

**THE ADEQUACY OF SECURITY OF SERVICE OF EMPLOYEES IN UGANDA: A
CASE STUDY OF KAMPALA**

BY

MUKUVE SADAT

LLB/35250/113/DU

**A DISSERTATION SUBMITTED TO THE FACULTY OF LAW IN PARTIAL
FULFILLMENT FOR THE AWARD OF A BACHELORS OF LAW OF KAMPALA
INTERNATIONAL UNIVERSITY**

AUGUST, 2015

DECLARATION

I MUKUVE SADAT, declare that this research on “the adequacy of security of service”, a case study of Kampala district, is my entire effort and has not been submitted to any other institution of learning for any form of award.

Student's Name: MUKUVE SADAT

Reg. No. : LLB/35250/113/DU

Signature : 

Date: 31/08/2015

ACKNOWLEDGEMENT

Although this study has been a solitary enterprise, I benefited from a joint venture of several people who offered support, insight and access to research materials. I benefitted tremendously from their willingness to render time and support generously that contributed profoundly to the completion of this work. I am greatly indebted to my supervisor madam Başajabalaba Jalia who has taken time not only to go through my work but has contributed greatly to the entire enthusiasm, encouragement and valuable efforts were instrumental in shaping this dissertation.

I further want to recognize and appreciate my lecturers but most especially Mr. Kyaze Joseph for having been a parent who beyond teaching always advised me on what to do in tough circumstances of this study.

I further want to thank Hon. Hajji Ally Muwabe Kirunda Kivejinja. I am tremendously honored and grateful, that such a valuable figure has worked with this young generational mind in the efforts of compiling this book and getting it finished. His tremendous role is well appreciated and I believe this book will go along way too in shaping the minds of the current and future employers and employees in Kampala and Uganda at large.

I further want to thank Mr. Mbago Ronald and my sister Kyozi Justine mercy, my friend and colleague, Balidawa Clement, Musasizi Denis and Kanzira Fredrick for your moral, religious and financial support for the time I have been in Kampala. Your tremendous love for me changed my life and helped me focus on the future.

My greatest appreciation goes to the man and woman who Allah the Almighty gave insight of what my future would hold and relentlessly sacrificed for my life and indeed elevated me from shatters to a valuable personality; Mr. Sosipatery Tigawalana my father and his wife Ms. Tigawalana Harriet my mother. Your contribution to my academics and welfare will count to my life time and even time after and indebted for life, I will be to you all.

Special thanks go to my brothers and sisters and my entire family members for every contribution you have done towards my education. May Allah bless you.

ACCRONYMS

ADR	:	Alternative Dispute Resolution
CAP	:	Chapter
IMF	:	International Monetary Fund
ILO	:	International Labour Organization
ICCPR	:	International Convention On Civil And Political Rights
LDC	:	Low Developed Country
NSSF	:	National Social Security Fund
NGO	:	Non Government Organizations
OC	:	Order in Council
PEAP	:	Poverty Eradication Action Plan
PLA	:	Platform for Labour Action
TU	:	Trade Union
UN	:	United Nations
UPDF	:	Uganda People's Defense Forces
UAMDA	:	Uganda African Motors Drivers Association
UACCSA	:	Uganda African Colonial Civil Servants Association
UDHR	:	Universal Declaration of Human Rights
UEB	:	Uganda Electricity Board
URA	:	Uganda Revenue Authority

TABLE OF CONTENTS

DECLARATION	i
APPROVAL	ii
DEDICATION	iii
ACKNOWLEDGEMENT	iv
ACCRONYMS	v
TABLE OF CONTENTS.....	vi
ABSTRACT.....	ix
LIST OF STATUTES.....	x
LIST OF CASES.....	xi
CHAPTER ONE	1
INTRODUCTION AND BACKGROUND.....	1
1.0 Introduction.....	1
1.1 Background of study	1
1.2 Problem Statement	3
1.3. Objectives of the study.....	3
1.4 Research Questions.	4
1.5 HYPOTHESIS.	4
1.8 Significance.....	4
1.9.1 Research Strategy.....	5
1.9.2 Population	5
1.9.3 Sample Selection.....	6
1.9.4 Locality	6
1.9.5 Data collection techniques.	6
1.9.6 The Questionnaires Method.....	7
1.9.7 The Interview Method.....	7
1.9.8 The observation method.....	7
1.9.9 The focus group discussions/ consultative meetings.....	7
1.10 LITERATURE REVIEW.....	8
1.9.10 Synopsis	14

CHAPTER- TWO	15
THE HISTORICAL DEVELOPMENT OF EMPLOYMENT LAW IN UGANDA	15
2.0 Introduction.....	15
2.1.1 Pre-colonial Uganda.....	15
2.1.2 Labour situation in Colonial Uganda	16
2.2.0 Development of the Law	18
2.2.1 Trade/Labour Unions	18
2.2.2 Origins and Early History of Trade Unions in Uganda.....	19
2.2.3 Trade Union Legislations	20
CHAPTER - THREE	22
THE RIGHT OF SECURITY OF SERVICE	22
3.0 Introduction.....	22
3.1 Rights of workers/employees	22
3.1.1 Economic Rights	23
3.2.0 The Right of Security of Service.....	26
3.2.3 Misconduct warranting dismissal.....	36
3.3.0 Rules governing unfair dismissal complaints	41
3.3.1 Time Limit	41
3.3.2 Service.....	42
3.3.3 Employment status	42
3.4.0 Remedies for wrongful or unfair dismissal	43
3.4.1 Compensation damages.....	43
3.4.2 Reinstatement.....	45
3.4.3 Re-engagement.....	45
3.5.0 Impediments of security of tenure.....	45
3.5.1 Economic growth	45
3.5.2 Poverty eradication	46
3.5.3 Political stability	46

CHAPTER – FOUR.....	48
CHALLENGES TO THE SECURITY OF SERVICE IN UGANDA.....	48
4.0 Introduction.....	48
4.1 Challenges.....	49
4.1.1 Less severe punishments given to violators of the employee/ rights	49
4.1.2 The complaint and compensation procedures	50
4.1.3 Political conditions.....	51
4.1.4 Economic Conditions.....	53
4.1.5. Fixing Minimum Wages	54
4.1.6. Enforcement, education and recognition of labour rights	55
4.1.7. Lack of security, safety and health in the informal sector work place.....	55
4.1.8. Lack of social protection:.....	56
CHAPTER - FIVE	58
CONCLUSIONS AND RECOMMENDATIONS	58
5.0 Introduction.....	58
5.1 Recommendations.....	58
5.1.1 Reduction of the 13 weeks	58
5.1.2 Labour offices to be brought as close as possible to the employees	59
5.1.3 Severe punish merits need to be imposed on violators of the right of security of tenure	59
5.1.4 Developing political civil to protect workers from unfair dismissals	60
5.1.5 Sensitization of the working population on their rights	60
5.1.6 Minimum wage fixing.....	61
5.1.7 Enactment of the Protection of Employees (Fixed-Term Work) Act	61
5.2 Conclusion	62
REFERENCES	63

ABSTRACT

The research was sought to establish the adequacy of legal frame work of the law relating to termination of employment contracts in Uganda with regard to security of service/tenure and was driven by five major objectives: to examine the adequacy of the protection laws of employees in Uganda; to investigate the major cause of wrongful dismissal in Uganda; to find out the level of Government effort on sensitization of the protection laws against wrongful termination of employment contracts in Uganda; to determine the percentage of employees in Uganda who are wrongly terminated from their employments.

To achieve these objectives, the researcher employed library research study of various secondary data such as books, thesis, government policies, journals, commission reports, acts of parliament, international treaties, articles consulted in various libraries, equally various key respondents were interviewed. The study utilized both quantitative and qualitative research methods: two primary data collection instruments were used: structured questionnaire and interviews. The collected data was presented and analyzed to decipher findings.

The major finding of the study was that employers frequently abuse the right of their employees at will. Policies and strategies contained in the law documents require well-coordinated actions and commitment from government and all agencies in order for these employment policies to be fully adhered to. Thus the failure of enforcing the law has resulted into situations where workers are at the mercy of employers. Workers are not aware of their rights and continue to suffer at hands of their employers.

The researcher therefore recommended that the needs to develop political will to protect workers from unfair dismissals, sensitize of the working population on their rights, impose severe punishment on violators of the right of security of tenure, labor offices to be brought as close as possible to the employees and reduction of the 13 weeks to a less period.

LIST OF STATUTES

The Children's Act Cap 59

The Constitution Of The Republic Of Uganda 1995

The Employment Act 2006

The Factories Act Cap 220

The Industrial Disputes Act I 947 Laws Of India.

The Labor Unions Act Cap No. 7 of 2007

The Local Government Act Cap 243

The Modal (Standing Orders) Act 1 946 Laws of India

The National Social Security Fund Act Cap 222

The Occupational Safety and Health Act 2006

The Public Service (Negotiating Machinery) Act Cap 289

The Public Service Act Cap 288

The Pensions Act Cap 286

The Workers' Compensation Act Cap 225

LIST OF CASES

- Addis v Gramophone Co. [1909] A.C.488
- Ahmed Ibrahim Bholm v Car General Ltd, Civil Appeal No.12 Of 2002 (Sc)
- Amunyokol okol Johnson V A.G Civil Appeal No. 071/20 10
- Baꝑkingham Carnatic Mills Co. Ltd v Their Workmen, (1951) 2 LLJ 314
- Bank of Uganda v Betty Tinkamanyire, Civil appeal no 12 of 2007
- Barclays bank v Geoffrey Mubiru, C.A No.1 of 1998 (S.C) Unreported
- Bata Shoe Co. v D.N Ganguli, AIR (1961) SC 1158
- Bervani Harris v Gair (1981) IRLR 520,
- Bervani Harris v Gair, (1981) IRLR 520
- Blyth v Scottish Liberal Club, (1983) IRLR
- Board of Trust Port of Bombay v Dilip Kumar AIR, (1970) S.C 150,
- Boston Deep Sea Fishing & Coco v Ansell (1888) 39 Ch D 339
- Boston Deep Sea Fishing & Coco v Ansell, (1888)
- Carville v Irish Industrial Bank, [1968] JR 325
- Charles Kabagambe v UEB Constitutional Petition No. 2 of 1999
- Clouston & Co. Ltd v Corry (1906) AC 122
- Clouston and Co. Ltd v Corry (1906) AC 122, AT P. 129
- COX V Philips Industries (1976) 1 WLR 638
- DR. SAM Lyomoki & 5 ors v A.G, Petition No. 8/2004

Dunk v George Waller & Son, [1970] 2QB 163 (CA),

ESSO Standard (U) Ltd v Semu Amanu Opio, Supreme Court Civil Appeal No.3/93

Grover v B.L.N Ltd, (1973) IR388

Jupiter General Insurance v Shroff[1937] 3 All ER 67

Kafuna v Masaka District Cooperative Union HCCS 698 Of 1970, digested in (197) HCB 255

Konig v Karanje Properties (1968) EA 223

KONIG v Karanje Properties, (1968) EA 223

Laws v London Chronicle [1959] 1 WLR 698

Lindsay v Queens Hotel Co, (1919) K.B 208

Maw v Jones, (1890) 25 Q.B d 107

Obongo v Kisumu Municipality Council, [1971] Ea 91

Opolot V Uganda, (1967) HCB

PRICE V Movat, (1962) CB 508

REGAL (Hastings) Ltd v Gulliver [1967] AC 134 at p. 144 G

REPUBLIC V Duffield, (1851)

Rigby v Ferodo, [1987] I.R.L.R 61(CA)

Simon v Hover (1977) ICR 61

Simon v Hover (1977) ICR 61

Sinclair v Neighbor [1967] 2 QB 279

URA V Boniface Ojok, SCCA No.33 of 1991

Van Steenburgh v Rival Company, 171 f.3D (8TH CIR.1999)

CHAPTER ONE

INTRODUCTION AND BACKGROUND

1.1 INTRODUCTION

This is focused on law relating to protection of employees especially with regard to the termination of employment contracts in Uganda. This chapter therefore presents a background of the study, problem, objectives of the study, research questions, scope of the study, significances of the study and cauterization.

1.2 BACKGROUND OF STUDY

A man's right to work is as important to him as right of property, right to life, right to personal liberty, right to freedoms prescribed in the "*grund*" norm. If courts intervene every day to protect the rights, freedoms and liabilities, they must therefore be seen to intervene to protect the right to work and consequential rights such as the right not to be unfairly or wrongly dismissed from employment among others. Lord Denning once held "these courts intervene every day to protect the rights of property; they must intervene to for the right to work"¹. Employment being a contract 'terms' are deemed to have been stipulated in every employment contract before it commences however, the rate of termination and wails of terminated employees have been heard to the furthest point. This is because of the challenges it poses to the country.² "A statistics master plan drawn by Uganda Bereau of statistics out lines how data is collected as Poverty Eradication Action Plan (PEAP) is implemented. However, despite the existence of these plans, it has become increasingly clear that social development concerns of inequality, inequity, exclusion, unemployment and low productivity are still major challenges to the country, per statistics"³

That is what has enticed me to research on this field.

¹ Lee v showmen's guild of great Britain (1952)2 QB 329

² The republic of Uganda, strengthening statistics for planning, (2006/7-2010/10/11) the social development Sector strategic plan for statistics

³ The republic of Uganda, strengthening statistics for planning, (2006/7-2010/10/11) the social development Sector strategic plan for statistics

Security of service of employees or protection of employees is a wide subject covering the extent of employees' legal awareness and the extent of the violation of such protection laws especially with regard to termination of employment contracts in Uganda. This subject covers local and international laws as well as principles of nature justice and good conscience. It is a paramount for a country to establish the percentage of the employed population possessing knowledge of the protection laws especially against wrongful termination of employment contracts; the rate of actions either through alternative dispute resolution (ADR) or litigation against such terminations when they occur.

It is my submission that the higher percentage of the employed population of Uganda's ignorant of these protection laws and the higher percentage of the knowledgeable population does not take up actions against wrongful termination. This therefore will form the basis of this research.

Employment is a state of being on job or an occupation for which one is paid. ⁴This creates an employee- employer relationship which in all circumstances is contractual in nature. This

Relationship exists where an employee is employed under a contract of employment, that's to say a contract of service. It is distinguished from the relationship, of employer and independent contractors i.e. contract for services. The distinction is to be found in "tests" established by courts over a long period and one test can provide a complete answer to the question of employment status.⁵ "employee" refers to any person who has entered into a contract of service or an apprenticeship contract, including, without limitation, any person who is employed by or for the government of Uganda, including the Uganda public service, a local authority, a parastatal organization but excludes a member of the UPDF whereas an employer is any person or group of persons, including a company or cooperation, a public, regional or local authority, a governing body of an unincorporated association, a partnership, parastatal organization or other institution or organization whatsoever, for whom an 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 persons for whom an employee works, has worked, or normally works. "Termination" on the other hand is defined as a discharge of an employee at the initiative of the employer for justifiable reasons other than misconduct, expiration of contract,

⁴ Osborn's concise law dictionary; tenth edition, by Mick Woodley. London sweet & Maxwell 2005

⁵ The employment act 2006 laws of Uganda

attainment of retirement age, etc,⁶ but could also be a voluntary agreement for the employee to quit his / her job.

1.3 PROBLEM STATEMENT

Wrongful termination of employment contracts in Uganda is one indicator of unpopularity of the protection laws of employees reflected or backed by failure of the victim population to take actions against the same which must be addressed. It should be done in abide to control the escalating rate of terminations which has insecurity to contracts of services; help government develop proper plans for sensitization of the concerned population and equip the enforcement bodies of the laws in the country. This is because there is seemingly a trained and equipped enforcement mechanism that's the police and the judiciary, but these violations continue to be evidenced rendering them ineffective. The country is already faced by high unemployment rates for example, above 83 percent of Ugandan youths are unemployed according to recent report. It is my considered opinion therefore that the country "educates" as opposed to "certifying" the enforcing bodies and also sensitizes its concerned population on the employment rights and protection laws as another mode of controlling the high rates of wrongful terminations and their adverse consequences to the economy of the country as a whole, and assure national on job protection.

1.4. OBJECTIVES OF THE STUDY.

- 1.4.1 To examine the adequacy of the protection laws against wrongful termination in Uganda.
- 1.4.2 To establish the percentage of the knowledgeable of the protection laws against wrongful dismissal of employees in Uganda
- 1.4.3 To investigate the major causes of wrongful dismissal in Uganda
- 1.4.4 To find out the level of government effort on sensitization of the protection laws against wrongful termination of employment contracts in Uganda.
- 1.4.5 To determinate the percentage of employees in Uganda who are wrongly terminated from their employments.

⁶ supra

1.5 RESEARCH QUESTIONS.

To what extent have the protection laws of employees against wrongful termination been observed and enforced in Uganda: how secure are employees on jobs? What are causes of wrongful dismissal of employees in Uganda?

1.6 HYPOTHESIS.

The present legal and institutional framework has to be compatible in opinion and action with global standards in the employment sector. There is a need to reconcile the various international and domestic legislation and customary employment practices to give effect the security of employees on their employments and other related rights as enumerated in the constitution of the republic of Uganda and especially the employment act 2006 and other specific laws. Sensitization of the Uganda population on security of employment as provided by the ⁷Act thus, an employee, who has been continuously employed by his or her employer for at least thirteen weeks immediately before the date of termination, shall have a right to complain that he or she has been unfairly terminated, which has for a long time remained on paper. The implementers of the law- the labor office, have also not done what is necessary to secure the rights of the employees and as a result, gross violation of the employee has found fresh groups for their establishment in Uganda, escalating fires of employment in the country. This research therefore seek to establish the contribution of the unpopularity of the protection laws against wrongful dismissal and other violations of employees' rights to the escalating levels of unemployment in Uganda.

1.7 SIGNIFICANCE.

The major importance of this research is to establish the adequacy of the protection laws against wrongful termination of contracts of employment in Uganda and establish whether the same can be combated.

⁷ Section 71(1)employment act 2006(Acts Supplement)

1.8 METHODOLOGY

The researcher a cross-sectional survey design which is to adopt both quantitative and qualitative methods which is to investigate the cases of unfair dismissal of employees and other violations of employees' rights in Uganda.

1.8.1 RESEARCH STRATEGY

This research was carried out on the adequacy of security of service of employees in Uganda, the extent to which protection laws of employees against wrongful termination have been observed and enforced in Uganda, the causes of wrongful dismissal of employees in Uganda.

The researcher in order to collect data accessed the readily available materials in the library but shall also employ the random sampling of the clustered population. These methods are both cost effective as well as a time saving as less travels shall be required. Data was collected not from laboratories but from where living examples exist in order to generalize abilities.

By analyzing the adequacy of the protection laws of employees' security of service of the selected samples of the population in Kampala District, Uganda, being the capital city, with the highest population, employments in Government institutions, industries, business, etc. it was feasible to apply the findings to the rest of the population of the country.

1.8.2 POPULATION

Kampala is the economic, political and social city of the country and has a population of about 2 million inhabitants according to the results of the most current population census carried out by government of Uganda⁸. Of this, some are employed in the public sector, the private sector and personal businessmen employing a number of the population regardless to the nature of the business but being legal. For purposes of this research study therefore, the population shall be divided into stratus of women, men, and youth in employment at all levels of education and this was determined by nature of employment they are, using the stratified random sampling method and total of 200 people shall be sampled.

⁸ "state of uganda's environmental" bulletin 2014

1.8.3 Sample selection

Stratified sampling, in order to represent the three groups of the target population into stratus of men, women, youths from which due to the economic and budgetary constraints, limited time, etc. a disproportionate figure of representatives from each strata shall be dictated. Following the dictation by the researcher, 50% of men, 30% of mwome and 20% of youths of the target population shall be considered shall be considered for the research. Thereafter, the random sampling method shall be used to select the 100 men, 60 women, and 40 youths from the stratus. The interview and questionnaire methods of data collection were also used to get data from respective people from each stratum to help the researcher come up with a comprehensive research.

The total number of respondents was 200 consisting men, women, and youths representing the demographic nature of the employed population of Ugandan population.

The district register for employed persons shall be used to provide the names of the members of this group whereas the non-registered group (people employed in personal businesses), a non-random sampling technique – the purposive sampling was used to target such people but shall form part of the 100,60 and 40 respondents above.

1.8.4 Locality

This research was conducted with in limited range of boundaries of Kampala district of Uganda, east Africa, where three stratus shall be selected to produce 200 respondents only form within the employed population of Kampala district.

1.8.5 Data collection techniques.

Data was collected from 200 respondents representing all categories of employment in Kampala. The stratified random sampling method was used to divide the target population into stratus of men, women, youths because at one point may find that the reasons for insecurity of service at employed differ from sex to age. Therefore, the simple random sampling technique the random number method was used to selected the registered respondents while the purposive sampling technique was used to select from the unregistered part of the target population.

1.8.6 The Questionnaires Method

Was employed for some respondents in primary data collection through interviews, observations and group discussion methods. The questionnaire method will be used to find out; how secure or insecure they feel on employments; the causes of wrongful termination; whether they know of the protection laws against wrongful termination; and how they think government should help secure their services on employment etc.

1.8.7 The Interview Method,

Shall be used to be employed to help the researcher reach out to the respondents in their particular and respective offices, streets and businesses or any other places for interviews to gather the information. This method also helped the researcher obtain in depth answers and ask sensitive and complex questions. This method also helped the researcher obtain in-depth answers and ask sensitive and complex questions and yet registering a high response rate and a high percentage and comprehensive data collection. Similar questions as those above

May be asked but further follow up questions shall be asked and most account fro the non verbal communications such as attitudes and behaviors of the respondents.

1.8.8 The observation method.

Was also important as it provided means of varying the answers in the questionnaires and the details understanding of the values, motives and practices of the respondents. It also helped the researcher to draw comparisons among respondents from different categories of employment that will be used in the study.

1.8.9 The focus group discussions/ consultative meetings

shall also be held to help the researcher data relating to the findings and options of the group as a listening to the other group members' views encourage respondents to voice pinions readily and this helped inform the study more. It also helped provide rich insights which would be less accessible without the interaction in the groups.

1.9 LITERATURE REVIEW.

Termination of employment contracts especially at the instance of the employer causes far more litigation than any other aspect of employment relationship. Although disputes will arise during the subsistence of the relationship, normally, they are resolved by mediation, arbitration, negotiation and sometimes with the involvement of trade unions. Where an employee is dismissed, he or she is bound to suffer a prolonged of unemployment and thus is inclined to challenge his or her dismissal.

The employment relationship carries with it duties, obligations and rights on either or both parties some of which may be express terms while some are implied by courts of law. Implied terms are those imposed by common law on the parties to a contract for example; on the part of the employer, the duty to pay wages, to provide work, to exercise care, to cooperate and most importantly to provide access to grievances procedure, on the part of the employee; to obey reasonable orders, exercise reasonable care & competence, to maintain fidelity, to account etc., most of which have been codified in Ugandan legislations.

From the above, it is not surprising to maintain that there is a great deal of literatures written on this subject especially in the form of legislations, textbooks, cases, journals etc. and therefore this study shall have a critical review on most of them. For example the rights of workers in Uganda have acquired statutory recognition resulting from the promulgation of constitution⁹ such as the right to equality, freedom from discrimination¹⁰, the right to protection from slavery and servitude and forced labor¹¹, the right to protection from deprivation of property¹², economic rights¹³, the right to a fair and just treatment in administrative decisions¹⁴, to mention but a few. The same rights can be enforced under the constitution in article 50. The constitution also

⁹ The constitution of the republic of Uganda 1995

¹⁰ Art. 21 (1&2)

¹¹ Art. 25

¹² Art. 26

¹³ Art. 46

¹⁴ Art. 28

established the public service commission as under chapter ten and its functions under article 166. As a consequence therefore, parliament has enacted several labor/ employment related laws to regulate the relationships. The enacted acts of parliament of Uganda include; the labour Unions Act¹⁵, being the most current, to allow employees from and belong to labour unions of their choice; the children's Act¹⁶ to provide for care, protection and maintenance of children, to provide for local authority support for children; the workers' compensation Act¹⁷ to provide for compensation to workers for injuries and scheduled diseases incurred in the Course of employment; the national social security fund (NSSF) Act¹⁸ to provide for the establishment of national social security fund and to provide for its membership, the payment of contributions to, and the payment of benefits out of the fund; the public sector service (negotiating machinery) Act¹⁹ to make provision for the establishment of a joint staff council for the public service, for the settlement of disputes between the government and public officers, for other matters concerning the relationship between the government and the public service, and for matters incidental to and connected with the matters aforesaid; the pensions Act²⁰ to provide for the grant and regulating of pensions, gratuities and other allowances in respect of the public service of officers under the government of Uganda; public service Act²¹ to make provision for matters relating to the public service of the government of Uganda, the public service commission and for the other matters related thereto; the occupational safety and health Act²² to consolidate, harmonize, and update the law relating to occupational safety and health, repeal the Factories Act²³ and provide for connected matters; and last but not least and perhaps most importantly, the Employment Act²⁴ to provide and consolidate the laws governing individual employment relationships and other connected matters.

¹⁵ An Act of parliament of Uganda No.7/2006

¹⁶ Cap 59, Laws of Uganda

¹⁷ Cap 255, Laws of Uganda

¹⁸ Cap 222, Laws of Uganda

¹⁹ Cap 289, Laws of Uganda

²⁰ Cap 286, Laws of Uganda

²¹ Cap 288, Laws of Uganda

²² Act of parliament of Uganda enacted in 2006

²³ Cap 220

²⁴ Act of parliament of Uganda enacted in 2006

Besides the domestic law of Uganda, the international community having realized the importance of laying a common stand of laws and rights to protect employment relations, it has created a consensus among most of the countries of the world to the understanding of these relationship hence signing treaties to govern the same, binding all member states which has forced all members states to try to confirm the international standards. Examples of such treaties include; the international convention on civil; and political rights (ICCPR) of 1966, the African charter of human rights, the international labour organization (ILO), the rural workers organization convention of 1975, the protection of wages convention, the workers representative convention of 1971 and to mention but a few.

The list of both domestic and international laws on employment relationships may be endless but I shall assert that all the above were enacted or covenanted in the spirit of protecting workers or employees. However, the question to ponder remains as to whether the same have been observed and enforced or remained on paper.

Case law as developed over time by courts of law has endeavored to regulate the employment relationship and thus study shall deeply examine most of the cases reported and non reported.

According to srivastava²⁵, "discharged" which refers to as colorless as to the cause of relieving of the obligations arising from employer workmen, relationship may signify termination of relationships by workman himself or by employer either by standing orders or otherwise however that violation on part of employer was a necessary element. He referred to Indian legislation which defined and enumerated unfair labor practice on the part of employer under s.2 (ra) ready with fifth schedule of the industrial Disputes Act²⁶ to include: discharging or promising a work to join or organize a trade union (TU); discharging or punishing a workman for taking part in strikes (not being a strike which is deemed to be an illegal strike under the act) and; discharging office bears or active members of a trade union on account of their trade union's activities. The use of word "discharge" was confined to those cases of termination of employment relationship only was at the instance of the employer.

²⁵ Prof. S. C srivastava, industrial relations and labour law, revised 3rd edition, 1999 vikas publishing house pvt limited. At page 523.

²⁶ 1947, Laws of India

Since "misconduct" results into dismissal, it's necessary to know meaning of the word. It has not been defined but the modal (standing orders) Act²⁷ the following conducts shall be deemed to be misconduct.

Willful insubordination or disobedience, whether alone or in combination with others to any lawful and reasonable orders to superior, theft, fraud, or dishonest in connection with the employers business or property, willful damage to or loss of employers goods or property, taking giving of bribes or any illegal gratification, habitual absence without leave or absence for more than 10 days, habitual late attendance, habitual breach of any law applicable to the establishment, habitual negligence or neglect of work, frequent or repetition of any act or omission for which a fine may be imposed to a maximum of 2% of wages in a month, striking work or inciting others to strike work in contravention of the provisions of any law rule having of law.

According to Eletu v Uganda air line cooperation law²⁸, absence without leave for slow habitual neglect of work, misappropriation of fund or material, disobedience and other subversive description including disobedience likely to endanger life, threatening a co-worker within premises, insulting behavior by employee towards customers etc. constitute misconduct. The list has as well been included in Ugandan legislation but the question remains on their enforcement and the procedure to be followed before an employee if dismissed may not be adequate and as a result, many are being affected as though there is no law. Thus on the procedure, prof. Srivasta intimates that there must be procedural safe guards. He asserts that an inquiry must be conducted y the employer in accordance with the principal of Natural Justice. This is because *Nemo Debetesse Judex in propria sua causa*²⁹ and, *Audi alteram partam*³⁰ must be realized to a considerable extent to termination of services of workmen. As a result, the following principals have arisen:

²⁷ 1946, Laws of India

²⁸ Ibid page 525 [1984] HCB 39

²⁹ Latin word to mean "no man must sit in judgment in his own cause or on which he is interested"

³⁰ Latin word to mean "the parties must be heard"

There must be *a charge sheet*³¹, which mentions the charges against the workman (service of notice). In the case of *Bata Shoe Co. v D.N Ganguli*,³² it was held that a workman charged with an offence should be served with a copy of such charges.

This means that³³; the workman must submit an explanation and if no opportunity is availed to workman to do so, it amounts to violation of the principal of Natural Justice. Thus the workman may admit the charge, show repentance and promise not to refute the charges and or ask for extension of time for submitting explanation to the management.

*Proper managerial enquiry*³⁴; the management must hold a domestic enquiry to prove the allegations mentioned in the charge sheet supplied to him/her and the enquiry must be fair and just.

*The right to be defended by lawyer in domestic enquiry*³⁵; in the case of *Board of Trust port Bombay v Dilip Kumar*³⁶, it was held that “we have reached a stage in our onward march to fair play in action that where an enquiry before a Domestic Tribunal the delinquent officer is pitted against a legally trained mind, if the delinquent seeks permission to appear to through a legal practitioner the refusal to grant this request would amount to denial of a reasonable request to defend oneself and the essential principles of natural justice would be violated”.

Prof. Srivasta adds that if a workman is found to be wrongly dismissed, he may be allowed either reinstatement or any other relief appropriate to the circumstances or a particular case which is a matter of judicial discretion depending on the facts of each case. In *Backingham carnatic mills Co.Ltd v their workmen*³⁷, gajendragakar J. as he then was held that “the employee is entitled to

³¹ Ibid page 538

³² AIR (1961) SC 1158

³³ Ibid page 540

³⁴ Ibid page 540

³⁵ Ibid page 543

³⁶ AIR (1997)S.C 150

³⁷ (1951) 2 LLJ 314

security of service and should be protected against wrongful dismissal and so the normal rule would be reinstatement in such circumstances.”

According to Dawn D. Bannet-Alexanda and Laura P Hartman³⁸, in November 2001, a Texas jury awarded a former employee who was wrongly terminated \$30.5 million in damages. In March 2000, a Federal jury in California deliberated just half a day before awarding more than \$500,000 to scientist who claimed she had been fired from Stanford University Medical School for complaining about sexual discrimination.

He asserts that employment relationships are classified in different categories to include: *At will employment*³⁹ which can be terminated by either party at will. These are employments entered without express agreements or contracts. In other words, these are employments relationships where there are no contractual obligation to remain in the relationship and either party may terminate the relationship at any time and for any time add for any reason not prohibited by law, such as for discrimination; and *constructive discharge*⁴⁰ which occurs when the employee is given no reasonable alternative but to terminate the relationship considering an involuntary act on the part of the employee. This may either be firing or by employee’s decision to leave in certain circumstances. Thus, where the employee was not fired, it would be the actions of the employer that made him/her to leave. The test is whether the employer made the environment so intolerable that no reasonable employee should be expected to endure. Some courts hold that the employee must show that the employer created the intolerable working conditions with the specific intent of forcing the employee to quit and that the circumstances complained of were aggravated. In the case of *Van Steenburgh v Rival company*⁴¹, *an employee sued alleging constructive discharge because of sexual harassment. In that case, in 1988, Van Steenburgh was working at rivals manufacturing plant and enjoyed a good working relationship with her employer, Larry Esser. However, after Esser told the married Van Steenburgh that he was interested in seeing her socially, their relationship deteriorated. Esser’s conduct including*

³⁸ Dawn D. Bannett-Alexander & Laura P. Hartman, employment Law for Business, 4th edition, 2004, McGraw Hill Co. Inc. at page 29

³⁹ Ibid page 30

⁴⁰ Ibid page 31

⁴¹ 171 F.3d (8th Cir.1999)

repeatedly confronting Van Steenburgh in private and propising that she engage in a romantic relationship with him; touching her on numerous occasions; asking her go somewhere "to be alone" with him. In addition, while the two were playing cards with their spouse, Esser grabbed Van Steenburgh's legs under the table. In one incident, Essea grabbed her . in onother incident in march 1995, Esser put one hand on her breast. He said he would stop harassing her if he could "touch her down there" Van Steenburgh formally complained about Esser's conduct to carol Bottcher, the plant manager in may 1992 and early 1994. Bottcher verbally warned Esser once but failed to make any written record of the complaints. When the harassmt continued after Botter's warning Van Steenburgh complained repeatedly to another supervisor, Tommy tolover. Toiler insisted there was nothing he could do about Esser's conduct or Bottcher's failure to act, and indicated that bottcher would not take more severe action against Esser. In june 1995, in front of others, Esser informed Van Steenburgh that another co-worker would be placed above her in the production line. After the incident she informed tolover that she believed Esser had spoken in a hostile manner to humiliate her and retaliate against her infront of her supervisors and co-workers. Toliver said that he believed her but that nothing could be done because Bottcher would not believe the story. Later that day, Van Steenburgh quit her employment at rival and filed a complaint with equal employment opportunity commission.

1.9.10 Synopsis

Chapter Two: this chapter covers the historical development of employment law in Uganda.

Chapter Three: This chapter covers the rights of security of service.

Chapter Four: this chapter covers the challenges of the security of service in Uganda.

CHAPTER- TWO

2.0 THE HISTORICAL DEVELOPMENT OF EMPLOYMENT LAW IN UGANDA

2.1 Introduction

Employment law which can be used interchangeably with labour law can be defined as the branch of law which regulates the relationship between an employer and an employee at the place of work, the regime of labour law distinguishes itself with regard to providing the ideas and ambience of the ultimate working environment. The characteristic approach of this law with regard to addressing the conditions for employees indicates a high regard for rights of employees with regard to how he or she is 'treated by the employer. Labour laws in Uganda have gone a manifest of transformation. In 2006, the former Minister of Gender, Labour and Social Development, Bakoko Bakoro⁴², observed that the laws were obsolete and did not address the challenges and needs of new work environment and modern labour market thus explaining the rampant strikes at places of work, increased forced and child labour and poor working conditions, and added that there was need for harmonization of the Ugandan labour law with regard to international conventions on labour to which Uganda is a signatory. Thus the contemporary challenges of the work environment have been the impetus to substantial changes in this area of law. The purpose of this research was therefore to analyze whether the changes so far made to labour laws have impacted the community, establishing how they have been observed and abided by most importantly during times of termination of employment contracts.

2.2 Development of wage labour in Uganda

2.2.1 Pre-colonial Uganda

During the pre-colonial era, there was no capital and most activities dealt on land that to say, agriculture and later some iron smelting while some region concentrated on pastoralism. The concept of labour force was only relevant for providing community services for the general

⁴²New Labour Laws for Uganda. The New vision Tuesday April 2006, pg 26 19

population and building admission offices. In Buganda for instance, there was a concept of “bulungi bwa nsi” literally “for the good of the nation” whereby chiefs led the able adults into community services which was compulsory, and punishments were given in form of more labour to those who tried to abscond.

Labour was divided along class lines whereby members of the royal families and chiefs were exempted from the communal work. The rest of the member of community were subjects obliged to pay tribute to their leaders and that means that the concept of working was intended to provide food for oneself, paying tribute to the kings and or chiefs, and contribution to the building of social infrastructures. Labour was also divided basing on sex. While the male members of the community went hunting and did the hard labour, the women were responsible for farming and children bringing up.

The element of forced labour existed in circumstances where subjects were forced to participate in communal tasks such as building administrative Headquarters and infrastructures such as roads. However, this only arose in circumstances where there were not enough volunteers to participate in public work. In pre-colonial Uganda, there was virtually no need for working for payment. it was only subsistence and getting some extra for paying tribute to the kings and chief

2.2.2 Labour situation in Colonial Uganda

Uganda had succeeded in maintaining its labour status quo for decades but this was later on eroded by the introduction of wage labour around the beginning of the 20th Century. Like other African countries, Uganda’s colonial masters who came with an agenda of finding raw material rich places to feed their home industries during the European green revolution in the 1960’s & 70’s, employed forceful measure to get people to grow cash crops. They built a viable economy and stable administration which ensured control of the Ugandan communities for cheap labour to produce cash crops for export. They designed the existing administrative units- the kingdoms and chiefdoms to performs massive industrial raw materials e.g. *Buganda, Bunyoro and the Eastern region* produced coffee and cotton, *Ankole and Karamoja* were reserved for livestock, whereas no production industries were encouraged in *Kigezi, West Nile, Acholi and parts of Lango* because the colonizers capitalized on the stature of the inhabitants as labour force reserves.

They started by encouraging people to work on plantations but because the people needed to work on their own gardens, they preferred working on theirs creating a shortage of labour force on the plantations. In order to reduce this, the colonialists started hiring people with payments to work on the plantations. The payments were in the form of clothes, machetes, hoes etc.

The colonialists then introduced hut tax to force people to work in order to earn cash to pay the tax. It started as tax for every house hold thus the name "hut tax" but later was extended to be paid by every able bodied man. By 190S, government had regularized the system of paying tax by providing labour. This reflected a form of forced but paid labour force. The colonial government in a bid to attract more people into labour services exempted from payment of hut tax those who permanently worked on shambas (plantations) or industries. Later in 1909, poll tax any Act of Parliament of the United Kingdom, India and or any other colony of England. The

1911 Order in Council orderly amended the 1902 Order in Council by providing August 11th 1902 as the reception date of the English laws in Uganda because it was in 1902 when Uganda critically recognized the English Jaws. Thus, the English labour laws which were enacted to prevent collective wage fixing and bargaining such as; the Labourers Ordinance of 1349 which prohibited agreements and combinations whether of workers or employers to alter wages or conditions of labour, the 1548 Bill of Conspiracies-and craftsmen which provided inter alia that it was illegal for workmen to conspire, covenant, or promise that they shall not make or do their works but at a certain price or ratio, shall not enterprise or take upon them to finish what another has begun or shall not work but at certain hours and times...; the Combination of workermen's Act of 1800 which was enacted to halt the alarming organization of workers following the French revolution of 1789 aimed against the old feudal orders but was later repealed in 1824.

Courts of law also played a big role in the development of labour laws of England. In 1796..in the case of Republic v Mawbay , GroseJ. held that "as in te case ofjourneymen, conspiring to raise their wages, each may insist on raising his wages if he can. But if several meet for the same purpose, it is illegal and the parties may be indicted for conspiracy." In the case of Republic v Duffled⁴³ Eale J. held that it was unlawful for persons to combine and induce organizations or

⁴³ (1851)

even by peaceful persuasion to leave their employment with the object of forcing their employer to improve their wages. By no means, British laws became binding in Uganda and started influencing and modeling Uganda's employment relations.

2.3.0 Development of the Law

The prior Employment Act⁴⁴ was originally established as a decree in the rule of Idi Amin Dada and until recently, Uganda has been using these 1970's decrees for its employment policies. Although Uganda has new policies on investments, Amin's labour policies were still in use until 2000 when the government changed all decrees into Acts without debate⁴⁵. The 1977 employment Act continued to be the statute of application in Uganda until its revision on 24th May 2006 — the date of its assentation. On its revision, the Act took a more defined and relevant identity at the time, being the most recent amendment.⁴⁶ The revision was intended to consolidate and modernize the old law⁴⁷ which had been established before the introduction of the new and current Constitution and thus was paramount to provide for the new paradigms introduced in the new Constitutional order. It was also intended to give effect to constitutional provisions while repealing cap 219 and indeed the metamorphosis of the new Employment Act 2006 was geared at effectively fostering the ideal working environment and uphold the rights of employers and employees.

3.3.1 Trade/Labour Unions

Trade Unions are worth mentioning in the history and development of labour law in Uganda. They can be defined as organizations consisting predominantly of employees, the principal activities of which include the negotiation of rates of pay and conditions of employment for its members⁴⁸. The predominant historical definition is that a trade union is a continuous association

⁴⁴ Cap 219, Laws of Uganda 1977

⁴⁵ The new Vision, Tuesday April 4th 2006, pg 26

⁴⁶ *ibid*

⁴⁷ Cap 219

⁴⁸ "Australian Bureau of Statistics"

of wage earners for the purpose of maintaining or improving the conditions of their employment⁴⁹. It can be made up of professionals such as Lawyers, doctors, engineers etc., working in different places, or might include workers from only one trade or craft, or might combine several or all the workers in one company or industry. These things varied from region to region, based on the specific industrialization path taken in the place in question.

2.3.2 Origins and Early History of Trade Unions in Uganda

Trade unions have sometimes been seen as successors to the guilds of medieval Europe, though the relationship between the two is disputed⁵⁰. It has been argued that Medieval guilds existed to protect and enhance their members livelihoods through controlling the instructional capital of artisanship and the progression of members from apprentice to craftsman, journeyman, and eventually to master and grandmaster of their craft, yet⁵¹ Trade Unions' embraces the aggressive-expansionist drive to unite all labouring' men and women for a different order of things.

In Uganda, the history and origin of Trade Unions can well be explained by first linking it to the development of labour and its legislation. Wage labour was introduced by the British in the early 20th Century by coercion to pay tax and other several means. Later, labour was forced but though paid to enable the labourers to pay taxes and was nicknamed "*Kasanvu*". Although this was abolished in 1922, the need for labour remained and this necessitated the immigrant labour system in which people from Western, North-West Uganda and other from as far as Congo and Burundi to Kampala. Just like in the Western Countries, where there were severe penalties for attempting to organize unions, up to and including execution, in Uganda Trade Unions were formed and began to acquire political power, eventually resulting in a body of labour law that not only legalized organizing efforts, but codified the relationship between employers and those employees organized into unions. Precisely', however, because labour in Uganda at the time was migrant and most times casual, they were highly mobile and could thus hardly organize anything

⁴⁹ "History of Trade Unionism" (1894) by Sidney and Beatrice Webb,

⁵⁰ *ibid*

⁵¹ "United we Stand" (1971) by R.A. Leeson

like trade union, This therefore meant that for a long time there was no basis or need for trade union organization and before World War II, the only important organizations were tribal concerned with agitation for land especially in Buganda. Thus the first organization for wage earners — the Uganda African Colonial Civil Servant Association (UACCSA) was formed in 1920 and the first trade union was the Uganda African Motor Drivers Association (UAMDA) formed in 1945 and founded by James Kintu and drew most of its members from tax drives in Kampala.

2.3.3 Trade Union Legislations

The Laws regulating Trade Unions in Uganda from the colonial period to date include international and domestic laws. The Labour Unions Act is the principal laws governing Trade Unions in Uganda. Other laws include but not limited to the following

1. The Universal Declaration of Human Rights (UDHR) that was adopted by the General Assembly of the United Nations (UN) in 1948⁵² provides for the right to join a Trade Union, also states that “No one may be compelled to belong to an association.”⁵³
2. The International Labour Organization Convention⁵⁴ which preserves the right to organize and collective bargain, freedom of workers to form trade unions without any prohibition or discrimination from the employer and laid down immunities and privileges of registered unions in spite of the employers’ rights
3. The Constitution of the Republic of Uganda 1995⁵⁵ which provides that every person shall have a right to freedom of association which shall include the freedom to form and

⁵² Art.23(4)

⁵³ Art.20(2)

⁵⁴ Art.29 (1) (e)

⁵⁵ Art.40 (3)

join associations or unions, including trade unions and political and other civic organizations.⁵⁶ It also provides that every worker has a right to form or join a trade union of his or her choice for the promotion and protection of his or her economic and social interests,

3.3.4 Objectives of Trade Unions in Uganda

The major objectives of trade unions in Uganda for their establishment and maintenance can be outlined as bellow.

Negotiating and maintaining sound terms and conditions of employment for its members
establishing and maintaining mutual respect and trust between workers and employers, providing
guidance and support to members on labour related matters, effective handling of members
grievances and resolution of disputes at workplaces, empowering members to actively participate
in labour union activities, developing institutional capacity through information, education and
training, promoting and protecting workers' human and trade union rights as provided for under
Art 29(1) and 40 of the Constitution of Uganda, networking with other labour unions and
organizations in the pursuance of workers' rights -

⁵⁶ No.98

CHAPTER - THREE

3.0 THE RIGHT OF SECURITY OF SERVICE

3.1 Introduction

Truly, Uganda like the other East African States, have established laws protecting workers which have been developed over a period through experience. It's worth recalling that Uganda was colonized and labour which was communal turned into capital labour, where people started working for payment in order to afford taxes. Eventually, due to scarcity, it was obtained by force but though paid. Soon there was the emergency of Trade Unions which agitated for legislations thus the various labour laws such as the 1970 Labour Decrees, the 1977 Employment Act, Constitution of the Republic of Uganda, Employment Act No 6 of 2006, The Local Government Act Cap 243, the Local Government Amendment Act 2006, Trade Unions Ordinance of 1937, and No, 8-1 0, and Workers Compensation Act Cap 225, the Occupational Safety and Health Act 2000, among others that Uganda has had to-date. For that reason, Uganda has established Laws under-which the employment relationships are governed but even then, in Uganda like any other East African State, the workers have not benefited enough from the statutory provisions due to the socio-political and economic conditions as shall be discussed hereinafter.

3.2 Rights of workers/employees

Following the fore-going, the legislations have underlined rights protecting the employees including security of service. Security of service is the centre of all the other rights. This is because failure of observance of the any of the other rights is likely to result into termination of

the employment relationship and thus no security of service. For instance, if the right to good conditions of work is violated, the employee/s would be forced to quit work; the right to maternal or paternal leave, the right to be paid for the work done, the right to safety at work to mention but a few all may result into termination of the relationship. Security of service is also the key right because it has the capacity of completely the relationship whereas the rest of the rights may not have such effect. Once this right is not respected, the country is likely to

foreshorten economically as many people will abandon their employments implying that there will be less revenue collected by the state in taxes, high unemployment rates, high government expenditures, etc. hereunder are the rights of employees as provided for by the different employment laws of Uganda.

3.2.1 Economic Rights

Economic Rights are those which guarantee work opportunities, career development and other opportunities. The rights enshrined under economic rights include; the right of access to work, the right to remuneration, the right to protection from sexual harassment, the right to security of service, protection from exploitation, protection of children from hard labour, the right to retirement etc. Objective No. 14⁵⁷ provides that state shall endeavor to fulfill the fundamental rights of all Ugandans to social justice and economic development and shall, in particular ensure that all development efforts are directed at ensuring the maximum social and cultural wellbeing of the people and that all Ugandans enjoy rights and opportunities and access to education, health services, clean and safe water, work, decent shelter, adequate clothing, food security and pension and retirement benefits.

The Constitution of the Republic of Uganda⁵⁸ thus provides inter alia that Parliament shall enact law to provide for the right of persons to work under satisfactory, safe and healthy conditions, to ensure equal work without discrimination and to ensure that every worker is accorded rest and reasonable working hours and periods of holidays with pay, as well as remuneration for public holidays. It also provides for the right to form trade unions and accord women workers protection during pregnancy and after birth in accordance with the law. Following the above provision, many Acts of Parliament have been enacted in pursuance of the above provision thus guaranteeing the rights mentioned above. Specifically on the security of tenure, the constitution⁵⁹ that a public officer shall not be victimized or discriminated against for having performed his or her duties faithfully in accordance with this Constitution; or dismissed or

⁵⁷ The National Objectives and Directive principles of State Policy of Uganda

⁵⁸ Art. 40

⁵⁹ Art.173, constitution of Uganda 1995

removed from office or reduced in rank or otherwise punished without just cause. This article covers all public officers and lays a foundation for all other laws that were to come into force. The Employment Act⁶⁰ is the principal law regulating employment relationships in Uganda. It provides for the minimum employee rights but the employer may offer more favorable terms than those provided for under the Act⁶¹. The Act provides for weekly rests; that an employee shall not be required to work for the employer for more than six consecutive days without a day of rest which shall be taken on any day which is customary or as shall be agreed between the parties⁶², annual leaves⁶³, maternity leaves⁶⁴,

paternity leaves⁶⁵ and also provides for sick payments⁶⁶, dismissals for work⁶⁷. In the case of URA V Bonface Ojok⁶⁸ where the contract provided for 2 years as probation period, it was held that the probation for two years was contrary to Section 24 of Cap 21 9⁶⁹ which prescribed the probation period of 6 months.

The Workers' Compensation Act Cap 225 regulates compensation of employees and their dependents in case of death, injury or disease of the employee sustained in the course of his/her employment. Secondly, the liability of the employer is strict in the sense that even if the injury is due to his negligence, the employer is liable. It thus creates a right to the employees to be

⁶⁰ No. 6 of 2006

⁶¹ Section 27 (2)

⁶² Section 51(1)

⁶³ Section 54,

⁶⁴ Section 56

⁶⁵ Section 57

⁶⁶ Section 55

⁶⁷ Section 58

⁶⁸ SCCA No. 33 of 1991

⁶⁹ Also section 67 (2)

compensated and a duty on the employer to compensate the injured worker or family members in case of death. As noted above, injuries sustained on job may result into one's dismissal or termination for inherent disability. In the above scenario, it would amount to unfair dismissal.

The Labour Unions Act⁷⁰ allows employees to form associations of their choice as was held in the case of *Dr. Sam Lyomoki & 5 ors v A. G*⁷¹. It is also provided for in the constitution⁷². The major purpose of the labour unions is negotiating and maintaining sound terms and conditions of employment for its members. However, trade unions in Uganda have not attained the popularity necessary for them to serve their members and thus failed to deliver any substantial part. Most of the working populations especially the casual labourers are not registered members of the trade unions and while even the registered members have remained victims of the employees' rights violations especially in relation to unfair dismissals. The 2005 country report indications remain almost unchanged to date. It was reported that,⁷³ "globalisation is considered a greatest challenge to trade unions. It has encouraged employers and some governments to adopt a more hostile reaction to the trade unions. The impact of globalisation on workers/Trade unions include:- Downsizing resulting into redundancies, longer working hours or extra shifts introduced without any pay increase, expectance to produce more output with fewer workers, threats by management on relocation of production if labour costs cannot be reduced, workers are not allowed to form or join a trade union, growth of precarious forms of work and less job security, attacks on the social security system, erosion of collective bargaining and trade union influence, feminization of labour, in EPZs, homework and contract labour (i.e. AGOA girls), continued growth of informal sector, rapid technological change, and prolonged periods of slow economic and employment growth, etc.

With the prevalent impacts of globalisation and the absence of enabling labour laws, trade unions in Uganda have failed to counteract the influence of liberalisation of international trade and

⁷⁰No. 7/2006

⁷¹Petition No. 8/2004

⁷²Art. 29 (1)(e)

⁷³ 2 NOTU Country Report Course al-00389: Trade Union Training on International Economics, Regional Intergration and Political Economy: At the International Training Centre of the ILO (turin;]4/o3 to 08/04/2005) Presented by Bidi Saida

investment on their bargaining power. Due to poverty and low levels of education, most unions cannot afford the use of modern technologies i.e. computers. Those who can afford the computers will only use the word processor for internal communications, no internet, e; mail and the rest. Hence, get second hand information and are cut off from the rest of the world”.

The National Security Fund Act⁷⁴ obliges every employer to deduct and remit to the National Social Security Fund (NSSF) 5% of the employees’ wages per month and also to contribute 10% of the employee’s salary to the fund. Although many employers have tried to register their employees with NSSF, a lot remain unregistered even when the government has threatened and arrested some. Some employees who have tried to fight for their rights have been terminated.

3.3.0 The Right of Security of Service

The right of security of service as mentioned above is being considered as the most important right since it has the effect of completely determining the employment relationship with all its adverse consequences on both parties. In fact, all the other rights of employees and employers if violated may have an effect on security of service. Thus, in order to effectively discuss this right, the researcher had to consider all the other rights guaranteed under the Employment Act and other labour related legislations as discussed above.

The right to security of service is a novel aspect of the new legislation alien to the prior statutes. It is widely referred to as the right to protection against unfair and unjust dismissal. The older laws placed all power in the hands of the employer with regard to the welfare of the employee which led to the revision of the same. However, today, the Employment Act 2006⁷⁵ provides an opportunity to the employee to complain due to unfair termination of his or her contract. It provides that “an employee who has been continuously employed by his or her employer for at least thirteen weeks immediately before the date of termination shall have the right to complain that he or she has been unfairly terminated.” The reason for the insertion of this section was based on the past prevalence of unjustified dismissals and the realization for protection against the same. Thus, the provision clearly fortifies the protection of the right of security of service.

⁷⁴ Cap 222

⁷⁵ Section 71(1)

The right can also be implied from the wording of section 65⁷⁶ which provides for the lawful modes of termination of the employment relationship. It provides thus;

(1) Termination shall be deemed to take place in the following instances-

(a) Where the contract of service is ended by the employer with notice;

(b) Where the contract of service being a contract of fixed term of task, ends with the expiry of the fixed term or the completion of the specified task and is not renewed within

a period of one week from the date of expiry on the semesters or terms not less favorable to the employee;

(c) Where the contract of service is ended by the employee with or without notice, as a consequence of the unreasonable conduct on the part of the employer towards the employee; and

(d) Where the contract of service is ended by the employee, in circumstances where the employee has received notice of termination of the contract of service from the employer; but before the expiration of the notice.

Therefore, any other form of termination or dismissal outside the prescribed modes is unfair termination for which an employee can exercise his or her right to complain as noted above.

The Constitution of the Republic of Uganda⁷⁷ provides for the right to appeal against administrative decisions taken against an individual and a fair hearing before an administrative tribunal. However, socio-political and economic conditions do not favor such rights. For instance retrenchments which were imposed by World Bank and IMF in the early 1990s led to laying off of many people on promises to be paid whereby some were not paid, some were paid less while some died before being paid. Moreover in the case of *Opolot v Uganda*⁷⁸, court held that one who has power to appoint has the power to dismiss. Therefore the president has discretion to fire certain civil servant. This put the security of tenure of most employees at risk.

⁷⁶ 76 Employment Act No.6 of 2006

⁷⁷ Art. 42 of the 1995 Constitution

⁷⁸ (1967)HCB

Much as the constitution and the specific legislations have provided for the subsidiary rights to the right of security of tenure as mentioned above, much remains to be desired from the state on the protection of employment right. The Courts of Judicature may be commended here for its promotion of the employment relations in the cases which find their way there by awarding punitive damages. However, what is desired from government is for it to recognize the continued violation of the employees and create accessible avenues through which the victimized or injured employees or employers can get redress. The outstanding contribution of the court can be seen in the following cases as proof that common law courts are now, awarding damages, for other consequences of employment, in addition to the traditional damages that the plaintiff is entitled to recover by way of payment of salary in lieu of termination notice, where the employment contract is terminable by notice, or by way of remuneration for the remainder of the contract period, where the employment contract is not terminable by notice and in all the other respects of determining the relationships.

General damages are awardable by court at large and after due court assessment. They are compensatory in nature in that they should offer some satisfaction to the injured plaintiff.

Aggravated damages are, like general damages, compensatory in nature, but they are enhanced as damages because of the aggravating conduct of the defendant. They reflect the exceptional harm done to the plaintiff by reason of the defendant's actions/omissions. Both general and aggravated damages focus on the conduct of the defendant in causing the injury to the plaintiff that is being compensated for.

Punitive or exemplary damages are an exception to the rule that damages generally are to compensate the injured person. These are awardable to punish, deter, express outrage of court at the defendant's egregious, highhanded, malicious, vindictive, oppressive and/or malicious conduct. They are also awardable for the improper interference by public officials with the rights of ordinary subjects. Unlike general and aggravated damages, punitive damages focus on the defendant's misconduct and not the injury or loss suffered by the plaintiff. They are in the nature of a fine to appease the victim and discourage revenge and to warn society that similar conduct will always be an affront to society's and also the court's sense of decency. They may

I also be awarded to prevent Unjust enrichment. They are awardable with restraint and in exceptional cases, because punishment, ought, as much as possible, to be confined to criminal law and not the civil law of tort and contract.

The common law principles that damages are not awardable for injury to feelings or reputation by reason of unlawful dismissal or termination of contract of employment -*Addis v Gramophone Co.*⁷⁹ or for causing plaintiff have more difficulty in obtaining new employment-

*Maw v Jones*⁸⁰ have over time been interpreted so as to make employment law keep pace with economic and other social developments of modern society. Thus, in *Dunk v George Wailer &*

*Son*⁸¹, damages additional to those of loss of earnings were awarded to a plaintiff for his loss of training and for the diminution of his future prospects by reason of his loss of status of a person who had completed an apprenticeship, which was taken to be important in his acquiring a new job. The plaintiff's contract of apprenticeship had been wrongfully terminated during its course.

The plaintiff in *Cox v Philips Industries*⁸², while he could recover no damages for wrongful dismissal as the defendants had paid him appropriate compensation for the unlawful dismissal, was awarded damages for depression, anxiety, frustration and illness. The plaintiff had been offered and he had accepted a better position with greater responsibility and an increased salary by the defendants, in order not to lose him to a rival company. The defendants, later, in breach of their contractual obligations to the plaintiff, relegated him to a position of less responsibility and vague duties. The plaintiff became depressed, anxious, frustrated and ill. He left employment under conditions of wrongful dismissal by the defendant. The employee in *Rigby v Ferodo*⁸³ was made to work being paid a lower figure of wages, the reduction being wrongfully made by the

⁷⁹ [1909] A.C.488

⁸⁰ (1 890) 25 Q.B d 107

⁸¹ [1970] 2QB 163(CA),

⁸² [1976] 1WLR 638

⁸³ [1987] I.R, L.R 61(CA)

employer. He sued for damages for breach of contract of employment. His entitlement to damages was held by the Court of Appeal to be more than, and not only restricted to the 12 week period of notice by which the contract could have, but had not, been lawfully terminated by the employers.

In Uganda, the correct legal position as to the award of exemplary damages in instances of a breach of contract requires some critical examination. In *Esso Standard (U) Ltd v Semit Arnanu Opio*⁸⁴, the respondent managed a petrol station for the appellant under terms, amongst which was one, that the respondent's services could only be terminated by the appellant on giving him six months notice. The appellant, in breach of this term, gave the respondent only two weeks' notice to vacate and on failure to do so, the appellant, in the language of the trial judge: The trial court awarded respondent Shs. 15, 000,000k general damages for breach of contract and the damages included an element of punitive damages. In *Ahmed Ibrahim Bholm v Car General Ltd*⁸⁵, a case of breach of contract of employment the decision in *ESSO STANDARD (U) LTD* case, notwithstanding, TSEEKOKO, JSC, in his lead judgment stated: "As I said earlier, in the plaint the appellant prayed for exemplary damages but the learned trial judge described them as general damages. It is now recognized that courts in East Africa can award punitive and/or exemplary damages in torts and contracts. This is clear from the decision of *Oboiigo v I(Isurnu Municipal Council*⁸⁶, a decision of the EA Court of Appeal."

3.3.1 Unfair Dismissal

Dismissal⁸⁷ is a unilateral termination of the contract by the employer by word or deed, the employer tells the employee that their relationship has or shall come to an end. This unequivocal dismissal generally puts an end to the legal relationship instantly though exceptionally the employee may take the view that the relationship has not ended and in the event, the contract will subsist until the proper period of notice expires. Where the employer does not give the agreed

⁸⁴ Supreme Court Civil Appeal No.3/93

⁸⁵ Civil Appeal No.12 Of 2002 (Sc)

⁸⁶ 11971) Ea 91

⁸⁷ Section 2 Employment Act 2006

notice, he repudiates his fundamental obligation under the contract which is to pay wages in return for the work done.

Unfair dismissal or termination is defined as the situation when an employer terminates the services of an employee without notice or with less notice than that to which the employee is entitled by any statutory provision or contractual term⁸⁸. Most of the employment contracts in the country terminate improperly with a few people seeking redress in courts of law, labour offices or elsewhere. It is appalling to note however that even government and its agencies, institutions, and parastatals are in the practice. Examples include, the case of *Amunyokol okol Johnson v A.G* Civil Appeal No. 07 1/2010, where the petitioner was unfairly dismissed from his position as Ambassador to China, *Charles Kabagaine v UEB* Constitutional Petition No. 2. of 1999, Charles an employee of UEB was unfairly dismissed, the teachers that were threatened by dismissal if they did not abandon their strike for higher salaries in 2012⁸⁹, Dr. Edward Kunonya who was arrested and dismissed unfairly from Mulago Hospital and for Makerere University⁹⁰, Censured Kalungu Speaker Sued Council For Unlawful Dismissal⁹¹ etc. and other cases of private companies such as the case of *Eng. George Ndyabawe v Shell (U)*⁹² and all the other cases in this study.

A dismissal is considered to be automatically unfair if the employee is dismissed for any of the following reasons as laid down under the Employment Act:

1. Membership or proposed membership of a trade union or engaging in trade union activities, whether within permitted times during work or outside of working hours
2. Religious or political opinions

⁸⁸ Section 69(1)

⁸⁹ The New Vision online: September 92012, Posted by Sandra Birungi on July 5,2012

⁹⁰ <http://ugandaradionetwork.com/aJstory.php?s32355#ixzz252MXP6rh> (August 30, 2012)

⁹¹ <http://ugandaradionetworkcom/a/story.php?s44477#ixzz25zj101sl>

⁹² The New Vision online: Shell (U) loses case t former employer by Hilary Kiirya. Febuary 27 2006

3. Legal proceedings against an employer where an employee is a party or a witness
4. Race, color, sexual orientation, age or membership of the Traveler community
5. Pregnancy, giving birth or breastfeeding or any matters connected with pregnancy or birth
6. Availing of rights under legislation to maternity leave, adoptive leave, care's leave, parental or force majeure leave
7. Unfair selection for redundancy

The other form of unfair dismissal is in connection with the violation of Art.42 of the Constitution. It was elaborated in the case of Charles Kabagambe v UEB⁹³. In this case, the hearing at the tribunal was conducted unfairly and unjustly as illustrated in the following manner:

- (i) Kabagambe was repeatedly denied access to evidence and documents in possession of the respondent.
- (ii) The hearing was characterized by attempts to ambush him and mislead him as to the true nature of the charges against him.
- (iii) He was denied a right to counsel when the respondent was represented by counsel; (iv) Members of the Tribunal acted both as prosecutor and judge in the conduct of the purported hearing, and thus violated the rules of natural justices.
- (v) The Tribunal had in the composition two members, Mr. Frank Katusiime and Mr. Kagule - Magambo, who had personal differences with him and who had refused to disqualify themselves from participating in the hearing. Their participation in the hearing resulting in unfair and unjust treatment of him, (vi) Evidence was adduced before the respondent's tribunal in his absence at a second hearing on the May 6 1999 and he was neither given notice of the fact that the tribunal had received the said evidence nor given a chance to rebut or respond to it; (vii) He was

⁹³ Constitutional Petition No. 2 of 1999

ordered out of the hearing of May 6 1999 by the respondent's Chairman and his absence from the hearing was afterwards relied on by the respondent to justify his dismissal on a false allegation that he had walked out of the hearing and (viii) The respondent took a long time to make a decision after having completed hearing on the September 18 1998.

Before an employer dismisses an employee, the above provision must be understood to offer a fair hearing to an employee before any dismissal may be justified⁹⁴. An employer is required to explain to the employee in a language the employee may be reasonably expected to understand, the reason for which the employer is considering dismissal and the employee is entitled to have another person of his or her choice present during this explanation. Thus an employer shall, before reaching any decision to dismiss an employee, hear and consider any representations which the employee has made. The employee should be given reasonable time within which to

Share the representations. With the above therefore, violation of Art.42(supra) in reaching an administrative decision makes the decision unfair warranting the victimized person a complaint or seek

Press in Courts of Law. -

Excluded categories

A right to complain against an employer for unfair dismissal as provided for under the Employment Act is not to the following:

- (a) An employee who is under 16, or who has reached normal retiring age or who is not covered by the Redundancy Payments Acts because of age
- (b) A person working for a close relative in a private house or farm, provided both also live in the same house or farm;

⁹⁴ [http://www.mywage.org/uganda/home 1 about-laws/dismissal](http://www.mywage.org/uganda/home%201%20about-laws/dismissal)

- (c) A member of the UPDF
- (d) A person undergoing full-time training or apprenticeship in FAS
- (e) An officer of vocational education committees, a county or city manager and the chief executive of the Health Service Executive
- (f) An employee who is employed under a fixed-term/specified-purpose contract and where the contract is in writing, is signed by both parties and contains a clause that the Acts shall not apply in relation to a dismissal consisting only of the expiration of the fixed term contract or the completion of the specified purpose⁹⁵.
- (g) An employee who works outside the State (unless the employee is resident in the State for the duration of the contract or is domiciled in the State and the employer is resident in the State for the duration of the contract)
- (h) Statutory apprentices who are dismissed within 6 months after beginning apprenticeship or within one month after the completion of the apprenticeship
- (i) An employee who is on probation or undergoing training at the beginning of employment, provided that the duration of probation or training is one year or less and is specified in the written contract of employment.
- (j) An employee who is dismissed during training for qualification or registration as a nurse or for other specified Para-medical employment

Note: The exclusions from the Acts of persons referred to in points (b), (e), (i), (j) and (k) shall not apply where the dismissal results from:

- The employee's pregnancy, giving birth or breastfeeding
- Availing of rights under the Maternity Protection
- Availing of rights to adoptive leave or additional adoptive leave, parental leave, force majeure leave or care's leave

⁹⁵ Section 3

The exclusion from the Acts of persons referred to in points (a) and (d) shall not apply where the dismissal results from the employee availing of the right to parental leave, force majeure leave or care's leave. The Unfair Dismissals acts will not apply to a dismissal where the employees employer at the commencement of the employment informs the employee in writing that the employment will terminate on the return to work with that employer of another employee who is absent from work while on maternity leave, adoptive leave or care's leave.

Much as the Employment Act provides for protection against unfair dismissals⁹⁶; it nonetheless permits the employer to dismiss an employee at any other time whenever the employer thinks a fundamental term of the contract has been broken by the employee⁹⁷. It is normally referred to as summary dismissal. Besides, the right to summarily dismiss has been preserved by common law as can be proved by case law. Thus, the legislations do not guard against dismissal but rather it provides a system of appeal where the victim can question the fairness of the dismissal after he or she has been dismissed. In the Supreme Court case of *Bank of Uganda v Betty Tinkamanyire*⁹⁸, Justice Kanyeihamba stated that "it is trite that, a court of law should not use its powers to force an employer to retake an employee it no longer wishes to continue to engage. However, depending on the circumstances, an employee who is unfairly or unlawfully dismissed, as in this case, should be compensated adequately in accordance with the law". The power dismiss summarily is exercisable in circumstances where the contract expressly authorizes summary dismissal. It can also be exercised where the employee is guilty of serious misconduct, unless the contract precludes its exercise in the circumstances in question. Where the employment contract does not specify the grounds for summary dismissal, what constitutes serious misconduct for these purposes depends on the nature of the job in question and the terms of the contract. In the case of *Barclays bank v Geoffrey Mubiru*⁹⁹, Certain actions such as stealing from the employer, deliberately destroying the employer's property and gross insubordinations were regarded as serious misconduct, however, often, the line is difficult to draw between what misconduct justifies summary dismissal and what calls for other penalties. In

⁹⁶ Section 69 (2)

⁹⁷ Section 69(3)

⁹⁸ Civil appeal no 12 of 2007

⁹⁹ C.A No.1 of 1998 (S.C)(Unreported)

that case, Justice Kanyeihamba, said; "In my opinion, where any contract of employment, like the present, stipulates that a party may terminate it by giving notice of a specified period, such contract can be terminated by giving 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 for notice is stipulated, compensation will be awarded for reasonable notice which should have been given, depending on the nature and duration of employment".

3.3.3 Misconduct warranting dismissal

As noted above, a conduct warranting dismissal other than any other penalty is difficult to define. In the case of *Grover v B.L.N Ltd*¹⁰⁰, Kenny J. said; "it is impossible to define the misconduct which justifies immediate dismissal. There is no fixed rate of law defining the degree of misconduct which justifies dismissal. What 'is' or 'is not' misconduct must be decided in each case without the assistance of a definition or a general rule. Similarly, all that one can say about serious misconduct is that it is misconduct which the court regards as being grave and deliberate. And the standards to be applied in deciding the matter are those of men and not angels". In the case of *Carville v Irish Industrial Bank*¹⁰¹ where the managing director who had been summarily dismissed for having arranged for a carpet in his house to be fitted in his office and charged the bank for a new carpet that had been fitted in his house instead, Justice Kenny's decision that the act constituted a misconduct as to justify summary dismissal was overruled stating that the misconduct in question usually must have been known to the employer at the time he decided on the dismissal. This means that the employer cannot as a defense to an action for wrongful dismissal, rely on act of misconduct on the part of his servant s which was unknown to him at the time of the dismissal, unless the act is of so fundamental a character as to show a repudiation of the contract of employment by the servant.

In the case of *Bank of Uganda v Belly Tinkarnanyire*¹⁰² the facts of the case according to Justice Tsekooko were that the respondent who had served the appellant bank for ten years in

¹⁰⁰ (1973)1R388

¹⁰¹ 11)0 [19681 1R325

¹⁰² Supra

various positions and apparently without blemish on her record and had only four years left before her normal retirement. Indeed on 25th August 2002, the appellant sent the respondent to Germany to understudy the Human Resource Department of the Germany Bank which would imply she was still needed. Surprisingly, upon her return she was handed a letter dated 21/8/2002 retiring her. No reason was assigned for this premature retirement nor was she given opportunity to be heard before that retirement. The two courts below correctly found that this amounted to summary unlawful dismissal, apparently the Governor of the appellant had earlier circulated a circular warning that drunkards, lazy, insubordinates, fraudsters and incompetent employees would have their services terminated. In the absence of any reasons to explain her dismissal, it is not unreasonable to infer that she was included among that category of undesirable employees. The learned Justice therefore found this a special case which called for appropriate award of damages as the trial and appellate court had ordered.

The test of summary dismissal was stated in the case of *Laws v London chronicle Ltd*¹⁰³. It was stated thus "whether the conduct complained of is such as to show the servant to have disregarded the essential conditions of the contract of service". A single act may constitute sufficient cause to justify instant dismissal for example, fraudulent conduct, willful disobedience of lawful and reasonable orders, etc. it was further held that one act of disobedience or misconduct can justify dismissal only if it is of a nature which goes to show in effect that the servant is repudiating the contract, or one of its essential conditions moreover, the order must be within the scope of the employment. In *Price v movat*¹⁰⁴, it was held that a worker who has been hired to perform one kind of task cannot be compelled to do something entirely different. For example, a person hired in an executive capacity cannot ordinarily be expected to spend his working hours performing manual labour. Generally, the misconduct warranting dismissal depends on the circumstances of each case.

In certain circumstances, the contract sets out in details the circumstances in which it can be terminated forthwith by one or both parties. Where the contract sets out the grounds for immediate dismissal, a court may conclude that those grounds supercede and displace the

¹⁰³ (1959)1 WLR 698

¹⁰⁴ (1962) CB 508

common law right of summary dismissal, In *Glover v B.LN Ltd*¹⁰⁵, the plaintiff contract enumerated the grounds and circumstances in which he could be instantly dismissed and it was held; "Because of the express provisions of this clause, no implied term is to be read into the contract that the plaintiff might be summarily dismissed for misconduct. On the contrary, the clause expressly provides that the plaintiff could not be validly dismissed for misconduct and was of a kind which, in the unanimous opinion of the board of directors . . . injuriously affected the reputation, business r property of the companies".

The plaintiff in *Glover* had been employed as the technical director of a group of car assembly companies, which later merged with another care assembly group; one of the terms of the contract was that his appointment could be terminated without giving rise to any claim for compensation or damages upon the happening of any events following namely; - (c) "if Mr. Glover shall be guilty of any serious neglect in the performance of his duties or willfully disobeys reasonable orders, directions, restrictions or regulations of the board of directors of any of the said companies which in the unanimous opinion of the board of directors for the time being of the holding company present and voting at the meeting injuriously affects the reputation business or property or management of either the holding company or the operating company.or the factors company". At the beard meeting of the holding company, a report was presented accusing the plaintiff of a long catalogue of improprieties, such as being a shareholder in the company that supplied automotive goods to the group, getting company employees to do work on cars he owned without charging himself for their services and getting company employees to do work for several weeks in his own house without ever charging himself for their work. The board resolved that he should be instantly dismissed. It was held that the test of whether his dismissal was lawful was not whether he had been guilty of serious misconduct but whether he had committed acts of misconduct as characterized by the above clause in his contract. If in the circumstances the directors could reasonably conclude that he so mis conducted himself, he could have been dismissed forthwith. It was found that the conflict of interest arising by virtue of his involvement in a supplier to the group was not even misconduct, since its existence had been disclosed to the employer; that although getting work done on his cars without charge was

¹⁰⁵ *Supra*

misconduct, it was not serious misconduct as defined in the contract; while getting work done on his house without charge amounted to such serious misconduct, his dismissal was held to be unlawful because he not been given opportunity whatsoever to defend himself against the allegations made against him.

An employer is entitled to dismiss an employee without notice or payment in lieu thereof if the employee is guilty of misconduct. The general principle considered in every case however is the gravity of the misconduct thus whenever it so gross, the employer may not give warning to the employee. In the case of *Boston Deep Sea Fishing & Coco v Ansell*¹⁰⁶ It was held that (1) where an employee is guilty of gross misconduct, he may be dismissed summarily, even before the end of a fixed period of employment; (2) dismissal may be justified by reliance on facts not known to the employer at the time of the dismissal, but only discovered subsequently, even after the proceedings began; and (3) the dismissed employee is not entitled to any wages or salary for the broken period of employment immediately preceding his dismissal, because his entitlement had not accrued by then. In this case, the employee was dismissed for taking secret commissions.

In the following cases, the dismissals were justified.

Gross negligence: For example in the case of *Jupiter General Insurance v Shroff*¹⁰⁷, where the manager of a life insurance department of an insurance company negligently recommended the insurance of a life which a few days earlier the managing director had refused to insure, the claim for unfair termination failed on grounds of gross negligence.

Willful disobedience: In the case of *Laws v London Chronicle*¹⁰⁸, it was held that there is no fixed rule defining the degree of misconduct which will justify dismissal; disobedience must at least have the quality that it is willful; a deliberate flouting of an essential contractual condition which amounts to repudiation of the contract.

¹⁰⁶ (1888) 39 Ch 1) 339

¹⁰⁷ [1937] 3 All ER 67

¹⁰⁸ [1959] 1 WLR 698

Drunkenness: Whether drunkenness justifies summary dismissal of a servant is a question of fact. In *Clouston and Co. Ltd v Corry*¹⁰⁹ which concerned summary dismissal for drunkenness, Lord James of Hereford delivering the judgment of the Board said: - "Now the sufficiency of the justification depended upon the extent of misconduct... Of course there may be misconduct in a servant which will not justify the determination of the contract of service by one of the parties to it against the will of the other. On the other hand misconduct inconsistent with the fulfillment of the express or implied conditions of service will justify dismissal. His Lordship went on to observe that "the question of whether the misconduct proved establishes the right to dismiss the servant must depend upon facts - and is a question of fact.

Theft or taking of property without authority When it is a gross/grave act of misconduct such as dishonesty, gross negligence, insubordination or a clear breach, prior warnings are not needed, for such acts are in breach of the fundamental duties of an employee, which causes the employer to lose his trust and confidence in the employee even though it is a single act. In the case of *Sinclair v Neighbor*¹¹⁰ where a betting shop manager took money from the till for his personal use it was held that the dismissal was fair.

Dishonesty: Eddy, a clerk working for trading company R, diverts its customers to company S and obtains a commission from S for such business introduced by him. This is a clear case of a breach of fundamental duties and obligations of an employee for he commits an act of dishonesty or fraud. He willfully causes loss to his employer. No employer can repose trust in such an employee, and summary dismissal of Eddy is warranted. In the case of *Regal (Hastings) Ltd v Gulliver*¹¹¹ it was held thus; 'The, rule of equity which insists on those, who by use of a fiduciary position make a profit, being liable to account for that profit, in no way depends on fraud, or absence of bona fides; or upon such questions or considerations as whether the profit would or should otherwise have gone to the plaintiff it was further held that whether it is to be described as dishonest misconduct or not, I do not think matters. Views might differ. It was sufficient for the employer if he could, in all the circumstances, regard what the manager did as being something

¹⁰⁹ [1906] AC 122, at p. 129

¹¹⁰ [1967] 2 QB 279

¹¹¹ [1967] AC 134 Lord Russell of Killowen said at p.144 G

which was seriously inconsistent - incompatible - with his duty as the manager in the business in which he was engaged.

Other cases may include of course depending on the principal laid in the above cases; sleeping while on duty, lateness, unauthorized absence from work¹¹², unsuitable clothing, computer hacking, inherent inability or incompetence¹¹³ dangerous or obstructive conduct, fighting, breach of safety rules, breach of hygiene rules and strikes¹¹⁴

3.4.0 Rules governing unfair dismissal complaints

In order to qualify to bring a claim for unfair dismissal under the legislation the following requirements must be met:

3.4.1 Time Limit

The time limit for beginning a claim for unfair dismissal is 3 months from the date of the dismissal¹¹⁵. If there are *exceptional circumstances*, the employee may be allowed to extend this period to more months from the date of dismissal. However, these must be exceptional circumstances for example that the complainant did not know the law will not suffice. The date of dismissal, under the unfair dismissals legislation, is the date on which the notice given to an employee terminating his/her services expires. Every employee is entitled to a statutory minimum period of notice¹¹⁶ if he/she has worked at least 13 weeks for the same employer. Written contract of employment may provide for a longer period of, notice than the above minimum period.

¹¹² Konig v karanjee properties (1968) EA 223

¹¹³ Bervani Harris v Gair (1981) IRLR 520.

¹¹⁴ Simon v Hover(1977)TCR 6I

¹¹⁵ Section 7 1(2) employment Act 2006

¹¹⁶ Section 58(1)

3.4.2 Service

Normally an employee must have at least 13 weeks¹ continuous service with his/her employer in order to bring a claim for unfair dismissal. However there are important exceptions to this general rule. If the employee has less than 13 weeks¹ of continuous service, he/she may bring a claim for unfair dismissal if you are dismissed for; trade union membership or activity¹¹⁷, pregnancy, giving birth or breastfeeding or any matters connected with pregnancy or birth¹¹⁸,

The Employment Act¹¹⁹ prohibits dismissal based on any of the following 9 grounds for discrimination: gender, civil status, family status, age, disability, religious belief, race, sexual orientation or membership of a particular political party. The above stipulation serves as an exception to the general rule stated above. For example, if an employee has been employed for less than a year he/she may not be able to bring a claim under the unfair dismissals legislation, but he/she may be able make a complaint of discriminatory dismissal. In general, the continuity of an employee's employment is only broken by the dismissal of the employee by the employer or the termination of the employment by the employee.

3.4.3 Employment status

You must be an employee, working under a contract of service¹²⁰. A contract of service is defined as any contract whether oral or in writing, whether express or implied, where a person agrees in return for remuneration, to work for an employer and includes a contract of apprenticeship¹²¹. The essential element of such a contract is that the relationship is one of employer/employee, as opposed to a contract for services where the relationship involves performing a service in return for payment, that is, a contractor. Besides, the contract must not be

¹¹⁷ Section 70(5)

¹¹⁸ Section 70(4)

¹¹⁹ Section 75(g)

¹²⁰ Section 65(1)(a) & 69(2) Employment Act 2006

¹²¹ Section 2 *ibid*

unlawful dismissal of the appellant to the monetary value of the period that was necessary to give proper notice of termination which is commonly known in law as compensation in lieu of notice. The principles established by this court in *Barclays Bank of Uganda v Godfrey Mubiru* (supra) remain good law that governs the relationship between an employer and employees with regard to termination of the latter's employment. I would therefore allow ground I of the appeal and limit the appellant's liability to compensation in lieu of notice of three months. You cannot therefore claim any compensation for such matters as injury to your feelings or stress caused by the dismissal".

Compensation will therefore take the following forms:

Actual damages: this deals with the present loss actual loss incurred by the party. It is a calculation of one's loss of earnings from the date of the dismissal to the hearing of your claim. Any money earned by you during this period will be deducted, as will any payment in lieu of notice received by you when you were dismissed. You are also obliged to lessen your losses during the period from your dismissal to the hearing by being available for and seeking alternative employment. If it transpires that you have no actual loss, because, for example, you took up other employment immediately after your dismissal, you are entitled to a token compensation of 4 weeks' pay. It thus means that the damages awarded for instance for non delivery of goods or services would be an amount equal to the difference between the price stated in the contract and what the promise would have to pay elsewhere.

Future damages: these are awarded for injuries that might reasonably be anticipated in the future. A calculation will therefore be made as to one's future loss, based on a consideration of how long it is likely to be before you can get alternative work. On the other hand, a party charged with fraud in the sale of a building infested with termites may be held liable for all damages that would be reasonably forthcoming as a result of the undisclosed and concealed infestation.

Other consideration include; Pension loss - a calculation that will try to assess what impact the unfair dismissal has had on your pension entitlements; Loss of statutory protection - a calculation dealing with the point that you will have lost protection under the unfair dismissals, redundancy and, minimum notice legislation; Contributory conduct - a calculation that will take into account any conduct by you that contributed to the dismissal, even though it was an unfair dismissal. The

degree of contribution will be stated in percentage terms and your award overall award reduced accordingly.

3.5.2 Reinstatement

Reinstatement treats an employee as if he/she had never been dismissed. Not only is he/she entitled to loss of earnings from the date of the dismissal to the date of the hearing, but also entitled to any favorable changes in the terms of employment during that period, for example, pay rises. This remedy is rarely used.

3.5.3 Re-engagement

Under re-engagement, the party will be given his/her job back but only from a particular date, for example, the date of the decision in the party's favor. In cases where this remedy has been granted, the party will not be entitled to compensation for any loss of earnings. Often this remedy is used where it is felt that the employee contributed to the dismissal, even though the actual dismissal was unfair. Again, however, this remedy is rarely used.

3.6.0 Impotencies of security of tenure

There are no known impotencies of security of service in the existing literature. The following have however been established by this research through interviews with the working populations.

3.6.1 Economic growth

Security of service ensures the working community a steady income for as long as their employment contracts runs. It's the duty of every citizen of Uganda to pay tax¹²⁵. It follows from the foregoing that taxes are meant to raise government revenue. Taxes are the major source of government funds thus, the more taxes raised, the more sustainable an economy becomes. Taxes are however levied on the working population, the business community and on rental incomes of landlords and others. The Uganda Revenue Authority (URA) is a central body for the assessment and collection of specified revenue, to administer and enforce the laws relating to such revenue

¹²⁵ Art.17(I)(g)

and to provide for related matters. ¹²⁶Its major function is to collect and account for all revenue to which those laws apply. In summery therefore, I assert that if people's employment contracts are secured, a minimum wage fixed and all employee rights observed as discussed hereinabove, the country can reach a level of economic independence and a stable growth as opposed to the Prevailing phenomenon.

3.6.2 Poverty eradication

Uganda has been branded an LDC and for a long time has been trying to elevate itself from such a position but almost in vein. The reasons for such ranking include level of poverty, economic independence, and mortality rate among others. Uganda's poverty level is high and the major reason as established by this study is lack of security of tenure and other violations of worker's rights. This is because poverty levels can be reduced when people's employment relations are secured and a steady reasonable income is maintained which is still lacking in Uganda. The importance of SOS therefore is that it secures. People's jobs and maintains a steady flow of income which helps elevate people's and country's poverty levels and the ranking automatically changes.

3.6.3 Political stability

The current demonstrations phenomenon still fresh in people's minds and yet still on-going will provide a thorough explanation on this importance. The poverty levels due to unemployment, lack of minimum wage, low salaries to mention but a few in the country has been used by politicians to incite political instability whereby the unemployed youths, teachers & doctors demanding for higher pays, private sector workers demanding for minimum wage fixing have been teamed up by opposition politicians and demonstrated to the extremity of demonstration to wit rioting prompting the government to react with tear gas and gunshots-a situation which has caused political instability in Uganda affecting the economy. It thus means that SOS helps

¹²⁶ Section 3(1)

people to stay on jobs reducing the unemployment levels and leaving little to be used by the opposing political organizations hence political stability.

CHAPTER - FOUR

4.0 CHALLENGES TO THE SECURITY OF SERVICE IN UGANDA

4.1 Introduction

Despite the availability of such laws as discussed above, this research however established that workers' rights continue to be abused in Uganda. The extent of abuse of workers' rights is illustrated by the following case study on the Tri-Star Apparel Company. Tri-Star was hurtling to bust was its notorious labour relations record. Allegations of worker maltreatment lingered even after management said it would improve their conditions after the first workers strike on October 21, 2003 that resulted in the dismissal of hundreds. 'Instead, for the brief period the company existed, it was more known for its mistreatment of workers than export clothes. Initially 1000 girls were recruited from across the country, trained and offered jobs but that number kept diminishing and by its closure about 350 were employed. The complaint included:

Poor working conditions: These included standing for long hours without breaks, denial of sick leave and, pass-approved and timed toilet breaks; Abuse and sexual harassment: Individual cases of physical and verbal abuse as well as sexual harassment by the Tri-Star supervisors; Long working hours: The girls were forced to work for more than 10 hours a day Without payment for overtime, and consideration of the negative health effects. They were often threatened with dismissal for failure to put in the extra hours and to meet the company's unrealistic targets; Unlawful dismissals: Prior to the unlawful termination of the 265 female workers, some other employees were subjected to unlawful summary dismissals, either because they fell sick at work, refused to submit to their supervisors' sexual advances, failed to work extra hours or meet unrealistic targets; and Denial of the right to associate: According to the workers, the actual lay off was sparked by the demand for the right to unionize. The women exercised their right to withdraw labour by not working and staying in the dormitory until their demands were met by the employers. This is a clear example of how violation of any of the other rights threatens the right of security of tenure of workers.

The laws purely provide for labour rights to wit wages, conditions of work, safety & health conditions and the modes of dismissal of employees of both civil and private sector. However,

there are also many incidents of non-payment of wages, unlawful dismissal/termination and non-payment of terminal benefits. The extent of violations is evidenced in the number of workers seeking legal aid from NGOs. In 2004 alone, for example, 246 clients sought legal support and representation from Platform for Labour Action (PLA) and in 2005, 640 sought legal aid to resolve labour related claims. These abuses are common in many formal workplaces affecting, for example, teachers, security guards, flower farm workers and big enterprises such as fishing.

The Constitution of the Republic of Uganda¹²⁷ provides for the right to appeal against administrative decisions taken against an individual and a fair hearing before an administrative tribunal. However, socio-political and economic conditions do not favor such rights. For instance retrenchments which were imposed by World Bank and IMF in the early 1990s led to laying off of many people on promises to be paid whereby some were not paid, some were paid less while some died before being paid. Moreover in the case of *Opolot V Uganda*¹²⁸, court held that one who has power to appoint has the power to dismiss. Therefore the president has discretion to fire certain civil servant. This put the security of tenure of most employees at risk.

4.2 Challenges

4.2.1 Less severe punishments given to violators of the employee/ rights

In fact, violators of workers' rights and especially those who dismiss employees unfairly either expressly or by imposing harsh conditions forcing employees to abandon their work are not punished. The compensation and damages awarded to the victimized employees are entitlement which they should have enjoyed should they have not been unfairly dismissed depending on the length of the contract. The employers do not suffer extra losses in compensating or paying

¹²⁷ Art. 42 of the 1995 Constitution

¹²⁸ (1967) HCB

damages unless exemplary damages are awarded, thus in the case of *Kafuna v Masaka District Corporative Union*¹²⁹ an employee who was paid on a monthly basis was held to be entitled to recover wages equivalent to eighteen days worked during the month of dismissal. In *Lindsay v Queens Hotel Co.*¹³⁰ where the employee was claiming for tips, it was held that an employee is in principle entitled to compensation only for loss of remuneration that he was legally entitled to under his contract of employment whether that remuneration consisted of cash wages or other material or financial rewards (fringe benefits) or even intangible rewards such as publicity or enhancement of reputation. The intention of awarding damages however need not only be of

putting the victimized employee in a position he ought to have enjoyed should he/she have not been unfairly dismissed¹³¹, but also deter the dismissing employer and other employers from doing the same. The absence of the above has maintained fertile grounds for the continued violations of the right to security of service and there seems to be lack of political will to curb the practice since government is the major employer and also considering the need to encourage investors to come into the country. This can perhaps be evidenced from the rampant civil servants strikes in Uganda e.g. the teachers strikes in 2012 demanding for pay rises where government threatened dismissals of the striking teachers.

4.2.2 The complaint and compensation procedures

The employment Act lays down rules and procedures¹³² a complaining employee ought to follow breach of which may shadow the substance of the complaint and directly affect the decision to or not be compensated. For example, omission to plead specific damages in a complaint is fatal in court and the complainant will not recover such damages at any later stage. It seems therefore that all claims must be included in the same action otherwise a claim in the subsequent action

¹²⁹ HCCS 698 of 1970, digested in (197) HCB 283

¹³⁰ 29 (1919) K.B 208

¹³¹ Amunyokolokol Johnson v A.G Civil Appeal No. 071/20 10

¹³² Ibidpg49-51

will be barred as res judicata. In the case of *Kiirya v East African Railway Cooperation*¹³³ the employee in his action for wrongful dismissal omitted to claim for loss of benefits and was awarded only damages for loss of earnings based on wages in lieu of notice. Subsequently in a fresh Suit he sought to claim for his pension for twenty one years of service with the defendant corporation. Ssekandi J. held that the suit was barred as being res judicata because the question of loss of income was an issue that ought to have been raised in the first suit so that if the employee was so entitled, the damages would reflect that loss. Additionally, positioning of labour offices. Far from the employees and the high levels of labour casualization makes it even harder for the victimized employees to bring up complaints. The requirement of having been in service for 13 weeks is itself a loop hole for defendant employers to escape guilt of the violations if they decided to dismiss employees before such period.

4.2.3 Political conditions

Due to politics the rights of workers end up being violated despite the fact that there are laws in place to protect the employees from such conditions. A very good case scenario was during referendum in Kenya one year ago where the government threatened to sack all the civil workers who will fail to vote yes for the new constitution. The employees have a right to vote either way one prefers but the government took advantage of the situation and put the employees in a compromise. This would amount to unfair termination from service which is against Section 71 of the Employment Act.

(a) Failure of the government to implement the available laws, this is a very serious problem in East Africa, whereby we are always making good laws, like in this case there are good laws protecting the employees but they are always violated by the employers since the government lacks machinery mechanisms or interest of ensuring that the laws are followed. Another hard reason to believe though it is true is that most of these rich employers finance the politicians' campaigns and so as payback the politicians go slowly on the employers and these are the

¹³³ HCCS No. 33 of 1976 also HB 255

politicians controlling the government. For instance under the Factories' Act¹³⁴ provides at length matters pertaining to the safety of the workers, welfare of the workers, and health of the workers while inside those factories but rarely do we see the employers following the law in making sure that all these requirements are in place. The factory also ought to be constructed in a good way considering the safety of the employees, but the employers most of who are owners of these factories clearly violate the law by constructing bogus premises so as to save money without considering the safety of the employees. But I put it to the government that it is partly to one since while the law is there and very clear it deliberately fails to implement, the government will play politics even where the life of an employee is put in danger. Of late there have been cases of high rise buildings falling down because of bad and unprofessional instructions, but the owners of these buildings mostly who are politicians just walk scot free without ever facing criminal charges. The government has not yet put in place policies to prevent such accidents from happening in future. Under the Children's Act¹³⁵ "no child shall be employed or engaged in any activity that may be harmful to his or her health, education or mental, physical or moral development". There are however so many children here in Uganda who have been employed under clear violations of this section. Some employers in pursuance of cheap labour drag children out of school by enticing them with money so that they can work for them off course because they can offer cheap labour. Many families in East Africa employ children as house maids yet the government adamantly fails to address these issues.

Bad policies, the cabinet other times end up making bad policies. This is done mostly where corrupt politicians are bribed by rich employers to make policies that favor them but end up affecting the employees e.g. a policy that states that an employer can interfere with the right of association of the employees in their unions. Such a policy violates the Labour Unions Act, 2006¹³⁶ thus an employer shall not interfere with, restrain or coerce an employee in the exercise

¹³⁴ Cap 220

¹³⁵ Cap 59 Section 8

¹³⁶ Section 4(a)

of his or her rights guaranteed under this Act and an employer shall not interfere with the formation of a labour union or with the administration of a registered organization¹³⁷

4.2.4 Economic Conditions

Economic conditions have also contributed much to the sufferings being experienced by the employers. Especially during this period whereby many companies are experiencing financial difficulties to global effects like the political unsettlement in Libya, recession, high oil prices these entire factors end up affecting employees in one way or the other. Some employers dismiss wrongly or unfairly their employees so as to minimize on expenditures especially where the companies are experiencing financial constraints. Some companies fail even to pay the wages and salaries under the guise that they are not making profits. For example if I may borrow from our neighbor Kenya, some years back the City Council of Nairobi was dragged to court after failing to pay its employees under the guise that there was no money. The employees had worked for four months without a single penny and so the trade unions representing their members decided that enough was enough and went to court. In Uganda, the Employment Act, 2006¹³⁸ provides for entitlement to wages where the employee has worked. The employer has a duty to pay the employee without failure where the worker has rendered his services, it further states that “on termination of his or her employment in whatever manner, an employee shall, within seven days from the date on which the employment terminates be paid his or her wages and any other remuneration and accrued benefits to which he or she is entitled”. To those ends, Dr. Sam Lyomoki, a workers’ MP, said that current economic policies were reducing workers to “slavery and brutality and that workers should be mobilized throughout the country to struggle against such policies¹³⁹”. It thus calls for the cabinet to make considerable policies which reflect

¹³⁷ Section 4(b)

¹³⁸ Section 41

¹³⁹ New Labour Laws for Uganda. The New vision, Tuesday April 2006, pg 26

government will in championing workers' rights by not favoring investors and the rich local entrepreneurs.

4.2.5. Fixing Minimum Wages

This is one of the most essential aspects for cementing workers' rights. Individuals, organizations and trade unions in Uganda have tirelessly demanded that the Government fixes the minimum wage immediately to protect workers against exploitation by investors. However, there is a high level of casualization of labour which is coupled with disorganization. Uganda, similar to other countries, faces the 'representational gap' mainly due to casualization of labour and shifts to contractual forms of employment. A study carried out amongst informal sector workers in Lira Municipality revealed that 81.5% of 200 respondents did not belong to a trade union or work related organization. In addition, the majority of workers are in the informal sector where only 14% of the working population is in paid employment and 90% in self-employment as own account workers and unpaid family workers. This is aggravated by the fact that workers within the informal economy are not recognized and/or protected by legislation due to the nature of their work. According to newspaper reports¹⁴⁰ the current minimum wage established under the Act and stands at Shs. 601= (US \$0.03) per month having been originally set at Shs. 6,000=

(US\$3.25) per month under Si No. 38 of 1984 but subsequently reduced under the Currency Reform Statute 1987. This legal wage rate of Shs. 601= has been in force for more than 20 years and has been overtaken by the prevailing economic realities and as a result workers' rights to adequate wages have been abused, and the exploitation of workers continues. A Minimum Advisory Board established under the Act in 1995 found that the economy could support minimum wage of between Shs. 80,000= (US\$43) and Shs. 100,000/= (US\$55) per month at time and accordingly recommended to the Government to establish a minimum wage of Shs. 0001= (US\$40) per month. Establishment of minimum wage struggles continue to date as can evidenced by the rampant strikes in the country,

¹⁴⁰ Ibid 118

4.2.6. Enforcement, education and recognition of labour rights

Iganda's labour laws promote the rights of workers. The challenge worth mentioning here again is the level of enforcement and adherence to these laws. Work deficits can be reduced when the labour laws are adhered to by both the employers and employees and this includes ensuring that labour disputes are fairly heard. The commercial justice system is deemed by many, especially within the informal sector, as being expensive, slow and corrupt. Labour rights can also be recognized when workers are sensitized on their rights at work. This can be done through civic education activities and working with the structures of labour unions and NGOs. The Labour Disputes (Arbitration and Settlement) law is an opportunity for the labour officers to resolve disputes nearer the people. Unfortunately, more often than not, they lack facilities and resources to carry out their work. The government should allocate resources for labour dispute resolution and the Industrial court facilitated to develop regulations, as well as appoint a chief judge to preside over the court to enable the law to be functional. The District Labour Offices should also be facilitated to enable them carry out their work of labour inspection and dispute resolution.

4.2.7. Lack of security, safety and health in the informal sector work place

Safety, poor working conditions, abuse of workers' rights, lack of capital, lack of proper work tools and the difficulty of collecting payments from customers are some of the major challenges facing urban informal sector employees. The working conditions in most urban informal economy sites are appalling — long working hours with no rest as well as lack of adequate toilet facilities, storage space for their goods and child care facilities. The study carried out in Lira¹⁴¹ revealed that the poor hygiene among informal sector workers affected women most because many of them carried their children to their workplace and therefore in some cases, diarrhea and other related diseases suffered by the children were easily transmitted to the mothers. 49% of respondents reported harassment by municipality and market management. High and unregulated taxes, high rent, load shedding (especially for those who work at night) and a reduction in the number of customers were some of the other insecurities that informal sector workers were faced

¹⁴¹ supra

with and unless these are regulated, security of service remains threatened. As noted earlier, the right of security of service has many attributes as those mentioned in the above article and often leads to forced self dismissals thus; the other rights need to be observed if the SOS is to be protected. For example; Uganda ratified the ILO Right to Organize and Collective Bargaining

Convention which provides for workers' rights to freedom of association and collective bargaining as well as workers' (unions) protection against anti-union discrimination. Uganda's

Constitution also provides for a comprehensive range of human rights as required under the different conventions. Despite these provisions in Uganda over the years, the right to freedom of association by workers has continuously been threatened. Some employers/enterprises have also

not allowed social dialogue to prevail. This has occurred mainly in the hotel and the fishing industry as well as some garment industries as illustrated in some of the Newspaper reports.

4.2.8. Lack of social protection:

Decent work is said to exist in relation to the objective of social protection when workers benefit from protection in the event of health contingencies, work related injuries, diseases and incapacity, as well as from old age and survivors pension. Working conditions, social protection and the health and safety situation of workers are precarious in most E/African countries, particularly in the rural and informal sectors. The increasingly widespread use of new technologies, chemicals and pesticides, and the rising levels

of pollution and environmental degradation are resulting in risks which are all the more serious because workers concerned have inadequate information on them. However, although the ILO

has set standards of social protection through the ILO Social Security Convention, the current system in Uganda falls short of the set standards. Social security in Uganda like elsewhere in East Africa was designed to cater for the formal public and private sector employees. The National Social Security Fund (NSSF) is a contributory funded provident fund that pays benefits in a lump sum and only covers employees of firms that have five or more employees in the private sector. The benefits available are also limited to old age, invalidity and survivor benefits. Many formal sector employees do not subscribe to NSSF. The benefits under the public service

pension scheme cover severance package, gratuities, and monthly pension and survivors benefits. A heavy burden is also placed on the tax payers through the public service fund which is non-contributory and not funded but charged on the recurrent budget. The Government pension scheme has not been able to meet pensioner obligations on time and suffers from limited funding, problems with affordability and sustainability, coverage and arrears.

CHAPTER - FIVE

5.1 CONCLUSIONS AND RECOMMENDATIONS

5.1 Introduction

In a nutshell therefore, the laws protecting workers' rights in Uganda are in place, and, the challenges therein, the Government of Uganda assessed them and proposed solutions to address the deficits in both the formal and informal economies. The reduction of work deficits however will only be achieved when labour rights are realized, child labour is eliminated, social protection and social security are strengthened, the laws protecting workers are respected, when security of tenure is granted to workers, and when employment is availed to all. Therefore, it's those socio-political and economic conditions above which in fact have failed the observance of laws.

5.2 Recommendations

5.2.1 Reduction of the 13 weeks

The requirement under section 71(l)¹⁴² to wit the employee must have been in employment for a continuous period of 13 weeks in order to bring up a complaint for unfair dismissal leaves loophole employers can manipulate any time. The perpetrators seem to find loopholes in the law for the continued violation of the law and especially with regard to employment relations where the employer is seeking to maximize profits while exploiting the employee and at the same time cheating the country of its entitlements. Thus if the requirement is 13 weeks of continued

employment, the perpetrator will dismiss the employee in a lesser period so as to avoid defending a complaint. It is therefore important for the provision to be revised reducing the time requirement to almost no time for what is important is whether there was an agreement amounting to a contract of employment. The aspect of loss of income and the period the victimized employee may take to find another job which is considered in calculating damages in

¹⁴² Employment Act 2006

cases where the claim for unfair dismissal succeeds ought to suffice here in the same way as long as it is established that there was a valid contract of service. For casual workers where in most cases there are no written contracts of service and no appointment letters are given, the labour officer need to under-go special trainings on how to take evidence of existence of the contracts in bid to protect all workers from their exploitive employers.

5.2.2 Labour offices to be brought as close as possible to the employees

Pursuant to section 9(4 & 5) and section 1 O (2) (a-c)¹⁴³fruits of which can scarcely be found. The fruits of the above provision ought be reflected in improved working conditions, many labour complaints due the fact that more violations are taking place especially unfair dismissals among other violations but this has been hindered by the poor efficiency of the labour offices either due the unskilled officials, long distances from workers to the labour officers, corruption, little number of officers per district visa visible large area of coverage etc. it is therefore paramount that more trained labour offices be allocated closer to the workers if the their rights are to be championed.

5.2.3 Severe punish merits need to be imposed on violators of the right of security of tenure

Despite the fact the there are many employment related laws and indeed good laws, there seems to be no change in the observation of the laws by the employers since employee rights violations continue to be seen in the country. It appears that the fines in the form of damages which are awarded to successful complainants as discussed in former chapters are not fines but entitlements and as thus do not in any way affect the employer since he/she would have incurred the same expense. It follows from the above that the Acts need to provide for a fine big enough to scare employers from unfairly dismissing employees. We cannot agree that award of exemplary damages serves the purpose because exemplary damages are not awarded in every labour complaint and it also depends on the judge or labour officer and therefore needs the Acts to provide for specific fines which may vary from one circumstance to another.

¹⁴³ Employment Act 2006

5.2.4 Developing political civil to protect workers from unfair dismissals

It is also evident that government has been reluctant in protecting workers. This is normally true for many governments. It is linked to the fact that governments are the major employers and any move geared towards substantial protection of workers will directly engulf it and affect it equally and thus it cannot secure workers rights. This is true because any good law must have the uniformity principle. Paramount to note however, is that any government pursuing economic development, poverty eradication among its nationals among other impotencies, must have political will to provide the favorable conditions, legislate the relevant laws to protect it workers, establish impregnable mechanisms of implementation of the laws and policies, and most importantly be seen to fight openly for the sacredness of its policies and that what a political would entail. This is of recent not evident hear since government strategy is fixed on attracting investors only without minding on how the nationals are treated and how better the state can gain form them and as a consequence, many investors have manipulated us, robbed the state and left us exploited. Thus, the good environment created for the investors ought to be founded on the will of government to elevate its nationals from the poverty levels at the expense of the investors rather than investors and entrepreneurs enjoying at the expense of the many Ugandans being laid off their employments unfairly.

5.2.5 Sensitization of the working population on their rights

Linked to recommendation no.2 above is perhaps poor sensitization among the working population of their rights on employment. Despite the fact that labour officers may be few, distanced from the working population to wit staged at district administration headquarters only, the body charged with the sensitization of the population on the available laws has perhaps failed in its duty. Most of the working populations are ignorant of their rights to the extent most do not know appropriate avenues and procedures of seeking redress against their unfair employers. It follows from the foregoing therefore that there need to be adequate sensitization of the working community on their rights and be taught the procedures to be taken In seeking redress. The employers also need to be sensitized on how to promote employee rights especially teaching them what amounts to unfair dismissals in bid to promote security of tenure.

5.2.6 Minimum wage fixing.

It is noted earlier on, minimum wages are so essential in guaranteeing the rights of employees in his country. It is the first right an employee can be sure of and easily demand for. Once it is stipulated, the employer will have no escape but to pay his/her employees within the range so stipulated in the law and thus exploitation by inventors and entrepreneurs will be curbed. It is for that reason that workers have all along demanded for it as was established by this study's findings. It is therefore recommended that there be a minimum wage fixed as this will not only protect against exploitation but also secure workers on their jobs as many unfair dismissals have been attributed to demand for fair salaries as reflected in the teachers' demands, and other, examples hereinabove mentioned.

5.2.7 Enactment of the Protection of Employees (Fixed-Term Work) Act

There should be an enactment of the Protection of Employees (Fixed-Term Work) act to further ensure employees of the security of service. This has been done in different countries including the USA, United Kingdom, etc. To borrow from their acts, they provide inter alia that:¹⁴⁴ If an employee is required to enter into a number of such fixed-term or specified-purpose contracts there are two possible situations as follows: Employees on fixed-term contracts which commenced prior to the passing of the Act: Once such an employee completes or has completed 3 years' continuous employment (any or all of the 3 years' service may have occurred prior to the passing of the Act) the employer may renew the contract for a fixed term on one occasion only and that renewal may be for a period of no longer than one year; and, Employees on a fixed-term employment contract which commenced after the passing of the Act; where such an employee is employed by his or her employer or associated employer on two or more continuous fixed-term tracts, the aggregate duration of those contracts may not exceed 4 years.

However, the above-mentioned rules do not apply where there are objective grounds justifying / renewal of a contract of employment for a fixed term only.

¹⁴⁴ <http://www.workplacerelements.ie/enl>

There a renewal of a fixed-term contract does not comply with the above requirements and / is not be objectively justified, the contract is treated as an open-ended contract.

'The Unfair Dismissal Acts contain a provision aimed at ensuring that successive temporary contracts are not used in order to avoid that legislation. Where a fixed-term or specified-purpose contract expires and the individual is re-employed within 3 months, the individual is deemed to have continuous service.

Therefore, even where an employer excludes the unfair dismissals legislation in the manner described above, a Rights Commissioner or the Employment Appeals Tribunal will consider whether the use of such contracts was wholly or partly to avoid the employee having the protection of the unfair dismissals legislation. If it is considered that this was the case and the contracts were not separated by more than 3 months and the job was at least similar, then the case can be dealt with as if there was continuous employment and the employer will be required to justify the dismissal in the normal manner."

5.3 Conclusion

In conclusion, I gallantly exclaim that this research has tried to rigorously examine the adequacy of security of service of employees in Uganda; a case study of Kampala with regard to wrongful dismissals establishing the role of government protecting employees

It has been found that government needs to demonstrate its will in ending wrongful dismissals with its adverse effects to the population, economy and political life of the country as well as changing its image in the face of the international community. Wherefore, it's my considered submission that Uganda's' working population need be secured on their jobs by ensuring that employment laws especially as regards SOS are adhered to by the employers, be it government or otherwise in bid for sustained economic development, political stability, poverty eradication etc. as discussed in the above chapter.

REFERENCES

The Constitution of the Republic Of Uganda 1995

The Employment Act 2006

The Labour Unions Act Cap No. 7 Of 2007

Act of Parliament 2006

The Workers' Compensation Act Cap 225

The Childrens Act Cap 59

The Factories Act Cap 220

The Local Government Act Cap 243

The Nationa' Social Security Fund Act Cap 222

The Occupational Safety and Health Act 2006

The Pensions Act Cap 286

The Public Service (Negotiating Machinery) Act Cap 289

The Public Service Act Cap 288

The Modal (Standing Orders) Act 1946 Laws of India

The Industrial Disputes Act 1947 Laws Of India.

Addis v Gramophone Co. [1909] A.C.488

Ahrned Ibrahim Bholm v Car General Ltd, Civil Appeal No. 12 Of 2002 (Sc)

Backingham Carnatic Mills Co. Ltd v Their Workmen, (1951) 2 LU 314

Bank of Uganda v Betty Tinkamanyire, Civil appeal no 12 of 2007

Barclays bank v Geoffrey Mubiru, C.A No.1 of 1998 (S.C) Unreported

Bata Shoe Co. v D.NGanguli, AIR (1961) SC 1158

Bervanj Harris v Gair (1981) IRLR 520,

Bervani Harris v Gair, (1981) IRLR 520

Blyth v Scottish Liberal Club, (1983) IRLR

Board of Trust Port of Bombay v Dilip Kumar AIR, (1970) S.C 150,

Boston Deep Sea Fishing & Coco v Ansell (1888) 39 Ch D 339

Boston Deep Sea Fising & Coco v Ansell, (1888)

Carville v Irish Industrial Bank, [1968] JR 325

Clouston & Co. Ltd v Cony (1906) AC 122

Clouston and Co. Ltd v Corry [1906] AC 122, at p. 129

Cox v Philips Industries [1976] 1 WLR 638

Dr. Sam Lyomoki & 5 ors v A.G, Petition No. 8/2004

Dunk v George Wailer & Son, [1970] 2QB 163(CA), Esso Standard (U) Ltd v Semu Amanu Opio, Supreme Court Civil Appeal No.3/93

Grover v B.L.N Ltd, (1973) 1R388

Jupiter General Insurance v Shroff [1937] 3 All ER 67

Kafuna v Masaka District Corporative Union HCCS 698 of 1970, digested in (197) HCB

283

Kiirya v East African Railway Cooperation, HCCS No. 33 of 1976 also HCB 255

Konig v Karanjee Properties (1968) EA 223

Konig v Karanje Properties, (1968) EA 223

Laws v London Chronicle [1959] 1 WLR 698

Laws v London Chronicle Ltd. (1959)1 WLR 698

Lindsay v Queens Hotel Co, (1919) K.B 208

Mawv Jones. (1890)25 Q.B d 107

Obongo v Kisumu Municipal Council, [1971] Ea 91

Opolot V Uganda, (1967) HCB

Price v Movat, (1962) CB 508

Dawn D. Bannett-Alexander & Laura P. Hartman, "Employment Law for Business", 4 Edition, 2004, McGraw Hill Co. Inc. at page 29

Gordon W. Brown & Paul A. Sukys; Business Law with UCC Applications, 10th• edition Glencoe/McGraw-hill companies (2001) pg 222

Mick Woodley "Osborn's Concise Law Dictionary"; Tenth Edition, London Sweet & Maxwell 2005

Prof. S.C. Srivastava, "Industrial Relations and Labour Law"; Revised 3rd Edition, 1999 Vikas Publishing House pvt limited, at Page 523.

The Republic of Uganda, Strengthening Statistics for Planning. The Social Development Sector Strategic Plan for Statistics (2006/7-2010/11)

New Labour Laws for Uganda. The New vision, Tuesday April 2006, pg 26

Sandra Birungi, "3, 000 USE Teachers at Risk of Dismissal Over Side Jobs" The New Vision online:, Posted on July 5, 2012

Hilary Kiirya, Shell (U) loses case t former employer The New Vision online: February

27 2006

[HTTP://ugandaradionetwork.com a story.php?s'3 235 5#ixzz252MXP6rh](http://ugandaradionetwork.com/a/story.php?s'32355#ixzz252MXP6rh) (August 30, 2012)

[HTTP://ugandaradionetwork.com/a/story.php?s'44477#ixzz25zj 101sT](http://ugandaradionetwork.com/a/story.php?s'44477#ixzz25zj101sT)

[HTTP://www.workplacereactions.ie/en/](http://www.workplacereactions.ie/en/)

NOTU Country Report Course al-00389: Trade Union Training on International

Economics. Regional Integration and Political Economy: At the International Training

Centre of the ILO (turin: 14/03 to 08/04/2005) Presented by Bidi Saida

State of Uganda's Environment" Bulletin 2009