



## Examining Grounds for Termination of Employment Dismissal for Out-of-Work Misconduct



## 1. Introduction

While an employer can dismiss an employee for misconduct that directly contravenes the terms of the employment contract, the extent to which employees' conduct can be regulated by employers has been a subject of debate in Courts. Despite the common view that "conduct" only applies to actions during work hours at the workplace, the Ugandan Industrial Court ("the Court") has recently ruled in the **Agusi Franco vs International Institute of Tropical Agriculture, LDR No. 277 of 2021 case** ("the Agusi Franco Case") that an employee's off-duty or work misconduct can actually constitute a breach of their employment contract, justifying dismissal.

## 2. Facts of the case

In 2021, the Claimant, an Administrative Assistant, was terminated by the Respondent or Employer for allegedly assaulting and sexually harassing a subordinate employee under his supervision. The Claimant argued wrongful termination, citing lack of due process and a fair hearing, further contending that the reasons for termination stemmed from out-of-work misconduct. In response, the Respondent countered, stating that the Claimant had admitted to the allegations, negating the need for a detailed investigation. The Respondent also emphasized that the workplace connection remained, as both individuals resided in staff quarters under their control.

## 3. Decision of Court

The Court reaffirmed the employer's prerogative to terminate employment services, emphasizing that once the decision is made, the Courts cannot interfere. **See Hilda Musinguzi vs Stanbic Bank (U) Ltd SCCA No.5/2016, and Stanbic Bank Vs Kiyimba Mutale SCCA No. 2/2010.** The Court however cautioned that any dismissal must be founded on a valid reason and follow the due process in the Employment Act. Regarding the central question of whether an employee's off-duty misconduct can justify dismissal, the Court ruled in favour of the employer, stating that such misconduct can indeed warrant dismissal or termination

## 4. Rationale for the decision

The Court based its decision on the Australian case of **B. Rose vs Telstra Corporation Limited (Uno. 20564 of 1998)**. It observed that the contractual right of an employer to dismiss an employee on the grounds of serious and wilful misconduct committed outside working hours is limited to cases where the misconduct has a relevant connection with the performance of their work as an employee. Additionally, the misconduct must be incompatible with the employee's duty as an employee or likely to cause serious damage to the employment relationship.

The Court adopted a two-part question-based test to determine the validity of the Claimant's termination. It posed the following questions: "First, did the employee engage in the alleged actions? Second, did these actions have any relevant connection to the performance of their duties as an employee?"

Given Agusi Franco's admission to the alleged infractions, the Court focused on whether there was a relevant connection to the performance of his duties. As an Administrative Assistant and Supervisor, he held responsibility over the subordinate. The Court found that he remained her supervisor at the time and thereafter, thus had a duty to protect her, despite being the perpetrator of the harassment. This misconduct breached the trust and confidence the Respondent placed in him, justifying his dismissal, even if it occurred outside of work hours.

The Court deemed the timing and location of the assault irrelevant, emphasizing the wilful and reprehensible nature of Agusi Franco's misconduct. As the supervisor, he was expected to protect the subordinate from harassment, a duty he violated. This breach not only contravened the Human Resource Manual but also breached a fundamental term of his contract.

## 5. Our Commentary

The decision of the Court is a reminder that despite the provisions embedded in the employment contract, termination can be hinged on out-of-work (out-of-contract) misconduct. However, it is important to note that not all instances of out-of-work misconduct

would justify or culminate in termination. The conduct in question must have a relevant connection to the employment. It must be such that, viewed objectively, it is likely to cause serious damage to the relationship between the employee and employer, or the conduct is detrimental to the employer's interests, or the conduct is incompatible with the employee's duty as an employee.

In essence, the conduct complained of must be of such gravity or importance as to indicate a rejection or repudiation of the employment contract by the employee. Furthermore, the misconduct complained of will be grounds for termination if it directly has a connection with the performance of the employee's employment duties. Therefore, before an employer decides to dismiss the employee on grounds of out-of-work misconduct, they should be certain that the conduct complained of is of such gravity or importance as to indicate a rejection or repudiation of the employment contract by the employee.

The decision of the Court raises further thought-provoking questions concerning employment relations, particularly regarding out-of-work interactions between employees and employers. The Court's position that "...there was no evidence on the

record to indicate that at the time of the incident, he was not her supervisor or that she was not staff under his supervision. In the absence of evidence to the contrary, we are convinced that when he assaulted her, he was still her supervisor, and he remained her supervisor even after the assault..." presents an intricate situation.

While it's not necessarily implying that the Court is granting employers unrestricted control over employees' "domestic/private affairs" spilling into the workplace, the outcome in the Agusi Franco case does suggest a shift in that direction, albeit with limitations. It's recognized that termination based solely on out-of-work misconduct is permissible, but this must be approached with prudence and objectivity, devoid of emotional biases.

Our argument isn't that employers should be compelled to retain employees with tarnished personal records. Rather, the assertion is that for out-of-work misconduct to warrant termination, it must be directly linked to the employee's job performance. While there may be other grounds for termination, relying on out-of-work misconduct necessitates a clear and relevant connection, and such decisions should be made judiciously and with due consideration.

---

*Cristal Advocates accepts no responsibility for any loss occasioned to any person acting or refraining from acting as a result of material contained in this publication. Further advice should be taken before relying on the contents of this publication.*

## Contacts for this Publication.



**Kule Rolant**  
*krolant@crystaladvocates.com*  
Author



**Denis Yekoyasi Kakembo**  
*dkakembo@crystaladvocates.com*

- 
- **Energy & Infrastructure**
  - **Business support**
  - **Employment**
  - **Banking & Finance**
  - **School of Professional Excellence**
  - **Tax**
  - **Company Secretarial & Trustee Services**
  - **Public Law & Policy Advocacy**
  - **Dispute Resolution**
  - **Corporate and Commercial**
- 

### Contact us

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

✉ P.O. Box 1769 Kampala, Uganda  
☎ +256 (414) 971274  
admin@crystaladvocates.com  
🖱 [www.cristaladvocates.com](http://www.cristaladvocates.com)