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INTERNAL DISCIPLINE AND CRIMINAL PROCEEDINGS: VARIABLES TO CONSIDER IN HANDLING EMPLOYEE MISCONDUCT

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SOLICITORS, ADVOCATES & ARBITRATORS

INTRODUCTION

Mr. Victor Odogwu, a Senior Cash Officer at Shanks Finance Ltd., had been employed with the company since March 15, 2002. Over the years, he earned multiple awards for his commitment to maintaining the highest standards of integrity in his work. In early 2018, consistent with his duty to ensure proper financial transactions, Mr. Odogwu raised concerns regarding Ms. Clara Shakur, a junior staff member whom he suspected of engaging in transactions involving financial irregularities. Mr. Odogwu followed the prescribed internal reporting channels and provided detailed evidence to support his claims.

Instead of conducting a thorough investigation into these allegations, Shanks Finance Ltd. recommended that Mr. Odogwu overlook the suspicious activities of Ms. Shakur. Recognizing that the company's management intended to cover up the alleged misconduct, Mr. Odogwu reluctantly agreed but refused to withdraw his initial report from the company's official records. This decision caused some discontent within the company, but no further action was taken on the matter. In July 2018, Mr. Odogwu was accused of misappropriating company funds on a minor scale, which were allegedly transferred into his personal family accounts. The accusation, notably made by Ms. Shakur, led to Mr. Odogwu's suspension while the company conducted a preliminary investigation. Following a disciplinary hearing, Mr. Odogwu was advised to resign from his position in July 2018.

Mr. Odogwu found the advice to resign perplexing, given that his earlier concerns about Ms. Shakur's conduct were never addressed. Feeling aggrieved, he filed a claim with the local labour court, arguing that he was unfairly dismissed and seeking reinstatement. His case is analogous to ***Mr. Anthony Ogar Idagu v. United Bank for Africa Plc & 7 Ors, NIC/CA/20/2019, judgment delivered by Honourable Justice Sanusi Kado on August 1, 2024,*** where the court addressed issues of unjust dismissal and flawed disciplinary procedures, raising concerns about the fairness and legality of advising resignation under such conditions.

FACTS AND FINDINGS

Mr. Anthony Ogar Idagu ("the claimant") was employed by United Bank for Africa Plc ("the first defendant") from February 20, 2001, until July 11, 2018, with his last role being Cash Officer at the Bank's Ikom branch. A dispute arose when the Bank advised Mr. Idagu to resign after he raised concerns about the integrity of a junior staff member, Mr. Jeremiah Akpan, who was allegedly involved in cash pilfering. Mr. Idagu contended that the Bank's advice to resign was unjust, defamatory, and not in compliance with its conditions of service. On May 31, 2019, Mr. Idagu filed a complaint at the National Industrial Court, seeking several reliefs to wit; a declaration that the Bank's advice to resign was null and void, an order quashing the disciplinary committee's report that led to the resignation advice; reinstatement as an employee of the Bank with full entitlements; and damages exceeding 24 million naira for emotional and psychological trauma caused by the Bank's actions, which he argued wrongfully implied his involvement in fraudulent activities.

The core of Mr. Idagu's case was that the disciplinary process was procedurally flawed and unjust. He argued that the Bank's conditions of service did not authorize advising an employee to resign without just cause, especially where no misconduct had been proven against him. He further claimed that the disciplinary committee denied him a fair hearing by not allowing legal representation during the proceedings and that the advice to resign constituted a de facto sanction rather than a voluntary action. Moreover, Mr. Idagu claimed that the disciplinary committee's report was defamatory, implying his involvement in misappropriation of the Bank's funds and damaging his professional reputation. In their joint statement of defense, the defendants denied all allegations.

The Bank contended that Mr. Idagu had been found to have mishandled cash overages, which were improperly deposited into his personal or relatives' accounts instead of the designated overage accounts, contrary to the Bank's policies. The Bank argued that the advice to resign was in line with its Group HR Disciplinary Process and Sanctions Policy and was presented as an alternative to termination. The defendants maintained that Mr. Idagu voluntarily resigned and that the disciplinary process was conducted fairly and in accordance with the Bank's staff handbook.

The court ultimately ruled against Mr. Idagu. It found that while his resignation did amount to constructive dismissal, he was not entitled to compensation. The court noted that his claims for unpaid salaries and allowances were vague and lacked the necessary specificity and proof required by law. Additionally, the court determined that Mr. Idagu had not established himself as a credible "witness of truth." The court also denied the relief for reinstatement, referencing the case of ***Ilodibia v. Nigerian Cement Company Ltd. (1997) LPELR-1494(SC)***, which underscored the principle that a court cannot compel an unwilling employer to retain a willing employee, and vice versa. Moreover, the court criticized the practice within banks, including UBA, of advising employees to resign instead of imposing proper sanctions for misconduct, cautioning that such practices could undermine public trust in the banking sector.

While the court acknowledged that Mr. Idagu might ordinarily be entitled to compensation for constructive dismissal, it dismissed his case in its entirety due to his own unfair labor practices—specifically, his failure to properly account for an overage of ₦3,950.0 and his lack of reliability as a witness.

COMMENTARY

Constructive dismissal refers to situations where an employer's conduct effectively forces an employee to resign, thereby circumventing direct termination and avoiding claims for wrongful termination, severance obligations, or reputational damage. Employers may engage in practices that make it nearly impossible for the employee to perform their duties or pressure them to resign. In the present case, such tactics were employed by the 1st defendant, leaving the claimant, with no reasonable alternative but to resign. Although the defendant argued that the resignation was voluntary, the court found that it amounted to constructive dismissal. However, Mr. Idagu's initial success was short-lived.

Following his resignation, Mr. Idagu faced a disciplinary review for alleged misappropriation of funds and was subsequently summarily dismissed. Contending that the disciplinary hearing unfairly portrayed as a criminal without proper criminal proceedings, Mr. Idagu initiated legal action, asserting that an employer could not act on allegations of criminal misconduct until the accused is tried in a criminal court. He relied on ***Section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)***, which guarantees the right to a fair hearing, and argued that he should have retained his position pending such proceedings.

The crux of the matter centered on whether criminal proceedings must precede an employer's right to dismiss an employee accused of gross misconduct. The Court of Appeal in ***AG Kwara State v. Ojulari [2007] 1 NWLR (Pt. 1016) 551*** held that an employer retains the right to take disciplinary action, including dismissal, regardless of ongoing or anticipated criminal proceedings. A company is not obligated to ensure that the matter is first prosecuted in a criminal court before taking internal disciplinary steps. Hence, and as rightly decided in Stephen Izonebi v Federal Civil Service Commission & 2 Ors (Unreported) Suit NoNICN/ABJ/240/2013 judgment delivered on 11th February 2013, dismissal predicated on a fair internal disciplinary trial amounts to lawful termination of employment notwithstanding the pendency of a criminal proceedings for such matter. Notably, private companies have significant latitude in formulating and enforcing their disciplinary policies, provided these procedures adhere to statutory provisions and constitutional rights, and are conducted fairly and in good faith.

A significant aspect of the case was the court's refusal to award damages to Mr. Idagu, despite acknowledging constructive dismissal. This decision was based on several factors: the claimant's failure to establish defamation and prove resulting damages, his inability to accurately itemize special damages such as salary arrears, and the court's finding that he was not a "witness of truth" due to discrepancies concerning a ₦3,950.00 overage he retained in violation of UBA's policies. Citing ***Adewale v. Olaifa (2012) 17 NWLR (Pt. 1330) 478***, the court highlighted that a claimant's reliability and adherence to policy are crucial in determining entitlement to compensation. Had Mr. Idagu adhered strictly to the bank's policies and convincingly proved his damages, the court might have been inclined to award compensation. This ruling, underscores that claimants must not only prove the employer's fault but also demonstrate that their conduct was beyond reproach, reinforcing the equitable principle of fairness from both parties in employment disputes.

On the issue of reinstatement, the court denied Mr. Idagu's claim due to the principles governing "master-servant" relationships under Nigerian labor law. Citing ***Katto v. C.B.N. (1991) 9 N.W.L.R. (Pt. 214) 126 at 149***, the court held that it cannot compel an unwilling employer to retain an employee whose services are no longer required. Thus, once an employer lawfully terminates an employment relationship, the court lacks the authority to order reinstatement. This principle does not apply to cases of statutory employment, where non-compliance with governing statutes may indeed lead to reinstatement, as demonstrated in ***Ms. Fajemibola Aanu Mercy & 85 Ors v. Vice Chancellor, Ekiti State University (Unreported Suit No. NICN/AK/06/2020, judgment delivered on 28th January 2021)***, where the court ordered reinstatement due to non-compliance with university regulations. However, the present case does not fall within such exceptions.

The court further criticized the practice of advising employees to resign rather than imposing direct sanctions for misconduct. It noted that such practices could undermine the integrity of disciplinary standards and erode public trust, particularly in the banking sector. Employers are encouraged to revisit and amend their staff handbooks to remove provisions that could encourage such practices. While employers have discretion in disciplinary matters, it must be exercised within a framework of fairness and adherence to clear procedures, especially concerning consumer protection and trust.

This case illustrates the balance between an employer's right to take disciplinary action and the broader legal framework governing criminal allegations. It affirms that employers are not required to await the outcome of criminal proceedings before dismissing an employee, provided such actions comply with internal policies and procedural fairness. The decision also reinforces the legal principle that courts cannot reinstate employees in a "master-servant" relationship where termination is lawful. Moreover, the court's critique of certain employment practices calls for a reassessment of disciplinary measures within organizations, particularly in sectors where trust is paramount. Employers must enforce stricter adherence to internal procedures and consider revising their handbooks to ensure that disciplinary measures are both effective and transparent.

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