



## Employment Law Disputes: Learning points from the recent ruling of DFCU Bank Limited and Donna Kamuli.



## Developments in the Employment Law Dispute jurisprudence arising from the Court of Appeal decision in the case of DFCU Bank Limited -V- Donna Kamuli [Civil Appeal No.121 of 2016].

On the 30th day of October 2019, the Court of Appeal ruled on an employment dispute between DFCU Bank Limited and Donna Kamuli. This ruling sets a precedent (unless appealed and reversed by the Supreme Court of Uganda) regarding the principles which courts should consider when adjudicating employment disputes. This alert summarizes the facts of the case, the decision of the court, key learning points derived and highlights the way forward to better management of employee-employer relations.

### Brief facts:

Donna Kamuli was by letter of appointment dated 11/10/2011 employed by DFCU Bank as a Banking Officer. She was subsequently promoted to the rank of customer services officer by letter dated 17/01/2013.

According to her, during the course of her work, the appraisals were good and rated "C" until she developed misunderstandings with one of her line managers and her appraisals were downgraded to "D" through a mechanism known as "a moderation committee". She was then placed under a Performance Improvement Plan (P.I.P) after which according to her, she scored "C" although she never got communication regarding particularly the P.I.P.

Having had a new line manager she scored "C", "B" and "A" for the months of July, August and September 2014 respectively. She was on 16/10/2014 terminated for non-performance without being accorded a fair hearing.

The bank claimed that during the course of her employment, she was subjected to performance appraisals which fully involved her and when for the year 2013, she was rated "D" by the moderation committee, she was placed under a P.I.P which coincided with the midyear assessment and both were done concurrently giving the claimant a "D" which amounted to non-performance. Since appraisals involved her by way of feedback and discussion on ways to improve, the Bank found that the termination of her services was lawful and in accordance with the Human Resource Manual hence the Labour Dispute Claim. No. 002 of 2015 filed by Donna Kamuli against DFCU Bank in the Industrial Court of Uganda holden at Kampala.

### Issues raised at the industrial court:

1. Whether the dismissal of Donna Kamuli from DFCU Bank was wrongful, unfair and /or unlawful?
2. Whether Donna Kamuli is entitled to any damages?

### Decision of the industrial court:

The court in its reasoning and response to the first issue found that the termination of Donna Kamuli was unlawful indicating that there was a degree

of dishonesty in the overall assessment of Donna's performance. That evidence was not clear as to whether DFCU complied with its own Human Resource Manual ratings (staff handbook 2011) finding that the whole appraisal system of the Bank needed overhaul to reflect fairness to both the employee and the employer.

The matter was thereby decided in favor of Donna and the below orders as relates to the second issue were awarded;

- i) General damages to a tune of Ugx. 60,000,000/=
- ii) Aggravated/punitive damages totaling to Ugx. 80,000,000/=
- iii) Severance allowance calculated under a negotiated system between the workers (Donna) and the Bank or between the Bank and a union representing the workers of the Bank (Donna). In the absence of such a system, Donna be entitled to the equivalent of 1 months' pay per year worked.
- iv) Salary arrears (in compensation) from the date of the unlawful termination to the date of this award.
- v) Salary loan granted to Donna by virtue of her employment and wholly secured by such employment be unrecoverable.
- vi) Ugx. 6,518,231/= being the provident fund contribution admitted by the Bank in the termination letter.
- vii) Costs incurred in the matter.

The Matter went on appeal and the below Grounds of appeal were raised:

1. The court erred when it held that the Donna Kamuli was not accorded a hearing before termination.
2. The court erred when it awarded aggravated damages which were not pleaded.
3. The court erred when it awarded salary arrears from the date of termination to the date of the award which was not awardable in law.
4. The court erred when it relived the claimant of her loan obligation when neither the same had been pleaded nor proved.
5. It is contrary to common sense and justice to relieve the respondent of her outstanding loan obligations when she used and benefitted from the money advanced.
6. The court erred when it awarded excessive general and aggravated damages.

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### Decision and Findings of the Court of Appeal:

The court given its duty as a first appellant court re-evaluated the evidence on record and made the findings below.

On ground two, court ruled in principle that a party cannot be granted relief which was not claimed thereby allowing ground two of appeal.

Court's findings on ground three indicated that Donna was accorded a proper hearing before termination on the sole basis that the appraisal process undertaken provided an avenue for a fair hearing. The decision relied on (Isaiah Gitiku Gikumu V Menengai Oil Refineries Limited Cause No. 296 of 2014 (Kenya High Court) is to the effect that a hearing can be conducted either through correspondences or through a face to face hearing. Having found that Donna had been accorded a fair hearing, court found that the termination was lawful and ground three too succeeded.

On ground four, court found that being relieved from paying the loan was an issue that was never pleaded and therefore no evidence could be lead to prove it. That it was improper for the industrial court to make orders on an issue that was never pleaded. Ground four succeeded.

In spirit of the reasoning under ground four, Ground five succeeded on the basis that relieving Donna of her loan obligations in the absence of the loan agreement and without the said relief being pleaded was in error.

In arriving at its decision under ground six, court found that the amount of Ugx. 60,000,000 that was awarded in general damages was too high and not justified having found that the termination was lawful. This ground too succeeded.

In the premises, the judgment and orders of the industrial court were quashed and set aside save for order vi) above where the Bank was ordered to pay Donna a sum of Ugx. 6,518,231 being the provident

fund contribution admitted by the Bank in the termination letter and not challenged on appeal.

Court went ahead and ordered that Donna pays back the loan at the rate which was attached to it but not the commercial interest rate and that each party bears its costs.

### Key takeaways:

The judgment of the Court of Appeal in essence and in principle overturns the decision of the lower court (industrial court). From a reading of this decision, one would note that;

- Aggravated damages are not punitive but rather compensatory in nature.
- Punitive damages can be awarded in employment disputes but with restraint and in the exceptional of cases for the very reasons that punishment ought as much as possible to be confined to criminal law and not civil law of tort and contract.
- Court cannot decide what was neither pleaded nor proved because a party cannot succeed on a case not set out in their pleadings.
- A party cannot be granted relief which it has not claimed in its pleadings unless those pleadings are amended.
- Employment remedies must be proportionate to the economic injuries suffered and occasioned to the employee.

### Way forward:

- Employers ought to ensure that their appraisal processes are fair and documented.
- If an employee is to be terminated, the employee should be given a fair hearing and this should be documented.
- The process of termination ought to be humane, not malicious, or not cause humiliation or distress to the employee as courts may be inclined to award damages if the employee was ill-treated.

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