

UGANDA / JUDGMENT

Uganda v Sebidde Charles (Miscellaneous Application No. 151 of 2024) [2025] UGIC 38 (28 May 2025) [2025] UGIC 38

COURT

Industrial Court of Uganda

BEFORE

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

CASE / FILE NUMBER

Miscellaneous Application No. 151 of 2024

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THE REPUBLIC OF UGANDA IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA MISCELLANEOUS APPLICATION NO. 151 OF 2024

(Arising out ofKCCA/LUB/LC/010/2024)

UGANDA PROTESTANT MEDICAL BUREAU APPLICANT VERSUS SEBIDDE CHARLES RESPONDENT

Before:

The Hon. Justice Anthony Wabwire Musana

Panelists: Hon. Adrine Namara, Hon. Susan Nabirye & Hon. Michael Matovu.**Representation:**

- *1. Mr. Ambrose Naleba of H & ^G Advocates for the Applicant.*
- *2. Ms. Dusabe & Co. Advocates for the Respondent.*

RULING

- [1] By motion, the Applicant applied for leave to appeal against the award issued by Ms. Irene Nabbumba, Labour Officer, on 25th September 2024. In his supporting affidavit, Mr. Tonny Tumwesigye, the Applicant's Executive Director, averred that while the Respondent's termination was lawful, the Labour Officer had not evaluated the evidence. She had held that the Respondent did not accept the payment in lieu of notice, hence the Respondent had been summarily dismissed.
- [2] The Respondent opposed the application for leave to appeal, raising ^a preliminary point on the propriety of this application. The Respondent argued that the application was intended to validate an illegal appeal lodged without leave and was a tactic to frustrate his application to execute the Labour Officer's award.

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Submissions

- [3] For the Applicant, Mr. Naleba made two principal arguments: first, there was an initial consent to this application upon deposit of 30% of the decretal amount of the Labour Officer's award, and second, the Labour Officer had made various findings of fact regarding summary dismissal. We were referred to **Kampala Capital City Authority v Buwunga** and **The Aids Support Organisation Uganda Limited v Dr. Mugisha²** for the distinction between questions of law and fact, and to buttress the invitation to validate ^a notice of appeal, respectively.
- [4] For the Respondent, it was submitted that the application was incompetent because the appeal had been filed without leave. And Counsel for the Respondent relied on **Dr. Mugisha(ibid).** Citing **Makerere University v Kitumba³** and **Dr. Mugisha,** it was suggested that the Applicant had not shown the specific matters of fact on which the appeal was intended to be anchored. It was also submitted on the authority of **Kitumba,** that filing submission late was dilatory conduct for which we should dismiss the application.

Determination

- [5] It is trite that there is no automatic right of appeal against an award of ^a Labour Officer. Section 93(2) of the Employment Act⁴ provides that an appeal shall lie on a question of law, and with leave of the Industrial Court, on ^a question of fact forming part of the decision of ^a labour officer. The discretion to grant leave to appeal is vested in the Industrial Court. Because of this, we think Mr. Naleba's first contention lacks a firm legal foundation. Leave to appeal is granted by the Court, not obtained by consent, because, in our view, the Court should not be tied down to an appeal whose prospects do not make for a seriously arguable case. We hold this view because even in ordinary civil proceedings, the threshold for leave to appeal requires a court's inquiry into the prospects of success of the intended appeal. In **Sseruwuge v Kinoni Traders Cooperative*

Savings Credit Society⁵* the Honourable Lady Justice Katamba Nkwanga holds the general principle to be that leave to appeal will be allowed where, prima facie, there are grounds of appeal that merit judicial consideration, or the intended appeal has reasonable chance of success, or if the decision sought to be appealed conclusively determines the rights of the parties. Her Lordship cited *Sango Bay Estates Ltd. and others v. Dresdener Bank.⁶* These tests advance the course of earnest appeals, to delimit unmeritorious appeals. Therefore, while the parties may not contest an application for leave to appeal on questions of fact or mixed law or fact, the law vests the ultimate discretion to grant leave with the Court.

3 [2021] UGIC 92

⁵ [2021] UGHCCD 10 6 [1971] EA 17

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¹ [2023] UGIC 53

² [2023] UGIC 126

⁴ Cap 226.

LDMA¹⁵¹ *of*²⁰⁴ UPMB ^v SebicUe Cli.mes. Mr. Justing, (v ¹ yWabwire Musina. Riding 28.05.2025

- [6] The second preliminary point relates to the propriety of the application. Counsel for the Respondent suggests that the Applicant filed an appeal without leave or before applying for leave. Under Section 93(2) EA, an appeal does not lie, as of right, from ^a decision of a labour officer on any question of fact forming part of the decision; ^a dissatisfied litigant must first seek leave to appeal before commencing an appeal. It follows that an appeal cannot only be initiated after leave has been sought. The filing of a notice of appeal or memorandum of appeal does not render the present application incompetent. The Court may validate an existing memorandum of appeal. See *Uganda Civil Aviation Authority v Ojiambo ⁷.* Therefore, any intending Appellant may, as the Applicant now does, seek leave to appeal on questions of fact forming part of the labour officer's decision.
- [7] And while on the question of matters of propriety, we observe that the submissions were all filed outside the timelines set by this court. That is an unhelpful practice because this Court takes decisions on a specific Coram. Our direction was to file all submissions by 25th April 2025, to enable a coram on 16th May 2025. That did not happen because the Applicant filed its submissions on 19th May 2025, while the Respondent filed his submission on 16th May 2025. By late filing, parties deprive themselves of the opportunity to persuade the Court to connect the facts with the law; however, the Court ultimately decides the matter before it based on the evidence presented and not solely on the submission.

- [8] Therefore, this application is not incompetent. The notice and memorandum can be validated. So now, we must return to its merits.
- [9] The threshold for a grant of leave to appeal is that an applicant must satisfy the Court that the question of fact upon which they intend to anchor their appeal must have formed part of the decision of the labour officer and that they have a reason for seeking to make arguments on the question of law.⁸ In *Buwunga (supra)*,⁸ we stated that points of law relate to the interpretation and application of the law to the facts, while questions of fact relate to the findings resulting from the evaluation of evidence.
- [10] In this application, the Labour Officer's award and the draft notice of appeal were attached to Mr. Tumwesigye's supporting affidavit. According to the draft notice of appeal, the Labour Officer is faulted for finding that the Respondent was unlawfully terminated and concluding that the Respondent was summarily dismissed. It is essential to distinguish between termination and dismissal. Termination refers to the end of an employment contract. Under EA, the circumstances are set in Section 64. At the same time, dismissal is a specific form of
- ⁷ [20221 UGIC 18

yWabwire Musanx Ruling28.05.2025 I s ⁸ See *Ojiambo(lbid)*^I LDMA¹⁵¹ of²⁰²⁴ UPMB vSebidde Ckmcs.

termination that occurs when an employer ends an employee's contract because of the employee's misconduct or poor performance. The standards and yardsticks for lawful termination differ from those for a summary dismissal. The complaint is that the Labour Officer found unlawful termination and summary dismissal from the evidence. This means that, based on the evaluation of the evidence, there were twin findings of fact: summary dismissal and termination. In our estimation, this satisfies the threshold for a grant of leave to appeal on questions of fact. Because the threshold also requires our satisfaction with the prospects of success of the appeal, we think the matter of termination and dismissal warrants judicial consideration. We therefore do not accept the Respondent's hypothesis that the Applicant was not specific. Conversely, we find that the Applicant clearly articulates the need for further judicial considerations on the questions of dismissal and termination. For these reasons, we would grant the Applicant leave to appeal.

Accordingly, the Applicant is granted leave to file a memorandum and record of appeal against \$[11]\$ the decision of the Labour Officer, Ms. Irene Nabbumba, in KCCA/LUB/LC/010/2024, Sebidde *Charles v Uganda Protestant Medical Bureau*.^{*} The memorandum and record of appeal shall be filed within 30 days of the date of this ruling. There is no order as to costs.

It is so ordered.

Anthony Wagwire Musana, Judge, Inclustrial Court

Signed, dated and delivered at Kampala this 28th day of May 2025

The Panelists agree.

- 1. Hon. Adrine Namara
- 2. Hon. Susan Nabirye
- Hon. Michael Matovu

LDMA 151 of 2024 UPMB v Sebidde Charles. Ale. Justice Anti-Ly Wabnire Musana. Ruling
28.05.2025

28th May 2025

10.28 a.m.

Appearances

- 1. **Mr. Collins Mugisha** for the Respondent
- 2. The Claimant's Human Resource Manager, **Ms. Dorothy Nakyanze**, in Court.
- c.c **Mr. Samuel Mukiza**.

Mr. Mugisha: Matter for ruling. We are ready to receive it. Court: Ruling delivered in open court.
usana, LDMA¹⁵¹ of 2024 UPMB v Sebidde Charles. Mr. Justice Anti-Ly Wabnire Musana. Ruling 28.05.2025. I Ammerfy Wabwin Judge of the Industrial Court of
Uganda.

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