

2. The grounds for the application were set out in the affidavit of the 7th Applicant, Kiyimba Jean which were that:

(a) the 7th Applicant was employed by the Respondent in 2017 and the other Applicants were employed at different times as can be seen on their respective appointment letters which are accordingly attached to the plaint and marked A1, A2, A3, A4, A5, A6, A7, A8;

(b) from the said appointment letters, the Applicants were entitled to transport allowance of 52,000/= per month;

(c) the Applicants were also promised school fees allowance, food, and housing allowance and the latter two were provided but the housing allowance was paid for a few months and halted by the Respondent without any lawful explanation;

(d) for all the years in its employment, the Applicants worked for 12 hours each day and 6 days a week, but nothing was paid for their extra 4 hours in excess of 8;

(e) around 31st August, 2019, the Applicants together with the other security officers all totaling to 17 in number were abruptly summoned by the Human Resource Officer and given a notification of termination of their employment in which the Respondent promised to give them some money such as the school fees allowance for 3 terms and gratuity among other benefits;

(f) after about 5 days, the Respondent summoned them all once more and gave each of them a document entitled 'Release and



- Discharge' and told them to sign it or else they would not get their gratuity or any other entitlement;
- (g) they were all terminated without any justification and they approached M/s Bagyenda & Co Advocates for legal action;
 - (h) through their lawyers, the Applicants filed a plaint seeking compensation for unfair termination, transport allowance, severance allowance and unpaid overtime among others;
 - (i) at the time, some of the documentary evidence such as pay slips to support the Applicants' claims were missing and the first plaint generalized their claims;
 - (j) later, after the Applicants confirmed that they could not find other pay slips because the employer had not provided them, their lawyers advised that they can obtain court orders and get bank statements for evidential purposes should need arise;
 - (k) subsequently, the Applicants' lawyers advised that they should amend the plaint and specify each one's claim to avoid confusion since they are eight plaintiffs;
 - (l) the current plaint is more general and it is important that each of the 8 Applicants' claims be separately identified through amendment of the plaint;
 - (m) the Applicants have good claims in the main suit; and



(n) the Applicants will suffer irreparable damages and gross injustice if not allowed to separately identify their claims under the general plaint.

3. The application was opposed by the Respondent using affidavit in opposition sworn by Ms. Priscilla Namusikwe, the Respondent's Legal and Compliance Manager dated and filed in this court on 25th October, 2022. The Respondent alleged that the application and the main suit are improperly before this court and the Respondent shall raise a preliminary objection to the effect that:

(a) the Applicants' claim arises from an employment dispute and ought to have been brought under the provisions of the employment laws first to the labour office and then to the Industrial Court as by law established;

(b) given that the Applicants' claims and all reliefs sought for thereunder are employment / labour related, this honorable court has no original jurisdiction to hear this suit and application and that the same ought to have been initiated and commenced at the District Labour Office, Mukono where the dispute arose;

(c) there cannot be any valid application to amend pleadings in a claim filed in a court without requisite jurisdiction;



- (d) this court cannot usurp powers of other judicial bodies entrusted to deal with the claim and the present application, by attempting to try the same;
- (e) without prejudice to the foregoing depositions, the application and the supportive affidavit do not disclose any tangible and reasonable grounds for grant of unconditional leave to the Applicants to amend their plaint in Civil Suit No. 25 of 2020;
- (f) this application is brought as an afterthought two years after the filing of their plaint;
- (g) the Applicants through their proposed amendment are introducing new orders / claims and are effectively introducing a new cause of action, contrary to the provisions of law on amendment of pleadings;
- (h) the Applicants are presenting new evidence into the matter that is pay slips that were already in their custody even at the time of filing their pleadings;
- (i) the grant of the application would be very prejudicial to the Respondent company's defense which the proposed amendment intends to defeat; and
- (j) it is in the interest of justice that this application for grant of unconditional leave to amend the plaint in Civil Suit No. 25 of 2020 be disallowed and the same be dismissed with costs.



4. In rejoinder, the 7th Applicant deposed that at the earliest opportunity, their lawyers Bagyenda & Co. Advocates shall raise a preliminary objection to the effect that the person that deponed to the affidavit in opposition of this application did not have the locus to swear it and that they shall pray that the Respondent's affidavit is dismissed with costs. The Applicant further asserted that whereas the cause of action arises out of an industrial setting, the suit ought to be filed in this court and which the Applicants' lawyers rightly did because the cause of action and the reliefs sought can be tried and awarded by this court and that paragraphs (k)-(m) of the original plaint plead coercion and duress to sign a release and discharge form, which act is tortious in nature and a labour officer cannot resolve such matters. The Applicant argued that this court has jurisdiction to hear this application and the suit.
5. Further, the Applicants rejoined that the claims intended to be brought in the amendments are not afterthought and that should the Respondent think to the contrary, it will be at liberty to challenge it during trial. The Applicant stated that the reason for bringing the evidence is to help court determine all issues in controversy; that the suit has not started and scheduling has not even been done, so amendment with leave to avail new evidence can be allowed; that the Respondent does not show court how the intended amendment is going to be prejudicial to it. The Applicants prayed that this application be allowed and the preliminary objection be overruled.

A handwritten signature in black ink, appearing to be 'N. P.', is located at the bottom right of the page. The signature is stylized and somewhat cursive.

6. During the hearing of this application on the 17th October, 2022, the Applicants were represented by Counsel Twongirwe Bathremew from M/s Bagyenda & Co. Advocates. The Respondent was represented by Counsel Bernard Mutyaba from M/s KNT Advocates. Both counsel filed the parties' written submissions and the Applicants' counsel also filed the Applicants' written submissions in rejoinder.
7. The 7th Applicant averred that the person that deponed to the affidavit in opposition of this application did not have the requisite to swear the same and prayed that the Respondent's affidavit is dismissed with costs. The affidavit in opposition to the application was sworn by Ms. Priscilla Namusikwe who in paragraph 1 of the affidavit is described as the Legal and Compliance Manager of the Respondent Company though no proof is attached to prove the same.
8. I find that the non-attachment of such proof does not in any way prejudice the Applicants. Therefore, in the interest of justice, I shall consider all the parties' pleadings in the resolution of this application and the preliminary objection raised by the Respondent's counsel.

Issues

- 1. Whether this court has jurisdiction to hear this application and Civil Suit No. 25 of 2020.**
- 2. Whether the Applicants should be granted unconditional leave to amend the plaint in Civil Suit No. 25 of 2020.**



Issue 1

Whether this court has jurisdiction to hear this application and Civil Suit No. 25 of 2020.

9. The Respondent's counsel reiterated paragraph 3 of the Respondent's affidavit in opposition to the application in its submission. Citing Section 93 (1) and (2) of the Employment Act, the Respondent's counsel submitted that the Applicants' cause of action is premised on alleged breach of their contracts of service with the Respondent company. Further, that the reliefs sought include, among others payments of overtime, severance allowance, transport allowance and declaration that the Respondent was in breach of their contract of service; all these arise out of their employment relationship with the Respondent.
10. That the only remedy for a complainant in that respect is to file a formal complaint with the labour officer. That in the instant case, the Applicants ought to have filed their claim with the labour office of Mukono District as prescribed by the Employment Act. In addition, that the Labour Disputes (Arbitration and Settlement) Act under section 7 establishes the Industrial Court which has the mandate to arbitrate on labour disputes referred to it by the labour officer and hear appeals against the labour officer's decision. **(See; section 8 of the Labour Disputes (Arbitration and Settlement) Act and section 94 of the Employment Act).**
11. That from the foregoing, it is apparent that the Industrial Court does not have original jurisdiction to adjudicate disputes. It only deals with disputes that are referred to it by the labour officer or appeals from the



labour officer's decision. Counsel cited the case of **DFCU Bank Limited v. Donna Kimuli, Civil Application No. 29 of 2019**, where court affirmed the position that the Industrial Court does not have original jurisdiction to handle labour disputes. That it is evident in the instant case that this honourable court has no jurisdiction to hear this application and the main suit.

12. The Respondent's counsel further contended that by attempting to adjudicate over this claim, this court would have usurped the powers of the labour officer and those of the Industrial Court to determine the matter as mandated under the Labour Dispute (Arbitration and Settlement) Act and the Employment Act. That there cannot be any application to amend pleadings in a claim filed in a court without the requisite jurisdiction and neither can this court usurp powers of other judicial bodies entrusted to deal with the claim and the present application by attempting to try it.

13. The Applicants' counsel on the other hand contended that section 93 of the Employment Act, 2006 which establishes jurisdiction of court in employment matters is spread over and has to be read as a whole to give its actual meaning and intention in as far as the employment disputes are concerned. That the Respondent's counsel neglected to look at sub-section (6) of the Act which provides that a claim in tort arising out of the employment relationship claim shall be brought before a court and the labour officer shall not have jurisdiction to handle such a claim. (see the case of **Engineer John Eric Mugenzi v. Uganda**



Electricity Generation Co. Ltd, Court of Appeal Civil Appeal No. 096 of 2015).

14. It was further submitted for the Applicant that the act of force that was made by the Respondent's agent is a unique dispute that was to be adjudicated upon and if found culpable, the Respondent be penalized in damages which reward cannot be given by a labour officer. That the labour officer being the court of first instance in employment disputes does not try cases but only reconciles and arbitrates without granting damages that would be a remedy if the formal court tries the case. (Section 4 of the Labour Disputes (Arbitration and Settlement) Act). Counsel added that this court has unlimited original jurisdiction to try this case on its merits.
15. It is an established principle of law that a preliminary objection raises a pure point of law which is argued on the assumption that all facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. (**Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd [1969] EA 696**).
16. Article 139 (1) of the Constitution of the Republic of Uganda, 1995 provides for the jurisdiction of the High Court which is to the effect that:
"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."



Section 14(1) of the Judicature Act, Cap 13 states thus:

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.

17. The matter before this court arises out of a contract of employment or out of an employee - employer relationship. Section 93 (1), (2) and (6) of the Employment Act provides that:

“(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.

(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; or

(b) by either party to a contract of service alleging that the other party is in breach of the obligations owed under this Act.

(3)

(4)

(5)



(6) A claim in tort arising out of the employment relationship claim shall be brought before a court and the labour officer shall not have the jurisdiction to handle such a claim.”

18. Under Section 24 of the Labour Disputes (Arbitration and Settlement) Act, 2006 the powers of the Labour Officer are restricted to conciliation and mediation only. Therefore, a matter before them is only deemed complete and thus ready for reference to the Industrial Court when mediation, conciliation or any other proceedings under Section 4 of the Labour Disputes Act fail. The only option open to the plaintiff who is not willing to go through mediation or conciliation which is not mandatory would be to file his or her claim in the court which includes the High Court. Secondly, a clear reading of Section 93 (6) of the Employment Act cited above disqualifies the Labour Officer from handling Civil Suit No. 25 of 2020 since it includes tortious claims.

19. Article 129 of the Constitution of the Republic of Uganda, 1995 provides thus:

“(1) The judicial power of Uganda shall be exercised by the courts of judicature which shall consist of –

- (a) the Supreme Court of Uganda;*
- (b) the Court of Appeal of Uganda;*
- (c) the High Court of Uganda; and*
- (d) such subordinate courts as Parliament may by law establish, including qadhis courts for marriage, divorce, inheritance of property and guardianship as may be prescribed by Parliament.*



(2) The Supreme Court, the Court of Appeal and the High Court of Uganda shall be superior courts of record and shall each have all the powers of such a court.

(3) Subject to the provisions of this Constitution, Parliament may make provision for the jurisdiction and procedure of courts.”

20. In **Attorney General v. Joseph Tumushabe, Supreme Court Constitutional Appeal No. 3 of 2005** Justice Mulenga stated at page 19 of his judgment thus:

“Under clause 3 of article 129, Parliament has discretion, subject to the provisions of the Constitution only, to make provision for the jurisdiction and procedure of courts. There is no provision of the Constitution that restricts Parliament in the exercise of that discretion from vesting in a subordinate court jurisdiction over some matter, which is also within the jurisdiction of the High Court. Indeed that concurrency of jurisdiction is acknowledged in article 23(6) (b). In that regard therefore, Parliament may in its discretion, place a subordinate court in the appellate hierarchy at the same level as the High Court. Thus, for example, under section 15 of the Non-performing Assets Recovery Trust Act, (Cap 95) appeals from decisions of the Tribunal established under the Act lie to the Court of Appeal. That does not render the Tribunal a superior court. Similarly, decisions of the Court Martial Appeal Court, like those from decisions of the High Court, lie to the Court of Appeal, rendering the Court Martial Appeal at the same level, in the appellate hierarchy of courts, as the High



Court. It follows that the General Court Martial (from which, appeals lie to the Court Martial Appeal Court), is both a subordinate court within the meaning of article 129(1) (d), and lower than the High Court in the appellate hierarchy of courts.”

21. In **Attorney General v. Joseph Tumushabe** (cited above) Justice Bart Katureebe, JSC, at page 3 of his judgment, said:

*“The Court Martial is set up as part of the disciplinary mechanism for the UPDF under article 210(b) of the Constitution and its jurisdiction is set out in the UPDF Act. From these provisions, it is clear that Parliament may indeed provide for concurrent jurisdiction for the High Court and a subordinate court in certain matters. Article 23(b) of the Constitution itself provides for cases where an offence **“is triable by the High Court as well as subordinate court”**. Indeed, the General Court Martial, in criminal matters in respect of persons subject to military law has concurrent jurisdiction with the High Court. But concurrent jurisdiction per se in limited matters, does not make the general court martial equivalent to the High Court which the Constitution has created as a superior court with unlimited jurisdiction in all matters.”*

22. In **Justice Asaph Ruhinda Ntengye & Anor v. Attorney General Constitutional Petition No. 33 of 2016**, the Constitutional Court held that the Industrial Court is a subordinate court established by Parliament of Uganda under article 129 of the Constitution.



23. By virtue of article 129 (1) (d) of the Constitution of the Republic of Uganda, 1995 the Industrial Court remains a subordinate court to the High Court of Uganda. Its jurisdiction is limited. The Industrial Court is an appellate court which only receives complaints and referrals from the Labour Officer. The latter has no jurisdiction to handle a claim in tort arising out of the employment relationship under section 93(6) of the Employment Act. But under article 139 (1) of the Constitution of the Republic of Uganda, 1995, the High Court of Uganda has unlimited original jurisdiction in all matters and such appellate and other jurisdiction as may be conferred on it by the Constitution or other law.

24. In my view, the concurrent jurisdiction of the Industrial Court with the High Court does not in itself oust the unlimited original jurisdiction of the High Court to handle all matters including employment related matters as enunciated under Article 139 (1) of the Constitution and Section 14 of the Judicature Act, Cap. 13. In my judgment, the concurrent jurisdiction of the Industrial Court is only in respect to appeals from the Labour Officer's decision on employment matters. Otherwise, if the jurisdiction of the High Court is to be questioned, such provisions of the law would be rendered redundant and nugatory. Moreover, the Constitution of the Republic of Uganda, 1995 which gives the High Court its unlimited original jurisdiction is the supreme law. Article 2 (2) of the Constitution provides thus:

"If any other law or custom is inconsistent with any of the provisions of this Constitution, the Constitution shall prevail, and that other law or custom shall, to the extent of the inconsistency, be void."



25. Basing on the authorities cited above, this court therefore finds no merit in the preliminary objection raised by the Respondent's counsel challenging the jurisdiction of this court and holds that this Application and Civil Suit No. 25 of 2020 were rightly brought before this court and accordingly dismiss the preliminary objection.

Issue 2

Whether the Applicants should be granted unconditional leave to amend the plaint in Civil Suit No. 25 of 2020.

26. Citing the case of **Gaso Transport Services (Bus) Ltd v. Obene (1990-1994)** the Applicants' counsel contended that the principles governing amendment of pleadings are that: the amendments should not work injustice to the other side, an injury which can be compensated by the award of costs is not treated as an injustice; multiplicity of pleadings should be avoided as far as possible and all amendments which avoid such multiplicity should be allowed; application which is made malafide should not be granted; no amendments should be allowed where it's expressly or impliedly prohibited by any law (for example - limitation of actions).

27. The Applicants' counsel argued further that as per paragraph 12 of the affidavit in support of this application, owing to the non-availability of pay slips at the time of filing, the plaint was couched to generalize the claim yet it is apparent that each person's claim be separate for court to easily determine the rights and obligations of each party to the suit.



That it is just and equitable that this court allows the Applicants to amend their pleadings instead of filing a separate suit with issues that could easily be dealt with in this suit if leave for amendment is granted.

28. Learned counsel further averred that the main suit has not taken off and amendment of the plaint shall not be prejudicial to the Respondent / Defendant. That this application is brought in good faith and is not aimed to shift any "goal post". Counsel cited the case of **Lubowa Gyaviira & others v. Makerere University HCMA No. 47 of 2009**, where it was held that an amendment made before commencement of a hearing should be allowed if it does not prejudice the opposite party. That since the intended amendment is made in good faith, this court should be pleased to allow it. Additionally, that this amendment is not barred by statute and it was brought without undue delay and also that this application is not prohibited by law. Counsel prayed that this honourable court please to allow the application.

29. In response, the Respondent's counsel reiterated the principles for grant of an application for amendment and referred to the case of **City Aluminum & Glass Services Ltd v. Barclays Bank Uganda Limited, Miscellaneous Application No. 884 of 2020**.

30. It was submitted for the Respondent that the Applicants' proposed amendment introduces a new cause of action. That the Applicants vide their proposed amendment as attached to their affidavit in support of the application seek to introduce new orders or reliefs, which amongst others include payment of over time totaling up to UGX. 75,644,801/=,



declaratory order in respect of failure by the Respondent to pay transport allowance and in effect condemning the Respondent for breach of contract, general damages of UGX. 20,000,000/= and aggravated damages of UGX. 25,000,000/=. That introduction of new orders amounts to introduction of a new cause of action which is contrary to the law. (See the case of **City Aluminium & Glass Services Ltd v. Barclays Bank Uganda Ltd** (supra)).

31. Further, that the grant of this application would be very prejudicial to its defense which goes against the principles for grant of an application for leave to amend pleadings. Counsel added that this application is brought as an afterthought as it was brought nearly two years after filing the plaint. Besides, that the Applicants are trying to substitute one cause of action for another which is unacceptable by law. Learned counsel submitted that it is only fair that this application is dismissed with costs to the Respondent and prayed so.

32. In rejoinder, the Applicants' counsel submitted that the Applicants instituted Civil Suit No. 25 of 2020 and the cause of action therein is duress and undue influence arising out of an employment contract. Counsel submitted that the Respondent's assertion that "claim" means a cause of action is misleading and that it is better for an amendment to be made such that future suits are restrained.

33. Order 6 rule 19 of the Civil Procedure Rules, SI 71-1 provides thus:

"The court may at any stage of the proceedings, allow either party to alter or amend his or her pleadings in such manner and



on such terms as may be just, and all such amendments shall be made as maybe necessary for the purpose of determining the real questions in controversy between the parties.”

34. The above provision empowers this court to exercise its discretion to allow or deny amendments. Such discretionary power is exercised to do justice to the case and must be exercised judiciously with due consideration of all the facts and circumstances before the court. The principles that have been recognized by the courts as governing the exercise of discretion to allow or disallow amendment of pleadings have been summarized in a number of decided cases including the cases of **Gas Transporter Services (Bus) Ltd v. Obene [1990-1994] EA 88 (SCU)** and **Mulwooza & Brothers Ltd v. Shah & Co. Ltd, SCCA No. 26 of 2010** and they zero down to the following:

- (a) Amendments are allowed by the courts so that the real question in controversy between the parties is determined and justice is administered without undue regard to technicalities;
- (b) An amendment should not work an injustice to the other side. An injury that can be compensated by an award of damages is not treated as an injustice;
- (c) Multiplicity of proceedings should be avoided as far as possible and all amendments which avoid such multiplicity should be allowed;
- (d) An application that is made *malafide* should not be granted;



(e) No amendments should be allowed where it is expressly or impliedly prohibited by any law;

(f) The court shall not exercise its discretion to allow an amendment which has the effect of substituting one distinctive cause of action for another.

35. In **Ntungamo District Local Council v. John Karazarwe [1997] 3 KALR 52**, it was held that:

“Order 6 rule 18 (now Rule 19) confers a wide discretion to courts to grant leave to parties to amend their pleadings. However, an amendment that would prejudice the right of either party would not be allowed.”

36. It is trite law that timely amendment of the parties' pleadings should not be denied if it is for the purpose of a just and final resolution of disputes between the parties before court. Such amendment must be in the interest of justice across the board and must not flimsily open causes of action not previously before court. It should be solely for clarifying and ensuring that once they are brought the matter previously before court and all related issues touching the subject matter concerning the parties shall be finally and fully disposed of.

37. In **Eastern Bakery v. Castelino [1958] E.A 461** it was held that amendments to pleadings sought before the hearing should be freely allowed if they can be made without injustice to the other side, and there is no injustice if the other side can be compensated by costs. It was

further held that the principles applicable to amendments of complaints are equally applicable to amendments of statements of defence.

38. The Respondent claimed that by the Applicants' proposed amendment introducing new orders amount to introducing a new cause of action. Upon consideration of the averments in the affidavits and submissions filed by both parties, I find that this application is not expressly or impliedly barred by any law and neither is it crafted to substitute one distinct cause of action for another as claimed by the Respondent. The application is therefore properly before the court and the court is in position to exercise its discretion to allow or disallow the application for amendment.

39. This application is premised on the fact that the plaint in Civil Suit No. 25 of 2020 requires amendment because it was generalized due to some documentary evidence which were not within the Applicants' reach at the time of filing the suit yet they are necessary for the determination of the real issues in controversy.

40. I note that the facts introduced by the Applicants will have to be supported by evidence and strictly proved by them. Once the facts are admissible and material to the case, the real issue is whether they are true or false. This issue cannot be determined in any other way other than through evidence adduced at the trial. In such circumstances, a party would therefore be allowed to introduce such facts and then be put to strict proof of the said facts. I do not see any malafide in such



circumstances. I also do not find any prejudice likely to be suffered by the Respondent.

41. The Respondent further contended that this application was brought nearly two years after filing the plaint which was an afterthought meant to prejudice the Respondent of its defence. I note however, that in a South African case of **Trans-Drakensberg Bank Limited v. Combined Engineering & Anor**, [1967] 4 All SA (D) it was held that:

“A delay by a litigant in bringing a formal application to amend in itself was not ground for refusing the amendment, unless the Respondent could show prejudice.”

42. In the present case, the Respondent has not demonstrated to this court what injustice, if any, it will suffer if the Applicants are granted leave to amend their pleadings. Besides, if such application is granted, the Respondent will as well be granted leave to amend its defence if it so desires.

43. Pursuant to the foregoing, this court finds that the intended amendment will advance the cause of justice if granted. Therefore, this application is allowed with the following orders:


(a) the Applicants are hereby granted unconditional leave to file and serve their amended plaint within 15 days from the date of this ruling;

(b) the Respondent may file an amended written statement of defence within 15 days from the date of service of the amended plaint and serve it on the Applicants;

(c) each party shall bear their own costs of this application.

I so rule and order accordingly.

This ruling is delivered this 25th day of Jan. 2023 by



FLORENCE NAKACHWA
JUDGE.

In the presence of:

- (1) Mr. Okello Peter, the 1st Applicant;*
- (2) Mr. Ekwamu Joseph, the 2nd Applicant;*
- (3) Ms Babirye Juliet, the 5th Applicant;*
- (4) Mr. Byakika Ronald, the 8th Applicant;*
- (5) Ms Pauline Nakavuma, the Court Clerk.*