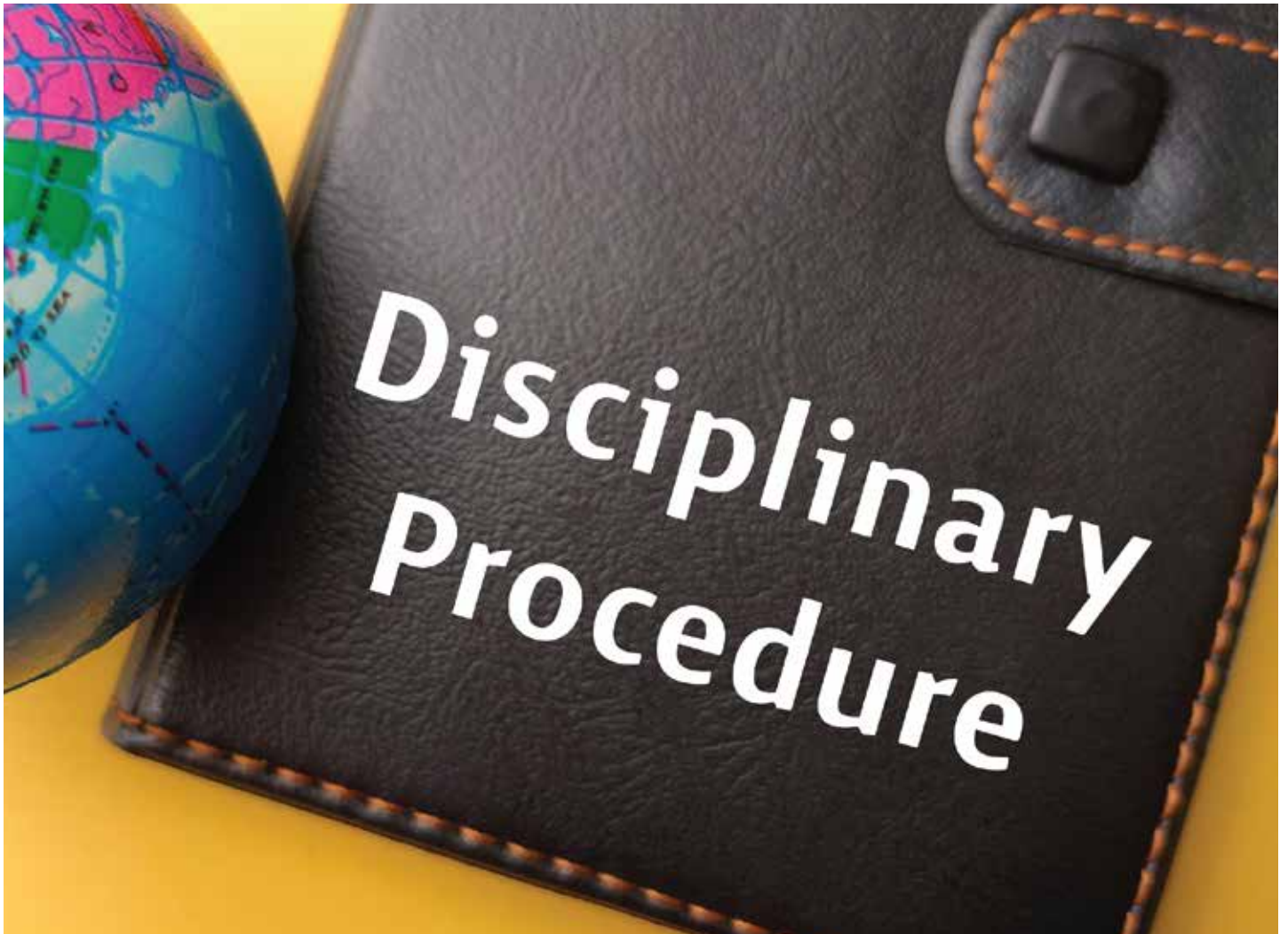


Disciplinary Procedures at the Workplace **An Overview of the Law in Uganda**



1 Introduction

Typically found in the employee handbook or code of conduct, disciplinary procedures guide on the acceptable standards of behaviour and performance at the workplace. Fair and consistent disciplinary processes not only foster a positive work environment but also protect the employer from potential non-compliance with the law while enforcing staff discipline. In this article, we give an overview of the law in Uganda with regard to workplace discipline.

2 Disciplinary guidelines

The guidelines regulating employee conduct and performance must conform to the requirements of Uganda's Employment Act 2006 including being in writing and in a language the employees understand as well as being non-discriminative and applied uniformly irrespective of race, colour, religion, gender, nationality, political opinion and trade union affiliation among others.

Disciplinary rules should also be available to all employees and the rules therein must clearly indicate the category of employees to whom they are applicable, the circumstances when applicable and the penalties for infringement among others. In workplaces with levels of supervision and managerial posts, the rules should make clear what level of management is mandated to initiate and implement any disciplinary action.

3 Disciplinary procedures

Employers must administer disciplinary procedures fairly, justly and reasonably in accordance with the law. Otherwise, there is a risk at adjudication that the disciplinary sanctions meted can be set aside with pecuniary consequences for the employer.

a) *Act expeditiously*

Excluding exceptional circumstances, disciplinary procedures must be undertaken expeditiously and without unnecessary delay. An employer who for example fails to impose a disciplinary penalty within 15 days from the time of becoming aware of the occurrence giving rise to disciplinary action ordinarily waives the right to do so.

b) *Investigations*

It may in some instances necessitate carrying out further inquiries to substantiate the allegations against the employee.

c) *Suspension during investigation*

An employee may be suspended with half pay if the inquiry being conducted may reveal a cause for dismissal. This suspension should not exceed four weeks or the duration of the inquiry. In *Sam Okao v Kampala Pharmaceutical Industries (Labour Dispute No. 049 of 2015)*, the Industrial Court held that when suspending an employee, it suffices to only give a reason without any details.

d) *Conduct of the investigation*

A neutral party should lead the investigations which once complete a report of the findings must be prepared and shared with accused employee at the earliest once a decision to pursue further disciplinary proceedings is taken. The employee should be informed of what is happening in a language which he understands and reminded of his rights to prepare his case and or explanation either personally or through representation of his choice.

e) *Right to a hearing*

An employee has a right to a fair hearing. In the case of *Ebiju James Vs UMEME HCCS 0133/2012*, the High Court held that even if the applicant's conduct (or misconduct) was 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 hearing is guaranteed by the Constitution of the Republic of Uganda.

The Court further elaborated that, "on the right to be heard, it is now trite law that the defendant would have complied if the following was done:

- Notice of allegations against the plaintiff was served on him and a sufficient time allowed for the plaintiff to prepare a defence.
- The notice should set out clearly what the allegations against the plaintiff and his rights at the oral hearing were. Such rights would include the right to respond to the allegations

against him orally and/or in writing, the right to be accompanied at the hearing, and the right to cross-examine the defendant's witnesses or call witnesses of his own.

- The plaintiff should be given a chance to appear and present his case before an impartial committee in charge of disciplinary issues of the defendant.”

f) Who conducts the disciplinary hearings?

The Employee Handbook should have clear guidelines on who within the organization has disciplinary powers and which individuals constitute the Disciplinary Committee/Panel (“DC”). Ideally, the committee should comprise officers that are higher in rank than the employee whose hearing is being conducted.

g) Disciplinary hearing proceedings

Though a physical hearing is preferred where the employee gets to meet the DC and all witnesses, the Court of Appeal held in the case of **DFCU v Donna Kamuli (CACA No. 121 of 2016)** that the hearing contemplated by section 66 of the Employment Act, 2006 does not require an employer to hold a mini-court and it can be conducted either through correspondences by letter/email or face-to-face hearing.

The disciplinary hearing should be in an enabling environment where both the employer as well as the employee can present their cases without fear or favour. Disciplinary powers exercised by employers take on a quasi-judicial nature and therefore, decorum must be maintained.

h) Communication of the disciplinary decision

Though the DC makes its decision on a balance of probability, it does not operate as a court of law. The DC should however be impartial and, make its decisions based on the facts and the evidence presented. DC hearings must be properly documented in the form of minutes kept as a record of proceedings.

It has been in contention sometimes that the record of proceedings is misrepresented because it is prepared by the DC. A possible solution to this is for the DC to also keep a voice/audio recording of the hearing which can later be transcribed into a record of proceedings.

Once the decision of the committee is reached, the decision must be expeditiously communicated to the accused employee. If found not guilty of the allegations, the accused employee will be expected to return to normal duty. Where the findings of the committee reveal that the allegations have merit, a disciplinary penalty is imposed and communicated to the accused employee.

i) Appeal process

It is good practice for an employee handbook to provide for a mechanism of appeal against the decision of the DC. If this right is provided, an employee has to first exhaust the internal mechanisms of appeal within an organization before escalation to the Labour Officer.

The appeal should be to a higher authority than the DC. Needless to say, the appellate authority should not have individuals that were involved in the earlier disciplinary hearings otherwise the impartiality of the appeal process comes into question.

An internal appeal has the effect of staying the implementation of any punishment decided upon by the DC until the appeal has been heard and a decision given. Consequently, the decision of the Appellate authority is usually final without prejudice to the Courts of Law.

4 Disciplinary penalties

In deciding the imposition of a disciplinary penalty, the employer must have regard to the circumstances of the employee and the infringement itself. As a requirement of the law, an employee cannot have his/her employment terminated on first disciplinary infringement unless the misconduct is so grave or is repeated disciplinary infringement.

a) Very minor infringements

In cases of minor infringements of work discipline, the employer must deal with the situation by way of informal advice and correction rather than invoking the formal processes. The sanction for such infringements can be a caution.

b) First time minor infringements

For infringements such as late arrival for work,

unauthorized absence from work or failure to apply oneself properly to work and where formal disciplinary procedures are commenced, the employees can only be penalized by way of a written warning.

c) *Serious infringements*

For serious infringements such as insubordination, the employee can be penalized by the imposition of a reprimand. Suspension as a means of punishment can also be considered but this should not exceed 2 weeks in any 6 months period.

d) *Serious misconduct*

For serious misconduct and repeated disciplinary infringements, the appropriate penalty is dismissal especially where there is theft or damage of employer's property, wilful endangering of the safety of the employer, fellow employer or member of the public, physical assault on the employer, fellow employee or member of the public and inability to perform work by

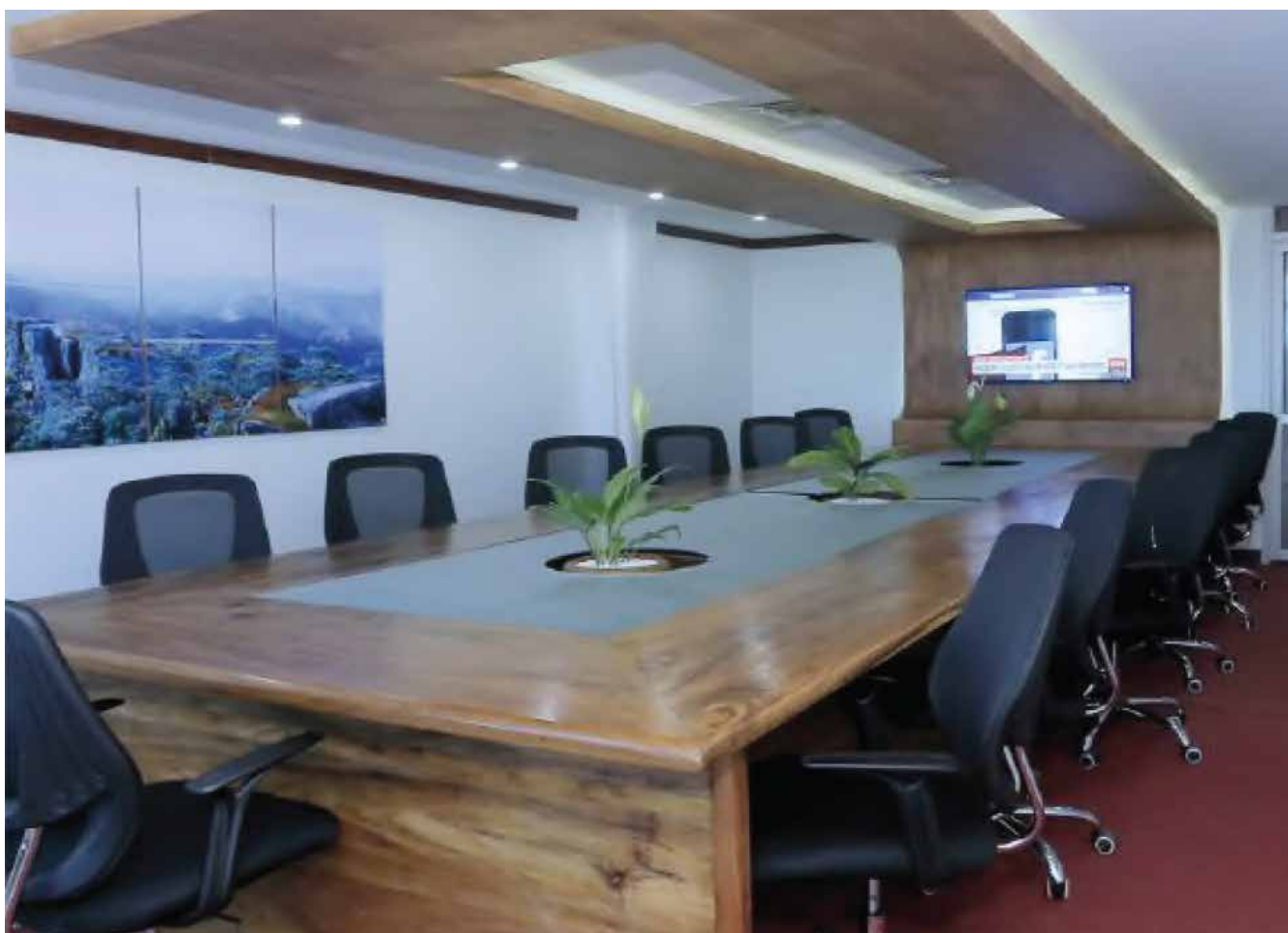
reason of voluntary intoxication.

There are a series of procedural steps to comply with under the law while effecting summary dismissal that our next article will cover.

5 Conclusion

As our discussion highlights, disciplinary proceedings should be handled with great care considering the heightened risk at stake of escalation to adjudication regardless of whether the disciplinary penalty meted out is justified or not. Prior to initiating formal disciplinary proceedings, an employer must conduct thorough investigations into the matter. The employer must communicate clearly with the employee about the disciplinary proceedings, provide a fair hearing but also document everything. To the extent possible, an employer should consider alternatives to formal disciplinary proceedings/actions like counselling, training and mediation to de-escalate the employer-employee disputes.

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Contacts for this Publication



Denis Yakoyasi Kakembo

dkakembo@crystaladvocates.com
+256 751 834 168

Denis is the Managing Partner at Cristal Advocates where he also leads the energy and tax practice. He is qualified both as a Lawyer and Chartered Accountant with vast experience serving various industries in Sub Saharan Africa. Before joining Cristal Advocates, he had worked for close to 10 years with Deloitte and Touche where he started his career and rose to senior managerial positions.

At Deloitte, he lived and worked in Uganda, Kenya, Tanzania and the United Kingdom for over 6 years and subsequently became the firm's chief of staff for the Energy and Resources Industry Group seeing him play a lead advisory role in Uganda, Kenya, Tanzania, Mozambique, South Sudan, Somalia and Ethiopia.

Denis is widely published and a regular commentator in the local, regional and international media and speaker at various forums regarding the taxation and financing of energy projects as well as the protection of large capital projects within the framework of international investment law.

He holds a Master of Laws degree in Petroleum Taxation and Finance from the University of Dundee in the United Kingdom, a Post Graduate Diploma in Legal Practice and a Bachelor of Laws degree from Makerere University. ■



Bill Page

bpag@crystaladvocates.com

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.

Bill is a graduate of Oxford University and completed his inspectors' training with the UK Inland Revenue in 1989. ■



John Teira

jteira@crystaladvocates.com
+256 704 493 997

John leads the public policy and advocacy practice at the firm and combines unique public and private sector experience.

Prior to joining Cristal Advocates, he had worked as a Private Secretary to the President of the Republic of Uganda. During this time, he participated in several public and private sector engagements that included advising and coordinating activities relating to oil and gas as well as infrastructural projects of national significance. John had earlier worked with the Post Bank Uganda Limited and Shonubi Musoke and Co. Advocates.

He holds a Bachelor of Laws degree from Makerere University and a Post Graduate Diploma in Legal Practice from the Law Development Centre and various other qualifications. ■



Dickens Asiimwe Katta

dasiimwe@crystaladvocates.com
+256 772 370 021

Dickens leads the oil and gas practice at Cristal Advocates. He has an in depth appreciation of Uganda's oil and gas sector having served as the maiden Company Secretary of the Uganda National Oil Company (UNOC) and the Uganda Refinery Holding Company Limited (URHC). UNOC represents the Government of Uganda commercial interests in the oil and gas sector while URHC represents government interests in the refinery project as well as managing the petrol based industrial park.

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.

He is a certified project control specialist (IFP) and holds a Master of Laws Degree in Petroleum Law and Policy from the University of Dundee in the United Kingdom, a Post Graduate Diploma in Legal Practice and a Bachelor of Laws degree from Makerere University. ■



Francis Tumwesige Ateenyi

ftumwesige@crystaladvocates.com
+256 702 540 936

Francis leads the litigation and dispute resolution practice at the firm. He is an Advocate of the High Court of Uganda with expertise in oil and gas, infrastructure and dispute resolution. He has been part of teams advising on projects in Uganda, Tanzania, Mozambique and South Africa. He specializes in regulatory compliance, national content, health and safety and dispute resolution.

He joined Cristal Advocates from Kizza, Tumwesige, and Ssemambo Advocates. He previously worked with the Advocates Coalition for Development and Environment (ACODE). He also undertook a traineeship with the oil and gas division of Webber Wetzel in Johannesburg, South Africa.

He holds a Master of Laws degree in Petroleum Law and Policy from the University of Dundee in the United Kingdom and various other qualifications. ■



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Contact us

Cristal Advocates
32 Lumumba Avenue
4th Floor, Padre Pio House
Lumumba Avenue

P.O. Box 1769 Kampala, Uganda
Tel: +256 (414) 671 274
Email; admin@cristaladvocates.com
www.cristaladvocates.com