

UGANDA / JUDGMENT

Uganda Communications Employees Union and 2 Others v Uganda Telecom Limited and Another (Labour Claim 26 of 2016) [2025] UGIC 16 (10 March 2025)

[2025] UGIC 16

COURT

Industrial Court of Uganda

BEFORE

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

CASE / FILE NUMBER

Labour Claim 26 of 2016

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THE REPUBLIC OF UGANDA IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA, LABOUR CLAIM NO. 26 OF 2015

1. UGANDA COMMUNICATIONS EMPLOYEES' UNION
(UCEU) :::::::::::::::::::::::::::::: CLAIMANTS
2. SARAH NAMUGERWA
3. SAMUEL BAZIMBYE AND 193 OTHERS

VERSUS

1. UGANDA TELECOM LIMITED
(UTL) :::::::::::::::::::::::::::::::::: RESPONDENT
2. NATIONAL SOCIAL SECURITY FUND (NSSF)

Before:

The Hon. Mr. Justice Anthony Wabwire Musana

The Panelists: Hon. Adrine Namara, Hon. Suzan Nabirye & Hon. Michael Matovu.

Representation:

- *1. Prof. John Jean Barya of M/s. Barya, Byamugisha & Co. Advocates for the Applicants.*
- *2. Mrs. Olive Kyalimpa Matovu of M/s. Ligomarc Advocates for the ¹st Respondent.*
- *3. Mr. Allan Waniale of M/s. S&L Chambers for the 2nd Respondent.*

Fly note: Employment law, practice, and procedure-Section 19 Labour Disputes(Arbitration and Settlement) Act Cap. 227(LADASA)-applicability of Evidence Act Cap. 8 to employment disputes-declaration of hostile witness-elements.

Case summary;

The court, in making its ruling, adhered to legal precedents and exercised its discretion under the LADASA to declare the NSSF's witness hostile. This was based on the understanding that typically, only the party who calls ^a witness can seek to cross-examine them if their testimony deviates from prior statements. The court considered the conflicting positions of the co-respondents regarding disputed contributions and referenced precedents where co-defendants with opposing interests were permitted to cross-examine each other's witnesses.

RULING**DECLARATION OF 2nd RESPONDENT'S^S WITNESS AS HOSTILE ***

- [1] On the 7th of March 2025, the 2nd Respondent presented its sole witness, Mr. Isaac Ogwang, its Senior Manager-Enforcement and Litigation. His witness statement made on the 11th of April 2024 was adopted as his evidence in chief. When Professor Barya, appearing for the Claimants, concluded his cross-examination of Mr. Ogwang, Mrs. Kyalimpa Matovu rose on an application to cross-examine Mr. Ogwang. She believed Mr. Ogwang's evidence championed the Claimant's case. Counsel cited section 98 of the Civil Procedure Rules S.1 71-1, inviting this Court to invoke its inherent powers. Mrs. Matovu submitted that in High Court Miscellaneous Cause No. 68 of 2015[1](#page-0-0), the 2nd Respondent was ordered to refund statutory contributions made by the 1st Respondent on behalf of the Claimants who were in excepted employment and ineligible for statutory contributions

¹ **Uganda Telecom Limited v The Managing Director NSSF and NSSF HCMC 68 of 2015**

by the 1st Respondent to the 2nd Respondent. Mrs. Matovu suggested that from reading Mr. Ogwang's witness statement, the 2nd Respondent had set up a case adverse to the 1st Respondent's case.

- [2] Opposing the application, Mr. Waniale, appearing for the 2nd Respondent, confirmed the order for the 2nd Respondent to refund the 1st Respondent in Miscellaneous Cause No. 68 of 2018. He told us that the 2nd Respondent, appealed, successfully, to the Court of Appeal[2]

(#page-1-0)which overturned Mugambe J. He also said that the 1st Respondent had preferred a second appeal to the Supreme Court. It was his view that from the cause and the pleadings, the 2nd Respondent had always been on the 2nd Respondent's side and that if the ¹st Respondent had recognised the adverse case against it, including Mr. Ogwang's witness statement which had been in its possession for many months, it ought to have amended its pleadings to make a case against the 2nd Respondent. He said this Court did not permit the 2nd Respondent to cross-examine the 1st Respondent's witness because no adverse case was set up. He said that the 1st Respondent should be treated in a like manner.

- [3] In a rejoinder, Mrs. Kyalimpa Matovu asked us not to lose sight of the issue before the Court on who was entitled to the 10% contribution remitted to the 2nd Respondent by the 1st Respondent. She reiterated her prayer for Mr. Ogwang to be declared a hostile witness.
- [4] We recessed to consider our ruling, which we now hand down.
- [5] The Evidence Act Cap. 8 of the Laws of Uganda does not define a hostile witness. According to Black's Law Dictionary[3](#page-1-1) a hostile witness is a witness who is biased against the examining party, is unwilling to testify, or is identified with an adverse party. Such a witness is also termed an adverse witness or unfavourable witness. In **Uganda vSsegonga Musa⁴** Bukirwa Ntambi Ag. J borrows from **Okwonga Anthony v Uganda[5](#page-1-2)** where our apex Court cited Sankar's Law of Evidence for the definition of a hostile witness as one willing to go back upon a previous statement made by him. Under Section 153 of the Evidence Act Cap. 8, the Court may, in its discretion, permit a person who calls a witness to put any question to him or her which might be put in cross-examination by the adverse party. This means that a party calling a witness may cross-examine its own witness. The principles expressed in **Ssegonga** and **Okwonga** suggest that the declaration of hostility is a matter of the Judge's discretion based on a witness resiling from a position taken during investigations. In **Okwonga**, the Court said it is important for the trial judge to compare the statement with the witness's testimony. If it is found that the witness's evidence is a departure from his earlier statement, then he would be declared hostile. The Court was of the view that it is up to a party calling a witness to apply that he or she be declared hostile. The opposite party does not have to agree, though it may oppose the application. At its discretion, the trial court can declare a witness hostile and allow the party calling him/her to cross-examine the witness. What emerges from these authorities is that the right to seek to declare a witness hostile is restricted to the party calling the witness. Those authorities also relate to criminal proceedings. From this purview, Section 153 of the Evidence Act does not envisage parties on the same side of the litigation aisle from crossexamining each other's witnesses.

- [6] What is unique about Mrs. Matovu's application is that she seeks ^a co-respondent's witness to be declared hostile. In the main claim, the 1st Respondent resists the Claimant's claim. At paragraph 4 of the written statement of defence[6](#page-1-3), it contends that it has or had no legal obligation to remit contributions to the 2nd Defendant, who is the 2nd Respondent in these proceedings. In its

² **The Managing Director National Social Security Fund and 196 Others [2022] UGCA 223**

³11^m Edn by Bryan Gamer at page 1920

< [2023] UGIC 2

⁵ [2002] UGSC 8

⁶ **The matter was originally filed at the High Court of Uganda as High Court Civil Suit 079 of 2015 hence the pleadings intituled under the CPR.**

memorandum in reply, the 2nd Respondent said it had sought the Attorney General's opinion on the question of entitlement to the contributions and was advised that it should refund the contributions of excepted employees to the 1st Respondent. The 2nd Respondent prayed that the claim be dismissed. Alternatively, it asked this Court to determine whether the contributions remitted to it were made in error.

- [7] Mrs. Matovu seeks to cross-examine Mr. Ogwang. Section 136(2) of the Evidence Act provides that the examination of a witness by the adverse party is called cross-examination. Again, the Evidence Act places cross-examination at adversarial ends.
- [8] In his resolution of an application on all fours with the present one, the Honourable Mr. Justice Henry I. Kawesa, in **Sewava Ssalongo and 18 Others v Male Mukasa and 2 Others*[7](#page-2-0)* observed that where it is shown that the interest between the Defendants' **interse** conflict each other, the other defendant has necessarily to be treated as an adversary and he is certainly entitled to cross examine the other Defendant or his witness. In this case, there was a reference to **Lord v Colvin*⁸ where it was observed that a Defendant may cross-examine his co-defendant who gives evidence or any of his co-defendant's witnesses if his co-defendant's interests are hostile to his own. There was also a reference to the definition of the word adverse, which means going in the contrary direction, counter action, opposing, calamitous, and unprosperous. In the present context, in his witness statement and oral testimony in cross-examination, Mr. Ogwang says that the 2nd Respondent has never resisted the Claimants from accessing their full entitlement. In his words, "Respondent is ready to pay the contributions that it has to the Claimants."* When he was shown REX6, he told this Court that the answer to the question on excepted employment was no. That is the matter for determination before this Court. Given this evidence, we do not accept Mr. Waniala's proposition that the 2nd Respondent has not set up an adversarial proposition to the 1st Respondent. The Respondents are at polar opposites; these are adversarial stances. We agree with Mrs. Matovu that Mr. Ogwang's testimony on

the 10% social security contributions held by the 2nd Respondent entitles the 1st Respondent to cross-examine Mr. Ogwang.

- [9] In the exercise of our discretion and upon considering the broad provisions of Section 8(3) LADASA, which imbue this Court with the powers of the High Court in the exercise of its function and taking into account the broader interests of justice and equity, we declare Mr. Ogwang a hostile witness and open to cross-examination by the 1st Respondent.

It is so ordered.

Signed, sealed, and delivered at Kampala on this 10th day of March 2025

⁷ 2021 UGHCLD 471

LOG 26 of 2015 UCEU & 195 ORS v UTL & NSSF. Ruling. Hostile witness. 10.03.202MwnyV)abwire Musana J.

^{1855,24} LJ Ch 517. This case was cited in *Sri Mohamed ZiaullavMrs Sogra Begum & Anor* HR 1997 KAR 1378 which was itself cited in *Sewava*.*

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THE PANELISTS AGREE:

- 1. Hon. Adrine Namara,
- 2. Hon. Susan Nabirye & ___ 5
- 3. Hon. Michael Matovu.

10,h March 2025

2:33 p.m.

Appearances

1. For the Claimants: Prof. John Jean Barya 16 Claimants.

- For the 1st Respondent:
- For the 2nd Respondent:

Mr. Rodney Nganwa holding brief for Mr. Allan Waniale

Court Clerk: Mr. Samuel Mukiza.

Professor Barya: The matter is for ruling on cross-examination of 2nd Respondent's witness.

Mr. Elijah Tayebwa holding brief for Mrs. Olive Kyalimpa Matovu

Court: Ruling delivered in open Court.

2:37 p.m.

Anthony Wabwire Musana, Judge, Industrial Court of Uganda

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CASE PAGE <https://chat.esheria.ai/case-law/uganda/uganda-communications-employees-union-and-2-others-v-uganda-telecom-limited-and-another-labour-claim-26-of-2016-2025-ugic-16-10-march-2025-unknown-top>

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