THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

MISC. CAUSE NO. 314 OF 1997

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BARCLAYS BANK OF (U) LTD……. APPLICANTS

— Versus —

N.V.C.C.P. TECH. EMPLOYEES…….. RESPONDENTS

BEFORE: - HON. THE PRINCIPAL JUDGE - MR. JUSTICE J.H. NTABGOBA

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RULING

This is an application for Orders of Certiorari and prohibition to be issued calling for and quashing the interpretative decision of the Industrial Court delivered on 11/2/97 in Trade Dispute No. 2 of 1993; and to issue a prohibition prohibiting that Industrial Court's award from taking effects, and the Industrial Court, by its Chairperson or Deputy Chairperson or any one else on the Court's behalf, from causing the award to be published in the gazette or the respondent or any person from enforcing the award against the applicant. The applicant is the Barclays Bank of Uganda, Limited, while the respondent is the National Union of Clerical, Commercial, professional and Technical Employees. The applicant was and still is a member of the association of Uganda Bankers and was party to the collective Bargaining Agreement, together with other member banks which was concluded with the respondent under the Trade Dispute (Arbitration Settlements) Act, Cap. 200 of the Laws of Uganda, as amended by Decree 18 of 1974 called "The Trades Disputes (Arbitration & Settlements) (Amendment) Decree, 1974.

The brief back ground to this application will assist in understanding the issues involved. On 22/6/94, a recognition agreement was entered into between the applicant (collectively with

the other members of the Association of Uganda Bankers) and the respondent (on behalf of the Association Unionised Employees). Thereafter a collective agreement was signed governing the general terms and conditions of service of the said unionised employees. An appendix to the Agreement known as Appendix 'B' which governs the salaries and other benefits of the employees seems to be the source of this applications. A dispute arose between the signatories to the correct interpretation of Annexture 'B', as regards the application of the terms and conditions of service for the period 1st January to 31 December, 1993. This matter was in due course referred to the Minister of Labour. The Minister, in turn, referred the matter to the Industrial Court for its interpretation of the award it had made on 18/4/95 and which had switched the effect of the award retrospectively to the period 1st January to 31st December, 1993. The Industrial Court gave its interpretation on 11/2/97. It is this interpretation that the applicant is challenging as wrong on a number of grounds, which Counsel for the applicants gave as six as follows—

(1) that the interpretation of the Court was null and void and ultra vires the Act in that the Industrial Court's award was not published in the gazette; that the omission breached the provisions of S.8(l) of the Act (as amended by Decree 18 of 1974).

Counsel for the applicant contends that the provision for the Industrial Court's award to be published in the gazette is mandatory and that such publication must be made within 28 days from the time of the award.

S.8(l) of the Act, as amended enacts that:—

"(1) If any question arises as to the interpretation of any award of arbitration tribunal or the Industrial Court, the Minister or any party to the award may, within twenty eight days from the time of the publication of the award, apply to the tribunal or the Court for a decision on such question, and the tribunal or the Court shall decide the matter after hearing the parties, or without such hearing provided the consent of the parties has been first obtained."

Mr. Kanyerezi introduced, in support of his argument, the provisions of S.8 (4) and 8.11(1) of the Act (as amended). He emphasised that. Subsection (4) of section 8 as well as S.8(1) interpret 8.11 . that an award of the tribunal or the Court must be published.

I will reproduce S.8(4) and 5.11(1) since I have already reproduced S.8(l). Section 8(4):—

"The decision of the arbitration tribunal or the Industrial Court as to the effective date of the award shall be conclusive, so, however, that if no such date has been determined by the tribunal or the Court, the award shall take effect from the date of its publication under Subsection (1) of this section".

Section 11 subsection (1) provides:—
"If any question arises as to the interpretation of any award of an arbitration tribunal or the Industrial Court, the Minister or any party to the award may, within twenty eight days from the time of publication of the award, apply to the tribunal or the Court for a decision on such question, and the tribunal or the Court shall decide the matter after hearing the parties, or without such hearing provided the consent of the parties has been first obtained".

Whereas the time within which a tribunal's or the Court's award must be published after the award is made has not been provided by the Act, it is clear that for such award to be submitted to the tribunal or the Court for interpretation, such submission or application must be made within 28 days from the time of publication of the decision in the gazette, pursuant to section 8(1) of the Act. This implies that the publication is mandatory and this is fortified by the provisions of S. 8A which constitute failure to implement a published award a punishable offence. This is what S.8A (l) says in this regard.

"(1) Every employer who fails or refuses to implement an award of an arbitration tribunal or the Industrial Court within 28 days from the date of its publication under subsection (1) of section of this Act, commits an offence and shall be liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding twelve months or to both".

In my understanding, an award under this Act must be published. If it is not published, it cannot be referred to the tribunal or the Court for the interpretation of the award made by the tribunal or the Court since submission of the award to the tribunal or the Court for such interpretation must be within the period of 28 days from the award's publication. In short, no publication of the award, no referral of such award back to the tribunal or the Court which made the award for interpretation. If an application is made to the Court under S. 11(1) before it has been published, the Court should decline to interprete it.

I need not go into the question whether or not the award had been published when it was referred to the Court for interpretation, since Counsel Kanyerezi, on saying so, Counsel Matovu did not oppose him or produce proof that the award had been published in the gazette.

In the result, an award that was not published at the time it was referred to the Court for interpretation should not have been so referred and the Court should not have interpreted it. I declare that its interpretation was ultra vires the Act and that it was null and void and should not be obeyed.

It is necessary to add that condonation of non-publication of an award under 6. 8(1) of the Act, being a penal offence under S. 8(A) of the Act, it should not be condoned for to condone it is to condone an illegality which Courts cannot do. (See Prof. Syed Hug —vs— The Islamic University in Uganda, Supreme Court Civil Appeal No. 47/95). I have, I must say, looked at the decision of Rajasingham J, in the case of Trade Dispute No. 4/91 (NIC —Vs— NUOCCP & TECHNICAL EMPL0Y.ES). The judge did not attempt the question of publication in his decision which only concentrated on the interpretation of S. 101 of the Civil Procedure Act — In any case, even if the Judge had dealt with the issue of the time of publication of an award, I get the impression that he would have error. This is because he had started on the wrong premises where he stated at page 2 that "section 11 of the Act as amended by Decree 18 of 1974 permits a party to an award to request for an interpretation of the award 'within 28 days from the time of the award'". With due respect to the Judge, 3.11(1) and S. 8(3) of the Act permit a party to apply for an interpretation of an award within 28 days of the publication, and not of the award as he stated.
Should my decision on the first ground be wrong, I then turn to grounds 2 and 5. This is with regard to the decision of the Industrial Court in its ward given on 18/4/95 but made retrospectively to cover the period 1st January to 31st December 1993. When the Court was asked to interpret its award pursuant to S.11 of the Act, it decided that the award would apply to all the employees of the banks involved in the award working with such Banks at any time during 1993.

The present application disputes that interpretation. Mr. Masembe Kanyerezi thinks that the employees who should benefit by the award are those employees who were working as the employees of the applicant when the Industrial Court's proceedings were commenced

because, according to Counsel, those were the employees who were party to the proceedings. In my view the question which arises is the same or analogous to the question that arises with regard to ground number *5*, and I think this is the reason why Mr.. Kanyerezi argued the two grounds together. He argues that the date from which the award takes place was 1.l2.9. Mr., Kanyerezi heavily relies on the continuation clause of the collective Agreement (Annexture 'A' to the affidavit of Peter H. Boyd sworn in support of these applications. The clause reads: —

"In the event of negotiations taking place on salaries, Rent Subsidy, leave Allowance, Medical Allowance, Cost of Living allowance Transport Subsidy, Luncheon Subsidy and Night Computer Allowance after twelve monthly intervals and in the event that on the parties entering into negotiations on the terms and conditions of a New agreement after 3 years, until such time as such negotiations are finalized the provisions of the present Agreement shall continue in force".

Mr. Kanyerezi has advanced a number of arguments to support his contention that the effective date of the award was not 1st January 1993 but 1st December 1993**.** One of such arguments is that where a party was dismissed party to the suit, he is not bound by the remuneration and cannot benefit so he concludes that even though the Industrial Court made its decision of 18.4.95 but making retrospective to 1st January 1993, only the employees who were in employment on 1.12.93 would be entitled to the benefits of the award. He says this is because 1.12.93 was the date when the Industrial Court proceedings commenced.

There are two points to remember when Mr. Kanyerezi's above argument is being considered. One point is that the Industrial Court is empowered by S.8(3) of the Act a to make a retrospective award "to a <u>date not being earlier than. the date on which the dispute to which the award relates first arose'.</u>

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This means that if the date on which the dispute arose which gave rise to the award was 1.12.93, then my second point is that the Court was wrong to switch the award to date when the 1st January 1993 which is a date earlier than the/dispute arose. The Court's award should have been made retrospective but not to a date earlier than the date on which the dispute arose which, as I am told, was 1.12.93. The award of the Court

to cover the period 1st January to 31st December 1993 was therefore manifestly wrong and I uphold Mr. Kanyerezi's contention that there was an error in the Court's award and in its interpretation thereof on the face of the record. If I may say, the Court had no power to disobey the statutory provisions of S.8 in subsection (3) which provides

'an award of an arbitration tribunal or the industrial court shall take effect from such date as maybe determined by the tribunal or the court as the case maybe, and maybe made retrospective to date not being earlier than the date on which the dispute to which the award relates first."

This is also a sufficient ground to set aside the industrial court's interpretative decision and to quash its award and I hereby set aside the decision and quash the award. But I will still proceed to consider grounds 3 and four of the application . Ground 3 states that there is an error of law on the face of the record in that the industrial court erred in law in holding that as long as the dispute remained undetermined there was no current agreement in existence when on the true interpretation of the annual collective agreements the agreement for the previous period remained in force and was applicable up till such time as the negotiations on a new agreement were concluded and it came into force.

There is not much I can do other than refer to the continuing clause of the collective agreement (see the penultimate paragraph of clause 2 at page 1 of Annexture `A' the supporting affidavit of Mr. P.H.Boyd).

Certainly, upto 1st December, 1993 the previous agreement continued in force and was applicable to the parties until 1st December 1993 when the new terms entered into force.

In answer to the 4th ground I agree with the contention on behalf of the applicant that the industrial court's award did apply only to the employees who died, or retired or were dismissed by the employer banks before that date.

With regard to the sixth ground, I can only say that the letters of retirement received by the employees, whether or not as a retrenchment, had nothing what soever bearing on the court's award. In other words, if an employee had been retired or to say, retrenched before the date on which the award commenced to apply he had nothing to benefit from that award. I do agree with the applicants' contention that any letter of retirement received before the 1st day of December 1993 was lawful with its packages. The industrial court award was not in any way applicable to retirements that took place before 1.12.93.

In the result, all grounds upon which this application was based are upheld and I find for the applicant and grant the orders as applied for in the application. I also order that the respondent shall pay the costs of this application.

J.H.NTABGOBA
PRINCIPAL JUDGE
10/7/98

10/7/98; Mr. Masembe for the applicants
Mr.Matovu for the respondents
Absent.
Court Ruling delivered.

D.K.WANGUTUSI
REGISTRAR, H/COURT
10/7/98