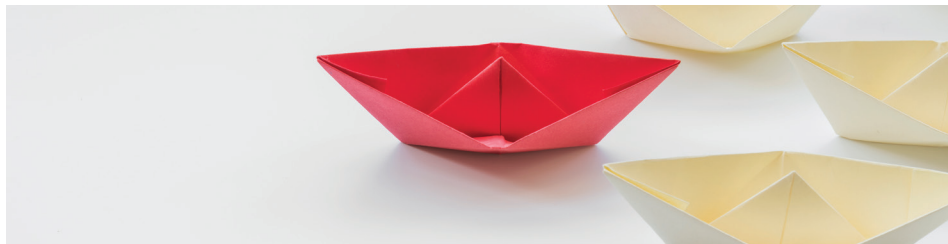


8 December 2020



## Court rules in favour of Employers in unfair termination cases

- Two decisions in favour of Appellants
- Court rules strictly on 30 days to lodge CMA complaint
- Arbitrator meeting complainant alone gross misconduct

In what will be a relief to employers, the Court of Appeal (Court) delivered its judgment in Appeal No. 357 of 2019 and Appeal No. 19 of 2017 where both Appellants were the employers. The panel for both appeals constituted of Justices Mwarija, Ndika and Kwariko.

### Appeal No. 357 of 2019

#### Brief background

The Appellant employed the Respondent as a sales relationship manager. The Respondent was terminated on 18 March 2014 and issued with a termination letter on 20 March 2014. Dissatisfied, the Respondent instituted a claim of unfair termination at the Commission for Mediation and Arbitration (CMA) on 22 April 2014. The Appellant (employer) lost the case at the CMA and the High Court, and appealed to the Court of Appeal.

#### Issues decided by the Court

The main ground of appeal at the High Court and the Court of Appeal was that the Respondent's claim was time barred as it was filed after expiry of 30 days, hence the CMA had no jurisdiction to arbitrate the dispute.

In calculating 30 days period of limitation for lodging complaints for unfair termination, the High Court excluded all Saturdays, Sundays and public holidays. The Appellant was of the view that Saturday, Sundays and public holidays should not have been excluded.

#### Decision of the Court of Appeal

The Court held that the High Court erred in its computation of 30 days limitation period by excluding all days falling within the weekends. The Court further held that the 30 days limitation period is exclusive of the first day and inclusive of the last day. But, if the last day falls on a weekend or public holiday, such last day should be excluded.

### Appeal No. 19 of 2017

#### Brief background

The Respondent filed a complaint before the CMA against the Appellant alleging unfair termination of employment. The Arbitrator found that the Respondent was unfairly terminated. Aggrieved by that decision, the Appellant lodged revision before the High Court where it partly succeeded. The Appellant was further aggrieved by the decision of the High Court, hence this appeal.

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#### About FB Attorneys

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## Issues decided by the Court

The issue raised by the High Court and the Court of Appeal was whether the Arbitrator committed misconduct warranting setting aside the award by entertaining the Respondent alone and granting him extension of time to file written submissions (WS) out of time in the absence of the Appellant.

## Decision of the Court of Appeal

In overturning the findings of the High Court, the Court held that the Arbitrator committed misconduct warranting setting aside of the award by meeting the Respondent alone and granting him extension of time to file written submissions in the absence of the Appellant.

To read a copy of the judgement in Appeal No. 357 of 2019, [click here](#).

To read a copy of the judgement in Appeal No. 19 of 2017, [click here](#).

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