THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT GULU

CIVIL SUIT NO. 07 OF 2023

1. BUSINGE MAXIM
2. AYELLA GEORGE ZACK.....PLAINTIFFS

VERSUS

SINOPEC SERVICES (U) LTD.....DEFENDANT

BEFORE: HON. MR. JUSTICE GEORGE OKELLO

RULING

This ruling arises from two preliminary points of law raised by learned counsel for the Defendant, Mr. Bonny Ntanda of Kampala Associated Advocates. He submitted that the Plaintiffs have no cause of action or locus standi to institute civil suit No. 07 of 2023. He also argued that, the suit should have been lodged before Labour Officer and is, therefore, premature before the High Court.

The brief background facts are that, the Plaintiffs were employed by the Defendant but were terminated after a period of about one and half month into service. In their joint suit, they challenge the termination of their services. They contend that they were employed as mechanics effective 14th

March, 2023. The contract was to run for twelve (12) months and would terminate on 13th March, 2024, but subject to fulfilment of the condition on probation. They aver that the first six months of the contract constituted a probationary period, but it could be extended by six months basing on the result of the employee's probation evaluation. According to the Plaintiffs, it was provided that, if at the end of the six months' probation period, no notice of termination was given by either party or extension of the probation period was given by the employer, the contract would be deemed confirmed.

It is apparent the Plaintiffs reported to their duty station at Tilenga Project site. The Defendant is said to be a sub-contractor of Total Energies, an oil giant involved in the petroleum- related activities within the Albertine Graben in Western Uganda. According to the Plaintiffs, once they were one month and twelve days into their employment, they were abruptly terminated without being afforded *'substantive and procedural fairness'*, and without justifiable cause. It is apparent poor or unsatisfactory performance was alleged by the employer. The Plaintiffs thus allege that, no prior notice of the allegations of unsatisfactory performance was given to them before termination. They claim to have appealed to the Human Resource Manager CLOS of the Defendant about the unfair termination but no hearing was afforded by the Defendant. The Plaintiffs contend, they worked with clean record and should have been given prior notice and

opportunity to defend themselves about the allegation of poor performance. They also claim they had resigned their previous jobs, with a promise of better job (terms) by the Defendant. They argue that they suffered humiliation, mental anguish and financial loss for which they hold the Defendant liable. The Plaintiffs thus seek for a declaration that their termination was unfair, wrong and unlawful. Each Plaintiff prays for compensation for unfair termination in the sum of Ug shs. 24,565,000 for the remainder of the contract period, general damages; interest, and costs of the suit.

When the matter came up for mention, learned Counsel Mr. Ntanda informed court that he wished to raise the mentioned preliminary points of law. He requested to make written submission. Learned counsel gave pointers regarding his points of law and attempted to proffer some information from the bar that, the Plaintiffs were terminated during probation period and so, in learned counsel's view, at law, once an employee is terminated during probationary period, no suit can ensue for unlawful termination. Learned Counsel at the time relied on section 71 (3) of the Employment Act, 2006.

The Plaintiffs who appear *prose*, agreed that the point of law be resolved first. Court directed both parties to file written arguments. They complied.

In its submission, the Defendant's main argument is that the Plaintiffs lack a cause of action. The Defendant, however, did not pursue the aspect of the alleged lack of *locus standi* that had earlier been hinted on. Learned counsel argued that, it is not contested that the Plaintiffs were employed on one year contract by the Defendant, with the first six months being probationary period. Counsel argued, it was on the completion of the 06 months probationary period that the Plaintiffs would have been confirmed into employment. Learned counsel relied on section 2 of the Employment Act, 2006, defining a probationary contract. Learned counsel also contended that, whereas an employee ought to be afforded a hearing before dismissal on grounds of poor performance (inter alia), the requirement of a fair hearing is not available where a probationary employee is terminated or dismissed. Learned Counsel cited sections 66 and 67 (1) of the Employment Act, 2006, in support.

Learned counsel went on to argue that, a contract for a probationary period may be terminated by either party giving notice of not less than fourteen days, or by payment by the employer to the employee seven days' wages in lieu of notice. He cited some decisions of the Industrial Court, to buttress his submission. Counsel pressed that, unless the Plaintiffs can prove that their contracts were ever confirmed or extended, they have no cause of action against the Defendant. He added that, the Plaintiffs do not enjoy the same rights under the Employment Act (I understood him to suggest,

unlike confirmed employees). Learned counsel wound his address that, since the Plaintiffs were duly terminated as required by the law, and were paid their dues as set out in section 67 (4) of the Employment Act (payment of seven days' wages), they, therefore, lack a cause of action against the Defendant.

In their response, the Plaintiffs commenced their submissions by addressing the elements of a cause of action as explained in the well-known case of ***Auto Garage & another Vs. Motokov (No.3), (1971) EA 314***, namely, the Plaintiff enjoyed a right, the right was violated, and the defendant is liable.

The Plaintiffs went on to cite section 27 of the Employment Act, and case law, to argue that, the Defendant provided better terms of service that constitute enforceable rights than that prescribed under the Employment Act. The Plaintiffs contended that, the Human Resource Management Manual (HRMM) of the Defendant formed part of the employment contract, and provide terms which must be read as constituting the terms of their engagement. They further argued that, under the Manual, their immediate supervisor was supposed to comment on their performance at least 10 days prior to the end of the probation period, and rate their overall level of performance, whether satisfactory or not, with a recommendation on

whether they should continue in employment or whether the employer should extend the probation period or terminate the employment.

According to the Plaintiffs, in light of the provision of the Defendant's HRMM, section 67 of the Employment Act which regulates the termination of a probationary contract, would be subject to the provision of the HRMM which requires that the immediate supervisor does performance evaluation and makes comments, (before any decision of the employer to terminate is made). The Plaintiffs further urged that, it was improper for the Defendant to terminate their employment on ground of unsatisfactory performance without doing its evaluation at least ten days prior to end of probation period. To the Plaintiffs, the termination was done prematurely. The Plaintiffs also submitted that the allegations of unsatisfactory performance should have been investigated by the Defendant's Disciplinary Committee. They asked this court to disallow this point of law.

Resolution

The point of law to the effect that the Plaintiffs have no cause of action, will be resolved by this court looking at the plaint and the annexures to it only, as guided by case law. See: ***Kapeka Coffee Works Ltd Vs. NPART, CACA NO. 3 of 2000***; ***Lworomoi Trobisch & another Vs. Aloti Hellen Ogwal, HCCS No. 007 of 2020***.

I have captured in summary, the Plaintiffs' case which is largely borne from their averments in the plaint. For emphasis, it is clear from their statement of facts constituting the cause of action, and other paragraphs of the Plaint that, the Plaintiffs' assertions are that, they enjoyed additional rights as employees of the Defendant under their terms of employment as under the Defendant's HRMM. They thus aver, such rights included, the right to a fair hearing and the right to receive comment from their immediate supervisor before they could be terminated on allegation of unsatisfactory job performance. Their alleged rights also included the right to have the allegations investigated before they could be terminated. According to the Plaintiffs, by the Defendant overlooking these rights and other procedural requirements, the Defendant violated the Plaintiffs' rights. The Plaintiffs thus claim damages plus other reliefs, contending, the Defendant's action caused them humiliation, mental anguish and financial loss. The Plaintiffs further allege to have resigned their previous jobs before taking up the Defendant's job offer, the Defendant having allegedly promised them better job (terms), only to be terminated after about one and half months on taking up the job.

Going by their pleading and the annexure thereto, especially the contract documents and the termination letters, I am satisfied that the Plaintiffs have disclosed their cause of action in the Plaint and have duly complied with the provisions of Order 7 rule 1(e) of the Civil Procedure Rules (CPR).

I have not considered the provisions of the HRMM because it is not attached to the plaint. The HRMM was only introduced in and attached to the written submission, which I find procedurally irregular. I think the Plaintiffs had no choice but to attach the document to their submissions, to show, among others, that they enjoyed additional rights in their employment contract which ought to have been respected by the Defendant. To my mind, on the material borne out of the plaint alone, I am satisfied that a cause of action has been sufficiently disclosed by the Plaintiffs. They have pleaded facts which are relevant to be proved in order to support a right to a judgment one way or the other. In the circumstances, I hold that the plaint is not liable to rejection or strike out order, under the provision of Order 7 rule 11 (a) of the CPR. I am fortified in this view by the decision of ***Ismail Serugo Vs. Kampala City Council & Attorney General, Const. Appeal No. 2 of 1998 (SCU)***.

As I was able to gather from his arguments, it seems learned Defence counsel wanted to canvass the aspect of the maintainability of the suit as against the Defendant, rather than the contention that no cause of action is disclosed in the plaint. I say so, because the Defence pleaded in its Written Statement of Defence that, there is no *reasonable* cause of action. That pleading, I think, informed the preliminary objection ultimately argued, although argued under the wrong rubric. I must say, the maintainability of a cause of action, which sometimes in practice is

couched by most Defendants as *"non-disclosure of a reasonable cause of action"*, and the aspect of *non-disclosure of a cause of action*, are legally distinct. Court's powers in dealing with the two matters are exercised differently. Where the objection is that the plaint discloses no reasonable cause of action, the power of court is discretionary and must be exercised only in plain and obvious cases. This is not like in cases where the plaint discloses *no cause of action*. There is no discretion in the latter, although in practice, a court may find that *a cause of action is disclosed* even if not all facts giving rise to it are pleaded. See: ***Tororo Cement Co. Ltd Vs. Fronika International Ltd, Civil Appeal No. 2 of 2001 (SCU) (per Tsekooko, JSC (RIP).*** Moreover the mere fact that a Defendant may have a valid defence to the action does not necessarily mean there is no cause of action. ***See: Blasio Bifabusha Vs. Elikanah Turyazooka, Civil Appeal No. 3 of 2000 (per C.M Kato, J.A, as he then was) (RIP); Aria Paul & Another Vs. Nyeko Lonzino Omoya, HC Civil Appeal No.028 of 2021.***

The other distinction I should point out is that, regarding the issue of *non-disclosure of a cause of action*, court looks at the plaint and any annexure thereto only, whereas in the case of an alleged *non-disclosure of a reasonable cause of action*, court looks at all the pleadings and assesses whether in light of the pleadings, the *cause of action has some chance of success*. These views are fortified by several judicial decisions. See: ***Auto***

Garage Vs. Motokov (No. 3) (supra); ***Sarwan Singh Vs. Notkin (1952) 19 EACA 117***; ***Nubbock & Sons Ltd Vs. Wilkin Heywood & Clark Ltd (1899) 19 QB 198***; and ***Drummond Jackson Vs. British Medical Association (1970) 1 WLR 668.***

From their arguments, both parties delved at length, and quite unnecessarily, in my view, into matters of evidence which are yet to be adduced at the trial. The Defence for instance launches deep into the nature of the contract, asserting prematurely that, it was a probation contract and not a fixed term contract with a probationary period. From his arguments, it seems it is the Defence suggestion that probationary contracts can be terminated without any need to comply with the requirement of a fair hearing under the Employment Act. I need not resolve this controversy as it would be placing the cart before the horse, because this court is yet to frame issues and receive evidence from the parties and resolve the controversy. But whichever way it turns out on fuller consideration, there is no prejudice in this court observing that probationary contracts differ from other contracts, as defined under section 2 of the Employment Act. That said, the issue of whether or not the requirement for a fair hearing applies differently to these contracts, is a matter for determination on merit. I can thus only state generally that, matters of law to be canvassed in this suit will gravitate around the consideration of the provisions of the Employment Act, 2006, the country's

Constitution, 1995, as well as the decision of courts on the matter which in any case are not in short supply. See for instance; ***Maudah Atuzarirwe Vs. Uganda Registration Services Bureau & 3 Others, Misc. Cause No. 249 of 2013***, (Elizabeth Musoke, J., as she then was). See also: ***Mark E. Kamanzi Vs. National Drug Authority & Another, HCMA No. 138 of 2021 (Boniface Wamala, J.,)***; ***Barbra Awidi Michelle Vs. Uganda Revenue Authority, Misc. Cause No. 0322 of 2021 (Boniface Wamala, J.); and Ben Rhaeim Aimen Vs. Granada Hotels (U) Ltd, Labour Appeal No. 002 of 2023 (Anthony Wabwire Musana, J.)***

For the reasons given, I over-rule the first preliminary point of law and dismiss it accordingly.

The other point of law is that the suit was prematurely lodged in this court. It was urged that a labour complaint should have instead been filed before Labour Office by the Plaintiffs. In this regard, Learned Counsel referred me to section 71 and 93 of the Employment Act, 2006. The Plaintiffs disagree, and contend that, in their suit, they further seek for damages and interest, reliefs which a Labour Officer cannot award. They explained that, that is the reason why they decided to sue in this court, among others.

The answer to the second preliminary objection is simple and straightforward. This court being the High Court, retains unlimited

original jurisdiction to hear employment matters as a court of first instance notwithstanding the provisions of section 93 (1) and 94 of the Employment Act, 2006, which appear to limit the powers of this court and purport to vest the jurisdiction exclusively in Labour Office and Industrial Court in the terms prescribed by those sections.

This court restated the clear legal position in the case of ***Ozuu Brothers Enterprises Vs. Ayikoru, HC Civ. Rev. No. 02 of 2016 (Mubiru, J.)*** that the jurisdiction of the High Court is unlimited and can only be limited by the Constitution itself. Further in the case of ***201 Former Employees of G4S Security Services (U) Ltd Vs. G4S Security Services (U) Ltd, SCCA No. 18 of 2010***, the Supreme Court of Uganda (per Dr. E. Kisaakye, JSC) observed that, section 93 (1) and 94 of the Employment Act, 2006, intended to oust the jurisdiction of ordinary civil courts in employment matters by restricting it to Labour Officers and Industrial Court. The Supreme Court stated that, sections 93 (1) and 94 of the Employment Act conflict with article 139 (1) of the Constitution, 1995, in so far as they limit the unlimited original jurisdiction of the High Court to hear employment matters as a court of first instance.

I should add that, although it falls within the wide provision of article 129 (1) (d) of the Constitution, 1995, which provide for subordinate courts, the Industrial Court of Uganda has been held to have concurrent jurisdiction

with the High Court in employment matters although placed in the appellate hierarchy equal to that of the High Court. The Industrial court thus has its special legislative design but that does not mean it is a superior court, or that because it exists, then the High Court downs its tools in employment-related disputes. See: ***Justice Asaph Ruhinda Ntegye & Another Vs. Attorney General, Const. Petition No. 33 of 2016***.

The law has, therefore, since been consistently clarified that, the High Court only lacks power to entertain matters where its jurisdiction is expressly limited by the Constitution, in terms of article 139 (1) thereof. Such exceptions, for example, are to be found in article 152 (3) of the Constitution, which was interpreted and extensively discussed by the Supreme Court of Uganda in the case involving ***Uganda Revenue Authority Vs. Rabbo Enterprises (U) Ltd & Mt. Elgon Hardware Ltd, Civil Appeal No. 12 of 2004 (per Prof. Lillian Tibatemwa Ekirikubinza, JSC)*** in relation to the limited original jurisdiction of the High Court to entertain tax matters. In other words, the High Court lacks unlimited original jurisdiction in tax matters as the jurisdiction is exclusively conferred on the Tax Appeals Tribunal by article 152 (3) of the Constitution of Uganda, 1995. Thus in tax matters, the High Court only exercises appellate jurisdiction under section 27 (1) of the Tax Appeals Tribunals Act Cap 345 (as Amended). I should perhaps further clarify that,

some decisions of the High Court have, with respect, and I suppose, out of accidental slip, continued to cite the case of ***Commissioner General Uganda Revenue Authority Vs. Meera Investments Ltd, SCCA No. 22 of 2007*** as an example and as the authority for the view that the High Court enjoys unlimited original jurisdiction in tax matters. That view is incorrect in light of the Supreme Court's latest decision on the matter in ***Uganda Revenue Authority Vs. Rabbo Enterprises & Elgon Hardware Ltd Civil Appeal No. 12 of 2004 (supra)*** **decided on 10th July, 2017.** The apex court distinguished the *URA Vs. Meera Investments Ltd* case, and departed from it, in line with article 132 (4) of the Constitution of Uganda, 1995, because, it found it was right to do so. Thus URA Vs. Rabbo Enterprises & Elgon Hardware Ltd, is the most authoritative and binding legal precedent on the matter.

To conclude my analysis, I wish to point out that the unlimited jurisdiction of the High Court is further circumscribed when it comes to handling other matters, for example, Constitutional matters, which is exclusively entertainable by the Constitutional Court, and election petition challenging the election of the President, in which case the Supreme Court enjoys exclusive original jurisdiction. These views were expressed in ***Habre International Co. Ltd Vs. Ebrahim Alarakia Kassam & Others, Civil Appeal No. 04 of 1999 (per Mulenga, JSC (RIP).***

The foregoing discussion aside, this court appreciates the fact that, in practice, specialized Divisions of the High Court usually transfer employment-related disputes lodged before it, to Industrial Court. This however, does not mean such transfers are on account of lack of jurisdiction by the specialized High Court Divisions. The transfer usually is for proper case management by the Industrial Court, among other reasons. It also relieves the specialized Divisions of the High Court of case burden as they focus on cases specially falling within their Divisions. I think it also reduces the bad practice of forum shopping, and ensures efficiency of the different courts, among others. I should add that, the practice of transferring labour disputes, as far as far as I am aware, is not available in the High Court Circuits across the Country. The High Court Circuits receive and take almost all matters as its original unlimited jurisdiction permit, and as the particular court may deem fit. High Court Circuits exercise their mandates, additionally, under section 19 (1) of the Judicature Act Cap 13. Therefore, I opine that, if the High Court Circuits were to adopt the practice that obtains in the Divisions and transfer employment-related disputes to the Industrial Court, litigants who are geographically disadvantaged by reason of being far from the Capital of Uganda (Kampala) where the Industrial court is situated, with respect, would be deprived of access to justice in labour matters. It would thus be increasingly expensive to access the Industrial Court by majority of Ugandans yet that court is yet to be decentralized, if at all. It would also

be contrary to the Judiciary current vision of making access to justice cheap and accessible to majority of consumers of justice across the country.

For the reasons I have given, the second preliminary objection is misconceived, and I accordingly over-rule it. I grant the Defendants costs of defending the objections.

The suit shall proceed for inter-party conferencing on merit.

It is so ordered.

Delivered, dated and signed in court this 30th January, 2024.

30/01/2024

George Okello
JUDGE HIGH COURT

Ruling read in court

30th January, 2024

Attendance

Plaintiff in Court – self representing.

Defendant's representative Okello Francis, Human Resource Office of Defendant.

Defendant's Counsel – absent (got mechanical problem).

Mr. Ochan Stephen – Court Clerk.

30/01/2024

George Okello

JUDGE HIGH COURT