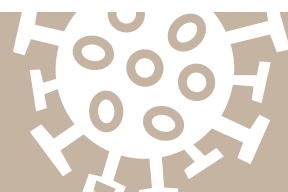




COVID-19

AND SOCIAL SECURITY; *A LEGAL PERSPECTIVE.*





INTRODUCTION

Towards the end of the year 2019, the first cases of Corona Virus disease (Covid-19) were discovered in the Wuhan City of China. Subsequently, the disease spread across the world and no continent has been spared. Covid-19 has globally affected over 190 countries. On March 11, 2020, the World Health Organization (WHO) declared Covid-19 a pandemic and it has become a global emergency given its impact on the entire world population and economy.

Uganda registered its first case of Covid-19 on March 21, 2020 as reported by the Ministry of Health (MoH). As of April 12, 2020, Uganda had registered 54 cases of Covid-19 with no recorded deaths. In order to curb the spread of Covid-19, on the 30th of March, H.E. the President of the Republic of Uganda, among other measures already in place, ordered a lockdown of the nation thereby restricting movement of people (including use of public and private means) and directed closure of non-food markets, malls, arcades, shops, saloon and so on for 14 days. On the 14th day of April 2020, the lockdown was extended for another 21 days up to 5th of May 2020.

Due to the lockdown, there has been a debate from different circles about Uganda's Retirement Benefits and Social Security laws amidst this Covid-19 pandemic, with most attention directed to the National Social Security Fund (NSSF). The debate has been centered on whether the National Social Security Fund management and the other retirement benefit schemes can consider paying out at least 10-20% of the members' total savings to help them during this period of the lockdown when members are not working thereby adversely affecting their earnings. The Managing Director of the National Social Security Fund, Mr. Richard Byarugaba, has responded by pointing out to the public that doing so would be illegal as such is not provided for under the law.



What is Social Security?

Social Security may be referred to as a government system that provides monetary assistance to people with inadequate or no income.¹ In some jurisdictions, it may also be referred to as welfare or a Social Safety net. It may also refer to Social Insurance, where people receive benefits or services in recognition of contributions to an insurance program.

These services typically include provision of retirement pensions, disability insurance, survivor's benefits, and unemployment insurance. This is somewhat similar to Uganda's model. Simply put, social security is a form of insurance which is meant to help the contributing members in times when they face hardships in their earnings due to a particular condition that is beyond their control or which is not out of their own making. However the type of benefits will vary depending on the laws of a particular country.

THE LAW:

Social security is also embedded in Article 22 of the Universal Declaration of Human Rights, which provides that everyone, as a member of the society, has the right to social security, and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each state of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Since more attention has been drawn to the National Social Security Fund, we shall focus on that. In Uganda we have two main laws governing social security and these are; the National Social Security Fund Act, Cap 222 and The Uganda Retirement Benefits Regulatory Authority Act 2011 (UBRBA) Act

The National Social Security Fund was established to provide for its membership, the payment of contributions to, and the payment of benefits from the fund. The Retirement Benefits Regulatory Authority was established under the UBRBA Act to regulate the management and operation of retirement benefits schemes in Uganda in both private and public sectors, including the NSSF

The National Social Security Fund (NSSF) under S.19(1) of the Act², provides for the following payable benefits;

- (a) Age Benefit**
- (b) Withdrawal benefit**
- (c) Invalidity benefit**
- (d) Emigration grant**
- (e) Survivors benefit**

¹David Bach(October 9, 2003), Financial words you need to know

²National Social Security Fund Act, Cap 222



Age Benefit

Section 20 of the Act provides for the Age benefit. This will only apply where a member of the fund attains the age of fifty years and has retired from regular employment or where a member has attained the age of fifty-five years regardless of whether they are still in regular employment or not.

The question would therefore be; with the outbreak of the Covid-19 pandemic, is a member who has not attained the age of 50 years but is still in regular employment or a member who has not attained the age of 55 years entitled to access any part of his or her total savings as a social security from the Fund under the circumstances? The answer is no because there is no legal basis for the payment.

Withdrawal benefit

Section 21 of the Act provides for the Withdrawal Benefit. This will also happen where a member attains the age of 50 years and he or she has not been employed under the contract of service for a period of one year immediately preceding his or her claim. The same question would be posed as to whether because of the Covid-19 pandemic, a member who does not qualify under the above requirement would be entitled to a pay under the circumstance? Still, the answer is no simply because the provision does not relate to the pandemic and therefore inapplicable in the circumstances.

In fact majority of the people pushing for a partial payment of their retirement benefits because of the Covid-19 are salary earners, who despite of not working because of Covid-19 are still being paid by their employers. We have also heard about some employees whose contracts of employment have been terminated or suspended because of Covid-19. Does this then mean that they are entitled to a full or partial payment under the withdrawal benefit? The answer is obviously no. The law provides that they must have been out of employment for a period of one year preceding their claim.

Invalidity benefit

Section 22 of the Act provides for the Invalidity benefit. This happens when a member of the fund is subject to such physical or mental disability as to be suffering from permanent total incapacity or partial incapacity of a permanent nature and he or she is unable by reason of that disability to earn a reasonable livelihood. Section 22(2) of the Act defines "permanent total incapacity" to mean such incapacity of a permanent nature as incapacitates a person for any employment which he or she was capable of undertaking before the accident, illness or other occurrence that was the cause of that incapacity.

In analyzing this type of benefit, could one argue that the total lockdown under the presidential directives, where one doesn't earn a reasonable livelihood would entitle a member to this kind of benefit? Unfortunately, the answer to this question would still be no. This is because this benefit is only payable where a member suffers from physical or mental disability that leads to a permanent total incapacity or partial incapacity of a permanent nature.

Most people have argued that they are entitled to be paid part of their savings/benefits since they are unable to earn a livelihood during the lockdown. However, there is a need to understand that, Covid-19 is not a permanent situation. Even though the Pandemic has affected the members' earnings in one way or another by majorly restraining work, the restraint is not the "permanent total incapacity or partial incapacity" envisaged under the Act. The Act relates "permanent total incapacity or partial incapacity" to mental or physical disability vide; physical and mental impairments/disorders neurological disorders, cardiovascular disorders, cancer, vision or hearing loss, hematological disorders and other terminal illnesses.



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it would risk being sued for acting ultravires and contrary to the existing laws.

The Emigration Grant:

This type of benefit is provided for under section 23 of the NSSF Act where a member emigrates permanently from Uganda to a country with which no reciprocal arrangement under this Act has been made and if contributions have been made into the fund during four financial years, the member shall be entitled to the full balance of his or her account in the fund. Without further analysis, this provision is not applicable in the current situation of Covid-19.

The Survivor's benefit:

This is provided for under Section 24 of the NSSF Act which provides that dependent relatives of the member of the fund shall be entitled upon his or her death to the survivor's benefit. The section goes ahead and defines the classes of dependent relatives and who a dependent relative is. Some examples are wife, husband, son, and daughter among others. This provision will also not be applicable under the Covid-19 situation.

From the above analysis and provisions of the NSSF Act, NSSF benefits are a safety net to only the categorized groups as demonstrated herein above. It is evident that at the time of the enactment of the Act, the law makers didn't envisage such a pandemic and therefore no provision was made for it. The logical conclusion is that NSSF board would not, under the current law and regulations, pay out any part of the savings to its members due to the Covid-19 Pandemic Outbreak. Otherwise, it would risk being sued for acting ultravires and contrary to the existing laws.

The only way the NSSF management would pay out any percentage of the members' savings would be, if, the NSSF Act is amended during this time to cater for such situations such as the pandemic.

By way of comparison to other jurisdictions, Peru's Congress approved a bill to let workers withdraw as much as 25% of their pension savings to help them during this Covid-19 pandemic. What ought to be noted here again is that there must be an enabling law for this to happen. The question that would next be asked is that, is it very hard to amend the existing law to help members amidst the pandemic? It is not that hard, if there is will from the government. The next question to have in mind is; is it necessary? Well, unless and unless and until the law is amended to cater for Pandemic Outbreaks as was done in Peru, NSSF has no basis for paying out the savings, as doing so would be ultravires, unlawful and illegal.



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