discrimination to equal protection of the law. All are entitled to equal protection any discrimination in violation of this declaration and against any incitement to such discrimination.[79] This means that both employer and employee are equal before the law 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**[80] that the human light 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. **NEPAD** 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.

Also the **ICESCR**[81] 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 political 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

[78] Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948
[79] See Article 7 of the Universal Declaration on Human Rights, 1948
[80] See http://www.nepad.org/tz/ctry.pdf accessed at 16:25 GMT on 2nd June 2009 NEPAD means New Partnership for Africa's Development, 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.
[81] See Article 6 and 8 of the International Covenant on Economic, Social and Cultural Right 1966 provides for the right to work fair remuneration and social security.

right to work and free choice of employment, just and favorable conditions of protection against unemployment, equal pay for equal work and favorable remuneration.

3.5. 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. in this juncture the researcher admits that this rights are not absolute right due to the tact that not every person willing to work is suitable for certain kind of work simply because also the work available sometime 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. It does not impose 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 and worksite and demand to be given work as provided for in the constitution on the right to nor does it mean that one can demand to be employed even when he/she is old senile or has no expertise on that area.

3.6. 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 standard required by human rights activists. The law governing the termination of employment in Uganda is lawfully out if date in many respects, in particular the common law, 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 laisses faire capitalism namely individualism and freedom of contract, over ideas over 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 mutual confidence between the parties and no; legal compulsion.

Therefore, this is the challenge and both 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.

3.7. Conclusion

In this sub-section, the analysis made in this work to strive that depriving someone the opportunity to work may lead to the downgrading of social. economic and status of the employees because depriving him/her work has adverse economic effects not only to the employees wellbeing 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 saw person to hardship in life which makes it almost impossible for him/her to enjoy life.

According to **Karl Marx**[82] 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 Ellis distinction Max is that an employer who is terminating the employee from his/her employment 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 treasured assets that human being has, purposeful labour does not only produce wealth also guarantees the very survival of man and it is therefore important to protect and harness of same ones labour.[83]

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

[82] Herman Goe (2008) Universal law series Law poverty and Development, published by Universal Law Publishing Co. Pvt Ltd at p.3
[83] Ibid

sometime infringement of the right to work has been happening that way because of government policy and lack of political will.

3.8. 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 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 and decisions in other cases of little value. However, in general the court will have to consider such matters as the responsibility of status of the employee the nature of the business or industry of the employer. In the case of **Stanbic Bank v Kiyemba Mutale**[84] the S.C stated that the position of the law is that an employer may terminate the employee's employment for reason or for no reason at all. However, the employer must do so according to the terms of the contract otherwise he would suffer the consequences arising from failure to follow the right procedure of termination. This is shown or portrayed under s 68 of the **Employment Act**[85].

3.9. 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 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 is to what absence 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 as it was seen in the case of **Fillieul v Armstrong**[86] or mistake. For

[84] (2010), 2 SCCA
[85] (2006)
[86] (1837) Ad & El. 557

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 as in the case of **East African Trading Co. v S. B. Seth.**[87] 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 Naraniee Properties,**[88] 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 repudiator breach. In **Hare v Murphy Brothers Ltd,**[89] 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 cannot amount to repudiation[90] although at common law it may operate as frustration of the contract of employment. This portrayed for under **s 62 (3)** b which directs us to the first schedule of the **Employment Act**. Under **Rule 3 Sub Rule 3(b)** provides for unauthorized absence from work as a minor infringement hence it can't be lied upon to terminate a contract not until it is reparative.

3.3 Disobedience

An employee is 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 as per the case of **Lewis v London Chronicler newspaper.**[91] An employee is not under a legal obligation to

[87] (1907-10)
[88] (1968) E.A 223.
[89] (1973) CR 33
[90] Except perhaps where it is self-induced
[91] (1959) L.W.L.R 698

comply with a mere request as opposed to an order as per **John Luing & Sons Ltd v Best**[92], 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 to only lawful and reasonable orders.[93] 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 by an employer to perform an unlawful act as per **Gregory v Ford** .[94] The reasonableness of an order is always a question of fact in each case but in general it depends on the scope of the employee's duties under the contract. Thus an order that does not relate to the nature of the employee's duties as defined by the contract is not reasonable as per **Ottoman Bank v Chakarian** [95] 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**[96] 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,**[97] 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 justified summary dismissal. In **Olocho v City**

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[92] (1968) LTR3
[93] The burden of proof is on the employee
[94] (1951) 1 ALLER 121
[95] (1930), 277 A.C
[96] (1930) U.L.R 21
[97] Ibid

Council of Nyandarua,[98] it was held that willful disobedience such as to justify summary dismissal without notice must be serious and not relatively minor or trivial in the circumstances of the case. It must also be a repudiation of the circumstances of the case.
This is provided for under s 69 of the **Employment Act**[99].

3.10. 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 fidelity include the duty to work diligently and only for the employer during working hours, to take or retain any secret profits obtained during the course of employment, to respect the employers trade secret and other confidential information and not to willfully disrupt the employer's business or affairs.

However, irrespective of particular form in which the duty of faithful service and fidelity may manifest itself, it has one basic characteristic which is that it is founded on trust and confidence. For this reason, where summary dismissal is founded 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 as per **Sanclair v Neighbour.**[100] 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,**[101] it was held that a criminal conviction is not required in order to justify summary dismissal. In **Sinclair v Neighbour.**[102] Sachs J in coming to this conclusion stated that. "as between the employer and the employee where the former deliberately takes money illicitly behind the back of his employer and appropriates It even temporarily his own use knowing the employer would disapprove that is sufficient to my mind to establish that as the employer and the employee that conduct is dishonest. In **Ladislaus Mukasa v Uganda commercial Bank,**[103] it held that banking duties call for a high standard of conduct

[98] (1966) E. A 467
[99] (2006)
[100] (1967), 2. Q.B. 279
[101] (1973) E.A 569
[102] (1967) 2Q. B 279
[103] Ibid

from bank officials since their position in the hank is one of particular trust and responsibility however, where employee is prosecuted on a charge based on the alleged breach and is acquitted; the decisions in **Kalemera v Salaama Estates,**[104] **Mumira v National Insurance Corporation,**[105] **and Kirya v East African Railways Corporation**[106] seem to suggest that the dismissal should be wrongful.

3.11. Incompetence and negligence

A contract of employment is not a contract ***uberrimae fidei,*** **Bell v Lever Bros**[107] 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 fraudulently.[108] 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 does not in fact have those skills; the employer may rescind the contract for misrepresentation.[109] Therefore, summary dismissal for breach of this warrant can only be justified where the employee is not reasonably competent to perform the duties under the contract but not otherwise. Where the employee is reasonbly competent but the employee 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.

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[104] (1970), 157 HCCS (unreported)
[105] (1985), 110 HCB
[106] (1974), 7 HCCS
[107] (1932), 161 A. C
[108] Modern Law Review 694
[109] The Normal Contractual Principles On Misrepresentation

CHAPTFR FOUR

SUMMARY, CONCLUSION AND RECOMMENDATIONS

4.0 Introduction

In this chapter the study presented the summary of the research findings of the work recommendations 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 be seen to be done.

4.1 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 as below;

In many occasions, reconciliation sessions at the working place and labour department by labour officer, to reach a settlement involves no cost unless the parties decided to bring a representative, such as lawyers. If no resolution is reached, both parties have the right to proceed with matter to court for a formal hearing. The process can take up to an average of one to two years and at this stage, costs start to mount as well as energy and time, producing a lot of frustration and sometimes disappointments.

Termination of employment is an expected shocking event. For most workers, dismissal generates a number of losses to an employee including money, time, energy and an unpleasant experience. In addition to the obvious economic difficulties resulting from seizing the sole income for an employee, dismissal can lead to family problems, children suffering in shocking, unplanned event, unemployment stress, depression, and loss of confidence.

Dismissal problems are usually magnified if dismissal is unjust or unfair. Therefore, for the principle of fairness and justice, societies strive to stabilize the wellbeing of the weaker party. It is therefore, important that the weaker party in this equation 'the employee', has the opportunity to seek justice with the higher authority.

The research identifies that not only are genuine unfair dismissal cases brought to courts but often, we see unfair dismissal claims involving a fair dismissal. There are no official statistics on this subject as to how many cases are classified as unfair dismissal.

Dismissal dispute cases produce a substantial to employers, employees and society. The cost involves money, time and energy. Usually, employers find themselves in difficult positions in defending their decisions in court, not only disrupting their businesses but also incurring many losses and expenses.

The research established that compensation is the most common outcome of any successful unfair dismissal case. However, re-instatement of employment is also possible but rarely occurs. This option is hard to execute due to psychological mind frame of both parties in disputes and the unpleasant experience.

The research identified two types of unfair dismissal effects; tangible (financial) and intangible (non-financial). Tangible effects that can be quantified such as loss of earnings which is easily for the court to award. Intangible effects such as injury to feelings, humiliation, stress, depression, marital difficulties, fairly and children and damage to repudiation. This is the most difficult award for the Judge to estimate to award since there is no clear law addressing this type of compensation. It is left to the judge to make a fair estimation. Most verdicts tend to ignore or award a very modest compensation for any intangible damages simply due to complicity of estimating such damages and also due to the limited expertise of judges. The determining the level of unfair dismissal and the fair compensation value in court system is at the discretion of the court. Court of such subject matter.

4.2 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 possible for impending redundancy or termination, as to enable employees who may

be affected by the termination to take early steps and to consider possible alternatives 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.
For example, the doctor by his/her negligence operates patients without taking all expert precaution then it is likely to hamper the life of a patient.

The employer should consult the labour officer as to the best means by which the desired management results can be 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 labour officer on the criteria to be applied in selecting the employee's redundancy or termination. When a selection has been made the employer shall consider the labour officer whether the selection has been made in accordance with those criteria. Whether or not an agreement as which criteria to be adopted has been agreed with the labour officer, 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 labour officer. 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 and gain for his/her life.

4.3 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 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 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.

4.4 General Conclusion

To sum up, in the African region 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 seasonal awards which have ordered the re-instatement of dismissed employees. Justice Mulenga stated that in the cases of **Kayondo v The Co-operative Bank Civil Suit,**[110] 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 decide whether the termination was just and fair. He further stated that it is a general rule that would not in the normal circumstances order an employer to employ an employee 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 as was in the case of **Hill v Person and Co. Ltd.**[111]

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 of law especially the laws touching on their areas of work.

4.5 Area of Further research

The researcher therefore proposes further research on the need to adopt laws that recognize domestic work as formal employment and the efficacy of such laws.

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[110] (1991), 10 SCCA
[111] (1972) ch 305

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