

UGANDA / JUDGMENT

Asiimwe and Another v Round Off International Limited (Civil Suit 576 of 2020) [2023] UGCommC 84 (27 April 2023)

[2023] UGCommC 84

COURT
Commercial Court of Uganda

BEFORE
Abinyo, J

CASE / FILE NUMBER
Civil Suit 576 of 2020

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5 THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION) CIVIL SUIT No. 576 OF 2020 10 1. ASIIMWE EMMANUEL

2. TWINE RICHARD MUHIRE PLAINTIFFS

VERSUS

ROUND OFF INTERNATIONAL LTD DEFENDANT

15 BEFORE: HON. LADY JUSTICE SUSAN ABINYO

RULING

Introduction

20 The Plaintiffs instituted this suit against the Defendant for recovery of unpaid salary amounting to UGX 40,000,000(Uganda Shillings Forty Million only), unpaid medical bills, salary arrears that shall accrue from the date of filing this matter till the Defendant resumes paying the same or till the final determination of this matter by Court, reinstatement to work or in the alternative damages for unfair 25 termination and severance allowance should it fail to reinstate them to work, interest on the said amounts and costs of this suit.

The Defendant in its written statement of defence denied liability on account that the employment contracts expired, and the Plaintiffs were fully paid their salaries. The Defendant contended under paragraph 3 of the Defence that the suit be

30 dismissed with costs on the basis of the preliminary objections indicated thereto.

Representation

The Plaintiffs were represented by Counsel Ivan Bagyenda of M/S Bagyenda & Co. Advocates while Counsel Ezra Mulindwa of M/S Akampurira & Partners appeared for the Defendant.

- 5 During the scheduling proceedings, Counsel for the Defendant raised the following preliminary objections that:
- 1) The plaint does not disclose a cause of action.
- 2) This Court is not clothed with the jurisdiction to entertain this matter, since such powers are vested in the District Labour office under section 93 and 10 94 of the Employment Act, 2006.

Determination of the preliminary objections

This Court will resolve the 2nd objection first, and later consider the 1st objection in that order.

The 2nd preliminary objection on whether this Court has jurisdiction to entertain 15 Civil Suit No. 576 of 2020?

I have considered the submissions of Counsel for the parties herein, to make the following findings;

It's trite law that jurisdiction is conferred by statute. *(See David B. Kayondo Vs Cooperative Bank (U) Ltd S. C. Civil Appeal No.19 of 1991*, and *Habre International*

20 *Company Ltd Vs Kassam & Others [1999] 1 E. A 125)*, which was cited with approval in the case of *Fred Twinobusingye & Another Vs Bank of Uganda & Another HCCS No. 0024 of 2016*, relied upon by Counsel for the Defendant.

Section 93 of the Employment Act, 2006 (hereinafter referred to as "the Act" provides that:

25 "93. Jurisdiction over claims; remedies

- (1) Except where the contrary is expressly provided for by this or any other Act, the only remedy available to a person who claims an infringement of any of the rights granted under this Act shall be by way of a complaint to a labour officer.
- 30 (2) A labour officer shall have jurisdiction to hear, and to settle by conciliation or mediation a complaint— (a) by any person alleging an infringement of any provision of this Act; or (b) by either party to a contract of service alleging that the other party is in breach of the obligations owed under this Act. (Emphasis is mine)
- 35 (3) Where there is an infringement of this Act, the labour officer shall have the power to order a party to comply with the provisions of this Act and, in accordance with its provisions, make the aggrieved party whole.

- 5 (4) Where there is a breach of obligations owed under a contract of service, the labour officer shall have the power to order a party to respect the obligations owed and, in accordance with the terms of the contract, to make the aggrieved party whole.
- (5) Where the labour officer has found both an infringement of the Act and a 10 breach of obligations owed under a contract of service, the remedy he or she shall order shall not result in double recovery for the aggrieved party.
- (6) A claim in tort arising out of the employment relationship; claim shall be brought before a court and the labour officer shall not have the jurisdiction to handle such a claim.
- 15 (7) Where within ninety days of the submission of a complaint under this Act to a labour officer, he or she has not issued a decision on the complaint or dismissed it, the complainant may pursue the claim before the Industrial Court.
- (8) A labour officer shall state the reasons for any decision taken on a 20 complaint."

From the above provision, and the reading of sections 41, 65, and 87 of the Act, it is clear that the Plaintiffs claim, and the remedies sought for, are vested in the labour officer.

- 25 I have read the case of *Ozoo Brothers Enterprises Vs Ayikoru HC Civil Revision No. 0002 of 2016)*, relied upon by Counsel for the Plaintiffs, and find that the Learned Judge opined that whereas the primary intention of creating District Labour Officers as a forum for employment civil disputes resolution is to provide a speedy, inexpensive and effective forum for resolution of disputes arising from workmen,
- 30 and their employers, it is created as an alternative and concurrent rather than an exclusive forum... Deference to such alternative forums is not an admission of lack of jurisdiction.

It is noteworthy that the facts in Ozoo's case are distinguishable from the instant case however, this Court will not delve into the distinction here.

35 In the case of *Uganda Broadcasting Corporation Vs Kamukama HC Misc. Application No. 638 of 2014*, the Learned Judge stated that:

"This position of the law was not meant to deny the lower Courts and quasijudicial forum the mandate to adjudicate over matters which the different legislations empower them to do. For easy access to justice and proximity* 40 *to the public, it is reasonable and in Court policy that causes should be*

5 *instituted in the lowest mandated forum possible before resort is had to the High Court to avoid unnecessary expenses... By Parliament enacting other subordinate legislation conferring jurisdiction to different forum to adjudicate over disputes does not in any way diminish the fact that the High Court has unlimited jurisdiction. Much as this Court has unlimited* 10

*jurisdiction, if one looks at the intention of parliament in conferring jurisdiction on the Labour Officer, and the creation and operationalisation of the Industrial Court with appellate jurisdiction

it would be prudent if these two institutions are put to good use. This is our current Court policy. Avoiding these institutions would be defeating intentions of the Legislature since the* 15 *Industrial Court is now operational. I find it proper to refer this matter to the labour Officer for appropriate handling."*

I am fully persuaded by the decision in *Uganda Broadcasting Corporation Vs Kamukama(supra)*, and agree that where there is an alternative remedy, and procedure available for the resolution of a dispute, the parties should be given 20 an opportunity to pursue other alternative dispute resolution mechanisms, which are complementary to the judicial processes.

It is my understanding that this serves the purpose for which the subordinate institutions or forums were established by the Legislature, and not to oust the jurisdiction of this Court. *(See the Indian case of Rajasthan State Road Transport*

25 *Corporation Vs Krishan Kant 1995 AIR 1715, 1995 SCC (5) 75*, cited with approval in the case of *Ozuu Brothers Enterprises Vs Ayikoru Milka HC Civil Revision No. 0002 of 2016)*.

For reasons stated above, this Court finds that this is a proper case to be handled by the Labour Officer. The referral of this case to the Labour Officer, does not in 30 any way diminish the unlimited jurisdiction of this Court.

Accordingly, this Court finds that the 2nd preliminary objection is sustainable.

Consequently, this Court finds it unnecessary to delve into the merits of the 1st preliminary objection.

This Court makes Orders that Civil Suit No. 576 of 2020 is dismissed with no order as 35 to costs.

5 Dated and delivered electronically this 27th day of April, 2023.

SUSAN ABINYO JUDGE 10 27/04/2023

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