



I Agree

ALERT

MUTUAL SEPARATION AGREEMENTS IN EMPLOYMENT LAW



As with many things in life that have a beginning, there will always be an end. It is not any different with employment relationships. While the start to most employment relationships tend to generally be a rosy affair, the end in many cases tends to play out in an acrimonious manner.

While there are different ways in which employment relationship can legally be brought to an end, the majority tend to be based on unilateral actions of either the employer or employee. There is one option however in which both parties can amicably bring to an end the employment relationship, which unfortunately rarely explored. Separation agreements are "highly advisable" when an employer is considering to dismiss (as one of the options) an employee for any reason short of major misconduct.

Mutual separation agreements are legally binding agreements through which employers and employees negotiate an end to their contractual employment relationship. They are generally a waiver of certain rights by both parties to enable a "soft exit" of the employee.

Through this arrangement, employee's image is kept intact and the same applies to the employer's image that, depending on the circumstances of the particular case, would have been dragged through a potentially contested exit.

The law in Uganda

Whereas there are no explicit statutory provisions governing mutual separation agreements in the employment statutes, the common law principles and the Contracts Act, 2010 provisions would apply in terms of what constitutes a valid and enforceable contract. Since the relationship between an employer and his/her employee is contractual in nature and regulated by the terms and conditions of the contract, it is generally open for the two parties to execute any other agreement in which they may vary, waive or change their respective contractual rights and obligations.

For that to happen however, the statutory requirements for a valid contract in law must be present. To that end, all the necessary prerequisites such as offer, acceptance and consideration must be present. Such consideration may be in the form of a compensation package to the employee in lieu of any other claims by the employer.

Can a mutual separation agreement be challenged?

There are situations where the parties have reached and signed an agreement but the question arises whether the existence or non-existence of some fact, or the occurrence or non-occurrence of some event, destroys the basis upon which that agreement was reached so that the agreement is discharged or in some other way vitiated.

A vitiating factor is one which spoils the contract, rendering it imperfect. A mutual separation agreement, being like any other agreement will not be enforced if it is shown that it was vitiated by any one of the five vitiating factors being; misrepresentation, mistake, duress, undue influence, and illegality.

While the legal landscape in Uganda has not had any challenge on the use and enforceability of separation agreements, a number of cases have been litigated upon in other jurisdictions and as such offer some guidance on how challenges to the enforceability of the separation agreements can generally be handled or resolved.

In the South African case of *Gbenga-oluwatoye V Reckitt Benckiser South Africa (PTY) limited* and another (2016) 37 ILJ 2723 (CC) court considered the validity of a mutual separation agreement entered into by an employee and employer. The parties agreed to mutually part ways as the full and final settlement of any claims that the parties may have against each other. In the separation agreement, the employee acknowledged and accepted that the termination of his employment was without duress or undue influence and that he had unconditionally and voluntarily waived his right to approach any court for relief. The employee later sought to challenge the validity of the agreement primarily arguing that the agreement essentially restricted his constitutional right to seek judicial redress and was therefore against public policy.

In dismissing his claim, Court held that an employment separation agreement should in law, be treated in the same manner as any other agreement between the employer and employee and that it is invalid when it is entered into under duress or where there is undue influence that vitiates either party's consent.

Court concluded by noting that there was no violation of his constitutional right to access courts because he had a full understanding of the consequences of the agreed waiver. Court also noted that when determining the lawfulness of such a waiver, constitutional rights may be limited to the extent that such limitation is reasonable.

Full and final settlement clauses which provide for the finality of a dispute are common place, lawful and not contrary to public policy. Therefore, since the agreement was unambiguous, the valid compromise took precedence over any other contractual entitlement that the employee could have had.

Essential terms for employee separation agreements

Most employee separation agreements require the employee to waive any potential legal claims. For employers, this is often the primary purpose of the agreement.

In exchange for waiving the claims, an employee separation agreement can offer a severance package to the employee or some benefits which would not ordinarily be available to the ex-employee. Such additional benefits while not being a mandatory requirement, are often a good incentive for the employee to sign the document.

It can also help enhance the employer's reputation.

The agreement can also include any number of other clauses, such as confidentiality or no-compete clauses, and require the employee to return any company tools or property.

And if the Employee Won't Sign?

Employees aren't under any obligation to agree with what is proposed by an employer. As with all agreements, there is always a need for acceptance by the other party, who in this case would be the employee. If the employee won't sign, the employer can still explore other options which can include; revoking the draft agreement; improving the terms offered to the employee; proceeding with the normal course of disciplinary proceedings against the employee or terminating the employee.

Conclusion

Mutual separation agreements in employment law are enforceable and a valid avenue to ensure a smooth and soft exit for employees. In exploring this option, it is important that the parties exercise caution so as to avoid any mistakes that could instead trigger the very acrimonious litigation upon exit, being avoided through the execution of the separation agreement. They ultimately provide protection and insulation to the employer against frivolous (or nonfrivolous) lawsuits filed by disgruntled former employees



Author

Augustine Obilil Idoot

Partner

aidoot@kaa.co.ug



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