

**AN ANALYSIS OF EMPLOYMENT LAW IN RELATION TO WRONGFUL
TERMINATION IN UGANDA**

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**A RESEARCH REPORT SUBMITTED TO THE SCHOOL OF LAW IN PARTIAL
FULFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF A
BACHELOR OF LAWS DEGREE OF KAMPALA
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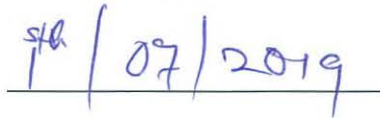
JUNE 2019

DECLARATION

I, **Bwambale Enock**, Reg. No. *LLB/47019/152/DU*, do solemnly declare, that apart from the reference to others peoples' works which have been duly acknowledged, this research project is product of my academic and has never been submitted before by any other researcher in any other higher learning institution or university for any purpose.



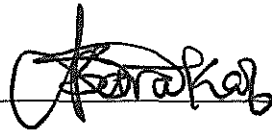
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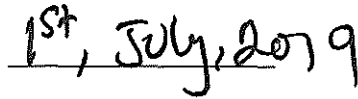
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APPROVAL

I, **Baraka Samuel**, certify that, I have supervised and read this study and that in my opinion it conforms to acceptable standard of scholarly, presentations and is fully adequate in scope and quality as a dissertation in partial fulfillment of the requirement for the award of Degree of Bachelor of Laws (LLB) of Kampala International University.

A handwritten signature in black ink, appearing to read 'Baraka Samuel', is written over a horizontal line.

Signature

A handwritten date in black ink, '1st, July, 2019', is written over a horizontal line.

Date

DEDICATION

I dedicate this work to my dear parents Mr. Kahagwa Solomon and Mrs. Masika Edith Kahagwa.

ACKNOWLEDGEMENT

The past four years of my study have involved hard work, reading, writing and rewriting. Not an easy process to do considering that such research is individually undertaken. But, there was always a light at the end of the tunnel, present by the end result of the hard work.

However, undertaking such step and completing it would not have been possible to do if it was not for the guidance, help, patience of my parents and uncle Martin, they have always been there to help provide their invaluable advise; cooperation has not been limited to academic matters but also present in all others aspects. For all of that I have say thank you and I would like to express respect and gratitude.

I also want thank my supervisor Baraka Samuel who meticulously read the drafts and offered invaluable guidance throughout the drafting and writing of this research, it is through his professional guidance that I was able to complete this. Any errors and omissions are entirely mine.

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- i. The Constitution of the Republic of Uganda of 1995
- ii. Employment Act No. 6 of 2006
- iii. The Employment (Recruitment of Uganda migrant workers abroad) Regulation, No. 62 of 2005
- iv. The Labour Union Act No. 7 of 2006
- v. Minimum wage Act of 2019
- vi. The workers compensation Act Cap. 225
- vii. The Labour Disputes (Arbitration & settlement) Act NO. 8 OF 2006
- viii. The Occupation Safety and health Act No.9 of 2006
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- i. International Labour Convention, No of 1975
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- iv. GullabhaiUshillingi vs. Kampala Pharmaceuticals Ltd, No. 6 Of 1999
- v. Laws vs. London Chronicles, (1959) 1 WLR 698
- vi. Ridge vs. Baldwin (1964) Ac 40
- vii. Benonh H. Kanyangoga and Others vs. Bank of Uganda No. 080 Of 2014
- viii. Geys vs. SocieteGenerale London Branch November 2012 UKSC 63
- ix. Allen vs. Flood (1898) Acat 1
- x. MichelaVsSt.Thomas of Viallnova Catholic School. 2015 Onca 801(Conl11)
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ACRONYMS

| | |
|--------|---|
| NOTU: | National Organization of Trade Unions |
| ILO: | International Labour Organizations. |
| NEPAD: | New Partnership for AFRICA’S DEVELOPMENT |
| PIP: | Performance Improvement Plan |
| MGLSD: | Ministry Of Gender, Labour and Social Development |
| EAC: | East African Community |
| UNATU: | Uganda National Teachers’ Union |

ABSTRACT

Time and again employees leave their jobs by mutual agreement, wrongful termination or their employees dismiss them. Regulatory authorities and legislation bodies in every society strive to manage and stabilize social welfare by introducing regulations and laws to protect the interest of both parties. One of these regulations is the labour law governing which include provision of fair employment termination or dismissal procedures.

In order to achieve the aim of this study, a library based research project has been conducted and most of the court's decision, recent or old, have been considered in order to find out how they dealt with the issue in the past and whether their attitude has changed to reflect the analysis of employment law In relation to wrongful termination in Uganda today.

The opinions and thoughts of scholars and government officials on this matter have also been examined in order to ascertain their opinion on the legal framework for suitable protection of the rights of employees under the current legal regime in Uganda today.

After analyzing the employment law in relation to wrongful termination in Uganda, It was found and therefore concluded that while to a greater extent the employment law in Uganda in relation to wrongful termination in Uganda is enforceable both by employer and employees as well as the labour institutions, it has, to some extent, been ignored.

It was recommended, inter alia, that the courts in Uganda should impose strict penalties to the employers like huge amounts of compensation for the employees where uniform and consistent application of the rule is not adhered to in supporting a good cause termination. This would compel the employers to appreciate legal principles of employment law in relation to wrongful termination in Uganda.

CHAPTER ONE

GENERAL INTRODUCTION OF THE STUDY

1.0 Introduction

This chapter provided a general overview and introductory information about the rationale for the study, the problem statement and the research question, the aims and objective of the study, scope and time frame of the study and literature review of the study.

1.1 Background of the study

Uganda, being a capitalistic state is dominated by private investors and this system of capitalization had also led to privatization of government institutions however not all institutions are privatized. Thus capitalization had increased employer-employee relationship in Uganda

It was said that in 1950s the International Labor Organization with actual intent attempted substantively to address the problem of wrongful termination, by trying to begin the process by noting in the form of a resolution over the absence of international standards on the termination of employment. It was stated that; labor organization seemingly had significant idea where the recommendation paved the way for far more important recommendation 119 of 1963.¹

Under recommendation 119, termination of employment at the initiative of the employer, provided the major impetus for many legal systems in their unfair dismissal legislation; it was stated that an employee should not be subject to dismissal unless there was a valid reason connected with the operational requirements of their undertaking establishment or service.

¹ International labor organization record of proceeding 33rd session 1950, Hyde trygve,desertation, university of Georgia.

Despite this recommendation in the laws of 1970s there was no effective enforcement observed on wrongful termination².

In relation to the above it was found that *Cyrill Grunfeld*³ asserted that an employer is entitled to dismiss an employee for any reason or for no reason at all, this was because employers are regarded as masters over servants.

However in the English Contract of Employment Act 1963 (repealed and re-enacted in 1972) laid down minimum periods of notice on which one could be dismissed and the rights to be dismissed were enshrined under the employees contract of employment. In *McLellan v Northern Ireland general health services*⁴, the plaintiff was appointed to permanent and pensionable post. Her contract stated that the board could only dismiss her for gross misconduct and inefficiency or unfitness, the board sought to terminate her appointment on the ground of redundancy.

It was held that this did not constitute a valid termination. This reflected that dismissal was valid if it was in line with the agreed terms and failure of which amounted to wrongful termination.

It was also observed that since the advent of the provisions relating to unfair dismissal in repealed England contract of employment Act 1972, brought smile on the face of employees where all employees within their scope obtained legal rights designed to protect their job and where the main significance of statute as a legal concept was to offer an automatic right of reinstatement in the event of a dismissal which was not justified; police constable who was dismissed unlawfully, a remedy of reinstatement was upheld.⁵ And since Uganda was protectorate

² Article 2(1) of the recommendation 119

³ Cyril Grunfeld. (1971) *The Law of Redundancy*; Sweet and Maxwell, London, page 157

⁴ (1957) 2 ALL ER 129

⁵ *Ridge vs. Baldwin* (1964) AC 40

of England this law was applied as statute of general application, therefore from this background there was need to analyze the current employment law in relation to wrongful terminations in Uganda. Where under Section 2 of the Employment Act 2006 which was the current law in Uganda, the interpretation section provides;

Dismissal from Employment" meant the discharge of an employee from employment at the initiative of his or her employer when the said employee has committed verifiable misconduct".

The same section provides:

"Termination of employment" meant the discharge of an employee from employment at the initiative of the employer for justifiable reasons other than misconduct, such as expiry of contract, attainment of retirement age.

This provision provided the major elements of dismissal and termination which are "verifiable misconduct for dismissal and justifiable reason for termination" on which one is entitled to be dismissed or terminated. The law was enacted to act as a voice of those who cannot speak when there was unfair dismissal or wrongful termination; hence this research was to find out whether or not Ugandans employers have taken these existing laws for granted.

1.2 Statement of the problem

Most employers failed to put the existing laws into considerations. This has led to low enforcement of the employment law in relation to wrongful termination of employees, which increased the rate of people who are wrongly terminated and due to this there was a lot of litigation in courts of law which needed to be disposed off. Therefore the researcher decided to

carry research study on analyzing the employment law in relation to wrongful termination a concern which needed fair hearing⁶.

1.3 Hypothesis of the study

This study was based on the assumption that there was employment laws and that most employers have failed to enforce laws on employment where most employees do not know their rights, which escalated wrongful termination in Uganda.

1.4 Objective of the study

1.4.1 General objective

The main objective of this study was to analyze the employment law in relation to wrongful termination in Uganda.

1.4.2 Specific objectives

- (i) To examine the legal and the institutional framework of employment law in the relation to wrongful termination in Uganda.
- (ii) To examine the causes of termination in line with the lawful modes of termination of employees in Uganda in relation international standard of labor law.
- (iii) To identify the possible strategies on how the high rate of wrongful termination can be reduced.

⁶ Article 28 of the Ugandan constitution 1995

1.5 Significance of the study

- (i) The research analyzed the escalating unemployment due to wrongful termination and found out strategies on how to overcome it.
- (ii) The study showed concern on how the relationship of employer-employee was to be protected without prejudice to the rights under the employment of contract.
- (iii) The study was significant in the view that it examined the role of the judicial sector on a fight against wrongful termination in Uganda.
- (iv) The also acted as source of information for future researchers.

1.6 Methodology

A qualitative method of research that was method applied while carrying out the study where both primary and secondary sources were consulted. The primary source to be consulted include Ugandan constitution of 1995, legislations on employment law and case laws and secondary source will, inter lia include; textbooks, dissertation, journals, articles, web sites and international legal instruments. Under the research design, decision was made about the enforcement of law concerning termination in Uganda;(i) Whether employers constructively terminate employees in order to avoid liability of wrongful termination, (ii) Whether employers follow the right procedure of termination of an employee (iii) And whether employees are dismissed because of their own misconduct.

1.7 The literature review

Uganda being a growing economy which is still at the early or initial stages of development little work on analyzing the employment law in relation to wrongful termination in Uganda under the current legal regime was less published by Ugandan authors thus various source from different jurisdictions was consulted in addressing the research topic.

According to Simon Honey Ball and Jon Bower⁷, made observation on termination from employment, the author observed the concept of termination under the common law that “Where a contract (either written or verbal) does not include an express term setting out the notice period that an employer was required to provide an employee, the common law implies a term of reasonable notice of termination”, the discussion of the author on termination was based on the common law and not on the employment Act of Uganda hence there was need to analyze the compliance by the employers with the law on termination as stipulated under the employment Act of 2006 of Uganda

Michele Richard⁸, while analyzing the market framework of labor he ought to be flexible on labor laws, to dispelled the notion that labor market was natural, that there are many markets as there are many rules to constitute them. Also he argued that the labor market perspective must include laws, rules in structuring the market and determining the entitlement and the immunities which the individual participant commands at the negotiating table.

It was seen that although the author does not specifically point out compliance with law on dismissal from employment by the employer, he placed a greater emphasis on adhering to the

⁷ Labour laws 7th edition oxford university, page 120

⁸ Michele Richard(1995) published by the national library of Austria page 30

labor laws to regulate the employment relationship. His writing captured the general objectives of this study, when he respectively acknowledged that all forms of work are socially valuable and that condition of employment should be respectful of the preference and the needs of the participant, this was taken to be a sound argument in view that the traditional role of labor law is to appropriate protective function of the participants in employment relationship.

David L. Gregory⁹, Argued that the common law rules provided the appropriate benchmark against which to measure modern statutory development. The author noted that malice and combination were at the heart of great labor cases of the late nineteenth century in both Europe and England and the United States. That one position which is chiefly associated with the majority views was in *Allen vs. flood*¹⁰ which treated malice and combination as wholly immaterial to the question of liability this decision came up when one group of the workers announced through their union leaders that they would not continue in the employ of the third party unless he dismissed the members of arrival union working under contracts at will and this was held in Allen case not to be tortuous even if actuated by malice. While giving decision above the majority relied on its earlier decision in *mogul v mc Gregory*¹¹ which held that a combination of shipper could act to exclude rivals by predatory even though their intention was to inflict economic harm in order to secure their own self advancement. However it was noted that the area of concentration of the author was outside the area of the indented study, in regard to compliance and as to whether there is compliance with the law on termination by the employers as stipulated under the employment Act of 2006 but this helped the researcher to examine constructive termination as one of the facts which result into wrongful termination in Uganda.

⁹ Labor and constitution, volum 1, St. Johns University, grand publishing inc, 1999

¹⁰ (1898) ACat 1

¹¹ 23 Q.B.D 598 (1889), aff'd, 1892. AC25

The desire to review literature was include different theories of labor which was conducted thus the well reasonable theories was examined below, the general theory is known as theory of employee welfare paternalistic¹², its theory that Management started to assume a fatherly and protective attitude towards employees, partially to suppress the movement of union.

It is not believed that merely supplying many benefits such as housing, recreation and pensions make management paternalistic it is the attitude and the manner of installation that determined whether or not management is paternal in its dealing with employees to be paternalistic and two characteristics are necessary.

Firstly the profit motive ought not to be prominent in management's decision to provide such employees with services. They should be afforded because the management has decided that the employee needs them, just as a parent decides what is good for his children.

Secondly, the decision concerning what services to provide and how to provide them belongs solely to management. As the father makes the decision that the feels is the best for the child.

Under *Elective theory* of labor the general contracture principles provided that, if one party commits a repudiator's breach of contract, the other party is entitled to either terminate or affirm the contract.¹³

And under the *Automatic theory* provided that, if one party unilateral repudiators breach contract it operates automatically to bring the contract of employment to an end¹⁴.

¹² Labour welfare and labour legislation 2, T.M. Suresh marugan, 2012-2014, digiztal date 2013, page.10

¹³ Employment law in context, David Cabrelli, Oxfard university press 2016, page 587.

¹⁴ ibid

Clarity of the two theories was brought by the Supreme Court decision that was in the case of *Geys vs. Societe Generale*¹⁵ the court held that the contract could only end if the other party elected to accept such repudiation. And that Mr. Gey's contract was not automatically terminated with societe generals thus societe general liable for wrongful repudiation. . Further stated that whether the employer chooses to terminate or dismiss an employee, such employee is entitled to reasons for the dismissal or termination. In employing the employee, it was strongly believed that the employer has reason to so employ him/her. In the same way, in terminating or dismissing the employee there ought to have reason for the decision¹⁶

The case above introduced the concept of fair hearing as a test to be determined before termination of the employee and was defined under article 28 of the Ugandan constitution 1995.

There was the Utilitarianism theory which was predicated upon the notion that decision should reflect the option that produces the greatest amounts of satisfaction or the most positive results for the most public. And also that a decision to terminate an individual's employment, then would naturally reflect a calculation that such action is for the benefit for the work place as whole¹⁷.

This theory introduced the issue of unfair dismissal of an employee which was examined in relation to wrongful termination as seen under section 69 of employment Act 2006, in court's decision; "*.....summary dismissal is dismissal without notice, let alone the right to be heard.*

¹⁵ London branch November 2012 UKSC 63

¹⁶ Benonh H. kanyangoga and others vs. bank of Uganda No. 080 of 2014 raising from labour dispute claim No. 164 of 2014

¹⁷ <https://www.utilitarianism.com>

*That once the respondent sought to invoke his rights of summary dismissal, then such an employee has no rights to be heard....”*¹⁸

According to the literature reviewed above, it has been strongly believed that the writings of the authors didn't analyze the employment law in relation to wrongful termination. And it was reason that influenced a researcher to carry out this study, analyzing the employment law in relation to wrongful termination in Uganda.

1.8 Scope of the study

1.8.1 Conceptual scope of the study

This study analyzed the employment law in relation to wrongful termination in Uganda under the current legal regime

1.8.2 Geographical scope of the study

This study was conducted around Kampala and the reason for choosing place is because of the high population for both employers and employees.

1.8.3 Time scope of the study

This study was carried in period between May and June 2019 the rational is to ensure the researcher concentrates on the research so that it is purpose is appreciated by the prospective readers.

¹⁸ Barclays Bank (u) ltd vs. Godfrey Mubiru SCCA no.1 of 1998

1.9 Chapterisation

Chapter one: Introduction of the study

Chapter two: The conceptual frame work of the study.

Chapter three: The Legal frame work of employment law on wrongful termination.

Chapter four: The researcher's findings of the study conducted.

Chapter five: Conclusions and Recommendations

CHAPTER TWO

THE CONCEPTUAL FRAME WORK OF THE STUDY

2.1 Introduction

In this chapter, the researcher reviews the different concepts that address issues of employment law in Uganda. This is done so as to understand the various meanings concepts used in employment-related matters. A review of key institutions that Uganda has adopted to ensure effectiveness of labour administration.

2.2 The meaning of different concepts

The employment law governs rights and duties between employers and workers. Also referred to as labor law, these rules are primarily designed to keep workers safe and make sure they are treated fairly, although laws in are place to protect employers' interests as well. Employment laws are based on state constitution, legislation, administrative rules, and court opinions. Thus particular competes will be explained in that capacity.

Employment; is the relationship between master and servant without, the act of employing, the state of being employed, and for which one has been hired and is being paid by an employer¹⁹

Employment; is the state of gainful engagement in any economic activity.²⁰

Labor administration; is the public administration activities in the field of national labour policy.²¹

¹⁹ Black's law dictionary, 8th edition, at page 566.

²⁰ The National Employment policy for Uganda, Glossary.

²¹ The National Employment policy for Uganda, Glossary

Underemployment; it was stated underemployment occurs when one does not have a job that is full-time or that reflects his or her training and financial needs.²²

Also referees to a situation whereby persons aged 14-164 years are not fully utilized in terms of hours of work, skill and earnings.²³

Thus underemployment may be most affected by the number of youthful workers in the labor force, who tend to experience more underemployment as they change jobs and move in and out of the labor force, and public policies that may discourage employment or the creation of jobs (such as a high minimum wage, high unemployment benefits, and low opportunity costs associated with laying off workers).

Further it was stated that Underemployment occurs when workers' jobs don't use all their skills, education, or availability to work. According to the Organization for Economic Cooperation and Development, there are two types of underemployment: visible and invisible²⁴.

Visible underemployment includes employees who are working fewer hours than is typical in their field. They are willing and able to work more hours but cannot get full-time employment. They often work two part-time jobs just to make ends meet.

Invisible underemployment includes workers in full-time jobs that don't use all their skills. This type of underemployment is almost impossible to measure. It requires extensive surveying that compares workers' skills versus job requirements. The workers often don't even realize their skills could be better used elsewhere.

²²<https://investinganswers.com/dictionary/u/underemployment> (last accessed 20th/6/2019)

²³ The National Employment policy for Uganda, Glossary

²⁴<https://www.thebalance.com/organisation.economic-cooperation.development.330587>. (last accessed 20th/6/2019)

Unemployment; referees to a situation whereby persons aged 14-64 years , who during a reference period are without work but are available for paid employment or self-employment.²⁵

Thus unemployment can be explained to mean a condition of one who is able to work but unable to find work. Once in Uganda idleness was penalized for by the law because it was assumed to be voluntary; however it is now recognized that unemployment often arises from factors beyond the control of the individual worker. And may be due to seasonal layoffs (e.g., in agricultural jobs), technological changes in industry (particularly by increased automation), racial discrimination, lack of adequate skills by the worker, or fluctuations in the economy²⁶.

Unemployment is the state or condition of being unemployed²⁷

Decent work ; referees to opportunities for safe work that is productive and delivers a meaningful income, security in the work place and social protection for families, better prospects for personal development and social integrations , freedom of expression and association, to organize and participation in the decision making and equality of opportunity and treatment for all women and men.²⁸

Decent work was definite to mean; employment that respects the fundamental rights of the human person as well as the rights of workers in terms of conditions of work safety and

²⁵ The National Employment policy for Uganda, Glossary

²⁶<https://www.questia.com/library/economics-and-business/business/employment-and-the-workplace/unemployment> (last accessed 20th/6/2019)

²⁷ Black's law dictionary, 8th edition, page 1563.

²⁸ The National Employment policy for Uganda, Glossary

remuneration respect for the physical and mental integrity of the employee in the exercise of his/her employment²⁹.

Termination of employment" means the discharge of an employee from employment at the initiative of the employer for justifiable reasons other than misconduct, such as expiry of contract, attainment of retirement age³⁰. There are two types of job terminations³¹. Termination can be a voluntary termination of employment by the employee. Voluntary termination includes resignation or retirement. Or employment termination can also be involuntary - when an employee is terminated by the employer. Employees can be terminated for cause. In that case, an employee is fired or dismissed from their job. Employees can also be laid-off when there is no work available for them.

Wrongful termination also was defined as; a term that generally refers to a person being fired illegally³². Many terminations that people think of as "wrongful" aren't illegal. In most states, employment is "at will". This means that the employer can fire the employee for no reason or any reason³³.

The research agreed that, If any employee has a contract with the employer, as is common when an employee belongs to a union, the employee probably cannot be fired without just cause.

²⁹General comment 18, 2006, United Nations, COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS- THE RIGHTS TO WORK, general comment no. 18, adopted on 24 November 2005, article 6 of the international covenant on economic, social and cultural rights.

³⁰Section 2 of Employment Act of 2006,

³¹<https://www.thebalancecareers.com/termination-from-employment-2060505>, article by Alison Doyle Updated May 14, 2019

³²<https://definitions.uslegal.com/w/wrongful-termination/>(last accessed 20th/6/2019)

³³ibid

Contracts can be written or implied. However, this type of dispute is characterized as a breach of contract case, rather than a wrongful termination case.³⁴

According to the Employment Act, employer means any person or group of persons, including accompany or corporation, public, regional or local authority, a governing body of an unincorporated association, a partnership, parastatal organization or other institution or organization whatsoever, for whom any employee works or has worked, or normally worked or sought to work, under a contract of service and includes the heirs, successors, assignees and transferors of any person or group of person for whom any employee works, has worked or normally works.³⁵

According to the Employment Act; Employee means any person who has entered into service or an apprenticeship contract, including, without limitation, any person who is employed by or a parastatal organization but excludes a member of the Uganda Peoples Defense Force.³⁶

Labor administration; is the public administration activities in the field of national labour policy.³⁷

Constructive discharge, also called constructive termination, meant that the employee quit, but only because they were forced out by the employer's behavior. Since the worker didn't voluntarily resign, in effect, they were terminated³⁸. The exception occurs when an employer purposely alters a specific employee's working conditions and work environment to make it

³⁴Lwangelukwago, James (1997), structural reforms and labor redeployment in Uganda: losers and winners. The Hague.

³⁵ Section 2 of the Employment Act of 2006

³⁶ Section 2 of the Employment Act of 2006

³⁷ The National Employment policy for Uganda, Glossary

³⁸<https://www.injuryclaimcoach.com/wrongful-termination-case.html>. article by Charles R. Gueli, Esq, Updated Feb 14, 2019

intolerable by any reasonable employee standard.³⁹ As a result, the targeted employee has no choice but to resign.

According to the interpretation section of labor union act; defines trade union to mean any organization of employees created by employees for the purpose of representing the rights and interests of employees.⁴⁰

The term “child labour” was defined as work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development.⁴¹

It refers to work that;is mentally, physically, socially or morally dangerous and harmful to children; and interferes with their schooling by; depriving them of the opportunity to attend school; obliging them to leave school prematurely; or requiring them to attempt to combine school attendance with excessively long and heavy work⁴².

2.3 The institutional framework of the study

The need for strengthening of labour administration and its institutions has been Identified as one of the priorities in the National Development Plan: Growth, Employment and Socio-Economic Transformation for Prosperity (2010/11 - 2014/15) (NDP) for the “labour and employment sector” in Uganda. Identified specific strategies and interventions include establishing a minimum wage for decent income; strengthening of the industrial court to adjudicate labour disputes; strengthening of labour administration and compliance with labour standards;

³⁹https://www.inssuryciamcoach.com/unsafe_work-practice.htm.

⁴⁰ Section 2 of the trade union Act of 2006

⁴¹ The National Employment policy for Uganda, Glossary

⁴²<https://www.ilo.org/ipecc/facts/lang--en/index.htm> (last accessed 20th/6/2019)

development, review and implementation of labour laws; and strengthening of social dialogue and tripartism through implementation of the Tripartite Charter.

2.3.1 Ministry of Gender Labour and Social Development.

A ministry of gender labour and social development is ministry with responsibility to empower communities in diverse areas. The ministry promotes cultural growth, skills development and labour productivity while promoting gender, equality, labour administration, social protections and transformation of communities.

The ministry came into being by constitutional requirement of the 1995 constitution, chapter 4 and 16 which mandates government to, “empowers development, labour productivity and cultural growth”

Ministry of gender labour and social development is represented by Hon. Mary Okurutu who provides political leadership to the entire ministry in parliament.

This ministry commonly called ministry of gender has one of its major tasks to ensure that all Uganda enjoy better standards of living, especially the disadvantaged and vulnerable groups. And one to attain the better standard of living his or her job has to protect because this is part and parcel of his life and this leads the researcher to analyze the employment law in relation to wrongful termination in Uganda.

1.3.2 The national organization of trade union(established by the trade unions as amended decree, 19730 and functioning immediately before the commencement of the trade union Act of 2006

In Uganda under the trade unions we have national teachers union among others which was made in 2006 as result of the trade union Act of 2006.

It was originally active as the Uganda teachers association (UTA), the teachers' association renamed itself the Uganda national teachers' union in March 2003 and thereby complied with the trade union act of 1971. And it is that in 2006, these laws were updated with the labor unions act. UNATU then was recognized as a charitable organization since 2006. With its 140,000 members, this made it the largest and oldest teacher union in the country⁴³.

And that one of the major tasks of UNATU is to collective bargaining and the attractiveness of the teaching profession. Uganda, once a pioneer in education policy within Africa, is now a developing country in the field of education. Low salary and a class size of 120 students make the profession of being a teacher unattractive. And due to this unattractiveness creates need to analyze the employment law in relation to termination to identify whether constructive termination does not occur which may result into wrongful termination by employees.

⁴³[https:// en. Wikipedia.org/wiki/Uganda national –teachers union#cite. \(last accessed on 18th June 2019\)](https://en.wikipedia.org/wiki/Uganda_national_teachers_union#cite_note-1)

2.3.3 Federal Union of Employers.

Also there is FUE⁴⁴ that was registered on 18th August 1960 under the names of Society of Employers and it was changed to Federation of Uganda Employers on 17th August 1961 under the Trustees Incorporation Act 1939. Today, FUE is the Voice of Employers on social and economic issues. It is recognized both locally and internationally.

And its mission is to enhance Employers' competitiveness through policy advocacy, fostering sustainable employment relations and provision of business support services and its from this mission of FUE that research viewed the federations roles in relation to wrongful termination which be analyzed in the course of the study.

2.3.4 The East African Community.

The East African Community,⁴⁵ is a regional economic bloc that groups together five countries including Burundi, Rwanda, Tanzania, south sudani, Democratic Republic of Cong and Uganda. The EAC's purpose is to widen and deepen co-operation among member States in political, economic and social fields, including:

- maintaining common employment policies;
- harmonizing labour policies, programmers and legislation including those on occupational health and safety;

⁴⁴<https://www.fuemployers.org/> (last accessed 20th/6/2019)

⁴⁵Treaty for the Establishment of the East African Community, Art.104 (3). See also Art. 5(2)(c) of the EAC Protocol on the Establishment of the East African Community Common Market on the scope of co-operation dealing with regulatory matters in the field of labour, employment and social protection.

- establishing a regional centre for productivity and employment promotion and exchanging information on the availability of employment;
- making training facilities available to persons from other Partner States; and
- enhancing the activities of employers and workers' organizations with a view to strengthening them⁴⁶

The Government is considering abolishing the requirement that citizens of other EAC nations obtain work permits to work in Uganda. This would allow professionals from Kenya, Tanzania and Burundi to work freely in the country. Uganda already has such an agreement with Rwanda.⁴⁷

2.3.5 The New Partnership for Africa Development

The new partnership for Africa development is an economic development program of the African union. NEPAD was adopted at the session of the assembly of heads of states and government in July 2001 in Lusaka, Zambia.

The NEPA's four primary objective are; were to eradicate poverty, promote sustain growth and development; integrate Africa in the world economy, and accelerate the empowerment of women.

It was based on underlying principles of commitments to good governs, democracy, human rights and conflict resolution; and the recognition that mentiance of those environment conducive to investment and long-term economic growth.

⁴⁶ ibid

⁴⁷ The Daily Nation, "Uganda to abolish work permits for EAC citizens", 1 April 2010.

Criticism is that the process by which NEPAD was adopted was almost totally excluded from the discussion by which it comes to be adopted⁴⁸. Thus civil society rejected NEPAD and this civil society includes trade union, non government organization, religious organization, African social movements, and youth and African organization.

2.3.6 The International Labour Organization

International Labour Organization (ILO) was said to be specialized agency of the United Nations (UN) dedicated to improve labour conditions and living standards throughout the world. Established in 1919 by the treaty of Versailles⁴⁹ as an affiliated agency of the League of Nations, and that the ILO became the first affiliated specialized agency of the united nations in 1946.

The functions of the ILO include the development and promotion of standards for national legislation to protect and improve working conditions and standards of living. The ILO also provided technical assistance⁵⁰ in social policy and administration and in workforce training; fosters cooperative organizations and rural industries; compiles labour statistics and conducts research on the social problems of international competition, unemployment and underemployment, labour and industrial relations, and technological change (including automation); and helps to protect the rights of international migrants and organized labour. After examining this intuition, the body for appeal where wrongful termination of the employment on international employees occurs is in need.

⁴⁸ civil society declaration on NEPAD July 2002

⁴⁹ [https:// www.britannica.com/event –treaty-of-versailles-1919](https://www.britannica.com/event/treaty-of-versailles-1919)(last accessed on 18th June 2019)

⁵⁰ [https:// www.britannica.com/topic/technical-assistance](https://www.britannica.com/topic/technical-assistance)(last accessed on 18th June 2019)

As noted above ILO is a specialized agency of the United Nations which was established after the end of the First World War as part of the peace treaty of Versailles. And Uganda is one of the 34 member's states that have ratified convention of the ILO.

Uganda made project "Combating Child Labour through Education". And in 2019 where ILO made its 100th anniversary on theme; advancing social justice and promoting decent work it's on this day on this day when Uganda made report on this project.

Background of the project, early in the work in Uganda, discussions with the education partners suggested that the project could play a useful role in supporting efforts to mobilize community action against child labour and in favor of education. It was considered this focus would reduce child labour which is a result of school drop outs. And this problem of child school dropouts have increased the number of the casual labor's in Uganda who need to be protected from wrongful termination, however wrongful termination was not the aim of the project but the need of analyzing employment law in relation to wrongful termination is essential to the causal labors .

2.4 Conclusion

Wrongful termination has been regarded as, an illegal act of ending the contract of employment without lawful justifications. This was due to the substandard of labour conditions and poor living standards in Uganda. And there are several institutions trying to curb down the bad practice of wrongful termination and this has been through various ways such as improving the working conditions and standards of living. This institution inter-alia includes, Ministry of gender labour and social development, National Organization of Trade Unions, International Labour Organization.

CHAPTER THREE

THE LEGAL FRAME WORK OF THE STUDY

3.1 Introduction

The examination of the employment law in relation to wrongful termination was in this chapter, the researcher reviewed the different laws that address's employment law in Uganda. This was done so as to understand the various rights and duties of employees and employers in employment related matters. Also it's through this chapter that the employment law in relation to termination was analyzed and the review of key international statutes that Uganda has ratified has also be consulted in order to come up with comprehensive analysis.

The primary labour statute; the Republic of Uganda Constitution 1995 as supreme law, the Employment Act of 2006, has broad application, covering all employees employed by an employer under a contract of service (apart from exceptions for an employer's relatives, the military and possible ministerial exceptions).

The last decade has been a busy period of labour law reform in Uganda. Where new instruments were brought into force and the purpose of the new instruments was to fill gaps in the legislation and, in particular, to improve the existing framework of labour law for better implementation and compliance⁵¹. In addition to the enactment of a number of statutes, a set of regulations in the area of labour and employment were adopted in 2011. All of these instruments were the result of tripartite consultation. Inter alia these include: The Employment Act No. 6, 2006; The Employment Regulations, 2011; The Equal Opportunities Act, 2007; The Labour Unions Act

⁵¹<https://www.ilo.org/wcmsp5/public/-ed.dialogue/-lab-admin/documents/publication>: The Minister noted that the recent main challenge for labour administration in Uganda has been getting the new legal framework into place.

No. 7, 2006; The Labour Unions (check - off) Regulations, 2011; The Workers Compensation Act, 2006; The Workers' Compensation Regulations, 2011.

3.2 The Republic of Uganda Constitution 1995

Uganda's 1995 Constitution (as amended) includes key provisions in the field of labour. It provides that every person in Uganda has the right to practice his or her profession and to carry on any lawful occupation, trade or business⁵². It prohibits forced labour⁵³ and child labour⁵⁴ and guarantees safe and healthy working conditions⁵⁵, equal pay for equal workers without discrimination⁵⁶, also provides for freedom of association in any trade union of choice for promotion and protection of employees economic and social interest.⁵⁷ And that employer of every woman worker shall accord her protection during pregnancy and after birth, in accordance with the law.⁵⁸

However it was stated that where the employer decides to terminate his or her employee's duties, the aggrieved employee should be accorded with a right of fair hearing. And it was provided that, any person appearing before any administrative official or body has a right to be treated justly and shall have a right to apply to a court of laws in respect of any administrative decision taken against him or her.⁵⁹

⁵² Art. 40(2) the republic of Uganda constitution 1995

⁵³ Art. 25) the republic of Uganda constitution 1995

⁵⁴ Art. 34(4) the republic of Uganda constitution 1995, that children are entitled to be protected from social or economic exploitation and shall not be employed in or required to perform work that is likely to be hazardous or to interfere with their education or to be harmful to their health or physical, mental, spiritual, moral or social development.

⁵⁵ Art. 40(1)(a) the republic of Uganda constitution 1995

⁵⁶ Art. 40(1)(b) the republic of Uganda constitution 1995

⁵⁷ Art. 40(3)(a) the republic of Uganda constitution 1995

⁵⁸ Art. 40(4) the republic of Uganda constitution 1995

⁵⁹ Art. 42 of the republic of Ugandan constitution 1995

3.3 Employment Act 2006

Employment was defined as a relationship between two parties, usually based on a contract where work is paid for, where one party, which may be a corporation, for profit, not-for-profit organization, co-operative or other entity is the employer and the other is the employee⁶⁰

In Uganda employment relations are primarily governed by the employment Act No. 6 of 2006, in this Act it was stated that a contract of service shall not be terminated by an employer unless he or she gives notice to the employee⁶¹, however any exception was given where the contract of employment is terminated summarily in accordance with section 69. After addressing researcher's mind on the said provision it created desire to look at the common law in matters of termination and it was articulated that main significance of statute as a legal concept is to confers an automatic right to reinstatement in the event of a dismissal which is not justified by law thus where, in case where a police constable was dismissed unlawful and remedy of reinstatement was upheld. ⁶²

It's of essence for the employer to address his or her mind on the date when the employee was employed and this was to be proper when the employer is vest with law, thus the notice required to be given by an employer or an employee shall not be less than two weeks where the employee has been employed for a period of more than six months but less than one year; not less than one month, where the employee has been employed for a period of more than twelve months, but less than five years; not less than two month, where the employee has been employed for period of five, but less than ten years; and not less than three months where the service is ten years or

⁶⁰Dakin,Stephen; armstrong, j.scott (1989)

⁶¹ Section 58(1)(a) of the Act.

⁶² Ridge vs. Baldwin (1964) AC 40

more. This provision was providing the right to stay as employee or as employer and a breach of which could mark party to be held liable.⁶³

when the Ugandan courts decisions was view in relation to the position of the law on termination, it was found out in the supreme court of Uganda it was stated by *tsekokojsc* that: where any contract of employment stipulates that a party may terminate by giving notice of a specified period, such a contract can be terminated by giving the specified notice for the stipulated notice for the period. In default of such notice by the employer, the employee is entitled to receive payment in lieu of notice and where no period of notice is stipulated compensation will be awarded for reasonable notice which should have been given depending on the nature and duration of employment. Payment in lieu of notice can be viewed as an ordinary way of giving of notice. The right of the employer to terminate the contract of service whether by giving notice or incurring a penalty of paying compensation in lieu of notice for the duration stipulated or implied by the contract cannot be fettered by the court⁶⁴

whereas Uganda does not consider the financial status of the employee was stated that “an employer’s financial circumstances may well be the reason for terminating a contract of employment – the event that gives rise to the employee’s right to reasonable notice. But an employer’s financial circumstances are not relevant determination of reasonable notice in a particular case: they justify neither a reduction in the notice period in bad times nor an increase when times are good.”⁶⁵ Where this opinion of the judge was emphasizing concern of notifying the employee before termination of employment in order to avoid financial disability.

⁶³Section 58(3) employment Act No.6 of 2006

⁶⁴ Bank of Uganda Vs Betty Tinkamanyire SCCA No. 12 of 2007 *per Tsekoko JSC*

⁶⁵Michela vs. St. Thomas of Villanova Catholic School. 2015 ONCA 801 (con11)

More was that the labor office may make an order; that the employer pay to the employees the wages which would otherwise have been due for the period of suspension with half pay⁶⁶. The rational for this half pay is to payment in arrears to employee if the remedy of reinstatement is given.

Contrary to the terms agreed upon by the parts to the employment contract; the employer shall prove the reason or reasons for dismissal and where an employer fails to do so, the dismissal shall be deemed to have been unfairly terminated⁶⁷. Therefore an employer can not just by payment in lieu or giving reasonable claim to have terminated an employee lawful because under section it has been show that employer has to prove reason for termination failure of which makes any employer liable for wrongful termination.

3.3 The Trade Union Act of 2006

Under this Act the employee was give an opportunity to join any union of his or her choice organized by group of employees⁶⁸, the rational of which was that there is third party (labor unions) who can fight for his or her rights in case of any violation by the employer of which wrongful termination was one way of violating the employees right to work⁶⁹.

Further the Act emphasized the right to join trade union by discouraging employer from discriminating in regard to the hire, tenure or any terms or condition of employment in order to discourage membership in labor union⁷⁰.

⁶⁶ section 64 (5)(c) employment Act No.6 of 2006

⁶⁷ section 68(1) employment Act No.6 of 2006

⁶⁸ Section 3 of the trade union Act 2006

⁶⁹ Article 40(2) Uganda constitution 1995

⁷⁰ Section 4 (c) trade union Act 2006

This Act uphold common law remedy of reinstatement which was provided in the case of *ridge vs. Baldwin*⁷¹, under this statute it provides that the industrial court shall if it is satisfied, that the contravention has occurred, order appropriate relief for the complaining party including, but not limited to the reinstatement of any employee who has been dismissed⁷².

3.4 The National Employment Policy for Uganda of 2011

The MGLSD administers a number of policies, but of relevance to labour administration are the National Policy on HIV/AIDS and the World of Work (July, 2007) and the National Employment Policy for Uganda: Increasing Decent Employment Opportunities and Labour Productivity for Socio-Economic Transformation (April, 2011).⁷³

The National Employment Policy provides a number of policy interventions in the various fields of labour and employment. Regarding labour administration, the policy has committed government in the adoption of strategies such as implementing labour laws, regulations and the fundamental principles and rights at work⁷⁴; developing a comprehensive and sustainable labour administration and employment services system; strengthening of labour administration institutions such as the Industrial Court, the Labour Advisory Board, the Minimum Wages Advisory Board and wages Councils, the Medical Arbitration Board and the Occupational Safety and Health Board⁷⁵; and strengthening of departments responsible for labour, employment as well as occupational safety and health.

⁷¹ (1964) AC 40

⁷² Section 6(2) trade union Act 2006

⁷³ policy 5, National Employment Policy for Uganda, 2011

⁷⁴ Policy 7.3 national employment policy, 2011

⁷⁵ Policy 7.7 national employment policy for Uganda, 2011

The National Policy of HIV/AIDS, which has largely been developed along the lines of the ILO Code of Practice on HIV/AIDS and the World of Work provides policy guidance and implementation strategies for HIV and AIDS interventions at the workplace.

3.5 International Labour Organization Convention C158

The ILO was established after the end of the First World War as part of the peace treaty of Versailles. The ILO constitutes states that it seeks to assist in the establishment of fair competition between countries through the establishment of standard setting protective values and to establish social peace through equal working conditions.

On 2 June 1982 the government body of the international labor office met for the 68th time in Geneva and adopted ILO convention C158⁷⁶. The theme of the conference was on termination of employment at the initiative of the employer. Convention C158 has been ratified by only thirty four of the 183 members' states of the ILO. It is significant to note for purposes of this contribution that South Africa, the United Kingdom, United States and the Netherlands have not ratified convention C158.

Article 2 of the convention excludes certain categories of workers from protection against dismissal, namely fixed term contract workers; works employed on a probationary period; and workers employed on arousal basis. Also the convention states that members' countries can exclude other categories of employee from certain provisions of convention C158 on the size and

⁷⁶Convention concerning Termination of Employment at the Initiative of the Employer (Entry into force: 23 Nov 1985)

nature of the employer's business⁷⁷. Article 4 to 8 of the ILO convention C158 deals with pre-dismissal requirements.

Article 4 of the convention C158 provides that; the of a worker shall not be terminated 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.

This makes it clear that the ILO only recognizes three broad categories of permissible grounds upon which a worker's service may be terminated, those related to misconduct, incapacity or the employer's operational requirements. it is also clear that dismissal must be based on a valid reason which can be classified within one of these categories. It is submitted that the degree or severity of particular behavior could play a role in determining whether the behavior can be categorized as a valid reason for dismissal.

The convention C158 states that a number of reasons shall not constitute valid grounds for termination. included in the list are union membership; acting in the capacity of a work's representative, race, color, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin, and absence from work during maternity leave⁷⁸.

This list of ground, according to the ILO, should automatically be viewed as impermissible grounds upon which a work's service may not be terminated. It is clear that this list is not exhaustive and that member countries are free to include additional grounds.

⁷⁷Article 2(5)

⁷⁸Article 5

Article 7 of convention C158 provides that; the employment of a worker shall not be terminated for reasons related to the worker's conduct or performance before he is provided an opportunity to defend himself against the allegations made, unless the employer cannot reasonably be expected to provide this opportunity.

Article 7 is not clear on whether this opportunity to defend one must take place at the workplace or, in the alternative, before an independent body or forum. It is, however, submitted that there are two indications that it should be granted at the workplace. The first is contained in the second part of article 7, which states that the employer may dispense with this opportunity if it appears that it cannot reasonably be expected to do so. The second indicator is contained in the next article, which provides for an appeal to an independent external body. Article 8 of ILO C158 provides that; a worker who considers that his employment has been unjustifiably terminated shall be entitled to appeal against that termination to an impartial body, such as a court, labor tribunal, arbitration committee or arbitrary.

We suggest that there are three main principles that can be extracting from ILO convention C158.

There must be availed reason for dismissal. A worker must be afforded an opportunity to defend him or herself at the workplace against the allegations made by the employer.

Every work should be entitled to an opportunity to lodge an appeal to an impartial tribunal or court against a decision to dismissal him or her.

The preliminary observation can be made that international standards do not dictate that formal court –like procedures have to follow at the workplace when the worker is given the opportunity

to defend him or herself against allegations made by the employer. Article 7 does not provide details in respect of notification periods, the right to call witness, or an entitlement to legal representation. In what follows, the extent to which the above three core principles have been given effect to in selection of foreign jurisdictions is considered.

3.6 The termination course of employment

Under here the researcher looked at the process in which employment contract is deemed to have been lawful terminated, in addressing this Employment Act and the opinions of different judges were consulted.

Under the interpretation section of the Act⁷⁹ it was provided that; dismissal means the discharge of an employee from employment at the initiative of his or her employer when the said employee has committed verifiable misconduct

And that termination of employment also meant the discharge of an employee from employment at the initiative of the employer for justifiable reasons other than misconduct, such as expiry of contract, attainment of retirement age.

Subject to interpretation section⁸⁰ this meant that termination occurs when an employer or an employee end an employee's employment with a particular employer. Literary termination was realized be voluntary (termination) or involuntary (dismissal) depending on the circumstances. When termination is initiated by the employer, it is usually involuntary although, under some circumstances, the employee may initiate termination and that is voluntary termination and the employee and employer may mutually agree to end their employment relationship.

⁷⁹Section 2 of the Employment Act 2006

⁸⁰ *ibid* .

Under the employment Act it was provided that termination shall be deemed to take place where the contract of service is ended by the employer with notice to the employee⁸¹; being a contract for fixed term or task, ends with the expiry of the specified term or the completion of the specific task and it is not renewed with the period of one week from the expiry on the same terms or terms not less favorable to the employee⁸².

It was stated that states which recognize employment at will⁸³, an employee may be fired for any reason, at any time, with or without cause. Employers do not even have to give a reason for why the employee is terminated from his or her job.

And in the Ugandan context employment at will; this has a relation to employment Act 2006 that the employee terminates his or her employment at any time for any reason with notice or without notice, as consequence of unreasonable conduct on the part of the employer towards the employee⁸⁴. This is always identified with casual workers who are employed at will of the employer.

In relation to the definition of dismissal⁸⁵ involuntary termination, literally meant an employer fires the employee or removes the employee from his or her job. An involuntary termination usually was as the result of an employer's dissatisfaction with an employee's performance, an economic down turn or escalating progressive indiscipline in the case of performance issues such as absenteeism.

⁸¹ Section 65(1)(a) employment act of 2006

⁸² Section 65(1)(b) employment act of 2006

⁸³ <https://www.thebalancecareers.com>

⁸⁴ Employment act 2006 section 65(1)(c)

⁸⁵ supra

Therefore under Employment Act⁸⁶ it was provided that: "notwithstanding any other provision of this part, an employer shall before reaching a decision to dismiss an employee, on the grounds of misconduct or poor performance, explain to the employee in a language the employee may be reasonably expected to understand, the reason for which the employer is considering a dismissal and employee is entitled to have another person of his or her choice present during this explanation".

And in the recent decision⁸⁷ the court on page 5 after distinguishing "termination" from "dismissal" it was stated that "in our opinion, whether the employer chooses to "terminate" or "dismiss" an employee, such employee is entitled to reasons for dismissal or termination. In employing the employee, we strongly believe that the employer had reason to so employ him/her. In the same way, in terminating or dismissing the employee there ought to be reason for the decision".

The above opinion was grounded in the provision of the employment act⁸⁸ which states that: "irrespective of whether any dismissal which is summary dismissal is justified or whether the dismissal of the employee is fair, an employer who fails to comply with this section is liable to pay the employee a sum equivalent to four weeks pay."

It seems that this section of the law is a sanction to the employer who fails to give reasons for the termination or dismissal of the employee thus giving credence to the above opinion.

Occasionally, an employer and employee recognize that they are not fit for whatever reason to trust each other. Then they mutually agree to on ways in a manner that makes neither party

⁸⁶ Section 66(i)

⁸⁷ Florence Mufumba Vs U.D.B (Labour claim 138/2014)

⁸⁸ section 66(4)

culpable for the termination. This approach to termination was called “agreeing on an exit strategy”⁸⁹. No pain. The unwanted employee, the unwanted job: gone. And that this was known as basics of just cause termination

However in the supreme court of Uganda it was held in *Barclays bank of Uganda vs. Godfrey Mubiru*⁹⁰ by (Kanyehambajsc, as he then was) that;

“where a service contract is governed by a written agreement between the employer and the employee, as in this case, termination of employment or service to be rendered will depend both on the terms of the agreement and on the law applicable”.

The rationale for this provision is that where the law and the agreement of the contract contradict, the provisions of the law prevail.

In other instances termination of employment, it was stated that the employment is terminated for a reason which is given to the employee and stated in the termination letter⁹¹. This was known as Termination for cause and that this can occur in situations such as: Violation of the company code of conduct or ethics policy; Failure to follow company policy; Violence or threatened violence; Extreme insubordination to a manager or supervisor; harassment⁹² of other employees or customers, or Watching pornography online.

⁸⁹ <https://smallbusiness.chron.com/employee-termination-types-1288.html>

⁹⁰ Supra

⁹¹ Employment law termination for just cause; Stuartrudner, 2017.

⁹² Section 7 of the employment Act 2006

Under the Employment Act 2006⁹³ provided for summary dismissal and the rationale for this under wrongful termination is that where an employee is unfairly dismissed this results into some consequences with wrongful termination which is the end of employment

Thus Summary dismissal meant a dismissal without notice or with less notice than the employee is entitled to under the contract or under the law and summary dismissal is justified when an employee, by his conduct shows that he has fundamentally broken the contract of service⁹⁴.

The phrase fundamentally broken as used was not defined under the Act. However, under common law, which applies to fundamental breach of contract by reason of the provisions of the Judicature Act, the law on summary dismissal as was, in *Barclays bank vs. Mubiru*⁹⁵ a dismissal without notice (and without a hearing) was reserved for serious misconduct.

It was noted that there is no exhaustive list of the misconduct that justifies summary dismissal employment act, but according to *Laws vs London Chronicle*⁹⁶ one isolated act of misconduct is sufficient to justify summary dismissal. The test was stated to be whether the conduct complained of is such as to show the servant to have disregarded the essential conditions of the contract of service.

Be the above as it may, it is important to note that the post 2006 Employment Act whose position was that there is a mandatory right to be heard now reserved by Act⁹⁷ for every form of dismissal, a right not available in summary dismissals previously *Godfrey Mubiru vs. Barclays*

⁹³ section 69

⁹⁴ Section 69 (I, ii) employment Act 2006

⁹⁵ (supra)

⁹⁶ [1959] 1 WLR 698

⁹⁷ Section 66 of the Employment Act 2006

*bank*⁹⁸ otherwise, the rest of the common law meaning of summary dismissal as stated above was substantially left intact by the act, however under the exception circumstances the employee many not enjoy the fair hearing⁹⁹

Therefore , even if the applicant's conduct (or misconduct) was regarded as one that amounted to disregarding the essential conditions of the contract of service such as to be regarded as having fundamentally broken the contract of service and therefore justifying summary dismissal, the applicant had to be accorded the right to a hearing. The right to a heard is guaranteed by the constitution of the republic of Uganda¹⁰⁰ as follows:

“Any person appearing before any administrative official or body has a right to be treated justly and fairly and shall have a right to apply to a court of law in respect of any administrative decision taken against him or her.”

Further provides that the right to a fair hearing cannot be derogated from an individual¹⁰¹.

This principle has been considered as one of universal application. Article 10 of the universal declaration of human right, 1948; article6(1) of the European convention on bill of rights and fundamental freedoms, 1950; article 7(1)(c) of the African chart on human and people's rights, all this provides for right for fair hearings.

3.7 Remedies available to the aggrieved party

(i) Damages

⁹⁸ *supra*

⁹⁹Section 69(3) employment Act 2006 provides that in cases of summary dismissal where the employee by his or her conduct has fundamentally breached his/her contract of employment it may not be necessary to conduct a hearing

¹⁰⁰Article 42

¹⁰¹Article 44 (c)

The principles governing award of damages were outlined in the supreme court case of *Ahmed Bhaku vs. car and general it*¹⁰², where Mulenge JSC (as he then was) made a distinction between a contract which makes no provision for termination prior to expiry of a fixed period and one in which there is a provision enabling either party to terminate the employment. It was held that:

“....in the event of wrongful termination, by the employer, the employee in the former contract would be entitled to recover a damages the equivalent o remuneration for the balance of the contract period whereas in the later case the wronged employee would be entitled to recover as damages the equivalent of remuneration for the period stipulated in the contract for notice...”

The rational of awarding damages in the event of breach of contract of employment, Mulengajsc then, stated that; “damages are indented to restore the wrongful party into the position she or he would have been in if there had not been breach of contract thus in the case of employment contract for a fixed period which is not terminated if there is no wrongful termination, the employee would serve the full period and receive the full remuneration for it. And in the case of the contract termination provision is complied with, the employee would serve the stipulated period and receive remuneration for that period or would be paid in lieu of notice”¹⁰³

(ii) Compensation

An employee who is unlawfully or wrongfully dismissed is entitled to adequate compensation in accordance with the law. In *Barclays vs. Godfrey Mubiru*, it was held that ... “in my opinion, where any contract of employment, like the present, stipulates that a party may terminate it by giving notice of a specific period, such contract can be terminated by giving the stipulated notice

¹⁰²SCCA NO. 12 of 2002

¹⁰³Gullabbhaiushillingi vs. Kampala pharmaceuticals ltd, SCCA No6 of 1999

for the period. In default of such notice by the employer, the employee is entitled to receive payment in lieu of notice and where no period for notice is stipulated, compensation will be awarded for reasonable notice which should have been given, depending on the nature and duration of employment”

Section 58(3)(b) of the employment act, 2006 provides that notice required to be given shall not be less than one month, where an employee has been employed for a period of more than 6 month but not less than 5 years.

In *bank of Uganda vs. Betty Tinkaanyire*,¹⁰⁴ court held that; “... the reasoning of the court of appeal in *Agbettab vs. Ghana cocoa Marketing board (1984-86) GLRD 16* should be followed so that the courts were able to award damages which reflects the court disapproval of a wrongful dismissal and the sum was not confined to an equivalent to the works wages...”

(iii) Severance allowance,

Severance package is pay and benefits employees received when they leave employment at accompany. In additional to their remaining regular pay, it may include some of the following; an additional payment based on months of service. Payment for unused vacation time or sick leave.

The employment Act¹⁰⁵ 2006 provided that an employer shall pay severance allowance where an employee has been in his or her continuous service for a period of six months where the employee is unfairly dismissed by the employer.

¹⁰⁴ S.C.C.A No12 of 2007

¹⁰⁵Section 87(a)

(iv) Repatriation allowance,

A repatriation allowance is intended to assist internationally recruited staff members in the efforts required of them if they decide, at the end of their employment, to return to their country of origin with the intention of establishing themselves there. The Employment Act¹⁰⁶, 2006, stipulates that an employee recruited for employment at a place which is more than one hundred kilometers from his or her home shall have the right to be repatriated at the expense of the employer.

(v) Reinstatement,

reinstatement means and requires the employer to treat the employee in all respects if he had been dismissed, thus his pension, seniority rights etc, must be restored to him and he will benefit from any improvement in terms and conditions which came into operation whilst he was dismissed¹⁰⁷.

However, the common law principle which was adopted by Ugandan courts that; an employer should not be forced to retake an employee when the employer no longer wishes to continue engaging him or her.¹⁰⁸

Reinstatement of an employee is governed by the provision of section 71 of the employment Act part of the section states, "... (5) If the court finds that the dismissal is unfair the court may order the employer to reinstate the employee or order the employer to pay compensation..."

¹⁰⁶Section 39

¹⁰⁷Employment Law 3rd edn p.271; Vines vs. National Dock labour board (1956) 1 all.ER; Dr. Patrick mwesietve vs. Attorney General: H.C. Misc App No.242 of 2006

¹⁰⁸ Barclays bank of Uganda vs. godfrymubiru S.C.C.A No 1 of 1998

3.8 Conclusion

The legislative body has been so significant to confront the issue of wrongful termination in Uganda. It has given both the employer and the employee breathing space. According to the legislations, national and international with support of case law have provided for the test of lawful termination. It follows that according to Section 58(1) (a) of the employment Act of 2006 requires that reasonable notice should be given to the employee before he or she is termination of his/her employment. And that the notice should include reasons for termination and opportunity to appear and defend.

CHAPTER FOUR

PRESENTATION OF THE STUDY FINDINGS

4. 1 Introduction

The study assessed the position of employment laws in Uganda, and to ensure the satisfaction of the study the researcher consulted; statutes, judicial, the interpretations of the procedural provisions and the institution of labor. This research was conducted on assumption that; There is employment law and that most employers have failed to enforce this law on employment in relation to wrongful termination.

Under this chapter research was able to present the results that were obtained from the research conducted. This chapter paved way to whether the termination of employees is adhered inter alia to; article 28, article 40(1)(2) (3), and article 42 and article 44(c) of the 1995 Uganda constitution which protects the right to work. This was reviewed in relation with the labour laws of Uganda.

'Firing an employee is both the worst day of your life and the best day, that's because when you let someone go it affects their family and their livelihood, and it's tough. But it's also the best day of your life because, normally, if you have to fire someone, that person has been a pain in the butt for a while, and it's time for them to go.'¹⁰⁹

¹⁰⁹says Jerry Osteryoung, director of outreach at the Jim Moran Institute at Florida State University's College of Business.

4.2 Outcomes of the research conducted

The issue of constructive termination was found to be of paramount concern where termination occurs over grave reasons that most employees shy away from publishing either in courts of law in public because of their dignity. As it is indicted under the employment act 2006, sexual harassment at work is any offence. But most employees unsteady of accusing the employer for the offence, they choose to terminate the contract of employment¹¹⁰, not because they want but because of the constructive behavior of the employers

Additionally it was found that most employers tend to demote employees from the senior official positions, introduce restrictive policies coupled with harsh penalties which in results irritates the employees ability to continue with work. It is found that this done to ensure that the employee can dismiss his or herself than being terminated by the employer, hence wrongful termination whoever employee voluntarily terminated the employment.¹¹¹

However 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 adhere¹¹². In Uganda, the private sector has been the employer of many workers due to free market economy and globalization... Despite their human rights, especially the rights to work are being scarified due to success of globalization. The researcher agrees that in order for globalization to be successfully the process must contain a human rights initiative this include representing, promoting and protecting the right to as the court has been working hard to protect this right.

¹¹⁰ Section 7

¹¹¹ <https://employment.findlaw.com/losing-a-job/>

¹¹¹ The principle of natural justice *nemo iudex in sua causa* constructive-dismissal-and-wrongful-termination.html last accessed on 22nd/ 06/ 2019, at 3:04 pm

¹¹² The principle of natural justice *nemo iudex in sua causa* that no person can be the judge on his own cause .

Also on the issue of right procedure of termination it was found out that most employees are wrongful terminated from work because employers don't follow right procedure for termination which asserts that;¹¹³

“The employment of a worker shall not be terminated for reasons related to the worker's conduct or performance before he is provided an opportunity to defend himself against the allegations made, unless the employer cannot reasonably be expected to provide this opportunity”

The Act provides that in any claim arising out of termination the employer shall prove the reason or reasons for the dismissal, and where the employer fails to do so, the dismissal shall be deemed to have been unfair within the meaning of section 71¹¹⁴ The Industrial Court has also interpreted that provision to mean that whether it is a dismissal or termination, an employer must prove the reason(s) for termination¹¹⁵ The reasons should be justifiable and must not be related to misconduct. Failure to follow the procedure was so detrimental to the employees because in the current era job is part and partial of human being.

Also it was finding of the research that most employers don't know their rights because of the ignorance of the law and that the employers do not orient the employees on the existing of employment. For instance under article 40(2) it was stated that every person in Uganda has the right to practice his or profession and to carry on any lawful occupation, trade or business.

However this right to work is given by one hand and is taken by other than other, by the constitution and the judiciary, the constitution assertions in one hand has always given the

¹¹³procedure prior to or at the time of termination, Article 7 of C158 - Termination of Employment Convention, 1982 (No. 158)

¹¹⁴The Employment Act, 2006.

¹¹⁵ Labour claim 138/2014 (supra)

right to work to any person capable and willing to do work but the ordinary legislation have taken it away, the good example of this provisions which take such right of the person to work can be found in the Labour Dispute (Arbitration and Settlement) Act¹¹⁶ where it provides that where an order of reinstatement or re – engagement is made by an arbitrate or court and employer decides not to re- engage the employee, the employer shall pay compensation of twelve months wage due and other benefits from the date of unfair termination to the date of final payment.

Despite the fact that employees are wrongful terminated It is was finding that termination may voluntarily occur for less positive reason instance Where the employee has to work every day with a coworker who bullies ¹¹⁷ her or her in subtle ways that are not outwardly noticeable. Under such circumstance the employee can't claim contractive termination because he or she has adhered bulling and in end she decides to terminate the contract.

Uganda, once a pioneer in education policy within Africa, is now a developing country in the field of education. But it was finding of the research that; Low salary and a class size of 120 students make the profession of being a teacher unattractive. Since its inception, the union has been calling for a 100% increase in pay, as well as benefits such as travel allowance, health insurance and pension increases. Since 2016 UNATU has been negotiating with Minister of Education¹¹⁸. In the negotiations, they were able enforce at least a 50% wage increase. This clearly mean that failure of the government to increase the benefits of the teachers, the government will contractively intending to terminate the teachers hence depriving them of their right under article 40(2) of the Ugandan constitution 1995

¹¹⁶ 2006. Act No. 8

¹¹⁷ <https://www.theblancereers.com/what-is-bullying>.

¹¹⁸ Janet Museveni, First Lady of Uganda.

It was finding of the researcher that unemployment rate for young people in Uganda ages 15–24 is 83%.¹¹⁹ This rate is even higher for those who have formal degrees and live in the urban area. This is due to the disconnection between the degree achieved and the vocational skills needed for the jobs that are in demand for workers. And the wrongful termination in this issue was found under employment of apprenticeship¹²⁰ were most employees at that time are not well vest with rules of procedure in his or her new job, and with skills need by the employers then the result of all is that employees are wrongful terminated.

Youth unemployment remains a serious policy challenge in many sub-Saharan African countries, including Uganda. In 2013, youth (aged 15 to 24) in sub-Saharan Africa were twice likely to be unemployed¹²¹ compared to any other age cohort. For Uganda, in 2012, the Uganda Bureau of Statistics revealed that the share of unemployed youth (national definition, 18-30 years) among the total unemployed persons in the country was 64 percent¹²². Given the rapid growth of the Ugandan population three-quarters of the population are below the age of 30 years—coupled with the fact that the youth are getting better educated through higher access to primary and secondary education, a stronger focus on job creation for this cohort of people cannot be overemphasized.¹²³

Causes of youth unemployment are believed to be multifaceted, ranging from an inadequate investment/supply side of jobs, insufficient employable skills, high rates of labor force growth at 4.7 percent¹²⁴ per annum. Then it was due that inter liar, the high rates of labor force growth

¹¹⁹https://en.wikipedia.org/wik/youth_in_uganda#citee.note_no_10

¹²⁰ Section 2 of the employment act of 2006

¹²¹<https://www.ilo.org.wccmm/documents/publication/wcms> (last accessed on 6/22nd/2019)

¹²²<https://www.ubos.org/onlineefiles/uploads/ubos/pdf documents/NCLS-report 2011-12>

¹²³ <https://www.brookings.edu/blog/africa-in-focus/2014/08/26/youth-unemployment-challenge-in-uganda-and-the-role-of-employment-policies-in-jobs-creation/>

¹²⁴https://www.mglsd.go.ug/wp_content/uploads/2011/04/epmloyment/policy1blank-pdf

most employers takes advantage of their administrative powers to wrongful terminate employees without any form of termination taken into consideration this also where employees are dismissed because retaliation which is against the law to terminate an employee because he reports his employer for a state a law violation, even if the report is not true.

It was finding of the researcher that a large population of Ugandans is underemployed i.e. being either highly skilled but working in low paying jobs or working part time. However, in comparison to the unemployment challenge, underemployment does not feature prominently in Uganda's labour market policy discussion. Underemployment equally disrupts the economy's development, as many persons out there are unsatisfied with their employment situation. This category of workers is often neglected during national planning and yet for the economy not to leave anyone behind, ensuring that the employed persons are in decent work is vital.¹²⁵ Thus the employees are at the massy of the employer this has currently created situation of employment at will and termination at will.

Also it was finding of the researcher that casual workers do not have specific law that governs the them in Uganda¹²⁶ and this have given the employers the liberty to wrongful terminate the casual workers in Uganda which has in increased the number of the hence unemployment. On some was noted that casual works are not entitled to receive a written warning for misconduct or poor performance before they can be terminated, and an employee is terminated at any time with verbal notice

¹²⁵<https://www.eprcug.org/blog/549-the-need-to-focus-on-the-growing-number-of-underemployed-persons-in-uganda-s-labour-force>, By **MadinaGuloba and Miriam atunze**

¹²⁶ Article 2(2.2) (c) A Member may exclude the following categories of employed persons from all or some of the provisions of this Convention; Workers engaged on a casual basis for a short period.

Also it was finding of the study, the researcher agrees that the judiciary has taken steps to ensure that the public is well informed of the employment law on termination both to the employers and the employees such as time-off dismissal: any employee who is terminated for taking time-off are protected by law, such as voting, child care or women on maternity leave are protected from termination and harsh working conduction where any employee is terminated on weakness such; due to pregnancy the employer will held for wrongful termination.¹²⁷

4.3 Conclusion

In this chapter , the assessment made showed that depriving someone the opportunity to work may demote the 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 him/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.

¹²⁷ Article 5 and 6 of C158 - Termination of Employment Convention, 1982 (No. 158)

CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

5.1 Introduction

The weaknesses in the law of dismissal as highlighted above undoubtedly call for proactive action where the objective of protecting vulnerable employees and enhancing employment security is to become a reality. The following key recommendations are worth consideration.

5.2 Conclusions

The employment law is there but most employers have failed to enforce the existing law; the failure of enforcing the law has resulted into situations where workers are left at the mercy of employers.

And secondly most employees are not aware of their rights and remedies under the employment law thus they continue to suffer at the hands of the employers.

This was study on the analysis of employment law in relation to wrongful termination in Uganda. Employment is very relevant in the determination of lawful termination. While to a greater extent, employment law is enforceable in the Uganda, it has to some extent ignored consequently, while employment laws in Uganda aim harmonizing the labour standards. This employment law ought to be considered in balancing the employer-employee relationship in Uganda.

5.3 Recommendations

Firstly, the legislation in Uganda should prescribe the burden to be discharged by the employer for purpose of justifying termination of contract of employment by way of dismissal. Such

legislative intervention will ensure that clearly stipulated guideline are followed in all cases where the courts are called upon to resolve the inevitable dispute as to justification or inconsistency in approach adopted by the court in so far as the principles to be employed in determining whether or not dismissal from employment is justified are concerned. For instance this can be done through the PIP which is the employer's last-ditch attempt to communicate the needed performance improvements to the employee. But the PIP, and any escalating disciplinary measures, also provide for documentation that demonstrates that the employer made an effort to salvage the employment relationship.

Secondly, the executive branch of Government in Uganda should take proactive action in domesticating labor conventions this is meant to enhance employment security at the international level. Such domestication will ensure that dismissed employees are able to rely on these impotent instruments in challenging dismissals effective in breach of the obligations contained therein.

The ministry of gender labor and social development should formalize policies that emphasize the re-training of employees in the course of their employment this will reduce involuntary termination of an employee that ranges from poor performance to attendance problems to violent behavior. Occasionally, an employee is a poor fit for the job's responsibilities or fails to mesh with the company's culture; with performance problems, the employer most often has tried less final solutions such as coaching from the employee's supervisor to help the employee improve.

If an employee is fired in violation of an employment contract, sometimes called a breach of good faith, there may be a claim against the company then to sure that justice is prevailed government under the supervision of the ministry of gender labor and social development should

stringent on what counts as “implied employment contracts,” so it is a good idea to have an attorney review the company’s employment agreements or contracts to ensure that compliant are protected from wrongful termination

The courts in Uganda should impose strict penalties to the employers like huge amounts of compensations to the employees where uniform and consistent application of the rule is not adhered in supporting a good cause termination. While it is understandable that the circumstances in any given case may be unique, if the rule was knowingly violated, the punishment should generally be the same as in all prior instances of violation. If an exception is to be made, there must be substantial mitigating circumstances.

The Ugandan Government should introduce a policy through the Ministry of Gender Labor and Social Development, which makes it mandatory for the employer to make it significant requirement to support any just cause termination with demonstration that progressive discipline was applied. progressive discipline if applied it can addresses a key consideration in which questions like; was the employee given every opportunity to correct their unsatisfactory behavior or performance? However there are some workplace conduct that is sufficiently serious to warrant discharge on only a single incident, such as theft, fighting, sexual or other serious harassment, insubordination, and similar egregious misconduct, the use of progressively more serious discipline should always be demonstrated.

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