ALN
UGANDA
MMAKS Advocates

LEGAL ALERT

EMPLOYMENT & LABOUR LAW

July 2026

"MOONLIGHTING" AND DUAL FULL-TIME EMPLOYMENT: INDUSTRIAL COURT AFFIRMS THAT THE DUTY OF FIDELITY BARS SECRET SECONDARY JOBS AND UPHOLDS SUMMARY DISMISSAL OF A SENIOR LECTURER

The Industrial Court of Uganda has held that an employee who secretly holds two full-time jobs breaches the duty of fidelity and may be summarily dismissed, even where the restraint-of-trade doctrine would not itself apply during employment. MMAKS successfully represented Cavendish University Uganda ("CUU") in the matter in which the Claimant's suit for unlawful termination was dismissed in its entirety.

What Happened?

The Claimant, Dr Fredrick Kiwuwa Lugya, was a Senior Lecturer employed by CUU under a two-year fixed-term contract from 21st November 2016 (the "Contract"). Clause 12 of the Contract prohibited him from taking up other full-time employment.

In June 2017 the Claimant was assigned to CUU's Electronic Distance Learning (eDL) project as Deputy Project Manager. He alleged that he was promised a special contract and additional pay for that role, which CUU declined to provide and that the disciplinary action which followed his pay demands was retaliatory. CUU maintained that his consolidated salary covered any additional tasks and that no extra pay had been authorised in writing as his Contract required.

CUU discovered that the Claimant remained a full-time employee of Makerere University Kampala (MUK) throughout his contract with CUU, a fact he had allegedly concealed by submitting a 2014 CV stating he had left MUK in 2012. Upon this discovery, the Claimant was subjected to disciplinary proceedings and summarily dismissed for breach of Clause 12 of the Contract.

At the disciplinary hearing and again in cross-examination before the Industrial Court, the Claimant admitted that he was serving both institutions on a full-time basis throughout the Contract period. He maintained, however, that CUU had always known of his employment at MUK and that CUU management had assured staff that clause 12 in their contracts would not be enforced.

The Claimant sued, arguing (i) the disciplinary committee (DC) was improperly constituted because it lacked a Deputy Vice Chancellor (DVC) and Legal Officer and (ii) Clause 12 was an unreasonable restraint of trade. He sought severance pay, unpaid project wages and general, special and punitive damages exceeding UGX 422 million.

The Industrial Court's Decision

- **Procedural fairness**: Under CUU's HR Manual, the Executive Director was entitled to constitute the DC on a case-by-case basis where the DVC and Legal Officer posts were vacant. The DC, chaired by the Dean of the Faculty of Law, with the HR Director as Secretary and a Faculty Representative, was therefore properly constituted and the requirements of procedural fairness under the Employment Act, Cap 226 (the "Employment Act") were satisfied.

- **Restraint of trade vs. duty of fidelity**: The Court held that the restraint-of-trade doctrine ordinarily applies to restrictions operating after employment ends, not during its subsistence. During employment, the applicable principle is instead the common-law duty of fidelity and good faith, which the Court broke down into four elements: **(i) exclusive devotion**: a full-time employee must dedicate their contracted time and attention to the employer; **(ii) transparency**: honest disclosure is required rather than secretly holding secondary jobs; **(iii) non-competition**: actively competing with the employer, diverting clients or soliciting co-workers is forbidden; and **(iv) protection of trust**: an employee cannot unilaterally decide that a second job causes no harm, because secret dual employment inherently destroys the relationship of confidence between the parties.

- **Moonlighting**: The Court held that **secretly** holding two full-time jobs is inherently incompatible with the duty of fidelity, regardless of whether the employer allegedly knew or whether provable harm was shown.

- **The arithmetic mattered**: The Claimant argued that his contract only required a maximum of 28 teaching and administrative hours a week at CUU, leaving him free for the remainder of the week. The Court rejected this, stating that the Contract generally set a working week of 48 hours (eight hours per day on weekdays and four hours on weekends), which is also the statutory maximum ordinary working week under the Employment Act. Serving two full-time employers would therefore require the Claimant to work well beyond what the law and the Contract contemplated. The Court observed that "it would take a magician" to serve both employers and that whether the employer suffers a disadvantage is not for the employee to decide; that remains a matter of managerial prerogative of the employer.

- **The ILO/UNESCO argument**: The Claimant invoked the UNESCO Recommendation Concerning the Status of Higher-Education Teaching Personnel (1997), which permits outside professional activity for academics. The Court held that the Recommendation's own proviso, namely that such activity must not interfere with the employee's primary institutional commitments or contravene institutional policy, defeated the Claimant's reliance on it, given the express Clause 12 prohibition and the inherent impossibility of honouring two concurrent full-time commitments.

- **The discrimination claim**: The Claimant argued that he had been singled out because other academic staff held similar dual appointments. In dismissing this claim, the Court, relying on its earlier decision in *Aporo George Goldie vs Mercy Corps Uganda [2024] UGIC 23*, held that unlawful discrimination requires proof of unequal treatment motivated by a protected attribute such as race, sex, religion, HIV status or disability. No such attribute was pleaded or proved, so unequal enforcement of an exclusivity clause could not, on its own, amount to discrimination.

- **Remedies**: Because the dismissal was found both procedurally and substantively fair, all the monetary claims fell away, including severance pay, damages for the unexpired portion of the fixed-term Contract and general and punitive damages. The suit was dismissed in its entirety.

Key Takeaways for Employers

- **No harm, no foul does not apply**. The Court rejected the employee's defence that he met all his KPIs and that his employer suffered no measurable disadvantage. Employers need not prove underperformance, financial loss, or any concrete detriment to justify summary dismissal for undisclosed dual full-time employment.

- **Exclusivity clauses rest on the duty of fidelity, not restraint of trade and are therefore easier to enforce**. Because the duty of fidelity, rather than the restraint-of-trade doctrine, governs in-term exclusivity, employers do not need to satisfy the more onerous reasonableness test that applies to post-termination restraints of trade. Draft and label these clauses accordingly.

- **Oral assurances by managers cannot override written contract terms**. The employee argued that management had informally assured staff that the exclusivity clause "would not be enforced." The Court gave this no weight. Employers should train line managers never to make informal dispensations on written contract terms and should include express "no oral variation" clauses in both contracts and HR policies.

- **Disciplinary committees can be constituted ad hoc, but only with express policy authority and safeguards.** The Court upheld a DC that lacked the DVC and Legal Officer because the employer's HR Manual expressly authorised the Executive Director to constitute the committee on a case-by-case basis where those posts were vacant. Employers should build this fallback mechanism into their HR policies, document the authority relied upon each time it is invoked and ensure the charging officer is excluded from the committee.

- **Impose a standing disclosure obligation at hire and on any material change.** The Claimant's concealment of his MUK appointment was central to the finding of breach. Require all staff to disclose existing employment, directorships and material business interests at recruitment and to update the disclosure whenever circumstances change. Attach disciplinary consequences for non-disclosure.

- **Maintain a complete disciplinary paper trail from notice to outcome.** The Court's procedural fairness analysis turned on the documentary record: the show-cause letter, the notice of hearing, the disciplinary committee minutes and the dismissal letter. Employers should retain every document generated at each stage of the process.

Cavendish University Uganda was represented by our Principal Associate, **Alex Samson Ntale** and Associate, **Philip Eria Nsaja**. For advice on employment contracts, non-compete clauses or workplace disciplinary process, please get in touch.

 

Alex S. Ntale
Principal Associate

ntale@ug.aln.africa

Philip Eria Nsaja
Associate

nsaja@ug.aln.africa

This alert is for general information only and does not constitute legal advice. For advice on your specific circumstances, please contact the authors.