

UGANDA / JUDGMENT

Nabulere v International Organization for Migration (Labour Dispute Miscellaneous Application 107 of 2021) [2023] UGIC 65 (2 October 2023) [2023] UGIC 65

COURT

Industrial Court of Uganda

BEFORE

Wabwire Musana, J, Musimbi, Panel Member,
Kagoye, Lapenga

CASE / FILE NUMBER

Labour Dispute Miscellaneous Application 107 of
2021

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**## THE REPUBLIC OF UGANDA IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA LABOUR
DISPUTE MISCELLANEOUS APPLICATION NO. 107 OF 2021****(Arising from Labour Dispute Reference No. 101/2021 & Labour Dispute No. 327/2020)****SAMUEL NABULERE:***** **:::CLAIMANT******### **VERSUS******#### INTERNATIONAL ORGANISATION FOR MIGRATION **ESPONENT********Before:******The Hon. Mr. Justice Anthony Wabwire Musana:**

Panelists:

- 1. Hon. Jimmy Musimbi,
 - 2. Hon. Robinah Kagoye &
 - 3. Hon. Can Amos Lapenga.
- ### **Representation:****
- 1. Mr. Samuel Nabulere, appearing pro se.
 - 2. Mr. Allan Mukama, State Attorney, representing the Attorney General for purposes of production of a Cooperation Agreement.

RULING**Introduction**

[1] This ruling concerns an application for certified copies of documentary and electronic evidence consisting of employment records of several of the Respondent's staff, including Stephen Atibuni, Ekau Gabriel, Olivia Nalunkuma, Michael Kilama, Assume Gloria and Bernadette Nalumansi Ssebaduduka. The Applicant also sought copies of the Respondent's audited accounts, funding allocations, the organogram, the Human Resource Manual, Joint Administrative Review Board processes, and other documents. It was brought by chamber summons under Order 10 Rules 1 and 2 of the Civil Procedure Rules S.1 71-1(CPR and Section 22 of the Civil Procedure Act Cap. 71 (CPA)).

Background facts

[2] The background facts of this application are that the Applicant was employed as ^a Human Resource Assistant of the Respondent on the 15th of September 2011. The Special Short-Term contract (SST) was valid for three months, with one-month probation terminable by two weeks' written notice. By letter dated 5th December 2011, James Bean, the Officer In charge of the Respondent, issued Mr. Nabulere with notice of termination of his contract on the grounds of redundancy and lack of funds. The notice of termination was followed by ^a letter of recommendation dated 13th December 2011. The Applicant contested the ground of redundancy and asked for compensation for leave days. The Respondent maintained that the Applicant's termination complied with the employment contract. Through a series of emails, the Applicant countered that he was discriminated against based on sex. He argued that the spirit of his contract was that it would be standardized after the initial three months, and that he would serve permanently. He threatened legal action. In response, by an email dated 13th May 2020, the Respondent's Legal Officer, Evelyn Kachaje, advised that the Respondent enjoyed immunity from proceedings and that the Applicant had not exhausted the Respondent's internal dispute resolution mechanisms ^{(Joint. Administrative Review Board (JAB))}. The Applicant then commenced legal proceedings by filing Labour Dispute No. 327 of 2020, ostensibly referred to this. Court, culminating in Labour Dispute Reference No. ¹⁰¹ of 2021. By ^{the} ^{reference}, the Applicant sought UGX 100,000,000 in compensatory money damages, general, punitive, and exemplary damages, taxes, unconditional reinstatement, and an order that the Respondent be cautioned.

Proceedings and preliminary issue

- [3] When the application was called for hearing before this Court on the 5th of September 2022, the file contained ^a letter dated 26th May 2022 from the Permanent Secretary of the Ministry of Foreign Affairs *(from now "MOFA"),* bringing to this Court's attention the Respondent's immunities and privileges ,/MndeFa Cooperation Agreement signed between the Government of Uganda and : the Respondent on 26th March 2012 and immunities under the Diplomatic Privileges Act Cap. 201. Precedent holds that matters of immunity sit at the heart of the jurisdictional avenue to dispute resolution. We brought this to the Applicant's attention.
- [4] Appearing *pro se,* the Applicant contended that the Respondent had failed to constitute the JAB, hence, his failing of the matter in Court. He cited the cases of **Emmanuel Bitwiromunda v Embassy of Zaire H. C. C. S 858 of 1993** and **John**

Katuramu v Embassy of Zaire H. C. C. S 1069 of 1996 in support of the idea that once an embassy enters into ^a civil contract, it has submitted to jurisdiction.

- [5] Given that the Cooperation Agreement had not been produced before this Court, we directed the Registrar of this Court to obtain ^a copy from MOFA. When this was not forthcoming, a summons to produce the Cooperation Agreement was issued to the Attorney General under Section 18 of the Labour Disputes (Arbitration and Settlement of Disputes)(Amendment Act), 2021. By letter dated the 21st of September 2023, the Solicitor General provided this Court with ^a copy of the agreement, for which this Court is grateful.
- [6] The preliminary question for determination is whether the Respondent enjoys diplomatic immunity and privileges from the court process. In the case of **Sheik Twaha Katungulu Luyimbazi v World Islamic Society,[1](#page-2-0)** we opined that immunity is ^a pure point of law. It goes to the jurisdiction of this Court. Therefore, as ^a matter of law and priority, this Court would have a bounden duty to consider the question of immunities and, by extension, jurisdiction first. It is beyond dispute that a Court may not act if it does not have jurisdiction.

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Analysis and decision of the Court %

- [7] Under Section 2 of the Diplomatic Privileges Act, Cap *201(from now "DPA"),* the President of the Republic of Uganda may, by statutory instrument, make regulations extending any or all of the immunities and privileges conferred on diplomatic agents by virtue of this Act to prescribed organizations and prescribed representatives and officials, subject to such conditions and limitations as may be prescribed. In the exercise of this executive prerogative, under Regulation 2 of the Diplomatic Privileges (Extension to Prescribed Organizations) (Amendment) Regulations, 2003 S.I No. 39 of 2003, the immunities

and privileges conferred on diplomatic agents by virtue of the DPA are extended to the Respondent, as an organization listed in item 6 of the Regulations and to its representatives, officials, and employees who are not citizens of Uganda or persons permanently or ordinarily resident in Uganda. Article 3 of the Cooperation Agreement^[2](#page-2-1) between the Government of Uganda and the Respondent grants to the Respondent the same privileges and immunities as those granted to specialized agencies of the United Nations by the Convention on the privileges and immunities of the specialized agencies of 21st November 1947.

- [8] The Convention^[3](#page-2-2), is elaborate on the specie of inviolability. Under Article II, Sections 2 and 4 of the Convention, the premises, property, archives, and documents of the United Nations are inviolable from judicial action in ^a member

¹ Labour Dispute Reference No. 28 of 2022

² The Agreement is dated the IS⁰¹ of April 2019.

³ Convention No. 4

state, wherever held. Under Article V of the Convention, United Nations officials are immune from legal process for words spoken or written or actions they perform in their official capacity. This immunity is reflected in Article 4 of the Cooperation Agreement.

- [9] The principle of immunity from the receiving state's criminal, civil, and administrative jurisdiction, as provided under the Vienna Convention, was explained in the case **Blueline Enterprises vs. EADB C. A110 of 2009** quoted in **Clet Wandui Masiga vs. Association for Strengthening Agriculture in Eastern and Central Africa (ASARECA) H. C. C. S Nos: 266,267, and 268 of 2016**. The facts in that case were that the plaintiff filed ^a suit seeking damages for intellectual property infringements for works he had made when he was an employee of ASARECA. ASARECA, in its defence, asserted diplomatic immunity. Madrama ^J (os *he then was)* found that the Vienna Convention had been domesticated in the Diplomatic Privileges Act and observed that considering the instrdment creating the organization was imperative. His Lordship quoted a passage from Malcolm N. Shaw's treatise **"International Law"**^[4](#page-3-0) on page 927, where it is observed that as far as other international organizations are concerned, the relevant agreements have to be consulted since there are no general rules but rather particular treaties.
- [10] It is derived from the dicta in the Masiga"case, that immunity from legal process for an international organization must be a function of its constituent instrument. In other words, the approach is to consider the establishment agreement or treaty. In the case before us," under-. Article 1 of the Cooperation Agreement, the Respondent is established to carry out migration programmes. Under Articles 3 and 4 of the Cooperation Agreement, officials of the Respondent and their immediate dependent^enjoy privileges and immunities as under Articles II and IV of the Convention, Article 3 is worded as follows:

"The Organization shall enjoy in Uganda the same privileges and immunities as those granted to specialized agencies of the United Nations by virtue of the Convention on the privileges and immunities the specialized agencies of 21 November 1947."

Articles II to IV of the 1947 Convention grant, immunities to Representatives of Members to the principal and subsidiary organs of the United Nations and conferences convened by the United Nations, while exercising their functions and during journeys to and from the place of meeting, immunity from personal arrest or detention and from seizure of their personal baggage, and, in respect of words spoken or written and all acts done by them in their capacity as representatives, immunity from legal process of every kind. Documents and papers are inviolable,

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⁴ 4, h Edition, Cambridge International Press.

there is complete freedom of speech and independence in the discharge of their duties,

- [11] In the Katungulu case, we adopted the approach of Madrama J (as he then was) in the Masiga case of examining the acts complained of as against the immunities and privileges. We found that the employment and termination of Sheik Katungulu was in an official capacity and, as such, inviolable.
- [12] Adopting the approach in the Masiga and Katungulu cases to the matter before us, the Respondent employed the Applicant as a Human Resource Assistant as part of its official function. The letter of appointment, annexed to the Claimant's summary of evidence as "A," was a special short-term contract on the Respondent's letterhead and dated the 15th of September 2011. Jerry Haslam signed it as Chief of Mission—the body of the letter related to the Applicant's terms and conditions of employment. Similarly, when the Respondent terminated the Applicant, it did so under letterhead dated 5th December 2012. James Bean signed it as Officer In-Charge of the Respondent in Kampala, Uganda, in our view, both the letter of appointment and termination were signed by representatives of the Respondent as part of an official function. It would follow that the Respondent Organization and its representatives and or employees enjoy immunity from legal process in respect of the words written in the letter; determination as stipulated under the Conventions and particularly Articles II to IV of the 1947 Convention, Section 1 of the DPA and Regulation 2 of the Regulations and Articles 3 and 4 of the Cooperation Agreement.
- [13] We note that under Article 5, Section 20 of the Convention, the Secretary-General may waive immunity. Under Section 20 of the Convention, the privileges and immunities are granted to officials in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity of any official in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations. These convention provisions are enacted in Section 1 of the DPA and Regulation 2 of the Regulations. Therefore, save for waiver of immunity, officials of the United Nations

and, by extension, specialized agencies of the United Nations would be immune from the process for actions in the discharge and performance of their duties. The effect of these provisions is that immunity is not absolute. The exceptions, according to the Masiga case(supra), are that ^a diplomatic agent would not be immune in action relating to private immovable property, succession in which a diplomatic agent is involved as executor, administrator, heir, or legatee or an action relating to any professional or commercial activity outside the official functions of the diplomatic agent. The Applicant cited **Emmanuel Bitwiromunda v Embassy of Zaire H. C. C. S 858 of 1993** and **John Katuramu v Embassy of Zaire H. C. C. S 1069 of 1996**. Some brief comments on these cases are necessary. Both these cases relate to ex-parte

orders of attachment and sale of the Embassy of Zaire Property in Kampala. In both cases, the Embassy of Zaire did not enter appearance or file defences, and the Courts entered interlocutory judgments, and execution ensued. The import of these cases is somewhat distinct from the present case. In those cases, an employee of the Embassy of Zaire entered into tenancy agreements and defaulted on payment of rent.

- [14] In the present case, the question is whether an employment grievance against ^a diplomatic agent would be sustainable before ^a Court of law. In **Sabelo Caiphus Vilakati ^v South African High Commission [5](#page-5-0)** B. Ngcamphalala - Ag. ^J of the Industrial Court of Eswatini, in considering whether immunity was absolute, noted that the nature of the action was important. In that case, the Applicants were employed by the South African High Commission in its official capacity. The High Commission carried out disciplinary proceedings against the Applicants, found them guilty, and dismissed them. The Court considered this action official and dismissed the application, citing Article 31 of the Vienna Convention.
- [15] The matter before us concerns an employment dispute between a specialized United Nations Agency and an erstwhile employee. We think that the Respondent, in the present case, took the Applicant as an employee in an official capacity and terminated his services officially and, therefore, under this official banner, would be accorded necessary inviolability under the Convention, Act, Regulations, and Articles of the Cooperation Agreement as cited above. We are fortified in this view by the dicta of the Industrial Court of Kenya in the case of **Mwangi Patrick Githinji & 14 others v the International Organization for Migration[6](#page-5-1)**. In that case, the Claimants brought an action for unfair summary dismissal. The Industrial Court of Kenya found immunities under a Cooperation Agreement between the Government of Kenya and the International Organization for Migration conferred immunities under the Privileges and Diplomatic Immunities Act. Mbaru J., dismissing the claim, held that the Claimants' employment contracts were not subject to the national Court's interpretation. We find this dictum instructive and applicable to the matter before us.

- [16] %:.. As a final point, only a waiver of immunity would have allowed the Applicant to sustain his application. We were not shown any evidence of ^a waiver of the Respondent's immunity. Absent of such waiver, the Respondent is immune to legal process. As observed in paragraphs 6 and 7 above, the Respondent's premises, property, archives, and documents are inviolable. In effect, this Court cannot compel the Respondent to produce the documents sought and, as such, even consider the matter as this Court cannot subject the Respondent to its jurisdiction.

⁵ 384/19] [2021] SZIC156

⁶ Cause No. 2528 of 2013 cited in [2013] eKLR

- [17] We cannot come to any other conclusion except that the Respondent enjoys immunity from legal process in the circumstances of this case. Labour Dispute Miscellaneous Application No. 107 of 2021 stands dismissed. For this reason, there is an equal effect on Labour Dispute Reference No. 101 of 2021, which also stands dismissed with no order as to costs.

Signed, delivered, and dated in Chambers at Kampala this of October 2023

Anthony Wabwire Musana, Judge, Industrial Court

THE PANELISTS AGREE:

- 1. Hon. Jimmy Musimbi,
- 2. Hon. Robinah Kagoye &
- 3. Hon. Can Amos Lapenga.

Ruling delivered in open Court this 2nd day of October, 2023 at 10:17 a.m. o'clock in the presence of: \'

- 1. **For the Applicant:** Applicant is in Court.
- 2. **For the Respondent:** None

r. **Samuel Mukiza.** Court Clerk:

Musana, Anthony Wab Judge, Industrtyl'^ourt

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