

**THE INDUSTRIAL COURTS MIND ON FAIR  
DISCIPLINARY PROCESS AT THE  
WORKPLACE AND THE ROLE OF THE IN-  
HOUSE LAWYER**

**Hon. Lady Justice Linda Tumusiime  
Judge of the Industrial Court**

# INTRODUCTION

- ▶ Radical shift from collective disputes resolution mechanisms to individual disciplinary and grievance mechanisms. From informal resolution given the previous unfettered right to hire and fire to formal mechanisms /disciplinary processes underpinned by the principles of natural justice. Focus is on ensuring that there is substantive and procedural fairness.
- ▶ Corporate governance also emphasises fairness in organisational management
- ▶ **The Employment Act, 2006** unlike that of 1977, provides for formal procedures for the creation of employment relationships, (section 59 and 60) and those for handling discipline and grievances and termination of these relationships.
- ▶ **The Labour Disputes (Arbitration and Settlement) Act 2006**, established the Industrial Court as the Pinnacle of the formal disciplinary processes at the workplace or organization. See Section 7 and 8 of the Act.

- ▶ The Act established the Labour Office as the first court of instance in labour disputes with the primary function of conciliating disputing parties.
- ▶ The employment relationship though based on contract is unique in the sense that it is a contract for the exchange of personal service for remuneration and in a situation of collective bargaining between Labour unions and employers, where the employee(s) is/are subordinate to the employer.
- ▶ The rationale of the law in our view is simply give prominence to enforcement of the principles of natural justice in the management as a means to bridge the gap between the employer and employee.

- ▶ The subordination of the employee to the employee is another justification for the emphasis on regulation.
- ▶ The disciplinary mechanism being an integral part of the structure of an organisation is therefore also subject to regulation. It should therefore form a core part of any contract of employment. See Section Section 59 and 60 of the Act

# What is a disciplinary process?

- ▶ According to the business dictionary online, “ *a disciplinary procedure is a step by step process which a firm commits itself to follow in every case where an employee has to be warned, reprimanded, or dismissed.*”
- ▶ The disciplinary process is provided for in workplace policies such as human resources manuals, disciplinary codes etc and they form an integral part of the structure of any organisation.
- ▶ They are guidelines for employers and employees on performance and behaviour in the workplace. They are therefore the rules that govern the employment relationship.

- ▶ The Employment Act 2006 provides for discipline and termination under part VII of the Act and the Disciplinary Code under the 1<sup>st</sup> schedule
- ▶ The disciplinary processes and procedures are intended to ensure substantive and procedural fairness. See section 66 and 68 of the Employment Act and **Bwayo vs DFCU Bank Ltd(CS No.78/2012.**
- ▶ Therefore disciplinary procedures and or processes promote harmony at the workplace.
- ▶ The majority of references to the Industrial Court arise out of the mismanagement of the in-house disciplinary processes.

## The process

- ▶ There are 2 distinct phases; investigation and a hearing, and the subjects of disciplinary action are performance related conduct and inappropriate conduct or misconduct.
- ▶ The process eventually leads to either; Warning/reprimand, suspension and/or termination.
- ▶ Before decision to reprimand, suspend or terminate an employee the employer must do everything reasonable to assist the employee to meet the employer's expectations.

## ▶ Performance related disciplinary processes;

▶ In cases of disputes arising out of claims of termination on grounds for poor performances, the court expects to see that the employer was proactive in enabling the employee to perform to the required expectations by doing the following;

1. Did the employer reserve very clear terms of service
2. Had a clear performance plan
3. Had regular performance reviews/ appraisals (to identify points of strengths and weaknesses)

#### 4. Made plans for performance improvement

Its only then that the employer can consider performance related disciplinary action (*Donna Kamuli vs DFCU Bank LDC No.2 /2015, Moses Obonyo vs MTN (U) ldc no. 45 of 2015, Ebiju James vs Umeme Ltd (HCCS. No. 133 of 2012)*)

- ▶ After fulfilling all the above, the employee in issue should be given an opportunity to state his case as to show cause why he/she should not be penalised.
- ▶ The allegations are put to the employee, he or she is given reasonable time to defend himself/herself before a penalty is issued.

## ▶ Disciplinary process relating to Misconduct or inappropriate behaviour

- ▶ Misconduct takes the form of breach of the organizations policies and procedures. Gross misconduct may involves dishonesty or fraudulent behavior or criminal conduct. Examples include but are not limited to failure to perform the terms and conditions of service without reasonable explanation, sexual harassment, drunkenness or drug abuse, fighting at the work place, repeatedly abusive behavior.
- ▶ In a case of a labour disputes based on grounds of misconduct or inappropriate behavior the Court would consider the following: whether the disciplinary process was based on an established code of conduct, which is known to all staff.

- ▶ Was there an investigation to verify the allegations/facts.
- ▶ What was the quality of the investigation? Was the investigation based on the company's code of conduct? Did the investigation take place promptly? Was there reasonable explanation for the alleged acts committed? Was the investigation carried out by a neutral person? Was all the relevant information/documents collected and findings clearly stated?

# the Investigation

**The purpose of the investigation is to verify the allegations and give guidance on the appropriate disciplinary action to be taken**

- ▶ Once the investigation is complete, the report must be put to the accused, who should be given reasonable time to respond to it. There must be a fair hearing. Section 66
- ▶ The process must establish justifiable reason for disciplinary action-section 68 of the Employment Act.  
(*Florence Mufumbo Vs UDB LdcNo. 138 of 2014*)

## ▶ **In-house Disciplinary Committees-the hearing**

- ▶ Once the investigative phase is completed and the accused is given ample time to respond to the allegations about either poor performance or misconduct, the disciplinary process is therefore expected to provide for a forum where the accused employee should be able to appear to defend themselves and they should have a right to be accompanied by persons of their choice. (See Section 66 of The Employment Act 2006)
- ▶ The committee must comprise of officers who are empowered to discipline the accused ( should be at least superior or from a different department)

# In-house Disciplinary Committees-the Hearing

- ▶ The disciplinary committee is expected to make its decision on the balance of probability, its not expected to operate as a court of law but should be impartial and make its decisions based on the facts presented
- ▶ The proceedings of the hearings must be properly documented in form of minutes.
- ▶ The employee must be informed his/her right to be accompanied by a person of their choice, to cross examine witnesses if any and the respond to findings of an investigation
- ▶ In absence of a disciplinary committee, as is usually the case in SME's due process is still expected before any action is taken on the accused.

# The role of In-house lawyer

- ▶ The in-house lawyer is the guardian of the integrity of the disciplinary process of the organization.
- ▶ The in-house lawyer is the legal brain in the organization and his primary role is advisory .
- ▶ The in-house lawyer is expected to ensure that the organizations disciplinary procedures are in line with existing labour legislation/law.
- ▶ That the employees are aware of the performance standards required of them. They should be aware of the disciplinary policy
- ▶ He is expected to participate in the development of organisations policies and particularly the disciplinary policies and procedures
- ▶ once an allegation of poor performance or misconduct is raised the in-house lawyer is expected to ensure that prompt action is taken

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- ▶ That proper investigation is carried out, all witnesses are interviewed and relevant documents collected, that a valid reasons for disciplinary action are established and that the employee in issue is given opportunity to respond to the reasons for disciplinary action.
- ▶ The In-house lawyer must ensure that the employee(s)' responses to the allegations are taken into consideration by the disciplinary committee before any decision is taken. That there is impartiality and fairness. **(Grace Matovu Vs Umeme Ltd Ldc No. 4 of 2014)**
- ▶ In case of performance related disputes, the In-house lawyer must ensure that the person in question was given opportunity to improve
- ▶ The in- house lawyer is expected to ensure that the process is both substantively and procedurally fair. He is expected to guide the employer and to lead in house dispute resolution.
  - ▶ *NB: In absence of an In-house lawyer, the Human Resource officer/manger*
  - ▶ *is expected to take on said responsibility*

# Conclusion

- ▶ We believe that if organisations give importance to internal corporate governance and follow the principles of natural justice in both performance management and Disciplinary action, the purposes for which they are established will not only be achieved but surpassed. We also believe that such matters would not have to escalate to the industrial court and dividends both in time and money will be realised and in turn positively impact the economy as a whole.