

UGANDA / JUDGMENT

Ekodor Gabriel v Bidco Uganda Ltd and Ngwabibenard (Labour Dispute Reference No. 01 of 2024) [2024] UGIC 85 (25 September 2024)

[2024] UGIC 85

COURT

Industrial Court of Uganda

BEFORE

Tumusiime-Mugisha, J, Mugambwa, Panel Member,
Mubuuke, Panel Member, Ebyau, Panel Member

CASE / FILE NUMBER

Labour Dispute Reference No. 01 of 2024

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THE REPUBLIC OF UGANDA THE INDUSTRIAL COURT OF UGANDA AT J INJA
LABOUR DISPUTE REFERENCE NO. 01 OF 2024

BETWEEN

EKODOR GABRIEL CLAIMANT

v

- 1. BIDCO UGANDA LTD
- RESPONDENTS 2. NGWABIBENARD

Before:

The Hon. Head Judge Linda Lillian Tumusiime Mugisha

Panelists:

- 1. Hon. Harriet Mugambwa Nganzi
- 2. Hon. Frankie Xavier Mubuuke
- 3. Hon. Ebyau Fidel

Representation:

- 1. Mr. Dhakaba Ishaq of M/s. Dhakabu and Nkuutu Co. Advocates for the Claimant.
- 2. Ms. Kevin Amujong of M/s. Okalang Law Chambers & Legal Consultants for the Respondents.

RULING**Introduction**

[1] When the matter was called for mention to complete scheduling, Ms. Amujong orally raised a Preliminary objection regarding this Court's jurisdiction to entertain the present claim. She contended that under his paragraphs 4 and 4(m) of his memorandum of claim, the Claimant seeks compensation allegedly arising from Injuries sustained during his work of purportedly pushing open and closing a gate.

- [2] Therefore, he ought to have filed his claim under the Workers Compensation Act, which provides under Section 14(2), that all claims for compensation under the Act unless determined by agreement are determined by the Court and Section 1(a) of the said Act, prescribes the Court as the Magistrates Court established under the Magistrates Court Act, presided over by a Chief Magistrate or a Magistrate Grade 1. She cited **Komakech John v Muttico Technical Services Limited** Labour Dispute No. 7 of 2024 in which Justice Anthony Wabwire Musana cited **Mohan Musisi Kiwanuka versus Asha Chand** and held that the Industrial Court has no jurisdiction to handle matters arising under the Compensation Act and once a Court has no jurisdiction over a matter then it has no jurisdiction to try the entire case.
- [3] She further submitted that, unlike the High Court, the Industrial Court's jurisdiction is based on appeals and referrals, and it doesn't have jurisdiction to entertain matters under the Workers Compensation Act, therefore the Claimant's claim is illegal before this, so it should be dismissed with costs.
- [4] Secondly, citing **Auto Garage v Motocov**, 1971, East Africa, 514, which lays out what constitutes a cause of action and specifically that there must be a right and the right must be violated by the defendant or Respondent, she contended that the Claimant had no cause of action against the 2nd Respondent. It was her submission that, for an employment dispute to succeed, there must be an employee-employer relationship, and there was none between the Claimant and the 2nd Respondent. Therefore, the Claimant has no cause of action against the 2nd Respondent.

- [5] Counsel for the Claimant filed written submissions in reply, which were admitted on the record on 05/09/2024. He contended that the points of law raised by Ms. Amujong were prematurely raised even before scheduling. He also refuted the relevance of the cases she cited in support of the Preliminary Objection and insisted that they are distinguishable from the instant case.
- [6] According to him, whereas the Court in **Komakech v Muttico Technical Services Ltd & Anor,** dealt with the issue of jurisdiction, to handle a matter where the Claimant had sustained permanent incapacity, the Claimant in the instant case has several causes of action that arose out of his termination which this Court has powers (jurisdiction) to handle. He argued that the loss of the Claimant's employment in Komakech was purely related to a permanent total incapacity which was a result of amputation, while the instant claim is based on termination of employment.
- [7] According to him the Claimant's claim for **for recovery of Ugx.4,000,000/ being a long-term award after termination from employment salary, from May 2022 to date and medical expenses of Ugx.240,000/= Shs. 12,000,000/= as compensation for medical insurance for beneficiaries' damages and costs of the suit"* are provided for under the Employment Act, which confers this Court with jurisdiction to handle them, and in any case, the Claimant has more than one cause of action.
- [8] Therefore, dismissing the entire claim will be unfair, inequitable, and injustice to him. He argued that this Court's powers are commensurate to those of the High Court which has wide powers and these powers should be invoked to overrule the preliminary points of law. He relied on **Kehganzi Angelia v Mett (U) Ltd* HCM. A No. 471/2015*, where the High Court held that dismissing a Claimant's case would be closing doors of justice to the Claimant's claim which is the case with the Claimant who has other claims aside from the claim for loss due to injuries.
- [9] He further argued that **Mohan Musisi vAsha Chand** (supra) which was cited by Ms. Amujong, is distinguishable from the instant case because the former specifically dealt with expropriated property and repossession certificates while today's case is premised on employment law. He prayed that this Court is not persuaded by these authorities which are not in *pari materia* to the Claimant's claim.
- [10] Counsel further argued that **Sections 93(7) and 94(1) of the Employment Act** confers jurisdiction upon this Court to handle all employment-related claims and this case is not based on the Workers Compensation Act but on the Employment Act and in any case, this Court also has wide discretion to handle all labour related disputes including but not limited to those under the Employment Act, especially in a bid to avoid multiplicity and duplication of suits. He cited **Eng. John Eric Mugyenzi* v *Uganda Electricity Generation Company Ltd* C. A. C. A No. 167 of 2018*, the Court of Appeal held that the industrial Court should use its jurisdiction to adjudicate on issues of law and fact. Therefore, the Court should overrule this point of law.

- [11] Regarding the Cause of action against the 2nd Respondent, he contended that in *Komakech v *Muttico Technical Services Ltd & Anor,** this Court did not discuss or determine the issue of cause of action and whereas he agrees with the principle set down in **Auto Garage** (supra), he disagreed with the Respondents' assertion that the Claimant does not have a cause of action against the 2nd Respondent.
- [12] This is because, under paragraph 4(E-L) of his memorandum of claim, the Claimant proves that the 2nd Respondent was part and parcel of his employment routine, duties, and his eventual termination, as his direct supervisor and this is the reason he sued him together with the 1st Respondent who is the direct employer, albeit (an artificial person) who was wrongly influenced by the 2nd Respondent. He relied on **Kapeka Coffee Works Ltd v Npart* C. A. C. A No. 3/2000*, where the Court held that in determining a cause of action, Courts must look at the plaint (claim) and/or its annexures and in this case, paragraph 4 of the Claim clearly illustrates why the 2nd Respondent was sued. In any case, a party had the freedom to sue any party.
- [13] He also cited Order ¹ rule 7 of the Civil Procedure Rules, which he submitted has been buttressed by **Bonabana Janet v Byamugisha Baby Coach & Sons Transport Co. Ltd & Ors,** which emphasized that a party is at liberty to sue a person he seeks relief from. He insisted that the Claimant's claim discloses all the tenements of a cause of action against the 2nd Respondent, who directly supervised him during his employment. He contended further that the 2nd Respondent as the eye and hands of the 1st Respondent influenced the 1st Respondent to terminate his employment, thus violating his rights. He prayed that the points of law should be overruled with costs so that the main matter could proceed on its merits.
- [14] In rejoinder, Ms. Amujong refuted the assertion that the points of law had been raised prematurely because **Order 6 Rule 28** of the Civil Procedure Rules that governs preliminary objections allows one to raise preliminary objections at any point, even before scheduling. She cited **Attorney General of Uganda v Media Legal Defense Initiative and 19 Others,** EACA No. 3 of 2016,11, where it was settled that the illegality of an issue is a question of law that can be raised at any time and any stage of the proceedings of Court and a preliminary objection ought to have first been disposed of and particularly that preliminary objections and matters concerning jurisdiction ought to be determined first.
- [15] Therefore, the preliminary objections raised in the instant case were not prematurely raised. She contended further that the case of **Komakech John v Muttico Technical Services Limited,** Labour Dispute No. 7 of 2024, is not distinguishable from the facts in the current case, because that case dealt with a claim for compensation resulting from an injury, and it's the same in the present case. She insisted that that case is vital to the said pleadings because it was held

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that the Industrial Court has no jurisdiction to handle matters arising under the Workers Compensation Act.

- [16] Regarding the argument that the Claimant in the present claim raises various claims therefore, the claim should be entertained, she maintained that, this claim as in the case of **Komakech John v Muttico Technical Services Limited** Labour Dispute No. 7 of 2024 where the learned Judge cited **Mohan Musisi Kiwanuka v Asha Chand (supra)**, where the Claimant joins claims where Court has no jurisdictions, the entire claim has to be dismissed.
- [17] She insisted that **Mohan Musisi Kiwanuka v Asha Chand** provides the rationale for dismissing an entire claim to avoid litigants and their lawyers to go on fishing expeditions casting their nets so wide when they don't know what they intend to catch. She prayed that the same is relied on to dismiss this case. She contested the Claimant's reliance on **Kenganzi Angella v METL Uganda** because it was cited out of context. After all, this case dealt with an application for a stay of execution and has nothing to do with the preliminary objections on jurisdiction. She also contended that whereas the Claimant relies on **Engineer John Eric Mugenyi v Uganda Electricity Distribution Company** (supra), it is distinguishable because the said case dealt with preliminary objections on limitation and not with the jurisdiction of the Court.
- [18] She insisted that the Claimant's claim as stated under paragraph 4 (c) of his memorandum of Claim arising from an injury, fall under the Workers Compensation Act which this Court has no jurisdiction to handle. Regarding the 2nd preliminary Objection on cause of action, she contended that Counsel for the Claimant only stated that this Court **Komakech John v Muttico Technical Services Limited**, didn't resolve the preliminary objections on cause of action because it did not have jurisdiction therefore, it was not necessary to address the preliminary objections on cause of action.
- [19] She strongly argued that the preliminary objection is emphatic on the point that the Claimant has no cause of action against the 2nd Respondent Mbwabwe Bernard because all causes of action under the Employment Act and the Workers Compensation Act envisage that, there is an employer /employee relationship, which doesn't exist as between the Claimant and the 2nd Respondent, in the

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circumstances, the Claimant has no claim against the 2nd Respondent. She prayed that the claim would be dismissed with costs.

Decision of Court

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- [20] In **Attorney General of Uganda v Media Legal Defense Initiative and 19 Others*, EACA No.* 3 of 2016,11, the EACA stated that "It is the settled law that a court seized with a preliminary objection, is first of all enjoined by law to determine it, before going into the merits or substance of the case before it and failure to do so amounts to an incurable irregularity." The court went further to cite **Bank of Tanzania v Devran P. Valambia** (CAT) Civil Application No. 15 of 2002, for the Legal proposition that, "the aim of a preliminary objection is to save the time of the court and the parties by not going into the merits of the application because there is a point of law that will dispose of the matter summarily" and on **Thabita R. Maziku** in which it was held that: "it matters not, whether it was inadvertent or not, The trial Court was duty bound to dispose of it fully, by pronouncement of the Ruling (on it) before dealing with the merits of the suit....". In effect where it does not do so, all subsequent proceedings are a nullity.
- [21] Applying these principles to the Preliminary points before us, the points of law question the Jurisdiction of the Court to entertain the Claim and issues relating to whether there is a cause of action against the 2nd Respondent. These questions and particularly the question regarding jurisdiction must be resolved first, because as stated in Komakech, it "...it is the most fundamental issue that ^a Court faces in any trial... it is the very foundation upon which the judicial edifice is constructed, the foundation from which springs the flow of judicial process...".
- [22] In Words and phrases 3rd edition volume 2 at page 497, cited by Egonda Ntende, JCA, in **Babcon Uganda Ltd v Mbale Resort Hotel Ltd**, CACA No. 87 of 2011, defines jurisdiction as follows "By "jurisdiction" is meant the authority which a court has to decide matters that are litigated

before it or to take cognisance of matters presented in a formal way for its decision. The limits of this authority are imposed by statute, character, or commission under the court is constituted, and may be extended or restricted by similar means. If no restriction or limitation is imposed the jurisdiction is said to be unlimited. A limitation may be either as the kind and nature of the actions and matters of which the particular court has cognisance, or as to the area over which the jurisdiction extends or it may partake of both characteristics Where a court takes it upon itself to exercise a jurisdiction it does not possess, its decision amounts to nothing...". This is the reason that a court must first resolve the question of jurisdiction before any other question.

- [23] In the circumstances the question for resolution is whether this Court has jurisdiction over the Claimants case and whether he has a cause of action against the 2nd Respondent?

The Court of Appeal in **Asaph Ruhinda Ntengye and Anor v AG**, Constitution Petition No. 33 of 2015, resolved that, although the Industrial Court is established by Parliament under section 7(1) of the Labour Disputes (Arbitration and Settlement) Act 2006 (LADASA), but its awards are enforceable in the same way as a decision in a civil matter in the High Court. It is a Court established by the Parliament of Uganda under Article 129 of the Constitution.

- [24] Therefore, in accordance with Article 23 (6) (b) the Industrial court is placed in the appellate hierarchy at the same level as the High Court, therefore it has concurrent jurisdiction with the High Court. This notwithstanding the LADASA does not confer unlimited jurisdiction on the Court. Sec 8(1)(b) and 8(2) of the LADASA, provides that the court has jurisdiction to arbitrate and adjudicate labour disputes referred to it under the Act. In **Engineer John Eric Mugyenzi v Uganda Electricity Generation Co. Ltd CACA No. 167 of 2018,** the Court of Appeal held that the Industrial Court should use its jurisdiction to adjudicate on issue of fact or law under Section 8(1)(b) and 8(2) of the LADASA, to handle all labour disputes referred to it, Section 2 of the LADASA defines "Labour dispute" as: " ...any dispute or difference between an employer or employers and an employee or employees or a dispute between employees ; or between labour unions connected with the terms of employment, the conditions of labour of any person or employment, the conditions of labour of any person or of the economic and social interests of a worker or workers."
- [25] Although the LADASA broadly defines "labour dispute" to include disputes relating to conditions of work, it does not confer on the Industrial court Jurisdiction to determine matters relating to Workers Compensation Act 2006. The Law applicable is the Workers Compensation Act, Cap 225 of 2006. The Act provides for compensation of workers for injuries suffered and scheduled diseases incurred in the course of their employment. As rightly submitted by Ms. Among for the Respondent, Section ¹ makes reference to Court as the "... Magistrate Court established under the Magistrates Courts Act, presided over by a chief Magistrate or a Magistrate Grade 1, having jurisdiction in the area where the accident to the worker has occurred."
- [26] There is no reference to the Industrial Court, which as stated by his Lordship Wabwire J, in *Komackech (ibid)* was clear indication that the *"...* framers of the Workers Compensation Act did not intent for the Industrial Court to preside over disputes relating to workplace injuries..."* In the circumstances even if the Industrial Court enjoys concurrent Jurisdiction with the High Court, it does not have Jurisdiction to hear any matters about workplace injury or scheduled diseases incurred at the workplace.
- [27] According to the amended memorandum of claim on the record, the Claimant's claim against the Respondent, jointly and severally is recovery of sums of money for a long-term award after termination from employment, medical expenses, compensation for medical insurance for beneficiaries and for injuries suffered during the course of his employment when opening and closing the Respondent's heavy gate. It would therefore not be possible to resolve the question regarding his termination without referring to the injury, over which the Court has no jurisdiction.
- [28] Mr. Dhakaba argued that the Claimant had several claims and lack of jurisdiction over ¹ claim would not render considering the other claims a nullity. We respectfully disagree. This is because the Supreme Court in **Mohan Musisi Kiwanuka v Asha Chand** (ibid) settled position of the law that if a court has no jurisdiction over a part of the case

before it, it has no jurisdiction to try the entire case. As already discussed, this Court has no jurisdiction to handle matters relating to does workers injury or scheduled diseases incurred during the course of employment. We also do not agree that *Komakech John v Muttico Technical Services Limited* Labour Dispute No. 7 of 2024, is distinguishable from the facts in the instant case because it also dealt with claims relating to injury incurred at the workplace.

- [29] We reiterate that where the claimant has filed a claim for compensation for work place injury, this Court does not have jurisdiction to entertain the claim under the Workers compensation Act. This claim being partially brought for compensation for injuries suffered during the course of employment, which this court has no jurisdiction to determine, in light of Mohan Musisi Kiwanuka, the Court has no Jurisdiction to determine the entire claim. It is dismissed with no order as to costs.
- [30] no Regarding the second objection, having established that the Court has jurisdiction to determine the entire claim, it is not necessary to discuss it.

Signed in Chambers at Jinja this 25th day of **September 2024**.

Hon. Justice Linda Lillian Tumusiime Mugisha, **Head Judge**

The Panelists Agree:

- 1. Hon. Harriet Mugambwa,
- 2. Hon. Frankie Xavier Mubuke &
- 3. Hon. Ebyau Fidel.

25th September 2024 12:30 pm

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