

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA
CIVIL SUIT NO. 030 OF 2020

WETTAKA FRANCIS:: ::: PLAINTIFF

VERSUS

ATTORNEY GENERAL ::: DEFENDANT

BEFORE HON LADY JUSTICE FARIDAH SHAMILAH BUKIRWA

RULING

Brief facts and background.

In October 1980, the Plaintiff was recruited into the Uganda Police Force and was posted to Katwe Police Station as a Police Constable. On 20th November 1981, the Plaintiff was arrested and detained at Katwe Police Station for the murder of a suspect who had passed on in police custody while the Plaintiff was on duty. On 26th April 1983, the charges were withdrawn against the Plaintiff whereof he resumed his duties as a Police Constable until he was unlawfully and unfairly dismissed from service in the Uganda Police Force.

On the 25th day of April 1983, the Plaintiff applied to the Uganda Police Force for reinstatement to his lawful employment and duties as police constable since the charges against him had been dropped. However, by reply from the Uganda Police Force received by the Plaintiff on the 30th day of August 1989, his application for reinstatement was unsuccessful. The Plaintiff on the 30th day of August 1999 wrote to the Inspector General of Government requesting them to intervene in the matter but did not obtain any assistance hence this suit.

Orders sought

The Plaintiff seeks for orders for damages of UGX SHS. 200,000,000 (twenty million shillings) for unlawful termination from the Uganda Police Force, general damages, exemplary damages and costs of the suit.

Representations

Sarah Bingi from the Attorney General's Chambers appeared for the Defendant and Counsel Allan Ogoi of Okalang Law Chambers appeared for the Plaintiff.

When the matter came up for hearing, Counsel for the Defendant informed Court that this suit was supposed to be instituted at Kampala where the cause of action arose. Counsel further argued that since it is a labour dispute, the suit was filed in

a wrong Court and should have been filed in the Industrial. Court ordered both parties to file written submissions.

Issues

1. Whether this Court has territorial jurisdiction to entertain this suit.
2. Whether this court has the subject matter jurisdiction to entertain this suit.

Submissions

Both Parties filed written submissions which the Court has taken into consideration in arriving at its decision.

When the matter came up for hearing of the Respondents application for extension of time within which to file its Written Statement of Defence, Counsel for the Defendant raised an objection as to the jurisdiction of this Court. On the first issue, Counsel for the Defendant submitted that whereas the High Court has unlimited original jurisdiction in all matters and such appellate and other jurisdiction under Article 139 (1) of the Constitution of the Republic of Uganda, this Court has no territorial jurisdiction to entertain this suit. Counsel relied on Section 15 of the Civil Procedure Act Cap 71 and Criminal Revision No. 0002 of 2018, Uganda vs Hon. Kassiano Ezati Wadri and 31 Others to argue that while certain provisions may give the courts power to hear certain causes, other provisions may limit the rights of certain parties to avail themselves of that jurisdiction.

Counsel for the Defendant further submitted that section 19 of the Judicature Act Cap. 13 imposed a limit on the territorial jurisdiction of the High Court by creating circuits.

On the issue as to whether this Court has the subject matter jurisdiction to entertain this matter, Counsel for the Defendant submitted that there is an employer-employee relationship between the Plaintiff and the Defendant, and since the Employment Act of 2006 confers jurisdiction in employment disputes on the Labour Office with appeals to the industrial Court, the suit is premature as it was supposed to be lodged by way of a Complaint on Oath to the Labour Office and as such the suit should be dismissed.

Counsel for the Plaintiff submitted that the Defendant had no audience before this Court for failure to file its Written Statement of Defence despite being served twice by the Plaintiff. The Plaintiff further contended that in the premises, the Defendant had no locus standi to object to the territorial jurisdiction of this Court. The Plaintiff further submitted that Sections 93(1) and 94 of the Employment Act do not in any way oust the jurisdiction of the High Court which is conferred upon it by virtue of Article 139 (1) of the Constitution and that as such, the jurisdiction

of the High Court can only be altered by a Constitutional amendment or by an Act of Parliament.

Decision

The Law

Article 139(1) of the 1995 Constitution of Uganda provides that the High Court shall have subject to the provisions of this Constitution, have unlimited original jurisdiction in all matters and such appellate and other jurisdiction as may be conferred on it by the Constitution or other law.

Section 14 (1) of the Judicature Act Cap states that, “the High Court shall, subject to the provisions of this Constitution, have unlimited original jurisdiction in all matters and such appellate & other jurisdiction as mat be conferred on it by this Constitution or other law.

Section 15 (c) of the Civil Procedure Act Cap 71, provides that subject to the limitations in Section 11 to 14, every suit shall be instituted in a Court within the local limits of whose jurisdiction the cause of action wholly or in part arises.

With regard to the Plaintiff’s contention that the Defendant has no audience before this Court to object to its jurisdiction for failure to file its Written Statement of Defence, this Court is obliged to hear any objection to its jurisdiction which would otherwise culminate in an illegality if ignored.

In the case of **Makula International Ltd (1982) HCB 11**, it was held that, “an illegality once brought to the attention of Court overrides all questions of pleading including admissions.”

In the premises, this Court agreed to take into consideration the Defendant’s submissions objecting to its jurisdiction.

I will first resolve issue two that is whether this Court has the subject matter jurisdiction to entertain this suit

Article 193(1) of the Constitution together with Section 14 (1) of the Judicature Act confer on the High Court unlimited jurisdiction in all matters.

Section 93(1) of the Employment Act 2006 provides that;

“Except where the contrary is expressly provided for by this or any other Act, the only remedy available to a person who claims an infringement of any of the rights granted under this Act shall be by way of a complaint to a Labour Officer.” Further Section 94 of the same Act provides for appeals from the Labour Officer to the Industrial Court.



However, these provisions of the Employment Act did not take away the unlimited jurisdiction of the High Court granted by the Constitution.

In **Ms. Rabo Enterprises (U) Ltd Vs Ms. Mt. Elgon Hardwares Ltd. Vs Commissioner General, Ugandan Revenue Authority, Court of Appeal Civil Appeal No. 55 of 2003**, cited with approval in **201 Former Employees of G4A Security Services Uganda Ltd Vs G4S Security Services Uganda Ltd SCCA NO. 18 OF 2010 Okello J. A. (as he then was)** stated that,

“Clause 1 of Article 139 of the Constitution confers unlimited original jurisdiction in all matters. This is only made subject to only the provisions of the Constitution. This meant that the original jurisdiction of the High Court can only be changed by amending the Constitution’ He further expanded on the position of the law as follows:

“An Act of Parliament cannot repeal, alter or reverse a provision of the Constitution unless it is an Act to amend the Constitution, this is grounded on the fact that the Constitution is the supreme law of the land”.

This clearly meant that the unlimited jurisdiction of the High Court was not taken away by the Employment Act.

This Court pronounced itself on the issue in **Wanzusi Samuel vs Kakira Sugar Limited HCSS No. 202 of 2015**, where in Justice Luswata observed that,

“... the Court (referring to the Industrial Court) has been held to be a Court of Judicature, with two of its arbiters holding the post of a High Court Judge. Decisions of the Court are appealable not to the High Court but to the Court of Appeal. The interpretation would then be that the two Courts are of concurrent jurisdiction.”

I will not depart from the above decisions therefore the Defendant’s objection to the jurisdiction of this Court based on the subject matter fails.

I will now turn to resolution of the 1st issue. Whether this Court is clothed with the territorial jurisdiction to entertain this suit.

Section 15 of the Civil Procedure Act provides that, “every suit shall be instituted in a Court within the local limits of whose jurisdiction the cause of action wholly or in part, arises”.

It is clear from the Plaintiff that the plaintiff was posted to Katwe Police Station which is in Kampala and it was from there that he performed his duties. The unlawful termination according to the Plaintiff took place at Katwe in Kampala. This raises the issue of territorial/geographical jurisdiction.

In Uganda vs Hon. Kassiano Ezati Wadri & 31 others HCCR No. 0002 of 2018, Justice Stephen Mubiru defined geographical or local jurisdiction as the territory within which authority is granted to Court to deal with the legal matters, to make legal decisions and judgements and to direct justice.

He further stated that it serves both the purpose of minimising the chances of conflict and duplication of judicial authority. Providing for the jurisdiction of Courts on the basis of geographical location is meant to give structure to the system of administration of justice by ensuring that there is orderly disposal of cases. It also creates efficiency within the system by reducing conflicting cognisance of cases by different Courts at the same time”.

In the matter of **Cyprian Obbo Vs Alafari Onyango and Ors; HCCA No.130/2012**, the trial judge relied on the case of **Kigenyi Vs. Musiramo (1968) EA** wherein it was held that;

“an order for transfer of a suit cannot be made unless the suit had in the first instance been brought to a Court which has jurisdiction to try it. As such, to avoid any illegality, this suit will not be dismissed but it is hereby transferred to Mbale High Court since both Courts have jurisdiction to try this matter”.

Basing on the afore going, although this Court has jurisdiction to handle employment matters or labour disputes, it does not have the territorial jurisdiction to handle this matter. The cause of action arose in Katwe which is situated in Kampala. Hearing the matter in Kampala will ease access to the hearing by the litigants and witnesses (if any.)

The same is herein forwarded to the High Court at Kampala for further action.

No costs awarded.

I so order.


Hon. Lady Justice Faridah Shamilah Bukirwa

JUDGE

01/11/2022