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Legal Alert; Industrial Court of Uganda revisits principles governing Probationary contracts



The Industrial Court ("the Court") sitting at Kampala in a recent Judgement delivered on 13th November, 2023 in the case of Ben Rhaeim Aimen v Granada Hotels (U) Limited Labour Dispute Appeal No. 2 of 2023 revisited various principles governing probationary contracts by holding that even an employee on probation is entitled to a hearing before Dismissal.

Background

The employee was recruited from Tunisia as a Cost controller on a one-year contract. His contract contained a six-month probation clause. The employee asserted that he was terminated for poor performance without an appraisal for confirmation, extension or Termination of employment. The Employer in opposition asserted that according to Section 67(1) of the Employment Act, there was no requirement for a disciplinary hearing since the employee was serving under a probationary contract.

The Court's determination

The main issue for determination was whether Section 67(1) of the Employment Act which excludes the right to a fair hearing for employees under Probationary contracts was applicable to the employee in this case.

The Court found that a probationary contract has to be exclusively for probation and separate from a fixed term contract. As such, a fixed term contract of one year with a probation period like the one in the instant case did not amount to a probationary contract. The Court therefore concluded that the employee was not serving under a probationary contract since the contract had a fixed term of one year and as a result Section 67(1) did not apply.

The Court also made a determination on whether an employee under a probationary contract was entitled to a fair hearing. Arriving at its findings, the Court was of the view that Section 66(1) and (2) of the Act contained "notwithstanding clauses" that had an overriding effect over other provisions dealing with discipline.



That being the case, Section 66(1) and (2) would take precedence and trump Section 67 (1) which excluded the right to a fair hearing. In the circumstances, the Court departed from previous decisions of the Industrial Court and held that an employee serving under a Probationary contract was entitled to a fair hearing before dismissal.

Why is this relevant to Employers?

The upshot of this decision is that Dismissal during probationary periods is now subject to the same standard like that of regular/confirmed employees. This decision re-emphasizes the need for employers to be cautious of the procedural requirements before Dismissal regardless of the type of Employment contract.

In as much as employees on probation are not entitled to full rights, the right to a fair hearing is not one of those rights that can be excluded.

As a result of this decision, there is also a need for Employers to draft contracts/ HR manuals with clear provisions that leave no room for ambiguity in determining whether an employee has been engaged on a probationary or fixed term contract.

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