

UGANDA / JUDGMENT

Baliruno v Central Broadcasting Services (CBS) (Labour Dispute Reference 92 of 2020) [2023] UGIC 102 (24 May 2023)

[2023] UGIC 102

COURT

Industrial Court of Uganda

BEFORE

Wabwire Musana, J, Namara, Panel Member,
Nabirye, Matovu

CASE / FILE NUMBER

Labour Dispute Reference 92 of 2020

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**THE REPUBLIC OF UGANDA IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE NO.92 OF 2020 *(Arising from KCCA/LC/
RUB/013/2020)***

YUSUF BALIRUNO CLAIMANT

VERSUS

CENTRAL BROADCASTING SERVICES RESPONDENT

BEFORE:

The Hon. Mr. Justice Anthony Wabwire Musana,

PANELISTS:

- 1. Hon. Adrine Namara,
- 2. Hon. Suzan Nabirye &
- 3. Hon. Michael Matovu.

RULING

Introduction

- [1] When this matter came up for hearing, Mr. Frank Ssewagudde, appearing for the Respondent, objected to the admissibility of five of the Claimants' documents because these documents were photocopies and not covered under the exceptions in Section 46 of the Evidence Act Cap. 6 of the Laws of Uganda, which requires the production of original documents. He cited the case of Nathan Bisaso Vs Ssenyonga & Another C. S No. 750 of 2017. He also submitted that the other documents were not addressed to the Claimant and offended the basic principles of admissibility. He cited the case of Odongo Ochama Hussein Vs Abdul Rajabi H. C. C. A No. 19/2018 in support of that proposition. Finally, Counsel submitted that once ^a matter of admissibility of documents has been raised, it must be dealt with. He suggested that it was ^a wrong procedure to put documents in for identification once their admissibility was contested, and he cited the case of Tumushabe & Another Vs. Anglo African Ltd. & Another C. A. C. A No 38/1997 to buttress this proposition.
- [2] In her reply, Ms. Jane Nabirye, appearing for the Claimant, submitted that the documents objected to should be admitted because they were relevant to the matter before Court. Counsel suggested that the Claimant could be subjected to cross-examination by the Court.

Analysis and decision of the Court.

- [3] Under Section 18 of the Labour Disputes (Arbitration and Settlement) Act, 2006, the Industrial Court is not bound by the rules of evidence applicable to civil proceedings. In the case of Lubega Moses & 5 others v Roofings Uganda Ltd,¹ we held the view that evidence in labour matters ought to be freely given and received. Citing our decision in Moro Charles v Greenhill Secondary School,² we observed that the legislature intended to provide for ^a less formal approach to labour justice and that there appeared to be unanimity of view towards ^a less technically legalistic approach to evidence. We posited that the Industrial Court would be entitled to receive evidence submitted before it and determine its relevance, materiality, and weight. Consideration of the probative value of the evidence after admission ensures necessary safeguards; as such, the minimal formality is not about injustice. It may be appropriate to point out that other jurisdictions have taken the informal approach to evidence. In Southern Sun Hotels (Pty) Ltd v SA Commercial Catering & Allied Works Union and Another [2000] 21,³ the South African Labour Appeal Court found that hearsay evidence would be admissible in certain circumstances of labour disputes. This approach is at polar opposites with the rule against hearsay evidence as enshrined in the Evidence Act Cap. 6. The informal approach is rooted in social equity in administering labour justice. The constitutional precept of administering substantive justice without undue regard to technicalities as set out in Article 126(2)(e) of the 1995 Constitution is expressive of the rules of procedure of the Industrial Court.

- [4] Mr. Sewagudde submitted that the documents adduced by the Claimant did not fall within the exceptions set out in Section 62 of the Evidence Act Cap 6. He emphasized that CEX1, CEX 2, and CEX8 were not originals. CEX4 was not addressed to the witness, and the witness was not the author of CEX7. Having pointed out that the Industrial Court is not bound by the strict rules of evidence, we would not be inclined to reject the documents at this preliminary stage of trial. The Respondent would still have ample opportunity to address this Court on the evidence's authenticity, corroboration credibility, and reliability after it has been tested in cross-examination. As a rationale for the less legalistic approach to admission of evidence in labour disputes, under Section 18(l)(a) of the LADASA, the Industrial

¹ Labour dispute Reference No. 166 of 2020

² Labour Dispute Reference 10 of 2021

³IU 1315 (LAC)

Court may require, *suo moto*, ^a person to provide evidence about any matter as the Court may require or attend Court to give evidence or produce evidence before the Court. Such evidence when taken is subjected to evaluation at ^a later stage of the trial. We are fortified in adopting this view by the decision of the Court of Appeal in the case of Jennifer Nsubuga v Michael Mukundane and Another⁴ where in the lead judgment, the Honourable Lady Justice Monica Mugenyi(JJA) held that the admission of ^a document in evidence does not in any way affirm its legality or authenticity. Its admission is or was subject to proof of its evidential worth, which would of necessity entail ^a determination of its authenticity and or legality. We are therefore unable to accept the Respondent's contention that the evidence is inadmissible at this point.

Decisions and orders of the Court

- [6] Accordingly, the preliminary objection is overruled in the circumstances and for the above reasons. CEX1, CEX2, CEX4, CEX7, and CEX9 shall be admitted in evidence and marked CID1, CID2, CID4, CID7 and CID9. The claim shall be set down for hearing.

It is so ordered.

Delivered at Kampala this 2023

Anthony Wabwire Musana, Judge, Industrial Court

THE PANELISTS AGREE:

- 1. Hon. Adrine Namara
- 2. Hon. Suzan Nabirye
- 3. Hon. Michael Matovu

Delivered in open Court in the presence of:

- 1. For the Claimant: Ms. Linet Sarah Kyomugisha for claimant who is in Court.
- 2. For the Respondent: None

Court Clerk: Mr. Samuel Mukiza. C* *j*

⁴ C. A. C. A No.208 of 2018 para 105 at page 34

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