

UGANDA / JUDGMENT

Cavendish University Uganda Limited v Agolei (Miscellaneous Application 652 of 2021) [2023] UGHCCD 418 (28 March 2023)

[2023] UGHCCD 418

COURT

HC: Civil Division (Uganda)

BEFORE

Baguma, J

CASE / FILE NUMBER

Miscellaneous Application 652 of 2021

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA (CIVIL
DIVISION)

MISC. APPLICATION NO. 652 OF 2021

(ARISING FROM CIVIL SUIT NO. 47 OF 2021)

CAVENDISH UNIVERSITY UGANDA LTD ===== APPLICANT

VERSUS

JIMMY DANNY AGOLEI ===== RESPONDENT

BEFORE: HON. JUSTICE EMMANUEL BAGUMA RULING

Background.

The Respondent a former employee of the Applicant was allegedly terminate and upon termination he filed Civil Suit No. 47 of 2021 for unlawful termination and damages.

Counsel for the Applicant/Defendant filed this application to stuck out the main suit for want of jurisdiction.

The application.

This is an application by notice of motion under section 33 of the Judicature Act, section 93 of the Employment Act, order 7 rule 11 of the CPR and order 52 rule 1, 2 and 3 of the CPR seeking for orders that;-

1. HCCS NO. 47 of 2021 be struck out for want of jurisdiction.**2. Costs of this Application be provided for.**

The application is supported by the affidavit of **David Mutabanura** the executive director of the applicant whose details are on record but briefly states that;-

- 1. The Respondent was employed by the applicant as a lecturer till termination of his employment.
- 2. Following termination of his employment he filed a suit in this court seeking damages for purported termination of his employment.
- 3. I have been advised by my advocates that this is an employment matter which ought to be filed with the Labour Officer who should have referred the matter to industrial court where necessary.
- 4. This court has no jurisdiction to try an employment matter and the same should be dismissed.

In reply, the Respondent opposed the application in an affidavit in reply deposed by **Agolei Jimmy DanyDanniel** the Respondent whose details are on record but briefly states that; -

- 1. I filled civil suit No. 47 of 2021 against the applicant for breach of contract of service and sought general, specific and punitive damages.
- 2. I have been advised by my lawyers that this court is empowered by the constitution and the judicature act to handle such matters and section 93 of the Employment Act did not oust the unlimited original jurisdiction of this court.
- 3. The termination letter was just emailed to me 8months later from the time it was dated and I am informed by my lawyers that by then I was out of time to seek redress in the labour office.
- 4. The labour officer has no power to determine whether there was breach of contract of service and also cannot award general, Special and punitive damages which I seek from this court.

Representation.

At the hearing of this application, Mr. Isaac Walukagga together with Gulam Hussein of MMAKS Advocates represented the applicant while Mr. Mooli Albert Sibuta of Waluku Mooli & Co. Advocates represented the Respondent.

At the hearing both counsel agreed to file written submission and their details are on record.

Submissions for counsel for the Applicant.

Counsel for the applicant submitted that section 93 (2) (b) of the employment Act 2006 gives the labour officer jurisdiction to hear and determine by mediation or conciliation any dispute that relates to breach of a contract of service and other rights granted under this act.

Counsel referred to the case of **Former employees of G4S Security Services Uganda Ltd Vs G4S Security Services Uganda Ltd SCCA No. 18 of 2010** where court held that; -

"clearly, the above provision intended to oust jurisdiction of the ordinary civil courts in Uganda by ensuring that employment matters are only handled by the labour officers and the Industrial Court".*

Counsel submitted that the applicant's claim as stated in the plaint is for unlawful breach of contract of service by the defendant which falls squares within the ambit of section 93 of the Employment act and this court has no jurisdiction to try such a matter.

Submissions by Counsel for the Respondent.

Counsel for the Respondent submitted that the Respondent filed Civil Suit No. 47 of 2021 against the applicant for special damages, general damages, punitive damages, interest and costs of the suit and the cause of action being unlawful breach of contract of service by the Applicant. That this court has jurisdiction to try this matter and section 93 of the employment act is not applicable to this matter.

Counsel referred to the case of **Wanzusi Samuel Vs Kakira Sugar Ltd HCCS No. 202 of 2015** where court held that; -

"The High court and the Industrial Court have co-current jurisdiction since appeals from both courts lie to the court of Appeal".

Counsel also referred to the case of **Eng. John Eric Mugyenzi Vs Uganda Electricity Generation Co. Ltd CACA No. 167 of 2018** and submitted that the issues raised in the main suit go beyond the scope of the employment act and hence the provision of section 93 of the act do not apply.

Analysis of Court.

In the case of **Eng. John Eric Mugyenzi Vs Uganda Electricity Generation Co. Ltd CACA No. 167 of 2018** where court held among others that; -

"a labour dispute can be filed in a court of judicature having jurisdiction such as high court of Uganda"

*Court further stated that the labour officer from the foregoing does not have jurisdiction to award general or punitive damages....."

In the instant case, the Respondent/plaintiff in his plaint seeks among others for general damages which cannot be granted by the labour officer, therefore this suit is properly before this court and shall proceed on its own merit.

I find that this application lacks merit.

Conclusion.

In the final analysis, this Application fails with the following orders;

- 1. The application is hereby dismissed.
- 2. Let Civil Suit No. 47 of 2021 proceed on its merit.
- 3. Costs of this application be in the cause.

DATED, signed, sealed and delivered by email at Kampala this 28th day of March 2023.

Emmanuel Baguma

Judge

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