THE REPUBLIC OF UGANDDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO. 68 /2009

5 **G4S SECURITY SERVICES (U) LTD :::::::::::::::::::::: APPELLANT**

VERSUS

201 FORMER EMPLOYEES OF G4S

10 **SECURITY SERVICES (U) LTD :::::::::::::::::::::::: RESPONDENTS**

(Excluding those who withdrew

Their Complaints)

CORAM: HON JUSTICE A.E.N MPAGI-BAHIGEINE, JA.

15 **HON JUSTICE C.K BYAMUGISHA, JA.**

HON JUSTICE S.B.K. KAVUMA, JA.

(Appeal from the Decision of the High Court at Kampala before Hon. Lady Justice Anna Magezi Dated 20th July 2009 in Misc. Appl. No. 653/2007] Arising

20 **from Kampala District Labour Dispute No. CB 954/2006).**

JUDGEMENT OF HON. A.E.N MPAGI-BAHIGEINE, JA

25 The dispute concerns arbitral awards by the District Labour Officer. This appeal is by the employers, G4s Security Services (U) Ltd, from the ruling of the High Court in HCMA 653/07/09, allowing execution of the partial arbitral award to the respondents who were the appellants' former employees, by the District Labour Officer, on 20th July 2009, in Kampala Labour Dispute No. LB 954/2006.

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The respondents filed Labour Dispute No. CB 954/06 with the Kampala District Labour Office claiming long service awards, repatriation, overtime, weekly rest and daily lunch break, annual leave, sick leave and emergency leave not taken.

The Labour Officer first mediated the long service awards and repatriation and awarded a figure of Shs. 122,800,000/= in respect thereof to the respondents.

Due to the fact that the industrial court had not yet been constituted, the respondents state that they could not execute the award. The record however indicates that the appellants instructed their counsel to appeal after failing to reach a settlement over the awards made especially the long service awards.

The respondents filed HCMA No. 653/07/09 for an order that the said labour officer's award aforesaid be executed. On 20th July 2009, the High Court ordered execution of the award. Hence this appeal.

Mr. Andrew Kabombo appeared for the appellant while Mr. Mafaabi Godfrey was for the respondents. Both counsel adopted their written arguments as their submissions. Their oral submissions only served to highlight some salient points and authorities.

During the joint conferencing, three issues were agreed upon, namely:

1. **Whether the trial judge was right to enter judgement in favour of the respondents without hearing Labour Dispute No. LB 954/2006 on merits.**
2. **Whether the trial judge evaluated the evidence properly before ordering execution.**
3. **Whether the trial judge exercised the inherent powers of court in holding that the respondents were free to execute the judgement in their possession when evidence was to the contrary.**
4. **What are the remedies?**

On issue No. 1, whether the learned judge was correct to enter judgement without hearing Labour Dispute No. LB 954/2006 on merits, Mr. Andrew Kabombo for the appellant pointed out that the judge improperly evaluated the evidence on record and also wrongly exercised the inherent powers of court thus entering an erroneous judgement in the sum of Shs. 122,800,000/=. He pointed out the steps taken to file the notice of appeal in accordance with the **Employment Act, 2006 Section 94 (2)** on the question of law. No leave was necessary. They filed the notification of dispute in the labour office in 2007, under **Rule 3 of the Trade Disputes [Arbitration and Conciliation] [Industrial Court] Procedure Rules 2006.**

The appellants applied for the record of proceedings which were not forthcoming.

An application for stay of execution was filed and served on the respondents who filed an affidavit in reply thereto. It had not been heard by the time of the application for execution. It was stated that the application for execution was based on untruths. It should be set aside.

Mr. Godfrey Mafaabi for the respondents contended that the learned trial judge pronounced a ruling based on Misc. Application No. 653 of 2007 after submissions from either party.

He pointed out that the application was brought under **Order 52 rules 1 and 3 of the Civil Procedure Rules. Section 98 Civil Procedure Act and Sections 14 (1) and 33 of the Judicature Act.** The appeal is incompetent as no leave was sought and obtained as required under the **Employment Act, S.94.** Furthermore the appellant proceeded under the wrong law, the **Trade Disputes [Arbitration and Conciliation] Act.** The instant matter was not a trade dispute but an employment one. The respondent prayed for the appeal to be dismissed.

The Employment Act, 2006, **Section 13(1) (a)** vests the Labour Officer with powers to investigate and dispose of complaints in the following terms;

a) "Investigate the complaint and any defence put forward to such a complaint and to settle or attempt to settle any complaint made by way of conciliation, arbitration, adjudication, or such procedure as he or she thinks appropriate and acceptable to the parties to the complaint with the involvement of any Labour Union present at the place of work of the complainant……………"

With the above in mind, I observe that the learned judge in her ruling solely dealt with the matter of whether or not she had jurisdiction to issue an order for execution of the award.

She concluded:

"I therefore, reiterate that Judgement is entered for the applicants who are free to execute the judgement in their possession in the manner provided by the law".

Once protestations concerning the propriety of the subject matter of the execution were raised by counsel for the respondent, the learned judge was thereby put on notice

and it was incumbent upon her to inquire into the matter for which the execution order was being sought, as to whether the labour officer properly exercised his mandate under **S.13 (1).** Failure to do so inevitably caused a miscarriage of justice. The appellant had raised some pertinent issues of law concerning their company policy.

5 This was a peculiar case in that there was a gap, lacuna in the machinery of justice created by the non existence of the industrial court. There was uncertainty as to the proper course to take

The record indicates that during the hearing of the application the following facts

10 were brought to the attention of the court:

- The Respondents being dissatisfied with the award intended to appeal in accordance with the **Employment Act, 2006**, **Section 94(1).**
- A Notice of Appeal was filed in the Kampala Labour Office.

Due to the fact that the industrial court was not constituted for a long time, the

15 appellants proceeded under the **Labour Disputes (Arbitration and Settlement) Act 2006** and filed a notification of their appeal in the Labour Office and requested a copy of the proceedings.

The affidavit of Leon Jacobs, Managing Director of the appellants, dated 21-01-2008 is evidence to this fact. It is averred in paragraphs 5, 6, 7 and 9 thereof, thus:

20 **5. That I am further informed by the above said lawyer that there being no regulations for the forum which an appeal from the award of the labour officer to the industrial court should take, a notice of appeal was lodged in the labour office and subsequently a notification of Dispute was filed in the industrial court under Rule 3 of the Trades Disputes [Arbitration and**

25 Settlement] [Industrial Court] (Procedure) Rules S.I 224 – 3, which Statutory Instrument is saved under Section 44(2) of The Labour Disputes [Arbitration and Settlement] Act No. 8 of 2006 and provides for the referral of labour disputes to the Industrial Court.

30 **6. That I am also informed by the said lawyers that Rule 4 of the above said Rules requires the Clerk of the Industrial Court to notify the parties of the Registration Number of the dispute and to fix the date and place of the hearing.**

7. That to date the clerk of the Industrial Court has not informed the parties of the registration number because the industrial court is not constituted and thus the respondent cannot file the statement of the nature and particulars of the claim before the Industrial Court causing it to appear as though the respondent has not filed an appeal before the industrial court.

9. That on 21st March 2007, the respondent filed Miscellaneous Application No. 01 of 2007 in the industrial court for stay of execution of the award of the Labour Officer to which the applicants filed affidavits in reply and to date the said application has neither been fixed for hearing in the industrial court nor referred to the High Court for hearing and/ or orders therein………..".

On 21st March 2007, Catherine Achande swore an affidavit in support of the application for stay of execution, in which she challenged the propriety of the partial awards as being against the applicant's policy and the respective contracts of service. Paragraph 7 thereof states;

"7. The applicant is ready to make a deposit in respect of the costs of the said labour dispute as security for the performance of the award".

The respondents to this appeal, in arguing the application before the learned judge, based their arguments on what they considered to be fatal procedural irregularities viz failure to obtain leave to appeal under **Section 94(1) and (2) of the Employment Act**, invoking **rule 3** of the **Trade Disputes [Arbitration and Settlement] Rules** and failure to apply for stay of execution, all of which have been explained away in the affidavit of Leon Jacobs, the Managing Director of the appellant company (supra).
The appellant was appealing on a question of law for which no leave was required [**Section 94 (2)].**
This Section clearly spells it out:

94 (2) *An appeal under this section shall be on a question of law, and with leave of the Industrial Court, on a question of fact forming part of the decision of the labour officer.*

It is a bit puzzling for the respondents to over look such clear provisions and further to deny that the appellant never filed any application for stay of execution when Apiko

Sam, one of the respondents, swore an affidavit on 4th April 2007, in reply to the applicant's application for stay of execution and in opposition thereof.

The fact that it was not fixed for hearing in time was not to be blamed on the appellants but the court. The learned trial judge should have taken cognizance of this application and should not have proceeded to issue execution before disposing of it. Once papers are already filed in court the court ought not to ignore them. It should order for the matter to be disposed of first.

The High Court has unlimited jurisdiction to entertain the matter under **Section 33 Judicature Act (Cap 13)** which provides**:**

"33. The High Court shall, in the exercise of the jurisdiction vested in it by the Constitution thus Act or any written law, grant absolutely or on such terms and conditions as it thinks just, all such remedies as any of the parties to a cause or matter is entitled to in respect of any legal or equitable claim properly brought before it, so that as far as possible all matters in controversy between the parties may be completely and finally determined and all multiplications of legal proceedings concerning any of those matters avoided".

I consider the learned judge should have taken the trouble to acquaint herself with the genesis of the matter before sanctioning its finality by way of execution. That being the case the appellants cannot be held at ransom for the non existence of the Industrial Court, over which they have no control.

I consider this appeal ought to succeed so that the matter can be given an exhaustive appraisal. This I would think, takes care of the other remaining issues.

Since my lords C.K. Byamugisha, JA and S.B.K Kavuma, JA both agree, the appeal stands allowed, with costs.

Dated at Kampala this…**29th**...day of…**July**...**2010**.

A.E.N MPAGI-BAHIGEINE,

JUSTICE OF APPEAL

JUDGMENT OF S.B.K.KAVUMA, JA

I have read, in draft, the judgment prepared by The Hon Lady Justice A.E.N.Mpagi-Bahigeine, JA.

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I agree with it and the orders made therein.

Dated at Kampala this …**29th** …day of …**July**…2010.

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S.B.K.KAVUMA

Justice of Appeal

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