

Discipline at the Work Place in Uganda **An Overview of Summary Dismissal**



1 Introduction

Although an employer can immediately dismiss an employee for serious verifiable misconduct, such a decision must adhere to the procedural and substantive requirements of the law so that even if the employee escalates the matter to adjudication, the employer is not found liable for unfair or unlawful termination. This article gives a high-level overview of the law in Uganda regarding summary dismissal.

2 What is summary dismissal?

Summary dismissal is the termination of an employment relationship by the employer without or with less notice than that to which an employee is statutorily entitled to. It is ordinarily reserved for employee misconduct that fundamentally contravenes the employment terms and obligations.

In the matter of Tumusiime Richards & 5 others v Mukwano Personal Care Products (Labour Dispute Reference 213 of 2014), the Industrial Court observed that; “Although under section 58 of the Employment Act, an employee is entitled to notice before termination or dismissal, under Section 69 of the Employment Act, once an employee has breached a fundamental obligation under the contract of service, such notice may be dispensed with”.

3 Fundamental breach of contract of service

Where an employee is found guilty of verifiable misconduct that fundamentally breaches the contract of service, an employer can dismiss such employee summarily. What amounts to this misconduct varies depending on the circumstances of each case, the terms of the contract of service and employment manuals adopted by organisations.

The Industrial Court in the matter of **Benon Kanyangoga & others v Bank of Uganda Labour Dispute Claim No. 080 of 2014** noted that; “On the other hand, in dismissing an employee, the employer must establish that there is verifiable misconduct on the part of the employee. It is our view that verifiable misconduct includes but is not limited to abuse of office, negligence, and insubordination and all those circumstances that impute fault on the part of the employee which include incompetence...”

It has further been emphasised in **Ebiju v Umeme Ltd (Civil Suit 133 of 2012)** that: “There is no exhaustive list of the misconduct that justifies summary dismissal, but according to **Laws Vs London Chronicle [1959] 1 WLR 698** one isolated act of misconduct is sufficient to justify summary dismissal. The test is.. whether the conduct complained of is such as to show the servant to have disregarded the essential conditions of the contract of service.”

It is therefore important that the employment manuals and contracts of service adopted by organizations outline exhaustively the terms and conditions whose breach would lead to summary dismissal. The Employment Act lists theft or wilful damage to employer’s property, physical assault of a fellow employee or a member of the public and inability to perform work by reason of involuntary intoxication as some of the infringements that entitle the employer to summarily dismiss an employee.

4 The right to a fair hearing

An employee must be accorded a fair hearing before a decision for summary dismissal is reached by the employer. Even if the dismissal is justified, there are sanctions under the law for an employer who does not give the employee the right to be heard.

In **Tumusiime Richards & 5 others v Mukwano Personal Care Products** (Supra), it was stated that; “under Section 69 of the Employment Act, once an employee has breached a fundamental obligation under the contract of service, notice may be dispensed with although the section doesn’t preclude the obligation of the employer to provide a fair hearing as prescribed under Section 66”.

Also, the Court in **Ebiju James v UMEME Ltd (supra)** noted that *the post 2006 Employment Act position is that there is a mandatory right to be heard now reserved by Section 66 of the Act for every form of dismissal. The Court emphasized that: “even if the... 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”.*

Therefore, no matter the infringement, the right to a hearing cannot be dispensed with. Though, the Industrial Court in *Kabojja International School v Oyesigye (Labour Dispute Appeal 3 of 2015)* has opined that admission of one's guilt renders the need for a hearing redundant, it is advised that employers must at all times conduct hearings before dismissing an employee.

The importance of the hearing therefore cannot be underestimated. The hearing should not be treated as a mere formality but rather as a means for determination of whether an employee was guilty of the charges levied against him or her. The charges against an employee must be brought to his attention but also be given the opportunity to respond through denial or admission.

5 Consequences of summary dismissal

An employee that is summarily dismissed is disentitled from receiving any statutory notice that they may be entitled to. Upon dismissal, an employer has the obligation to remit wages and any other payments due to the employee at the time of the termination. An employee summarily dismissed is not entitled to

receive severance pay unless the termination is adjudged as unfair by Court.

On the employee's request, the employer must provide a certificate of service to the employee upon termination. The Act does not prescribe the precise form or appearance of the certificate of service but lists what it should entail including among others, names and addresses of the employer and employee, the capacity in which the employee was employed, what the employee earned at the time of termination, and if the employee requests, the reason of termination.

6 Conclusion

Summary dismissal is reserved for serious misconduct where employers have the right to dismiss employees without or with less notice. However, employers must follow a fair and reasonable process before making the decision to dismiss. This includes conducting a thorough investigation, providing the employee with an opportunity to respond to the allegations and considering any mitigating factors. Failure to follow a fair process could result in an unfair dismissal claim being made against the employer.

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