

UGANDA / JUDGMENT

Industrial Promotion services v Kasingye and Another (Labour Dispute Miscellaneous Application 1 of 2021) [2021] UGIC 90 (19 March 2021)

[2021] UGIC 90

COURT

Industrial Court of Uganda

BEFORE

Ruhinda-Ntengye, J, Tumusiime-Mugisha, J, Ebyau,
Panel Member, Mubuke, Panel Member,
Mugambwa, Panel Member

CASE / FILE NUMBER

Labour Dispute Miscellaneous Application 1 of 2021

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THE REPUBLIC OF UGANDA IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
MISCELLANEOUS APPLICATION No.001 OF 2021(JINJA) [ARISING FROM LABOUR
DISPUTE REFERENCE No. 003/2020]

BETWEEN

APPLICANT INDUSTRIAL PROMOTION SERVICES

VERSUS

RESPONDENTS 1. NELSON KASINGYE AGABA 2. LEATHER INDUSTRIES OF UGANDA

BEFORE

- 1. Hon. Chief Judge Ruhinda Ntengye
- 2. Hon. Lady Justice Linda Tumusiime Mugisha

PANELISTS

- 1. Mr. Ebyau Fidel
- 2. Mr. Fx Mubuke
- 3. Ms. Harriet Mugambwa

RULING

This is an application by chamber summons which is brought under Order 9, Rules 3(1) (a), (b), (g), 3(2) and Order 7 rules 11 and 19 of the Civil Procedure Rules.

The application seeks for orders of this court to

- a) Set aside the notice of claim/summons and service of the same on the Applicant.
- b) Declare that the court has no jurisdiction over the Applicant in respect of the subject matter and remedies sought.
- c) Declare that the claim is barred by law and dismiss it.
- d) Order that costs be borne by the 1st Respondent or Advocate of the 1st Respondent.

The application was supported by an affidavit sworn by one Nakiyemba Deborah to the effect that ^a notice of claim/ summons signed by the Registrar of this

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court was served on the second Respondent and not on the Applicant and yet the Applicant never employed the 1st Respondent.

The affidavit is also to the effect that the 1st Respondent never filed ^a complaint against the Applicant who was never invited before the Labour Officer and therefore the Labour dispute reference and claim against the Applicant is fraught with irregularity and breaches of natural Justice having been filed in this court in a manner contrary to law.

By affidavit in reply the 1st Respondent stated that the Applicant having been served with court process participated in the proceedings through one M/s. Consolate Ademson. The Affidavit in reply also stated that it was the "Title" of the reference to this court that omitted the Applicant which was ^a mistake of the Labour Officer and which should not be visited onto the 1st Respondent. According to the affidavit in reply the matters of law referred to this court cannot be resolved without the Applicant being party to the proceedings.

The Applicant was represented by Mr. Brian Emurwon of M/s. Kinobe Mutyaba Advocates while the 1st Respondent was represented by Mr. Gregory Byamukama of M/s. Okalang Law Chambers. The second Respondent was represented by NewMark Advocates.

SUBMISSIONS

The substance of the submission of the Applicant is that no reference can be to this court in ^a matter involving the Applicant in the absence of ^a labour complaint having been lodged against it, in the absence of a notification of the complaint to the Applicant by the Labour officer and in the absence of an invitation from the Labour Officer to participate in ^a mediation.

Counsel for the Applicant argued strongly that in the absence of evidence from the Labour Officer that it was his/her mistake as the matter was being referred not to mention the Applicant as ^a party in the proceedings, the attendance of one Ademson could not amount to participation of the Applicant in the proceedings and indeed nothing showed that it was a mistake of the Labour Officer. According to counsel, Consolate Ademson attended the proceedings as ^a representative of the 2nd Respondent and not the Applicant.

In his submission, counsel for the Claimant, relying on **Sections 93(1) of the Employment Act 2006, regulation 7 (2) of the Employment regulations 2011 and Section 3 of the Labour Disputes (Arbitration and settlement) Act 2006,**

ontended that once no labour complaint is raised against an employer to the labour officer and the labour officer has not attempted to settle the complaint as provided for under **Section 13 of the Employment Act** such ^a matter against an alleged employer cannot be competently before this court.

According to counsel, under **Order 7 rule 11 (a) of the Civil Procedure Rules**, the notice of claim ought to be rejected as against the Applicant for being barred by law.

In reply to the above submissions, it was contended for the 1st Respondent that there was collusion and connivance between the 2nd Respondent and the Application which was portrayed by the Applicant's conveniently making the 2nd Respondent a Respondent in the application yet the same advocate of the Applicant is counsel for the 2nd Respondent in the Labour Dispute. According to counsel, the affidavits of the 2nd Respondent conveniently support the application with falsehoods to which the 1st Respondent have no right of reply. He argued that the 1st respondent's affidavit in reply having implicated M/s. Ademson Consolate, the 2nd Respondent filed a supplementary affidavit by the same Consolate contrary to public policy since the 1st respondent was denied ^a reply which curtailed ^a right to ^a fair hearing and therefore affidavits of 2nd respondent ought to be struck off the record.

According to counsel, the affidavit sworn by one Nakiyemba Deborah on behalf of the applicant is false and the deponent had no capacity to swear the same and so they ought to be struck off as well.

In the alternative counsel argued that service of the notice of claim was properly effected on the Applicant as provided for by **Order 29 rule 2 (b) of the Civil Procedure Rule.**

According to counsel for 1st Respondent, the complaint was made orally before the Labour Officer who reduced it into writing in the presence of the Applicant's lawyer and the Applicant voluntarily sent a representative to defend the complaint. According to counsel, the representative of the 2nd Respondent did not deny being ^a senior employee of the Applicant at the same time so as to competently represent the Applicant before the labour officer. Relying on the report of the labour officer, counsel contended that the report itself cited the Applicant's name and mentions counsel seeking an adjournment to call consulate who was an employee of the Applicant as ^a Human Resource.

Counsel contented that since Mr. Brian Emurwon is on the record as attending proceedings before the Labour Officer as Counsel for the Applicant, the Applicant was on notice and participated in the proceedings. According to counsel, the question of law for this court as framed by the Labour Officer made the Applicant party to proceedings.

Decision of Court

We have carefully perused the application together with affidavits in support of the application as well as affidavits in opposition. We have also carefully studied the submissions of both counsel.

The gist of the application, as we understand it, is mainly that this court has no jurisdiction to entertain ^a claim against the Applicant because the Applicant was never a party to the proceedings before the Labour Officer, the 1st Respondent having not lodged ^a complaint against it and the Applicant having not been notified about it. The Respondent's case is that though the Applicant was not formally notified, it appeared in the proceedings through its Human Resource Personnel and thereby participated in the proceedings.

Section 71 of the Employment Act provides

"71 unfair termination

- *1) An employee who has been continuously employed by his or her employer for at least thirteen weeks immediately before the date of termination, shall have the right to complaint that he or she has been unfairly terminated.*
- *2) A complaint made under this Section shall be made to a labour officer within three months of the date of dismissal, or such later period as the employee shall show to be just and equitable in the circumstance.*
- *3) No complaint under this section may be made by an employee whose services have been terminated or who has been dismissed under a probationary contract*
- *4) The right of an employee to make a complaint under this section shall be in addition to any right an employee may enjoy under an agreement between an employer or group of employees and a labour union."*

the above Section provides for ^a written complaint to the Labour Nothing in Officer.

Section 3 of the Labour Disputes {Arbitration and Settlement) Act 2006 provides:

"3. Disputes to be referred to Labour officer.

(1) Subject to subsection 2, a labour dispute, whether existing or apprehended may be reported, in writing, to a Labour Officer, by a party to the dispute in such form and containing such particulars as may be prescribed by regulations made under this Act"

When both Sections of the law are read together our opinion is that the purpose of the law is to make the employer aware of the complaint made by an employee irrespective of the means the employee uses. This being the case we agree with the 1st Respondent that ^a complaint to the labour officer may effectively be made orally and the Labour Officer may reduce it in writing to enable him create a file in order to proceed to hear the complaint.

The question before us is therefore not whether there was a written notification of the complaint to the Applicant but whether the Applicant knew about the complaint.

It is not disputed that one Ademson Consolate appeared before the labour officer. The question is whether she appeared for only the 2nd Respondent or for the Applicant as well.

According to the affidavit of one Nakiyemba Deborah, Ademson appeared on behalf of the 2nd Respondent and not the applicant.

Ademson Consolate in ^a supplementary affidavit under Paragraph 4 swore that she got ^a consultancy contract by the applicant to provide Human resource Management services to several sister companies including the 2nd Respondent.

Under paragraph 5 she stated that she was seconded to the 2nd Respondent as Human Resource Manager and under paragraph 10 she asserted that she attended proceedings before the Labour officer as a Human Resource Manager of the 2nd Respondent.

According to the affidavit in reply of the 1st Respondent, Ademson as ^a Human Resource Consultant of the Applicant voluntarily participated in the proceedings. In the submission of counsel for the respondent, the fact that Ademson's email address had the Applicant domain name suggested she was an employee of the Applicant.

Taking into account what the Applicant states and 2nd Respondent agrees, that Ademson appeared on behalf of the second Respondent, and given that the some Ademson on her email address is the domain name of the Applicant, we form the opinion and we find as ^a fact that there is a close relationship between the Applicant and the second Respondent.

This is the reason as to why the labour Officer framed the question referred to this court as
"Whether the Industrial promotion services Uganda Limited that is the majority shareholder of the employer and whose members terminated the complaint's employment is also liable for the unfair termination?"

It is the nature of the relationship between the Applicant and the 2nd Respondent that will help this court to decide the issue referred by the labour officer. Having found as ^a fact that there existed ^a close relationship, it is our finding that Ademson in appearing before the Labour Officer appeared not only for the 2nd Respondent but for the Applicant as well. We do not find any reason to disassociate her from the Applicant. The email from her dated 6/1/2020 at 1:22pm is clearly from Consolate at ips <Uganda.com> which according to paragraph 5 of the affidavit in reply is the Applicant domain name which has not been disputed by the Applicant. The applicant having seconded Ms Ademson to the 2nd respondent could not turn

round to deny that it was the main employer who had power to even recall her to Headquarters.

Consequently, we agree with the Respondent that in the presence of the Human Resource Consultant, failure of the labour Officer to formally invite the Applicant to answer to the complaint could not render the reference to this court incompetent in respect to the Applicant.

We must emphasise that where a matter is referred to this Court by a labour officer the court deals with it as if it was not entertained by the labour officer at all. That is why the parties are required to file fresh pleadings and the original complaint of the labour officer is not a pleading in this court. Therefore, the parties are not restricted to the exact complaint or exact reference by the labour officer since the claim is taken to be as pleaded in this court and not as ^a complaint before the labour officer. When the Court of Appeal was considering the Jurisdiction of this Court in the lead Judgement of Hon. Justice Kenneth Kakuru **Civil Appeal 096/2015, Engineer John Eric Mugenyi vs Uganda Electricity Generation Co Ltd**, it stated:

At page 19 in the last paragraph

It is our considered opinion that a suit could have been filed in a Court of Judicature having jurisdiction on the subject matter such as the High Court. However, the Industrial Court has jurisdiction to adjudicate upon questions of law and fact arising from references to the Industrial Court" Therefore nothing could bar this court from entertaining the instant reference from the Labour officer.

The parties before this Court have ^a right to apply to the court to add ^a necessary party to the proceedings and the mere fact that such party did not appear before the labour officer is not ^a ground for rejecting addition of such party.

Consequently, the claim against both Applicant and the two Respondents having been referred this court, it is empowered to investigate the claim as referred and should the Applicant be in position to disassociate itself from the claim, it shall do it on the merits. The application fails and is dismissed with no orders as to costs.

Delivered & Signed by:

- 1. Hon. Chief Judge Ruhinda Asaph Ntengye
- 2. Hon. Lady Justice Linda Tumusiime Mugisha

PANELISTS

- 1. Mr. Ebyau Fidel
- 2. Mr. FxMubuke
- 3. Ms. Harriet Mugambwa

Dated: 19/03/2021

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