

preliminary point of law raised by the Applicant that the Chief Magistrate's Court lacked jurisdiction to handle employment matters which the Chief Magistrate overruled.

Background of the Application

- [4] The Respondent/Plaintiff sued the Applicant/Defendant in the lower Court for wrongful termination, payment of salary arrears, general damages, punitive damages and costs of the suit. The Applicant/Defendant filed the defence denying liability and therein notified the Respondent/Plaintiff that a preliminary point of law that this suit was filed in the Court that lacks jurisdiction would be raised.
- [5] The Applicant/Defendant formerly raised the preliminary point of law to the effect that the suit was filed in a Court that lacks jurisdiction to handle employment matters. Both Counsel for the parties filed their respective submissions in respect of the raised preliminary point of law.
- [6] Both in the lower Court and in this Court, the Respondent/Plaintiff was represented by **Mr. Ian Musinguzi of Ms. Musinguzi & Co. Advocates**, Masindi while the Applicant/Defendant was represented by **Mr. Simon Kasangaki of Ms. Kasangaki & Co. Advocates Masindi**.
- [7] Counsel for the Applicant/Defendant had argued that the matter before Court was based on the **Employment Act, 2006** and that the Plaintiff therefore should have brought the matter before the Labour Officer in accordance with the provisions of **S.93 of the Employment Act**.
- [8] On the other hand, Counsel for the Respondent/Plaintiff had insisted that the Magistrate's Court had jurisdiction in the

matter, for the Employment Act never expressly ousted the jurisdiction of the Magistrate's Court.

[9] The trial Magistrate on his part, overruled the Applicant's preliminary objection as follows:

*"I have considered the submissions of Counsel with particular regard to the decided case authorities cited. With all the due respect, I felt the decision in the case of **Ozoo Brothers** (Ozoo Brothers Enterprises vs Ayikoru, Arua H.C. Civil Rev. No. 02 of 2016) was more persuasive ...*

It is only those claims founded exclusively on rights and obligations created under the Employment Act where the Labour Officer has jurisdiction. That even in these disputes founded under the Employment Act, still a Magistrate's Court has jurisdiction. That it is only left to the election (choice) of the aggrieved party to decide where to seek redress. Otherwise for disputes based on common law or general law the jurisdiction is exclusively for the Magistrates' Courts if the matter is within their pecuniary power. It is clear from the Complaint that there are claims based in the general law or the common law. There is a claim for example, for general damages and punitive damages. Such claims are not founded in the Employment Act much as the suit arises out of the Employment relationship between the Plaintiff and the Defendant".

The Preliminary Objection was accordingly overruled

Revisional Powers of the High Court

[10] **S.83 CPA** vests this Court supervisory jurisdiction to review decisions of Magistrate's Court. The High Court's duty entails

examination of any proceedings before it for the purposes of satisfying itself as to the correctness, legality or propriety of any findings, order or any other decision and the regularity of any proceedings before it.

- [11] In exercise of its revisional power, the High Court therefore has to see whether the requirements of the law have been duly and properly obeyed by the Court whose order is the subject of revision, and whether the irregularity as to the failure or exercise of jurisdiction is such as to justify interference with the order; See **A.G. & Anor Vs James Mark Kamoga & Anor S.C.C.A. No. 8 of 2004** and **Munobwa Mohamed Vs UMSC, H.C. Civil Rev. No. 01 of 2006.**

Issue: The major issue for determination in this Application is: **Whether the trial Chief Magistrate exercised jurisdiction not vested in him when he handled a matter arising from breach of the Employment Act**

- [12] Counsel for the Applicant submitted that jurisdiction is the first test in the legal authority of the Court and its absence disqualifies the Court from exercising any of its powers. That jurisdiction means and includes any authority conferred by the law upon Court to decide or adjudicate any dispute between the parties or pass judgment or order; **A.G. of Lagos State Vs Dosunmu (1989) 3 NWLR pt. 111, page 552 S C** and **Owners of Motor Vessel "Lillian S" Vs Caltex Oil Kenya Ltd [1989] K.L.R. 1.**

- [13] He submitted further that the Employment Act confers jurisdiction to entertain labour dispute in the first instance into the labour office and not the Chief Magistrate's Court. That if the party to the labour dispute is not contented with the

decision of the labour Officer, he/she would have recourse the Industrial Court; **S.93 of the Employment Act, 2006**. That the Act was created as a mechanism for resolving employment disputes through Conciliation or Mediation and after an award is given by the Labour Officer, it may be challenged by way of an Appeal to the Industrial Court. That therefore to allow the Magistrates' Courts to continue entertaining matters of a Civil nature relating to employment disputes would render the Conciliation proceedings before Labour Officer to mockery and the whole purpose of the scheme as envisaged in the Employment Act shall fail.

[14] While relying on the authorities of **Julius Rugumayo Vs URA LD No. 27 of 2014, Former Employees of G4S Security Services (U) Ltd Vs G4s Security Services (U) Ltd, S.C.C.A No. 18 of 2010** and **Worldwide Vs Mukasa Kugonza, H.C. Rev. No. 1 of 2013**, Counsel concluded that the Chief Magistrate's Court had no jurisdiction to entertain **Civil Suit No. 41 of 2021** which is an employment matter, or had the Respondent wanted to skip the well laid out procedure he would have filed the same in this honourable Court which has original and unlimited jurisdiction but filing the same in the Chief Magistrate's Court was done in error of established procedure of instituting a labour dispute.

[15] Counsel for the Respondent on the other hand while relying on the authority of **Ozoo Brothers; Enterprises Vs Ayikoru Milka (Supra)** submitted that Courts have since adopted a more liberal approach while interpreting provisions of **Ss 93 and 94 of the Employment Act** inter alia, thus:

"The possibility of cases of legal or factual complexity supports the view that it was not the intention of the legislature to oust the jurisdiction of Magistrates' Courts

but rather creates alternative forums with concurrent jurisdiction. The civil jurisdiction of Magistrates' Courts in Employment disputes is alternative, leaving it to the election of the Plaintiff concerned to choose his remedy for the relief which is competent to be granted by way of a particular remedy available from one of the forums”.

That it therefore follows from the above that an aggrieved party can go to the Labour Office or to the Courts of Judicature to seek redress, depending on the prayers he or she is seeking for. She concluded that the Employment Act did not confer exclusive jurisdiction of employment matters to a Labour Officer as this would ouster the jurisdiction of Courts as granted in the Constitution and Parliament would not have intended that.

Resolution of the issue

[16] **S.93 of the Employment Act 2006** provides thus

- “(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 complainant to a Labour Officer.*
- (2) A Labour Officer shall have jurisdiction to hear and to settle by conciliation or mediation, a complaint-*
 - (a) by any person alleging an infringement of any provision of this Act.*
 - (b) by either party to a contract of service alleging that the other party is in breach of the obligations owed under this Act”.*

[17] In Former **Employees of G4S Security Services (U) Ltd Vs G4S Security Services (U) Ltd (Supra)**, Dr. Kisaakye, JSC had this to say on the above provisions of the Employment Act.

*“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 Office 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”*

[18] She concluded on the issue that the Supreme Court pronounced itself on the position of the law with respect to the supremacy of **Article 139(1) of the Constitution of Uganda** in **Commissioner General, URA Vs Meera Investments Ltd S.C.C.A. No. 22 of 2007** quoting Okello J.A. in **Rabo Vs Commissioner General, URA C.A.C.A. No. 55 of 2003**, expounding on this provision 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”.

[19] Counsel for the Respondent submitted that in light of the above approach taken by the superior Courts in interpreting Statutes purporting to oust their jurisdiction, the well established principle that a provision ousting the ordinary jurisdiction of

the Court must be construed strictly, applies to the subordinate Courts as well.

[20] In Magistrates' Courts, Civil jurisdiction is conferred by **S.208 MCA** as follows:

“208. Courts to try all Civil Suits unless barred

Every Magistrate's Court shall, subject to this Act, have jurisdiction to try all suits of a civil nature excepting suits of which its cognizance is either expressly or impliedly barred; but every suit instituted in a Magistrate' Court shall be instituted in the Court of the lowest grade competent to try and determine it”.

[21] The above provision clearly vests the Magistrate's Court with jurisdiction to entertain and try *“all suits of a civil nature”* unless it is expressly or impliedly excluded from their jurisdiction. See **Sections 207, 212-215 M.C.A.** This jurisdiction of the Magistrate's Court emanates from **Article 129 of the Constitution** which confers jurisdiction upon ordinary Civil Courts in Uganda to entertain and handle disputes brought before it. It provides as follows:

“The judicial power of Uganda shall be exercised by the Courts of Judicature which shall consist of-

(a).....

(b).....

(c).....

(d)Such subordinate Courts as Parliament may by law establish ...”

[22] By way of analogy with the holding of **Kanyeihamba JSC in Commissioner General, URA Vs Meera Investments Ltd, S.C.C.A. No. 22 of 2007** and **Okello J.A. in Ms. Rabo Enterprises (U) Ltd & Anor Vs Commissioner General, URA**

C.A.C.A. No. 55 of 2003, the above Constitutional provision remains superior and mandatory until altered or modified by that other law which can only be an Act made by Parliament or a Constitutional amendment by the same authority.

[23] Justice Mubiru in resolving a similar issue before him in **Ozoo Brothers Enterprises Vs. Ayikoru (Supra)** quoted **Lord Reid in Anisminic Vs Foreign Compensation Commission [1969] 1 All ER 208** thus:

“It is a well established principle that a provision ousting the ordinary jurisdiction of the Court must be construed strictly meaning, I think, that, if such a provision is reasonably capable of having two meanings, that meaning shall be taken which preserves the ordinary jurisdiction of the Court”.

He then observed further as follows:

*“The mere grant of jurisdiction to another tribunal does not operate to oust the jurisdiction of subordinate Courts over the same subject matter. Because of the provisions of **S.208 of the Magistrate’s Court Act Cap.16**, a general jurisdiction is conferred on Magistrates’ Courts over “all suits of the Civil nature” cognizable by those Courts of which the exclusive jurisdiction is not given to some other Court or tribunal”.*

He concluded by holding that:

*“Whereas the primary intention of creating District Labour Officers as a forum for employment civil disputes resolution is to provide a speedy inexpensive and effective forum for resolution of disputes arising between workmen and their employers, it is created as an alternative and concurrent rather than an exclusive forum ... **S.93 of the***

Employment Act, 2006 does not expressly exclude the application of S.208 of the Magistrates' Courts Act to employment disputes ...”

[24] In the premises, from the foregoing I am unable to fault the trial Magistrate who found the authority of **Ozoo Brothers (Supra)** more persuasive than the other authorities that were provided by the Counsel holding other issue and overruled the preliminary objection raised. As was held by **Mulenga JSC in Habre International Co. Ltd Vs. Ebrahim Kassam & Others, S.C.C.A. No. 04 of 1999 (Reported in (1999) 1 EA);**

“The tendency to interpret the law in a manner that would divert Courts of law of jurisdiction too readily unless the legal provision in question is straight forward and clear should be disregarded since it could be better to err in favour of upholding the jurisdiction than to turn away a litigant from the seat of justice without being heard. The jurisdiction of Courts of law must be guarded jealously and should not be dispensed with too lightly”.

[25] In the instant case, I find that whereas **S.93 of the Employment Act, 2006** conferred District Labour Officer jurisdiction to entertain and handle employment civil disputes resolution, the Section did not at the same time oust the jurisdiction of the ordinary Civil Court from exercising their constitutional mandate of adjudication of such employment matters if brought before them. In this case, I find that the Magistrates' Courts were never intended to be denied jurisdiction of the instant case by **Section 93 of the Act.**

[26] In conclusion, I find that the trial Chief Magistrate's Court exercised jurisdiction vested in it. The trial Magistrate rightly dismissed the preliminary objection. I do equally dismiss the

Application with costs to the Respondent. The **Civil Suit No. 41 of 2021** to proceed to its conclusion before the Chief Magistrate's Court.

Dated at Masindi this **14th day of October, 2022.**

Byaruhanga Jesse Ruggyema
JUDGE