

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT GULU
CIVIL SUIT NO. 16 OF 2022**

- 1. ANYWAR CHARLES**
- 2. OCITTI NELSON AWIRA**
- 3. OJERA ADAM OGORA**
- 4. OTHIENO JAMES**
- 5. MUTESA MOSES**

=====PLAINTIFFS

-VERSUS-

GULU UNIVERSITY=====DEFENDANT

BEFORE: HON. MR. JUSTICE PHILLIP ODOKI

RULING ON PRELIMINARY OBJECTIONS

Introduction:

[1] The Plaintiffs instituted this suit against the Defendant in which they alleged that they were employed by the Defendant on different dates. On different dates they were informed that they had clocked their mandatory retirement age. On different dates, they requested to be paid their retirement benefits (gratuity) in accordance with the Defendant’s Human Resource Manual but the Defendant denied their request. The Plaintiffs therefore seek, a declaration that they are entitled to their retirement benefit (gratuity); an order for payment of gratuity amounting to UGX 254,689,686.825 as special damages; general damages; exemplary damages; interest; and costs of the suit.

[2] The Defendant denied the Plaintiff’s claim and contended that the Plaintiffs are not entitled to the gratuity since the same was remitted to National Social Security Fund to their credit in accordance with the Defendant’s Human Resource Manual. In the alternative, the Defendant contended that even if the Plaintiffs are entitled to the gratuity, their combined total gratuity, given their gross salaries, is below UGX 40,000,000/=.

Preliminary objections:

[3] When the matter come up for hearing on 2nd June 2023, counsel for the Defendants, Mr. Alexander Kafero, informed the Court that they had preliminary objections to raise. The Court gave counsel directives to file written submissions, which directives were duly complied with.

[4] In his written submissions, counsel for the Plaintiff raised 2 preliminary objections. The first preliminary objection was that this matter is improperly before this court. According to counsel, it is the Industrial Court which is clothed with the jurisdiction over this matter and not this court. In support of his argument, counsel relied on, Sections 3(1) and 93(1) of the **Employment Act, 2006**; Sections 2, 7 and 8(1)(a) & (b) of the **Labour Dispute (Arbitration and Settlement) Act, 2006**; the case of **Uganda Revenue Authority versus Rabbo Enterprises Ltd and Another SCCA No. 12 of 2004**; **Mutono Laban versus Kampala International University, Labour dispute No. 335 of 2017**; and **Lydia Hatega versus Attorney General and another, Labour dispute No. 19 of 2014**.

[5] The second preliminary objection was that the Plaintiffs' pleadings, as presented, does not disclose a cause of action against the Defendant. According to counsel, the Plaintiff's claim is based on the Defendant's Human Resource Manual which was not in existence at the time when the contract of employment of the Plaintiffs commenced. Counsel prayed that the suit be rejected under Order 7 rule 11(a) of the Civil Procedure Rules.

[6] In reply, counsel for the Plaintiff, Mr. Daniel Okalebo, submitted, on the 1st preliminary objection, that the Defendant did not file any application disputing the jurisdiction of this Court in compliance with Order 9 rule 3 of the Civil Procedure Rules. Counsel argued that, by failing to file the application, the filing of the defence by the Defendant has to treated as a submission to the jurisdiction of this court.

[7] Counsel further submitted that the right which the Plaintiffs are seeking to enforce are not those envisaged under Section 93(1) of the Employment At, 2006. According to counsel, the rights envisaged by Section 93(1) of the Employment Act, 2006 are those provided for in Sections 51 – 61 of the same Act. Counsel argued that the Plaintiff's claim does not arise from Sections 51 – 61 of the Act since it arises from the Human Resource Manual. In addition, counsel submitted that

the jurisdiction of the labour officers under Section 93 of the Employment Act is only to handle claims founded exclusively on rights and obligations created by the Employment Act. For that proposition of the law, counsel relied on the case of **Ozoo brothers versus Ayikoru Milka High Court Civil Revision No. 002 of 2016.** Furthermore, counsel submitted that even if the dispute falls within the purview of the Employment Act, this court, under Article 139(1) of the Constitution, is vested with unlimited jurisdiction in all matters.

[8] On the 2nd preliminary objection, counsel for the Plaintiff submitted that the plaint discloses a cause of action against the Defendant. According to counsel, the plaint discloses that the Plaintiffs were entitled to gratuity under defendant's Human Resource Manual 2017, this right was violated by the defendant when it refused to pay the said gratuity after the Plaintiffs attained the mandatory retirement age. On what should be considered when determining whether the plaint discloses a cause of action, counsel relied on the case of **Auto Garage -vs- Motokov (No. 3) (1971) EA. 514.**

Analysis and determination of Court:

[9] On the 1st preliminary objection, Order 9 rule 3(1) (a) of the **Civil Procedure Rules, S.1.71- 1** is emphatic. It provides that a defendant who wishes to dispute the jurisdiction of the court has to do so within the time limited for service of a defense, by applying to the Court for a declaration that the Court has no jurisdiction over the defendant in respect of the subject matter of the claim or the relief or remedy sought in the action. The application has to be by Chamber summons. See: **Order 9 rule 3(1) of the Civil Procedure Rules.** If the defendant does not file an application objecting to the jurisdiction of the court, under Order 9 rule 6 of the Civil Procedure Rules, the filing of the defense is treated as a submission, by the defendant, to the jurisdiction of the Court in the proceedings. In such a case, the defendant would, therefore, be estopped from raising any further dispute over the jurisdiction of the Court in the proceedings. See: **Ssentamu v Jibu Corporate Uganda Limited, High Court Civil Suit No. 51 of 2021.**

[10] In the instant case, the Court record shows that the Defendant was served with summons to file defense on the 13th May 2022. The Defendant did not file any application challenging the jurisdiction of this court. The Defendant is therefore estopped from objecting to the jurisdiction of this court.

[11] Be that as it may, I consider it important to pronounce myself on the jurisdiction of this court in this matter, given that a court cannot exercise jurisdiction that is not conferred upon it by law and whatever it purports to do without jurisdiction is nullity ab initio.

[12] First of all, the argument of counsel for the Plaintiff that the rights envisaged by Section 93(1) of the Employment Act, are those provided for in Sections 51 – 61 of the same Act, is, with all due respect, misconceived and without any legal basis. Section 93(1) of the Employment Act provides that:

“93. Jurisdiction over claims; remedies

(1) 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.”

[13] Nowhere is it stated in Section 93(1) of the Employment Act, that the rights referred to in that section, are restricted to those rights spelt out in Sections 51 – 61 of the Act.

[14] Secondly, I do not find merit in the argument of counsel for the Plaintiff that a labour officer has no jurisdiction over the Plaintiffs suit. Whereas under Section 93 of the Employment Act, a labour officer only has jurisdiction to hear and to settle claims for infringement of any of the rights granted under the Act; claims of infringement of any provision of the Act; and claims of breach of obligations owed under the Act, the jurisdiction of a labour officer under the Labour Disputes (Arbitration and Settlement) Act, 2006 is much broader. Section 3(1) provides that:

“3. Labour disputes to be referred to Labour Officer

(1) Subject to subsection (2), a labour dispute, whether existing or apprehended, may be reported, in writing, to a Labour Officer, by a party to the dispute in such form and containing such particulars as may be prescribed by regulations made under this Act.”

[15] A labour dispute is defined in Section 2. It states that:

““labour dispute” means any dispute or difference between an employer or employers and an employee or employees, or a dispute between employees; or between labour unions, connected with employment or non-employment, terms of employment, the conditions of labour of any person or of the economic and social interests of a worker or workers;”
Underlined for emphasis.

[16] In my view, therefore, the case of **Ozuu brothers**, which was cited by counsel for the Plaintiff, was cited out of context. In that case, the court restricted itself to the jurisdiction of a labour officer under the Employment Act, without making any reference to the jurisdiction of a labour officer under the Labour Disputes (Arbitration and Settlement) Act. Needless to add that both Acts were gazetted; assented to; and came into force on the same day.

[17] In the instant case, the Plaintiff contended that they were employed by the Defendant. Upon clocking their mandatory retirement age, they requested to be paid their retirement benefits (gratuity) in accordance with the Defendant’s Human Resource Manual. However, the Defendant denied their request. The dispute between the employee and the employer. It is connected with the employees’ employment. It is therefore a labour dispute which a labour officer has jurisdiction to deal with. It is only if the dispute is not resolved by a labour officer, that the labour officer refers the dispute to the Industrial Court.

[18] I however wish to point out that the jurisdiction of the labour officer to deal with this dispute does not in any way mean that the High Court does not have the original jurisdiction to entertain this matter. Article 139(1) of the **Constitution of Uganda, 1995** confers on the High Court unlimited original jurisdiction in all matters. It states that:

“139. Jurisdiction of the High Court.

(1) The High Court shall, 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 this Constitution or other law.” underlined for emphasis.

[19] The same position is also provided for in Section 14(1) of the **Judicature Act, Cap. 13** which provides that:

“The High Court shall, subject to the Constitution, have unlimited original jurisdiction in all matters and such appellate and other jurisdiction as may be conferred on it by the Constitution or this Act or any other law.” Underlined for emphasis.

[20] It is now a settled position of the law that for a statute to oust the jurisdiction of the High Court, it must say so expressly. This was the position which was expressed in **Kameke Growers Co-operative Society Ltd and 7 others versus North Bukedi Co-operative Society Union Ltd SCCA No. 8 of 1994** where Manyindo D.C.J., held that:

“The law on ouster of jurisdiction seems to me to be settled. It is, as this court pointed out in Kayondo vs The Cooperative Bank (U) Limited, Civil Appeal No. 10 of 1991, that for a statute to oust the jurisdiction of the High Court it must say so expressly.”

[21] The Supreme Court further pronounced itself on the supremacy of Article 139(1) of the Constitution in **The Commissioner General Uganda Revenue Authority versus Meera Investments Ltd SCCA No. 22 of 2007**. Kanyeihamba J.S.C., stated that:

“This provision remains superior and mandatory until altered or modified by that other law which, in my opinion, can only be an Act made by Parliament or a constitutional amendment by the same authority.”

[22] In **201 Former Employees of G4S Security Services Uganda Ltd V G4s Security Services Uganda Ltd SCCA No.18 of 2010**, which was an employment matter, the Supreme Court pronounced itself on the unlimited jurisdiction of the High Court vis- a - vis Section 93(1) of the Employment Act. At page 5, Dr. Kisaakye J.S.C. stated that:

“Clearly, the above provisions intended to oust the jurisdiction of the ordinary civil courts in Uganda by ensuring that employment matters are only handled by Labour Officers and

the Industrial Court. It is also evident that these sections conflict with the article 139(1) of the Constitution in so far as they limit the unlimited original jurisdiction of the High Court to hear employment matters as a court of first instance. Article 139(1) of the Constitution of Uganda (1995) confers on the High Court unlimited original jurisdiction and appellate jurisdiction...”

[23] Dr. Kisaakye J.S.C. further stated in the same judgement that:

“In this case under consideration, I fully agree with the trial judge and the learned Justices of Appeal that the High Court was indeed vested with original jurisdiction to hear this matter.”

[24] In my view, the facts in the case of ***Uganda Revenue Authority versus Rabbo Enterprises Ltd and Another SCCA No. 12 of 2004***, which was cited by counsel for the Defendant, are distinguishable from those in this case. In that case, Dr. Tibatemwa – Ekirikubinza J.S.C., held that the High Court exercises its unlimited jurisdiction, subject to other provisions of the Constitution. She held that one such provision which was envisaged in Article 139(1) is Article 152 (3) of the Constitution which provides for Tax Appeals Tribunal. She held that, it is the constitution itself which, through Article 152(3), which limited the original jurisdiction of the High Court and empowered the Tax Appeals Tribunal with Jurisdiction. I note that in the case of labour disputes, there is no similar provision of the Constitution which limits the original jurisdiction of the High Court. In the end, I find that this court has the original jurisdiction to entertain this matter.

[25] On the 2nd preliminary objection that the plaint does not disclose a cause of action against the Defendant, Order 7 rule 11(a) of the Civil Procedure Rules enjoins this court to reject a plaint if it does not disclose a cause of action. A cause of action was defined by the Supreme Court in ***Attorney General versus Major General David Tinnyefunza, Constitutional Appeal No. 1 of 1997*** to mean;

“...every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. ... It is, in other words, a bundle of facts, which it is necessary

for the plaintiff to prove in order to succeed in the suit. But it has no relation whatever to the defence which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff. It is a media upon which the plaintiff asks the court to arrive at a conclusion in his favour. The cause of action must be antecedent to the institution of the suit.”

[26] In **Auto Garage -vs- Motokov (No. 3) (1971) EA. 514** at page 519, Spry V.P, held that;

“I would summarise the position as I see it by saying that if a plaint shows that the plaintiff enjoyed a right, that right has been violated and that the defendant is liable, then, in my opinion, a cause of action has been disclosed and any omission or defect may be put right by amendment.”

[27] A determination as to whether a plaint discloses a cause of action or not has to be made only upon perusal of the Plaint and its annexures if any. This was the view expressed in the East African Court of Appeal case of **Jeraj Shriff & Co Versus Chotai Fancy Stores [1960] 1 EA 374** where Windham J.A. at page 375 held that:

“The question whether a plaint discloses 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 presumption that any express or implied allegations of fact in it are true.”

[28] In the instant case, the Plaintiffs contended, in the plaint, that they were employed by the Defendant. Upon clocking their mandatory retirement age, they requested to be paid their retirement benefits (gratuity) in accordance with the Defendant’s Human Resource Manual but the Defendant denied their request. In my view, the plaint shows that the Plaintiffs enjoy a right by virtue of the Defendant’s Human Resource Manual to be paid retirement benefits (gratuity). The Plaint also shows that the Plaintiffs’ right to the retirement benefits was violated by the Defendant when it refused to pay them.

[29] I find the argument of counsel for the Defendant, that the Defendant’s Human Resource

Manual was not in existence at the time of the Plaintiff's employment, not tenable in law. Parties to a contract are at liberty to amend their terms of a contract. As to whether the Defendant's Human Resource Manual formed part of the contract of employment of the Plaintiffs is a matter that will have to be proved in evidence. I therefore find that the plaint discloses a cause of action against the Defendant.

[30] In the end, I find no merit in the preliminary objections. They are accordingly rejected.

I so order.

Dated and delivered by email this 4th March 2024.

A handwritten signature in blue ink, appearing to read 'P. Odoki', with a long horizontal flourish extending to the right.

Phillip Odoki

Judge.