

## Uganda's Court of Appeal Decision

Termination of employment | Responsibility for salary loan repayment



On 3<sup>rd</sup> July 2020, Uganda's Court of Appeal delivered its judgement in the case of Uganda Development Bank (UDB) versus Florence Mufumba Civil Appeal No. 241 of 2015. One of the issues for determination was whether Florence Mufumba was still liable to the repayment of loans advanced to her by her former employer, UDB, in the event that her employment was unlawfully terminated. In this commentary, we give an analysis of the implications of this judgement as well as a discussion of the evolving jurisprudence on the matter.

## 1. Responsibility for salary loan repayment

The question of who bears the responsibility for repayment of a salary loan when an employee is terminated is back to the fore following the recent Court of Appeal decision in UDB versus Florence Mufumba.

Salary loans are a common feature in Uganda's financial services and labour markets. With no collateral required except an undertaking from the employer to remit monthly installments to the lender, almost every employed person can access a loan on the basis of their paycheck. The lender too is all but assured of recovering their money from a stable source. Or so it seems until one of the intrinsic dangers of such an arrangement, termination of the employee's job contract, strikes.

Salary loan arrangements are independent of, and separate from, the obligations of the parties under an employment contract between the employer and employee. On the face of it, this should mean that upon termination of the employment contract, the employer's obligation to remit payments to the lender ceases, leaving the lender and the borrower (former employee) to deal with each other according to the terms of their loan agreement. This ought to be the position regardless of whether the termination of the employment contract is subsequently found to have been fair, unfair or even unlawful.

The Court of Appeal has been grappling with this question for some time and the UDB decision is only the latest, but definitely not the last.

## 2. Nature of salary loans

Before delving into the Court of Appeal decisions, there is need to distinguish a number of the arrangements which, in common parlance, are considered salary loans. Firstly, there is where the employee borrows money from a commercial lender secured by their salary. The employer's involvement is to confirm to the lender of the employment status of the borrower, and pay the employee's salary through the lending institution or remit the periodic payments directly to the lender. The second category are loans provided by the employer to the employee, usually in the form of salary advances. There are also arrangements where employees borrow from their inhouse savings schemes, which may or may not be controlled by the employer, and repayment is secured by the salary and deducted at source by the employer and remitted to the scheme.

## 3. The Court of Appeal decision

On 3<sup>rd</sup> July, 2020 the Court of Appeal delivered a decision in a matter involving UDB and Florence Mufumba. Although there have been media reports that the decision relieved Ms. Mufumba, who had been unfairly terminated, from paying loans which she owed to UDB, her former employer, that is not in the letter of the judgment.

Instead, the Court of Appeal adopted a unique approach of ordering that UDB offsets part of Ms. Mufumba's loan liabilities from the court awards payable to her by UDB. It was further ordered that the offset amounts cover the loan liabilities up to her retirement date while any outstanding loan liabilities would be payable by her from alternative sources.

Two earlier decisions of the same court come to mind. In National Forest Authority versus Sam Kiwanuka (Civil Appeal No. 005 of 2009), the Court of Appeal held that where a party contracts a loan obligation but the unlawful or wrongful act of another makes them fail to pay the loan, they are entitled to special damages of an amount equivalent to the outstanding loan at the time of the unlawful act. Yet in DFCU Bank Limited vs. Donna Kamuli (Civil Appeal No. 121 of 2015) the Court of Appeal reversed a finding by the Industrial Court relieving an employee of loan obligations on the basis that they had been unfairly terminated as a result of which they were unable to pay off the loan. One of the key findings of the Court of Appeal was that the loan between the parties had not been availed and thus the Court could not speculate on its contents. Moreso, the Court of Appeal also ruled that Ms. Kimuli had been lawfully terminated.

#### 4. The current legal position

The current position, as espoused by the Court of Appeal, seems to be that where an employee is unfairly terminated, their outstanding salary loan obligations should be put into consideration in determining the quantum of damages and remedies available to the employee. This is in line with the principle of *restitutio in integrum* which seeks to restore a person to a position they would have been in had the breach, in this case unfair termination, not happened.

Secondly, where an employee is lawfully terminated, the position is that they carry their loan obligations. In DFCU Bank vs. Donna Kamuli, having ruled that Ms. Donna Kamuli was lawfully terminated, the Court decided that relieving her of the loan obligations was an error. That said, the decision in DFCU Bank vs. Donna Kamuli is on a further appeal to the Supreme Court. The UDB decision may also be appealed.

#### 5. Conclusion

Salary loans, whether provided by an employer or an independent lender, are a significant part of the country's financial services and labour markets. It is important to have clarity and certainty on the rights and obligations of the parties both during employment, and in the event of cessation of employment. We believe that a loan agreement is an independent contract separate from an employment contract and the two should not be married in the name of finding appropriate remedies for an unfairly terminated or dismissed employee. Such an approach may have adverse impact on the salary loans market as employers may become nervous about providing or supporting their employees acquire salary loans from financial institutions. It is hoped that the Supreme Court will take the occasion of the appeal between Donna Kamuli and DFCU Bank to definitively resolve the issue of the liability of salary loans upon termination.

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Bill is a Senior Advisor with Cristal Advocates. He has concentrated on working with energy companies with a particular focus on cross border transactions and M&A since 1989 and is a leading global energy and tax practitioner with wide international experience. Between 1986 and 1998, he worked in London with the UK tax authorities and Big Four accounting firms. From 1998 to 2004, he was based in Kazakhstan working across the Caspian region with Deloitte. He was in the region at the time it was developing its infrastructure for crude oil production with international investment following the collapse of the Soviet Union.

From 2004 to 2008, he worked in Russia where he led Deloitte's oil and gas industry group and established Deloitte's office in Sakhalin. He moved to East Africa in 2009 leading Deloitte's energy and resources industry group in Uganda, Kenya, Tanzania, Rwanda, Ethiopia and Mozambique. He was initially based in Kampala, Uganda later relocating to Dar es Salaam, Tanzania. Bill returned to the UK in 2014 supporting Deloitte UK teams working on outbound projects investing in Africa and was a key member of Deloitte UK's energy and resource practice until his retirement from the firm in September, 2018.

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Dickens was instrumental in UNOC's formation and initial period of operation and also served as its head of Contracts, Negotiations and Advisory until May 2018. Prior to joining UNOC, Dickens was Legal Counsel at the Petroleum Directorate of the Ministry of Energy playing key legal advisory roles on the negotiation and implementation of PSAs, Joint venture and other oil and gas agreements. He was also part of the team that shepherded the process of enacting the current Ugandan oil and gas Legislations and Regulations including the local content requirements.

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