

UGANDA / JUDGMENT

Apio and Another v Dwan Waa FM Radio Station (Labour Dispute Reference 7 of 2019) [2023] UGIC 47 (14 April 2023)

[2023] UGIC 47

COURT

Industrial Court of Uganda

BEFORE

Wabwire Musana, J, Musimbi, Panel Member,
Kagoye, Lapenga

CASE / FILE NUMBER

Labour Dispute Reference 7 of 2019

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THE REPUBLIC OF UGANDA

IN THE INDUSTRIAL COURT OF UGANDA AT LIRA

LABOUR DISPUTE REFERENCE NO. <sup>07</sup> OF <sup>2019</sup> X

(Arising from Labour Complaint No. KCCA/NDC/LC/084/2020)

1. APIO JULIET DIPOLAN: "CLAIMANTS 2. ETOGU
MOSES X X,

VERSUS

DWAN WAA FM RADIO STATION: ^: ^: RESPONDENT

BEFORE: %

THE HON. MR. JUSTICE ANTHONY WABWIRF. MUSANA,

PANELISTS: X X.

- 1. Mr. JIMMY MUSIMBI,
- 2. Ms. ROBINA KAGOYE &
- 3. Mr. CAN AMOS LAPENGA.

AWARD

Introduction

- [1] The Claimants were employed as radio presenters at the Respondent's station in Kaberamaido for two years from 1st October 2016 until 1st November 2017 when they stopped working due to non-payment of wages. They filed a complaint with the Labour Officer at Kaberamaido Town Council. The Labour Officer found in favour of the Claimants/ The Labour Officer referred this matter to this Court after it was suggested that he had failed to resolve the dispute.
- [2] The Respondent, despite service of the notice and memorandum of claim, did not file a memorandum in reply. Mr. Julius Otwal, a paralegal with the Claimant's lawyers, M/s Platform for Labour Action, filed an affidavit of service confirming service on one Haron Otim Ogwang on instructions of the Respondent's station manager.
- [3] On the 13th of March 2023, the matter was called for hearing. Ms. Bridge Kusemererwa, appearing for the Claimants, sought leave to proceed ex parte. Upon perusing the affidavit of service of Mr. Brian Mutebi, a court process server, we were satisfied that the Respondent had adequate notice of the hearing date. We granted leave to proceed ex parte.

Issues for determination

- [4] In the Claimants' scheduling notes filed on the Court record on 22nd April 2022, two issues were framed for determination viz:
- (i) Whether the Claimants are entitled to wages amounting to UGX 8,400,000 each
- (ii) What remedies are available to the parties?

Submissions and proceedings

- [5] When Ms. Kusemererwa opened her submissions, she reframed the issues in the following manner;
- (i) Whether the labour officer has the powers to arbitrate labour matters?
- (ii) Whether there existed an employment relationship, between the claimants and the respondents? and;
- (iii) Whether the claimants are entitled to the remedies sought?

Counsel did not offer the Court any explanation as to why she thought it fit to reframe the issues and without leave of Court. Under Order 5/Rule 1(5) of the Civil Procedure Rule S.I 71-1 *(from now CPR)* issues are framed after considering the pleadings and examining the parties. In the present case, the issues were taken as in the Joint Scheduling Memorandum. However, under Order 15 Rule 5(1) CPR the Court is empowered to amend or frame issues at

anytime before passing the decree. Under Order 15 Rule 5(2), the Court may strike out any issues as well.

[6] In this regard, issue no. 1 as proposed in the Claimant's written submissions invites a question of jurisdiction of the labour officer. In her submissions, Ms. Kusemererwa argues that the labour officer dismissed the complaint whilst he had no jurisdiction. This invites, as of necessity, a question whether in view of the arbitral decision, this matter is properly before this Court. Therefore, under Order 15 Rule 5(1) and (2) CPR we, shall determine the following issues.

Whether the labour officer properly determined the matter before him? (ii) Whether the claimants had an employment relationship with the Respondent? (iii) What remedies are the claimants entitled to?

Resolution of issues and Decision of the Court

Issue (i) Whether the labour officer properly determined the matter before him?

- [7] The facts of the case are basically clear and uncontested.
- The procedural history of this matter before the labour officer at Kaberamaido was that on 8th November 2018, the 1st Claimant filed a complaint regarding unpaid wages. The Respondent was summoned and appeared at the second hearing on the 15th day of November 2018 when the Respondent testified and the matter was set for ruling. On the 20th November 2018, the labour officer entered an award in favour of the Claimants that the Respondent had not complied with Sections 41 and 43(4) (b) of the Employment Act, 2006 (from now EA). He awarded the Claimants the total sum of UGX 16,800,000/= as unpaid wages under Section 78EA. Ms. Kusemererwa submits that the Labour Officer did not have jurisdiction to arbitrate over this matter. &
 - [9] In the case before us, there appears to have been an initial attempt to resolve the matter by mediation. CEXH 7 was a "mediation" invitation. The date of 6th February 2019 was fixed for mediation. CEXH 5 was titled Mediation Report. In the body of the report, the labour officer referred to the first mediation meeting held on 18th November 2018 and a second mediation meeting held on 6th February 2019. At these meetings, discussions were held but no conclusion was reached.
 - [10] According to the record of proceedings before the Labour Officer [1] (#page-2-0), an issue was framed for determination. It read whether the respondent unlawfully failed to pay wages to his employee contrary to section 41 and 53 of the Employment Act 2006. In this record, the matter came up for mediation on the 10th day of November 2018. The Claimants were present and a preliminary hearing was held. It was adjourned to the 15th of November 2018 at 10:00am. On the date the 1st claimant took oath and testified. The Respondent, was present, but did not cross-examine the 1st Claimant. The Labour Officer then set the matter for ruling on the 20th November 2018 and on that day he delivered his ruling and awarded the Claimants UGX 16,800,000/= in unpaid wages. He also directed the

Respondent to issue certificates of service. :

- [11] Ms. Kusemererwa submitted that the labour officer did not have powers to arbitrate this dispute. With the greatest of respect to Counsel, we think this is not a very accurate statement. The Employment Act, 2006 and the Labour Disputes (Arbitration and Settlement) Act, 2006 (as amended) make expansive provision for the jurisdiction of labour officers. Of particular import are the provisions in respect of employment disputes.
- [13] Under Part II of the **Labour Disputes (Arbitration & Settlement) Act, 2006** (now **LADASA**), the manner of dispute resolution and settlement is provided for. Under **Section 4** of the **LADASA**, the labour officer may meet with the parties and endeavor to conciliate and resolve the dispute, appoint a conciliator to assist resolve the dispute, refer the dispute back to the parties with settlement proposals or reject the report with reasons.
- [14] Under **Section 13 of the Employment Act, 2006**, the labour office may opt to resolve the complaint by conciliation, arbitration, or adjudication.
- [15] What emerges from the very clear provisions of the laws cited above is that a labour officer has jurisdiction to arbitrate over a dispute. The wider point is that a labour officer can elect

The same were admitted as CEXH2

on the method of dispute resolution whether it be conciliation, mediation, arbitration or adjudication. However, when the labour office opts to use conciliation or mediation, he or she cannot shift to arbitration or adjudication if conciliation has failed. And it is also expected that while conciliation and kindred procedure would lead to a negotiated resolution of the dispute, arbitration and adjudication would lead to a decision. The Industrial Court has held that conciliatory processes lead to a settlement while the adjudicatory proceedings lead to a decision and a labour officer may not apply these methods interchangeably.^[2] It is also settled that, when a labour officer chooses to proceed with one of the 3 methods stated under **Section 13(1) (a)**, he or she must settle the matter with the method chosen and refer it to another arbiter, where he or she fails to resolve it.^[3]

[16] In the matter before us, the labour officer started with mediation and then shifted course to adjudication or arbitration. The option to adjudicate and arbitrate was not available to the labour officer once he had started off with a mediation. At best, the labour officer would have referred the matter to another arbiter. In the result we would answer issue ¹ in the negative. The orders and award of the labour officer would be set aside.

We will return to conduct of proceedings before a labour officer later in this award.

Issue 2. Whether the claimants had an employment relationship with the Respondent?

- [17] The Claimants' each filed witness-statements. In her witness statement dated the 3rd of May 2019, the 1st Claimant/testified ;that she was employed as a radio presenter with the Respondent on a verbal contract/The terms of the contract were payment of a monthly salary of UGX 350,000/=. She testified that she had worked from the 1st of October 2016 until November:2018 when sKe/stopped on account of non-payment of salary. That the Respondent made various promises to pay to no avail. It was the Claimant's evidence that she has suffered emotional-'distress, psychological suffering and mental torment. The 2nd Claimant's statement mirrored the ¹st Claimant's statement. The Claimants took oath on the 23rd day of February 2023 and their respective statements were admitted as ,stheir evidence in chief. The Respondent did not attend Court and as such the Claimants' evidence was not challenged. In such circumstances, the evidence was not controverted.

- [18] :Ms. Kusemererwa cited Section 2EA in support of the proposition that oral contracts were valid contracts. She relied on the case of **Godfrey Kamukama v Makerere University Business School LDR No. 147/2019**[4](#page-3-2) where a contract of service was qualified by (i) agreement by the servant to provide work or skill to the master in exchange for a wage or other remuneration, (ii) a servant agreeing to be subject to the control of the master and (iii) other provisions consistent with a contract of services. We observed the Claimant's

² See the cases of *Sure Telecom v Brian Azemchap LDA 008/2015* and *The AIDS Support Organisation (TASO) v Nandala Annet Betty LDA 029/2018*

³ *Kasese Cobalt Company vs David Kabagambe LDA 271/2016*

⁴ The Industrial Court cited the case of *Ready Mixed Concrete(South East) v Minister of Pensions and National Insurance [1968] 2 QB 497*

demeanor under oath. They appeared truthful. [Considering their uncontroverted evidence[5] (#page-4-0), we would find that an employment relationship exists.

Issue II. What remedies are available to the parties?

Unpaid Wages

[19] Under Section 41(1) and (2) of the Employment Act, 2006(/row *now EA* an employee is entitled to wages. The Claimants claimed UGX 350,000/= per fmbhth unpaid for the duration of 2 years. This would amount to UGX 8,400,000/= each over the 2 year period. Absent of any evidence to controvert these claims, the Claimants ^e awarded UGX 8,400,000/= each as unpaid wages.

General Damages

- [20] The principles on the award of general damages are those damages such as the law will presume to be the direct natural consequence of the action complained of^[6](#page-4-1). In terms general damages are based on the common law principle of *restitute in integrum*.^{*} The Court of Appeal recently held that the appropriate general damages should be assessed on the prospects of the employee getting alternative employment or employability.^[7] (#page-4-2) The Industrial Court has held that damages are assessed depending on the circumstances of a given case and at the court's discretion^[8](#page-4-3) this Court observed. In assessing an appropriate quantum of damages in an employment dispute[^] the case of **Donna Kamuli v DFCU** ^[9](#page-4-4) the Industrial Court considered the earnings of the Claimant, the age, the position of responsibility, and the duration of the contract. In the case before us, we think that the Claimant is entitled to damages. Counsel for the suggested a figure of UGX 2,000,000 in general damages. The Claimants were earning UGX 350,000. They had worked for the Respondent for two years. Based on their monthly salaries; each of the Claimants will be awarded the sum of **UGX 1,000,000/=** as general damages.
- [21] Before taking, leave of this matter, we observe that the record of proceedings in the present case portends insufficient guidance on proceedings before the labour officer. First, the labour officer appeared to start a mediation and then proceeded to adjudication. And secondly, generally considering that the record of proceedings might have been better constructed. We think that it is important for the Industrial Court exercising both appellate and referral jurisdiction to offer some general guidance and direction
- [22] While proceedings before a labour officer are not expected to be akin to a trial before a formal court, it would be useful to follow some basic guidelines. We are mindful that in establishing labour officers, the intention of the legislature was to provide for effective, inexpensive, speedy and informal mechanisms of access to labour justice. The guidance of this Court, therefore, is not to supplant the intention of the legislature but to suggest broad

⁵ See case of *Lt(Rtd) George Kiggundu v A. G H. C. C. S* No. 386 of 2014

⁶ *Stroms v Hutchinson* [1950] A. C 515

⁷ *Stanbic Bank (U) Ltd v Constant Okou* Civil Appeal No. 60 of 2020

⁸ *Dr. Omona Kizito v Marie Stopes Uganda LDC* No.33 of 2015

⁹ LDC No. 002 of 2015

guidelines in the resolution of disputes before the labour officer. The guide considers that the law grants powers to the labour officer to resolve employment disputes by conciliation, mediation, arbitration and adjudication. We therefore posit that a conclusion of a matter before a labour officer may proceed in the following manner:

- (a) In respect of a conciliation or mediation, the labour officer is assisting the parties to reach a negotiated settlement or agreement. In this way, the labour officer guides the parties. The decision is finally that of the parties themselves. The officer is a steward or a facilitator, setting up meetings between the parties, providing an ambient venue for discussions, ensuring effective communication between the parties with a view to helping them reach a voluntary agreement as to settlement of the dispute. In this role, the labour officer is neutral, expected to be impartial and uphold confidentiality.
- (b) In relation to proceedings by way of arbitration or adjudication, the labour officer is an umpire or a referee whose decision is final. The decision is reached by the labour officer after the labour officer has considered the complaint and any replies, the documents, evidence and submissions of the parties. The process of arbitration or adjudication, necessarily invites the need for regulations. As with any discipline, there is need for rules. The broad guidelines below would serve as a form of roadmap in reaching a decision. We therefore propose as follows:

Preliminaries

- (i) After receiving the last reply from, either party, the labour officer holds meeting between the parties (counsel). If they are any points of agreement and disagreement, these can be discussed at this stage.
- (ii) The labour officer can also choose which method of dispute resolution they wish to proceed with. The choices are between conciliation and mediation on the one hand or arbitration and adjudication on the other. The labour officer cannot do both. It is either mediation/conciliation or arbitration/adjudication. In the matters of corroboration-pr mediation, the labour officer may opt for as much informality as is necessary to allow the parties to reach an agreement. However, arbitration and adjudication would require some more formality.

Arbitration or Adjudication

If the labour officer elects to proceed with arbitration or adjudication, they should decide what question (issue) needs to be determined. This is akin to setting of the agenda of the case. The labour officer can also examine the complaint and reply, consider any possible amendments, identify the actual issues and issue any directions on how to address any preliminary issues.

Sequence of hearing:

- (iv) The Complainant/Employee or his or her lawyer presents the complainant's case in brief. The Respondent/Employer or his/her or their lawyer presents Respondent's case in brief. ^Isup>
- (v) The labour officer can fix timetable for trial together with parties including time tables for presenting any documents and materials that the parties may wish to rely on. The labour officer can list admitted documents by the complainant, admitted documents by the respondent, and documents not admitted by either party. Witnesses of each party can also be listed at this stage.

Framing Issues

- (vi) The Labour officer can assist the parties to narrow down issues. Issue means a point in question a point of disagreement between the parties. An issue may be decided in favour of the complainant or in favour of the respondent. It is a point of controversy. The issues are framed by the Labour Officer with the assistance of the parties or their Lawyers, if represented. Issues should arise from the complaint and reply. :

Evidence

- (vii) Evidence may be given orally or in writing by way of a witness statement. A witness statement is a written statement signed by a person. It contains the witness's evidence and may be written in the person's own words. It may also contain documents in support of the case.

Trial Bundle "

- (viii) It is the collection of documents a party intends to rely on as evidence in support of their cases.

Proceeding at the hearing

- (ix) Parties may appear in person or be represented by a lawyer or Agent. The complainant has right to begin and may call any witnesses. A witness called by a party may be cross examined by the other party. This is to ensure fair trial and test the credibility of the witness. The witness may be re-examined. After the employee/complainant has closed his case, the respondent/employer party may call his/her witnesses.
- (x) Each party closes their respective cases. The labour officer may direct the parties to make their final arguments either orally or in writing. The officer may then set a date for award after the submissions.

- (xi) . When the Respondent does not file a response, on or before the date set for the : hearing, the case may proceed in the absence of such party. The complainant still has to prove his or her case. Where the Respondent appears and Claimant does not, the Labour Officer may dismiss the case unless the Respondent made an admission.

Recording proceedings

(xii) It is important to keep an accurate record of proceedings. This record of proceedings assists the Industrial Court in hearing and determining referrals and appeals from ⁱ decisions of labour officers. The labour officer should record the date/s or proceedings, the parties present, the representatives of the parties (Advocates or

Agents), the evidence adduced by each witness, the submissions both oral or written record, and the action taken or decision made.

The Award

- (xiii) The ruling or award must be in writing and contain the summaries of each parties case, the issues for determination, the evidence, the evaluation of the evidence and the reasons for the decision of the labour officer.
- [26] It is hoped that this guide assists the labour officers in the resolution of disputes presented before them.

Final orders of the Court

- [27] The orders of this Court are as follows:
- (i) It is declared that the Claimants were in an employment relationship with the Respondent and are entitled to wages.
- (ii) The Respondent is ordered to pay to the Claimant the following sums:
- (a) UGX 16,400,000/= as unpaid wages and;
- (b) UGX 2,000,000/= in general damages.

It is so ordered. ft. k

Delivered at Kampala this | day of

SIGNED BY:

The Hon. Justice Anthony Wabwire Musana, JUDGE, INDUSTRIAL COURT

THE PANELISTS AGREE

1. **Mr. CAN AMOS LAPENGA,**

2?^s^RpBINA KAGOYE &

3. Mr? JIMMY MUSIMBI.

Delivered in open Court in the presence of:

For the Claimant:

For the Respondent:

Court Clerk: Mr. Samuel Mukiza.

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Prepared on 14 October 2026 · Esheria