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KIRIRI WOMENS' UNIVERSITY OF SCIENCE AND TECHNOLOGY
UNIVERSITY EXAMINATION, 2023/2024 ACADEMIC YEAR
FOR THE DIPLOMA IN BUSINESS ADMINISTRATION
DBA 1009: LABOUR AND INDUSTRIAL RELATIONS

Date: 16TH AUGUST 2023

Time: 11:30AM-1:30PM

INSTRUCTIONS TO CANDIDATES

ANSWER QUESTION ONE (COMPULSORY) AND ANY OTHER TWO QUESTIONS

QUESTION ONE (30 MARKS)

CONSTRUCTIVE DISMISSAL

Most employees are not aware that they can obtain a redress for constructive dismissal. In 2023, Brenda - a legal professional stated that constructive dismissal occurs when an employee resigns because their employer's behavior has become so intolerable or made life so difficult that the employee has no choice but to resign. Since the resignation was not truly voluntary, it is in effect a termination. The Employment Act, 2007, does not make explicit reference to the term constructive dismissal unlike summary dismissal. However, Section 45 of the Act provides that an employee may terminate their employment where the employer has breached a fundamental term of the employment contract. Constructive dismissal is an exception to the general rule that an employee who voluntarily resigns from employment forfeits the right to sue an employer for wrongful termination of employment. The fundamental breaches by the employer towards an employee forcing them to resign from work may include non-payment of remuneration, sexual harassment, demotion in rank, failure to provide an employee with work, and serious cases of sustained discrimination or mistreatment or if the employer unilaterally varies terms of the contract. An employee can obtain redress for constructive dismissal, provided the employee resigned within reasonable time from his employment, with or without notice as a result of the employer's hostile treatment or hostile working conditions at his workplace. The employer must also not have expressed the desire to terminate the employee. It is also important to note that the employee should not have consented to the change prior to the resignation. Further, courts have held that suspension for an indefinite period particularly with no pay amounts to a constructive dismissal. Voluntary resignation of an employee merely to avoid appearing at the disciplinary hearing will not constitute constructive discharge since the employer is entitled to proceed with the hearing in the absence of the employee. Where courts have made a finding as to the existence of constructive dismissal, they have not shied away from awarding damages and other remedies to the affected employee as against the employer, including the wages which the employee could have been entitled to had he been granted adequate notice as prescribed under the Act or the Contract of service. Section 49 of the Act also provides for the following remedies: any loss arising between the date of dismissal and the date of expiry of the notice period which the employee would have been entitled to by virtue of the contract and, at the discretion of the court, the equivalent of a number of months wages not exceeding twelve months based on the gross monthly wage or salary of the employee at the time of dismissal.

Read the above case study and answer the following questions:

- a) Provide an extensive description of the term constructive dismissal. **(6 Marks)**
- b) Using examples, differentiate between summary dismissal and constructive dismissal. **(6 Marks)**
- c) Identify the fundamental breaches by the employer towards an employee that can lead to constructive dismissal. **(6 Marks)**
- d) Everyone deserves decent and dignified work and not an environment that leads to constructive dismissal. Describe the key pillars of decent work. **(6 Marks)**
- e) Highlight some of the remedies for constructive dismissal. **(6 Marks)**

QUESTION TWO (20 MARKS)

- a) The challenges of globalization have made international labour standards more relevant than ever. What benefits do they provide today? **(8 Marks)**
- b) Clearly discuss the jurisdiction of the Employment and Labour Relation Court in Kenya. **(8 Marks)**
- c) Examine any four approaches of labour and industrial relations. **(4 Marks)**

QUESTION THREE (20 MARKS)

- a) Trade Unions use Collective Bargaining Agreements as an instrument to stabilize the economy. Discuss the major roles that trade unions play as an actor in the labour market. **(8 Marks)**
- b) Using examples from organization of your choice. Discuss the factors influencing the choice and implementation of employee voice initiatives in 21st Century organizations. **(8 Marks)**
- c) There is a variation in the Constitution of Kenya and the industrial relations charter of 1984, in regard to those employees who are not supposed to join the union. However, it is vital to note that the constitution is supreme and grants everyone who is of working age, the right to freedom of association. Identify and explain the categories of employees who are excluded from union representation as per the Kenya's Industrial Relations Charter of 1984. **(4 Marks)**

QUESTION FOUR (20 MARKS)

- a) Representative participation is key in maintaining harmonious employment relationship. Discuss the various forms of representation participation you can adopt in your organization. **(8 Marks)**
- b) Using examples, provide an elaborate distinction between international labour standards, Conventions and Recommendations, in terms of their application. **(8 Marks)**
- c) Explain the negotiation skills and strategies that can be explored in addressing structural conflicts in the workplaces. **(4 Marks)**

QUESTION FIVE (20 MARKS)

- a) We all have a responsibility towards promoting a harmonious industrial relation. Discuss the agreed responsibilities of the government, employers and workers. **(8 Marks)**
- b) Explain the features of conciliation as a method of Alternative Dispute Resolution mechanism. **(8 Marks)**
- c) To promote harmonious employment relationship, Trade Unions supports employers by discouraging certain practices as stipulated in the Kenya's Industrial Relations Charter of 1984. Examine any four of these practices. **(4 Marks)**