THE REPUBLIC OF UGANDA,

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO 167 OF 2018

(ARISING FROM THE INDUSTRIAL COURT OF UGANDA LABOUR DISPUTE CLAIM NO 096 OF 2015)

(CORAM: KAKURU, MUSOTA, MADRAMA, JJA)

ENGINEER JOHN ERIC MUGYENZI} .....APPELLANT

VERSUS

UGANDA ELECTRICITY GENERATION CO. LTD} .....RESPONDENT

JUDGMENT OF COURT

The appellant lodged an appeal from the ruling of the Industrial Court at Kampala before Honourable Chief Judge Asaph Ruhinda Ntengye, Honourable Lady Justice Tumusiime Mugisha Linda and honourable members of the panel Mr Ebyau Fidel, Mr. Anthony Wanyama and Mr. Habiyamelemye Dominic given at Kampala on 7th April, 2017 in Labour Dispute Claim Number 96 of 2015.

In its ruling, the Industrial Court held that, the issue of limitation of the action can be raised at any stage of the proceedings and need not be pleaded first. Secondly, the Labour officer had not exercised his discretion to allow the appellant's claim outside the time prescribed by section 71 of the Employment Act and the Labour officer had exclusive discretion whether to allow the complaint outside the period of three months prescribed. Thirdly, the appellant's action was time barred and struck out accordingly.

The appellant was aggrieved and lodged an appeal on the following grounds:

1. The learned trial Judges of the Industrial Court erred in law when they made a finding that the point of law of limitation can be raised without being pleaded contrary to Order 6 rule 6 of the Civil Procedure Rules.

2. In the alternative the claim before the Industrial Court was not time barred.

3. The learned trial Judge of the Industrial Court erred in law when they interfered with the discretion of the Labour officer who admitted the appellants claim out of time.

4. The learned trial Judges of the Industrial Court erred in law when they failed to make a finding that the point of law of limitation could only be raised by way of appeal to the Industrial Court pursuant to section 94 of the Employment Act.

At the hearing of the appeal Learned counsel Mr. Ebert Byenkya appeared for the appellant while learned Counsel Ms Olivia Kyalimpa Matovu appeared for the respondents.

On the first issue, the appellant's counsel submitted that the issue of limitation was not pleaded contrary to Order 6 rule 6 of the Civil Procedure Rules. He contended that if it had been pleaded, the appellant would have had an opportunity to respond to it and therefore it was improper for the Industrial Court to entertain the issue. The Industrial Court erred in law to rule that a point of law can be raised at any time under the circumstances.

On the alternative ground, learned counsel submitted that the action was not time barred. He submitted that, section 71 of the Employment Act is not concerned at all with the filing of actions in the Industrial Court. It does not provide for a limitation period as such for actions in a court of law. He contended that it is the Employment Act that provides for limitation periods. In this case, the action was commenced under section 5 (3) of the Labour Disputes (Arbitration and Settlement) Act. He submitted that, labour disputes are initially commenced before the Labour officer who can refer the same to the Industrial Court. The Labour officer did not refer the matter under the Employment Act. The provision in question does not prescribe any time limits for lodging a claim with the Labour office. It is not couched as a limitation period because for instance under section 3 of the Limitation Act, an action for breach of contract has a limitation period of six years. In the appellant's case, the limitation period is six years. The period of three months is a non-existent limitation period that was imposed by the Industrial Court. He further submitted that the High Court can handle any dispute arising from contract and to take away the unlimited original jurisdiction of the High Court would be unconstitutional.

In reply Ms Olivia Kyalimpa Matovu opposed the appeal and adopted her conferencing notes filed on court record containing skeleton arguments against the granting of the appeal.

She submitted on ground one of the appeal that the Industrial Court rightly held that a point of law may be raised at any stage of the proceedings though it is not pleaded. She relied on the case of **Tororo Cement Limited v Frokina International Ltd; S.C.C.A No 2 of 2001 (arising from C.A.C.A No 21 of 2000)** for the proposition that the point of law can be raised at any stage of the proceedings.

Further, she submitted that Order 6 rule 6 of the CPR and the head note thereof states that it is about a new fact which must be specifically pleaded. It provides that the defendant or plaintiff shall raise by his or her pleadings all matters which show the cause of action or counterclaim not to be maintainable or that the transaction is either void or voidable in point of law and all such grounds of defence or reply as the case may be if not raised would be likely to take the opposite party by surprise.

Ms Kyalimpa submitted that the provision is intended to cater for matters that are new that may not have been in the knowledge of the plaintiff or defendant which party is on the other side which matter would come as a surprise to them and would mean that there are some facts that would be pleaded by that other party that could raise the issue of fraud, limitation, release, payment, performance or facts showing illegality either by statute or common law.

On the alternative ground, she submitted that section 71 of the Employment Act requires a complaint to be filed within 3 months. The facts are within the knowledge of the party who is aggrieved. An aggrieved party is required to examine the statute to establish whether the intended action would be within the time prescribed in that statute. Where it is not within the time prescribed, the law requires an explanation as to why the action could not be brought within three months. That is why under the general law of limitation, it is necessary to plead disability so as to qualify for adducing proof of exemption from the law of limitation. The pleadings at the onset must indicate the date the cause of action arose and it is from that point that the party would know whether they are within time or not. If it is a matter of seeking extension of time, then the party must plead for instance the facts as to why it could not be brought within three months.

On the issue of whether a complaint lodged under section 71 of the Employment Act is lodged under the Civil Procedure Rules, she submitted that the Civil Procedure Rules can be used for comparison. The issue of when the cause of action arose would not be a fact that would be a surprise for purposes of application of Order 6 rule 6 of the Civil Procedure Rules. Section 71 of the Employment Act prescribes the timelines within which to file the complaint as well as making provision for extension of time or allowing the complaint out of time utilised by the party commencing the proceedings. The employee who is aggrieved should show cause to the Labour officer as to why the complaint should be accepted outside the three months period. In the circumstances, the respondent had not even been called by the Labour officer and the matter proceeded ex parte so the issue could not have been raised before the Labour officer by the respondent. Counsel emphasised that the onus was on the complainant before the Labour office to move the Labour officer to accept the complaint out of time. This was never done.

The Labour officer had jurisdiction under section 93 of the Employment Act in the instances referred to in that section, to deal with the grievance of the appellant. The Labour officer tries to settle the matter by conciliation or mediation. Furthermore, under section 94 of the Employment Act, a party aggrieved by the decision of the Labour officer may appeal to the Industrial Court. The labour officer is the specialised tribunal just like the Tax Appeals Tribunal with specific timelines within which an action can be commenced before him and therefore the courts cannot apply the general law of limitation which deals with general causes of action.

In rejoinder Mr. Ebert Byenkya with reference to section 93 of the Employment Act submitted that there is a distinction between an infringement of the Act and violation of terms of service. He contended that the case before the court concerns violation of the contract of service. The Labour officer deals with infringement of the Act as well as obligations under the contract of service. It is therefore not restricted by section 93 (2) of the Employment Act for purposes of going to the Labour officer first by way of the complaint. It was within the rights of the appellant to first go to the civil division of the High Court or to the Industrial Court straight away as a labour dispute. The term "contract of service" is defined by both the Labour Disputes Act as well as the Employment Act in similar terms and is different from an infringement of the Act.

In further reply to the submission of the appellant's counsel, the respondents counsel submitted that the labour officer has jurisdiction in both instances of infringement of the Act as well as violation of the terms of service under section 93 of the Employment Act. Any person dissatisfied with the decision of the Labour officer may then appeal to the Industrial Court.

Resolution of appeal

The jurisdiction of the Court of Appeal in this matter is provided for by section 22 of the Labour Disputes (Arbitration and Settlement) Act, 2006 which provides that:

> "An appeal shall lie from a decision of the Industrial Court to the court of appeal only on a point of law, or to determine whether the Industrial Court has jurisdiction over the matter."

The right of appeal from a decision of the industrial court arises only on a point or points of law or to determine whether the Industrial Court had jurisdiction over the matter.

The facts of the appeal are not in dispute and the court is called upon to interpret the law only.

The points of law for consideration in this appeal are whether the issue of limitation had to be pleaded before it could be considered and whether the action of the appellant in the Industrial Court was barred by statute. Secondly, whether the section relied upon by the respondent to object to the appellant's action which had been upheld by the Industrial Court created a limitation period and required a complaint to be lodged before a labour officer within three months from the time the cause of action arose. Last but not least the court is called upon to interpret broadly whether an action such as that of the appellant pursuant to dismissal has a limitation period of three months or can be lodged within six years from the time the cause of action arose in a court of law. Having carefully considered the grounds of appeal and the issues agreed to at the conferencing as well as submissions of counsel we shall address the points of law as broadly as required by the issue at hand as it affects the conduct of labour disputes.

The brief background to the appeal is that the appellant was employed by Uganda Electricity Generation Company Ltd as a Chief Executive Officer or Managing Director under a written contract for a term of three years. The appellant's contract was terminated on 30th of July 2014 and being aggrieved initiated proceedings before the Kampala Labour Officer. The application was lodged in the Labour office in April 2015. It was contended for the appellant that the termination was unlawful under section 69 of the Employment Act pursuant to which the appellant sought payment of various heads of claim in sums of money totalling to Uganda shillings 449,252,148/=. In a letter dated 12th May, 2015, the Labour officer Mr Michael Baruch referred the dispute to the Industrial Court on the following grounds:

1. The Labour Officer is of the opinion that a substantial question of law or fact has arisen in the proceedings and is therefore unable to resolve the dispute.

2. The question or issues are:

    a. Whether the summary dismissal of the claimant by the respondent was malicious, unfair, wrongful and unlawful;

    b. Whether the claimant is entitled to general, special and punitive damages and if so, how much? And

    c. Whether the claimant is entitled to costs.

The facts in the summary of proceedings of the Labour Officer are that on 22nd April 2015 Messieurs Byenkya, Kihika and company advocates lodged a complaint with the

Labour Office/KCCA on behalf of the appellant requesting that the matter is handled by the Industrial Court on the ground that it involves a substantial question of law under section 5 (1) (a) and (b) of the Labour Disputes (Arbitration and Settlement) Act, 2006.

The appellant lodged a claim in the Industrial Court and served it on the respondent. At the hearing the respondent objected to the action in the Industrial Court on the ground that the action or reference was time barred by the time the complaint was lodged in the labour office. After hearing arguments from both sides the Industrial Court held that the issue of limitation need not be pleaded and can be raised at any time. Secondly, the Labour officer had not exercised his discretion to allow the appellant's claim outside the time prescribed by section 71 (2) of the Employment Act was not absolute and was subject to the exclusive discretion of the Labour officer to admit the complaint out of time but such discretion had not been exercised and the complaint was filed out of time. Further, that the claimant caused the reference of the matter to the Industrial Court outside the provisions of section 5 of the Labour Dispute (Arbitration and Settlement) Act. In the premises, they upheld the preliminary objection to the claim in the Industrial Court and struck it out with no order as to costs.

The first issue for consideration is whether the Industrial Court erred in law to hold that the issue of limitation raised against the claim of the appellant did not have to be pleaded first before it can be entertained under the general principle that a point of law can be raised at any stage of the proceedings. We have found the argument to be very tenuous because as a matter of fact it is admitted in the submissions of the appellant's counsel that the claim was lodged outside the three months period prescribed by section 71 (2) of the Employment Act 2006. The only proposition of law advanced by the appellant's counsel is that if it had been pleaded first, he would have had an opportunity to respond to the averment and would have the advantage of pleading for instance disability or any other ground. It is a further proposition that when this happens, the appellant would seek the indulgence of the Labour officer to accept the claim outside the period of three months prescribed for the lodging of complaints with the Labour officer under section 71 of the Employment Act 2006. We shall consider this point together with the submission that the Labour officer indeed accepted the claim outside the three months and it was his discretion to do so whereupon he referred the dispute to the Industrial Court for adjudication. Court was invited to further consider the jurisdiction of the Labour officer in the circumstances of the case and to determine the point as to whether the action could be filed in the Industrial Court as the court of first instance or in the High Court. The court was

invited to consider jurisdiction of the Labour officer under section 93 of the Employment Act.

The appellant's counsel relied on the provisions of Order 6 rule 6 of the Civil Procedure Rules for the contention that a defence of limitation has to be pleaded otherwise it would not be admissible. Order 6 rule 6 of the CPR provides that:

> "6. New fact must be specially pleaded.
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> The defendant or plaintiff, as the case may be, shall raise by his or her pleading all matters which show the action or counterclaim not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence or reply, as the case may be, as if not raised would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the preceding pleadings, as, for instance, fraud, limitation act, release, payment, performance, or facts, showing illegality either by statute or common law."

A literal reading of the rule requires the defendant not to surprise the plaintiff with a point of law such as the action being barred by the Limitation Act. Secondly, illegality either by statute or common law ought to be pleaded. The rule cannot be read in isolation of other rules which permit a point of law to be determined either on the pleadings or after evidence has been adduced. The issue is at what stage a point of law should be determined and not whether it cannot be raised if it is not pleaded. Issues of law can arise from the evidence adduced at the trial even if it had not been pleaded. Pleadings are there to give notice to the opposite side that something would be raised at the trial or hearing which they ought to defend or be ready for. In the case of **SN Shah v CM Patel and others [1961] 1 EA 397,** the East African Court of Appeal sitting at Nairobi considered the Kenyan equivalent of Order 6 rule 6 of the CPR.

> "... under O. VI, r. 5, of the Civil Procedure (Revised) Rules, 1948, it was for the appellant to raise this plea in his defence if he intended to rely upon it and it was for him to make it good. If he had raised the matter when he should have raised it, there would have been an opportunity for the plaintiffs to call evidence to show, if this was the fact, that they were in a position, when the suit was commenced, to hand back the plaintiffs' promissory notes on payment of the amounts found due.... However this may be, it was for the first defendant to plead the point and give an opportunity for evidence to be called upon it. It was too late to rely on it in a final address when the evidence had been closed."

In **Balwant Singh v Kipkoech Arap Serem [1963] 1 EA 651** the East African Court of Appeal considered the issue in relation to waiver and estoppels when they held that:

> "If a plaintiff relies on either waiver, which is based on contract, or estoppel, which stems from a rule of evidence... the facts giving rise to these pleas are material facts and should be pleaded (see Order VI, rules 1 and 5). There is, however, this difference between the two pleas: waiver gives rise to a cause of action and if the claim is based on waiver the facts should be pleaded in the plaint; but estoppel merely enables an independent cause of action to succeed by preventing a defence from being raised and thus the facts relating to estoppel would normally be pleaded in the reply and not in the plaint."

In as much as Order 6 rule 6 of the Civil Procedure Rules is couched in mandatory terms, it cannot preclude a point of law where facts are not in dispute or are agreed upon from being raised. In the case of **NAS Airport Services Limited v The Attorney-General of Kenya [1959] 1 EA 53** the East African Court of Appeal considered the effect of an application of the equivalent of Order 6 rule 28 of the Civil Procedure Rules for determination of a point of law upon application to court and determination of a point of law arising from the pleadings when they said:

> "Order 6, r. 27, under which the order appealed from was made reads as follows:
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> > "27. Any party shall be entitled to raise by his pleading any point of law, and any point so raised shall be disposed of by the court at or after the hearing, provided that by consent of the parties, or by order of the court on the application of either party, the same may be set down for hearing and disposed of at any time before the hearing."
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> This rule reproduces in all essentials the English O. 25, r. 2 of the Rules of the Supreme Court, as it stood before its amendment in 1958. Its general object and scope are summarized in the following words by Romer, L.J., in Everett v. Ribbands (4), [1952] 2 Q.B. 198 at p. 206:
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> > "I think where you have a point of law which, if decided in one way, is going to be decisive of litigation, then advantage ought to be taken of the facilities afforded by the Rules of Court to have it disposed of at the close of pleadings or very shortly after the close of pleadings."
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> Clearly the object of the rule is expedition. But to achieve that end the point of law must be one which can be decided fairly and squarely, one way or the

other, on facts agreed or not in issue on the pleadings, and not one which will not arise if some fact or facts in issue should be proved; for in such a case the short-cut, as is so often the way with short-cuts, would prove longer in the end."

The judgments above advance the principle that a point of law can arise out of the pleadings or otherwise. Under Order 15 of the Civil Procedure Rules, issues of law or fact can arise and issues of law which tend to dispose of the suit wholly or substantially ought to be tried first. Order 15 rule 2 of the CPR provides that:

"2. Issues of law and issues of fact.

Where issues both of law and of fact arise in the same suit, and the court is of opinion that the case or any part of it may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined.

The rule is applicable where the issues of law arise from the pleadings, they can be tried at the beginning of the trial as a preliminary point of law. However the court is not precluded from trying any point of law upon application of the defendant under Order 6 rule 28 of the Civil Procedure Rules which provides that:

28. Points of law may be raised by pleading.

Any party shall be entitled to raise by his or her pleading any point of law, and any point so raised shall be disposed of by the court at or after the hearing; except that by consent of the parties, or by order of the court on the application of either party, a point of law may be set down for hearing and disposed of at any time before the hearing.

A point of law can be raised in the pleadings or by application to court or on the basis of consent of the parties and upon uncontested facts. An issue of law can also arise from the documentary evidence or parole evidence. The rationale behind the pleadings raising issues of law is to give the other party notice of the point so that they can defend it. However the subsequent rules indicate that issues can be framed at any stage of the proceedings and the materials from which issues can be framed are spelt out under Order 15 rule 3 of the CPR which provides that:

"3. Materials from which issues may be framed.

The court may frame the issues from all or any of the following materials—

(a) allegations made on oath by the parties, or by any persons present on their behalf, or made by the advocates of the parties;

(b) allegations made in the pleadings or in answers to interrogatories delivered in the suit; and

(c) the contents of documents produced by either party."

The position of law therefore is that, a party to a suit must disclose in the pleadings every question of fact and law to be determined as an issue. However, one is not precluded from raising a question of law simply because it was not pleaded. Limitation is both a question of fact and law and ought to be pleaded, unless of course the facts are not in issue.

Allegations can be made on oath by witnesses or by any persons present on their behalf or by the advocates of the parties. Secondly, allegations made in pleadings or answers to interrogatories and the contents of documents produced by either party can form the basis of an issue. We have considered the pleadings before the Industrial Court. It is clearly stated in the letter of complaint to the Labour office dated 22nd April, 2015 at page 7 of the record that the appellant was employed on 17th May, 2012 as a Chief Executive Officer or Managing Director and his employment was supposed to be for a period of three years pursuant to a written contract. Thereafter the contract was terminated summarily on 30th July, 2014. The letter also discloses that the appellant had filed a suit in the Industrial Court in **Labour Dispute Claim Number 258 of 2014** on 5th November, 2014. The document has all the material facts upon which to raise the issue of limitation. Additionally, the memorandum of claim before the Industrial Court paragraph 5 thereof indicates when the cause of action arose. This is supported by the affidavit of the appellant which gives the facts in support of the dispute. Secondly, the issue is that the matter was raised by the respondents. The response to the claim can be found at page 28 – 31 of the record but does not raise the issue of limitation.

The Civil Procedure Rules on the question of pleadings has to be read together and its rules not read in isolation of one another. Order 6 rule 1 of the CPR requires the plaintiff to plead all the material facts disclosing a cause of action. Secondly, the particulars necessary to be pleaded are supposed to be pleaded under Order 7 rule 1 of the Civil Procedure Rules. Order 7 rule 6 of the Civil Procedure Rules presupposes that a plaintiff knows whether a suit is barred by the law of limitation and claims exemption thereof or not. It provides that:

"6. Grounds of exemption from limitations.

Where the suit is instituted after the expiration of the period prescribed by the law of limitation, the plaint shall show the grounds upon which exemption from that law is claimed."

It imposes a duty on the plaintiff to plead exemption if the action is barred by the law of limitation. For that reason we agree with the submissions of the respondents counsel that the plaintiff ought to know whether the action is barred by the law of limitation. This is made even clearer by Order 7 rule 11 (d) of the Civil Procedure Rules:

"11. Rejection of plaint.

"The plaint shall be rejected in the following cases—

(a) where it does not disclose a cause of action;
(b) ...
(c) ...
(d) where the suit appears from the statement in the plaint to be barred by any law;"

The provision that the plaint be rejected on the grounds stated above is mandatory (see **Auto Garage and others v Motokov (No 3) [1971] 1 EA 514**). In **Jeraj Shariff & Co v Chotai Fancy Stores [1960] 1 EA 374,** it was held by the East African Court of Appeal that:

"The question whether a plaint disclose a cause of action must be determined upon a perusal of the plaint alone, together with anything attached so as to form part of it, and upon the assumption that any express or implied allegations of fact in it are true."

The allegations of fact in the statement of claim included facts indicating when the cause of action arose and when the action was filed could be discerned from the attachments such as the letter of complaint. Last but not least, the Civil Procedure Rules is not applicable to a complaint lodged with the Labour Officer under section 71 of the Employment Act and the rules of pleading there under are not applicable. In the premises, ground 1of the appeal has no merit and is hereby disallowed.

In alternative ground under which grounds 2 and 3 are subsumed is **whether the claim of the appellant was time barred under section 71 (2) of the Employment Act, 2006**. Section 71 of the Employment Act provides that:

""71. Unfair termination

(1) An employee who has been continuously employed by his or her employer for at least 13 weeks immediately before the date of termination, shall have the right to complain 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 other period as the employee shall show to be just and equitable in the circumstances.

(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 rights 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 employee or group of employers and a labour union.

(5) If court finds that the dismissal is unfair, the court may –

(a) order the employer to reinstate the employee;

(b) order the employer to pay compensation to the employee.

(6) The court shall require the employer to reinstate or re-employ the employee unless –

(a) the employee does not wish to be reinstated or re-employed;

(b) the circumstances surrounding the dismissal are such that the continued employment relationship would be intolerable;

(c) it is not reasonably practicable for the employer to reinstate or re-employ the employee; or

(d) the dismissal is unfair only because the employer did not follow a proper procedure."

The issue for consideration is whether section 71 of the Employment Act quoted above in subsection 2 thereof prescribes a limitation period. The whole section is to be read in context. First of all, it refers to the time within which to lodge a complaint under that section. Secondly, it provides that the complaint shall be made to the 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 circumstances. Before dealing with the issue of whether it was shown to be just and equitable in the circumstances, it is prudent to first resolve whether the provision gives a limitation period at all.

Under section 71 (4) it is clearly provided that the right of an employee to make a complaint under the section shall be in addition to any right an employee may enjoy under an agreement between an employer or group of employers and a labour union. It is therefore abundantly clear that it deals with the rights of an employee to make a complaint to the Labour officer. Does this preclude an employee from filing an action in a court of law? This question can be partially answered by considering section 71 (5) of the Employment Act which clearly envisages a court finding a dismissal to be unfair and giving the kind of orders which a court of law may order. Which court/s is/are envisaged under this provision?

Section 2 of the Employment Act 2006 does not define the term "court" but expressly defines the term "Labour officer" to mean the Commissioner or a district Labour officer. It also defines "Industrial Court" to mean the Industrial Court established by the Trade Disputes (Arbitration and Settlement) Act, 2006. In other words by using the expression "court" it is open for consideration whether it means a court of judicature, subordinate court or Industrial Court.

Secondly, we heard submissions premised on section 71 (1) of the Employment Act, 2006 about what cause of action can be the subject of claim to be lodged before the Labour officer. Section 71 (supra) *inter alia* deals with the minimum period of employment which would entitle an employee to lodge a complaint. Secondly, subsection 3 of the same section bars any person who has been terminated on a probationary contract from lodging a complaint. The provision read in context deals with the rights of an employee to lodge a complaint rather than the limitation of such a right by prescribing the period within which to lodge the complaint.

Both advocates who appeared in the appeal addressed the court on the question of jurisdiction over claims and remedies as prescribed by section 93 of the Employment Act. The section provides that except where the contrary is expressly provided for by the Employment Act or any other Act, the only remedy available to a person who claims an infringement of any of the rights granted under the Act shall be by way of the complaint to a Labour officer. Secondly, a Labour officer has jurisdiction to hear and to settle by conciliation or mediation a complaint by any person alleging an infringement of any provision of the Act. Thirdly, the Labour officer has the right to settle through conciliation or mediation a complaint by either party to a contract of service alleging that the other party is in breach of the obligations owed under the Employment Act. The issue addressed was whether the appellant's action was an action alleging infringement of a right or obligation under the Employment Act. The appellant's counsel submitted that the appellant's case concerns infringement of the terms of service in a contract and not an infringement of the Employment Act per se.

On the other hand the respondent's counsel submitted that the Labour officer can deal with an infringement of a contract of service.

It is expressly provided in all instances under section 93 that there has to be a person alleging infringement of any provision of the Act or either party alleging against the other any breach of the obligations owed under the Act. The matter is made clearer by sections 93 (3), (4), (5) and (6) which provide as follows:

> "(3) Where there is an infringement of this Act, the Labour officer shall have the power to order a party to comply with the provisions of this Act and, in accordance with its provisions, make the aggrieved party whole.
>
> (4) Where there is a breach of obligations owed under the contract of service, the Labour officer shall have the power to order a party to respect the obligations owed and, in accordance with the terms of the contract, make the aggrieved party whole."
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> (5) Where the Labour officer has found both an infringement of the Act and a breach of obligations owed under a contract of service, the remedy he or she shall order shall not result in double recovery for the aggrieved party.
>
> (6) A claim in tort arising out of the employment relationship; claim shall be brought before a court and the labour officer shall not have the jurisdiction to handle such a claim...."

When read in context, the above provisions make it clear that there has to be an allegation of the infringement of the Act even if it is coupled with an allegation of breach of the terms of the contract of service. It follows that the Labour officer can only entertain the matter if it concerns an infringement of the rights granted or obligations under the Employment Act and any order made in respect of compliance to terms of service is corollary to the primary jurisdiction to deal with infringement of the Act.

Further, any claim in tort arising out of an employment relationship shall be brought before a court and the Labour officer has no jurisdiction to handle such a claim. First of all this resolves the first controversy as to what is meant by the term "court" since the term "Industrial Court" is defined for separately. The expression "court" means a court of judicature or a subordinate court and does not refer to a Labour officer or the Industrial Court. From the above premises, it follows that the orders envisaged under section 71 (5) for unfair dismissal, in terms of the right to reinstate the employee or order the employee to pay compensation to the employee must mean an order of a court of judicature or a subordinate court. An employee appearing before the Labour

officer can only apply the methods of settlement by conciliation or mediation. Conciliation and mediation by necessary implication lead to a settlement agreeable or acceptable to the parties.

In the premises, section 71 (2) does not bar an action for reinstatement or compensation in a court of law on the ground of unfair dismissal. It also follows that an action for unfair dismissal does not fall within the ambit of the powers of a Labour officer upon unfair termination. The unfair termination envisaged under section 71 is strictly in relation to infringement of the Employment Act and not necessarily an infringement of the contract of service or the terms thereof. Section 71 (2) is not a limitation period for the commencement of any action in a court of law or a court of judicature.

Secondly, the Labour officer has jurisdiction and power to allow a complaint outside the period of three months upon justification by the complainant as to why the complaint was brought outside the three month period or not within three months from the date the cause of action arose. The cause of action arises from the termination of the employment of an employee who has been in continuous employment of the employer for a minimum of thirteen weeks immediately before the termination. It does not and cannot limit a person whose services are terminated within 12 weeks or a period of three months as this may depend on the terms of the contract of service whose express terms are breached within a period of less than 13 weeks. Last but not least a limitation period expressly provided for by Parliament cannot be extended by a court of law unless extension is permitted under the same law.

The Court of Appeal when it was the highest court in Uganda has considered extension of time to lodge an appeal under section 62 (1) of the Advocates Act which provides that:

> "Any person affected by an order or decision of a Taxing Officer made under this Part of the Act or any regulations made under this Part of the Act may appeal within 30 days to a Judge of the High Court who on that appeal may make any order that the Taxing Officer might have made."

This was in **Makula International Ltd v His Eminence Cardinal Nsubuga and another [1982] HCB 11** when the Court of Appeal decided whether courts have jurisdiction to enlarge the time prescribed by section 62 (1) of the Advocates Act to appeal out of the prescribed time and in paragraph 11 of the digest held that: "A court has no residual or inherent jurisdiction to enlarge a period of time laid down by statute and therefore the Judge's order extending the time within which to appeal, several months after the expiry of the statutory period, was made without

jurisdiction, was a nullity and would be set aside. This decision was revisited in **Sitenda Sebalu v Sam K Njuba and another Election Petition Appeal Number 26 of 2006.** The facts of the Election Petition Appeal were that the trial Judge refused an order to extend time within which to serve the notice of presentation of an election petition filed out of time. The relevant limitation period is section 62 of the Parliamentary Elections Act 2005 which provides that:

> "Notice in writing of the presentation of petition accompanied by a copy of the petition shall, within seven days after the filing of the petition, be served by the petitioner on the Respondent or Respondents, as the case may be."

The Court held that the provision is repeated in the rule 6 (1) of the Parliamentary Elections (Election Petition) Rules which provides that within seven days after the filing of the petition, the petitioner or his or her advocate shall serve on each Respondent notice in writing of the presentation of the petition, accompanied by a copy of the petition. Further, rule 19 of the Parliamentary Elections (Election Petition) Rules provides that:

> "The court may of its own motion or on application by any party to the proceedings, and upon such terms as the justice of the case may require, enlarge or abridge the time appointed by the rules for doing any act if, in the opinion of the court, there exists certain special circumstances as make it expedient to do so."

The Supreme Court concluded after considering some decisions on whether an enactment couched in imperative language should be considered directory or mandatory that breach of section 62 of the Parliamentary Elections Act would not render any act done in disobedience of the enactment void. They held that the provision was directory and not mandatory. Secondly, the statute in question in section 93, gave the Chief Justice in consultation with the Attorney General mandate to make rules of practice and procedure under the Parliamentary Elections Act and therefore legislature had authorised the making of the rules and rule 6 of the Parliamentary Elections (Election Petitions) Rules which provided for seven days within which to serve the notice of presentation of the petition read together with rule 19 which permitted the enlargement of time for service gave the court jurisdiction.

From the above provisions, we can conclude without any contradiction to the above decisions that a limitation period is a bar to an action but section 71 (2) of the Employment Act just prescribes the period within which to lodge a complaint with the Labour officer with the rights of the Labour officer to allow the complaint outside the period of three months. It does not limit the powers of the Labour office as to when to allow the application. It only requires the complainant to justify the filing of the

complaint outside the period of three months. In this case the Labour officer without making any notes allowed the complaint to be filed. In any case, he had the powers to abridge the time within which to allow the complaint to be filed. The Industrial Court erred on a matter of procedure to treat the provision as a limitation period or a setback to the action and instead ought to have referred it back to the Labour officer for consideration on the ground that the reference was premature. The appellant alleges that he is entitled to compensation of over Uganda shillings 400,000,000/=. It is patently unjust to cut him off as if his claims were barred by the law of limitation. Moreover, the appellant had alleged breach of contract of employment, wrongful dismissal and non-payment of accrued employment and terminal benefits. The appellant further moved the Labour officer albeit without having heard the respondents, to refer the matter to the Industrial Court on the ground that it was fit for trial by the Industrial Court and not the labour officer. Perhaps, this was the issue that had to be considered as to whether the Labour officer had jurisdiction to entertain the claim. The issues which the Labour officer referred were whether the summary dismissal of the claimant and the respondent was malicious, unfair, wrongful and unlawful. Secondly, the issue was whether the claimant is entitled to general, special and punitive damages and if so how much. The Labour officer had no jurisdiction to award general, special or punitive damages. Neither did he have jurisdiction to determine whether the termination of employment was malicious. His jurisdiction was limited to establishing whether a provision of the Employment Act had been infringed and to order compliance with the Act.

With those few observations, it was erroneous to strike out the claim of the appellant on the ground that it was barred by the law of limitation. The alternative ground of the appeal that the Industrial Court erred to order that the action was barred by the law of limitation is allowed. The action was not barred by the law of limitation. If anything, the Industrial Court could have in the very least declined to hear the matter and could have referred it back to the Labour officer with directions to consider whether the claim should be entertained outside the time limited by section 71 (2) of the Employment Act.

With reference to the powers of the Industrial Court under section 5 of the Labour Disputes (Arbitration and Settlement) Act, the issue is whether the reference was tenable. The section provides that if within four weeks after receipt of the dispute, it has not been resolved in the manner set out in the Act, or the conciliator appointed considers that there is no likelihood of reaching an agreement, the Labour officer shall at the request of any party and subject to the provisions of the Act, refer the dispute to the Industrial Court.

The issue here is whether the reference was lawfully referred to the Industrial Court. As a matter of fact, the record indicates that the basis of the reference is that a substantial question of law or fact had arisen in the proceedings and the Labour officer was unable to resolve the dispute. From the resolution of the alternative issue above, it is clear that the Labour officer did not have jurisdiction in terms of the subject matter of the claim to deal with the complaint. Under section 5 of the Labour Disputes (Arbitration and Settlement) Act, 2006, instances when a labour officer may refer the dispute to the Industrial Court are provided for in the following words:

> "5 (1) If, four weeks after receipt of a labour dispute –
>
> (a) the dispute has not been resolved in the manner set out in section 4 (a) or (c); or
>
> (b) a conciliator appointed under section 4 (b) considers that there is no likelihood of reaching any agreement,
>
> the Labour Officer shall, at the request of any party to the dispute, and subject to section 6, refer the dispute to the Industrial Court.
>
> (2) Notwithstanding subsection (1), the period of conciliation may be extended by a period of two weeks, with the consent of the parties.
>
> (3) Where a labour dispute reported to a Labour officer is not referred to the Industrial Court within eight weeks from the time the report is made, any of the parties or both the parties to the dispute may refer the dispute to the Industrial Court."

The above section presupposes that the matter was properly lodged before a Labour officer whereupon it is sent for conciliation. In the alternative, if the matter is not referred to the Industrial Court within eight weeks from the time the report is made by the conciliator, any of the parties or both parties to the dispute may refer the dispute to the Industrial Court.

The manner of dealing with the complaint is provided for under section 4 of the Labour Disputes (Arbitration and Settlement) Act. The Labour officer is supposed to act within two weeks after receipt of the report which is made under section 3 of the said Act. First of all it was mandatory to serve the respondent a copy of the report of complaint in a labour dispute made by a party. Thereafter the Labour officer may meet the parties and endeavour to conciliate and resolve the dispute; or appoint a conciliator to conciliate the parties in dispute and inform the parties in writing of the appointment; or refer the dispute back to the parties with comments and proposals to the parties of the terms upon which settlement of the Labour dispute may be

negotiated; reject the report and inform the parties accordingly giving his reasons for rejecting it having regard to the matters provided there under. Lastly, the labour officer may inform the parties to the dispute that the report comprises matters which cannot be dealt with under the Act.

It is mandatory for a Labour officer at the request of any party to the dispute to refer the dispute to the Industrial Court. The grounds for referring the dispute are spelt out by section 5 of the Labour Disputes (Arbitration and Settlement) Act quoted above. The first problem encountered by the appellant is that he did not serve the respondent a copy of the report or complaint to the labour officer under section 3 (4) and therefore the Labour officer dealt with the matter without the participation of the respondent. However, the Labour officer did refer the matter to the Industrial Court at the request of one of the parties albeit without participation of the other party. Secondly, the law envisages a period of four weeks after receipt of the labour dispute where it has not been resolved in accordance with section 4 or the conciliator appointed considers that there is no likelihood of reaching an agreement is when the labour officer shall at the request of any party to the dispute refer the matter to the Industrial Court.

The appellant did not follow the established procedure of serving the respondent neither was the period of four weeks before the reference is made complied with. The letter of reference to the Industrial Court is dated 12th May, 2015 and the complaint addressed to the labour officer is dated 22nd April, 2015. This is less than four weeks prescribed by section 5 of the Labour Disputes (Arbitration and Settlement) Act.

The above notwithstanding, the controversy in this court crystallises into whether the Industrial Court had jurisdiction to deal with the reference as an original court. In the reference letter of the labour officer itself, it is clear that the labour officer desired the court to determine and dispose of the dispute. The functions of the Industrial Court are set out by section 8 of the Labour Disputes (Arbitration and Settlement) Act which gives the function of the Industrial Court as that of arbitrating on labour disputes referred to it under the Act; adjudicating upon questions of law and fact arising from references to the Industrial Court under any other law. The reference was not made under any other law but was purportedly made under the Labour Disputes (Arbitration and Settlement) Act. The Labour officer was of the opinion that a substantial question of law or fact had arisen in the proceedings and it was therefore unable to resolve the dispute.

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 of Uganda. However, the Industrial Court has jurisdiction to adjudicate upon questions of law and fact

arising from references to the Industrial Court. The questions referred were whether the summary dismissal of the claimant by the respondent was malicious, unfair, wrongful and unlawful. Secondly whether the claimant is entitled to general, special and punitive damages and if so, how much?

The Industrial Court has jurisdiction to arbitrate on references made by the labour officer and to adjudicate upon questions of law and fact. Lastly, the question is whether the reference was a reference under any other law. This is because section 8 (1) (a) of the Labour Disputes (Arbitration and Settlement) Act, envisages arbitration on labour disputes referred to it under the Act and the appellant's matter as far as the substance is concerned does not arise from a reference envisaged under the Labour Disputes (Arbitration and Settlement) Act because the claim itself was seeking payment of consolidated salary of the unexpired term of 8 months amounting to Uganda shillings 213,881,408/=, a car in lieu of eight months at Uganda shillings 29,306,248/=, unpaid gratuity up to March 2014 at Uganda shillings 80,205,528/= and National Social Security Fund at Uganda shillings 40,841,104/=. It was alleged in the claim that the termination was unlawful under section 69 of the Employment Act. Section 69 of the Employment Act concerns summary termination. It provides inter alia that no employer has the right to terminate the contract of service without notice or with less noticed than that to which the employee is entitled to under any statutory provision or contractual term. Secondly an employer is entitled to dismiss summarily and the dismissal would be termed justified, where the employee has, by his or her conduct indicated that he or she has fundamentally broken his or her obligations arising under the contract of service. The appellant attached a memorandum of claim filed by him against Uganda Electricity Generation Company Ltd and received on 17th October, 2014 by the Industrial Court. Secondly, a memorandum in reply filed by Uganda Electricity Generation Company dated 5th November, 2014. This formed part of the claim in the complaint to the Labour officer. The attached documents were not included in the record of appeal.

It was submitted by the respondent's counsel that the appellant had actually filed the action in the Industrial Court and the same had been dismissed for being prematurely filed in the Industrial Court which handles references only. It is also clear that the appellant subsequently a report of the dispute to the Labour officer and attached the pleadings of the appellant in the Industrial Court and the response of the respondent. The above notwithstanding, the respondent was not notified of the claim before the Labour office though the labour officer had all the materials upon which the parties have expressed themselves in their pleadings in the complaint. It follows that the reference arises from the attached claim and response of the respondent because the submission of the Labour officer to the Industrial Court cannot only arise from the

letter of complaint dated 22nd April, 2015 but includes a claim which he said was before him for the questions that he referred. Those questions are not contained in the letter of complaint but in the attachment of the pleadings initially filed in the Industrial Court.

In the premises, the Labour officer had the mandate and authority to refer the question to the Industrial Court. Further, the Industrial Court could determine the questions. We also find it disturbing for litigants to be subjected to uncertainty as to which forum to file an action in. Obviously if the matter had been filed in the High Court, there was likelihood that the same issue of whether it was properly before the High Court could be raised, because the Industrial Court is the court established as a special court to handle labour disputes and its decisions are appealable to the Court of Appeal. The Industrial Court should use its jurisdiction to adjudicate on issues or fact or law under section 8 (1) (b) and 8 (2) of the Labour Disputes (Arbitration and Settlement) Act to handle all labour disputes such as that referred to it by the labour officer in this appeal. The claim of the appellant which included a claim for general, special and punitive damages comes under any other law and could be adjudicated upon by the Industrial Court.

The final result is that the appeal substantially succeeds and the decision of the Industrial Court striking out the appellant claim is set aside. The dispute is referred back to the Industrial Court for expeditious adjudication in terms of Section 8 (2) of the Labour Disputes (Arbitration and Settlement) Act, of the questions referred by the Labour officer. Each party shall bear his or its own costs of this appeal.

Dated at Kampala the 18th day of April 2019

Kenneth Kakuru

Justice of Appeal

Stephen Musota

Justice of Appeal

Christopher Madrama

Justice of Appeal