

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
CIVIL DIVISION

**CIVIL SUIT NO. 319 OF 2020**

KENNETH ZAKAYO KWAMYA KAHERU ===== PLAINTIFF

VERSUS

BERKELEY ENERGY UGANDA LIMITED ===== DEFENDANT

**BEFORE: HON. JUSTICE EMMANUEL BAGUMA**

**RULING ON PRELIMINARY OBJECTION.**

**Background.**

The plaintiff filed this suit against the defendant for breach of a contract of employment seeking special damages, general damages, aggravated damages, interest and the costs of the suit.

The defendant filed a defence to the claim and raised a preliminary objection to the effect that this being an employment matter, this court does not have jurisdiction to entertain the suit.

**Preliminary objection.**

*Whether this suit is improperly before this court and ought to be dismissed on that basis?*

**Legal representation.**

Mr. Bazira Anthony together with Ebert Byenkya represented the Plaintiff while Mr. Timothy Masembe Kanyerezi, Mr. Alex Ntale, Mr. Brian Kajula and Kiapi Kenneth represented the defendant.

When this case came up for hearing, parties agreed to file written submissions.

**Submissions by Counsel for the Defendant on the preliminary objection.**

Counsel for the Defendant submitted that jurisdiction and forum for labour complaints is clearly provided for under the Employment Act 2006 and the labour

disputes Arbitration and Settlement Act, 2006. **Section 93 (1) of the Act** 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”.*

That section 5 of the Labour Disputes Arbitration and Settlement Act, 2006

*“When Labour Officer may refer dispute to Industrial Court*

*(1) If, four weeks after receipt of a labour dispute—*

*(a) the dispute has not been resolved in the manner set out in section 4 (a) or (c); or*

*(b) a conciliator appointed under section 4(b) considers that there is no likelihood of reaching any agreement, the Labour Officer shall, at the request of any party to the dispute, and subject to section 6, refer the dispute to the Industrial Court”.*

Counsel submitted that the above provisions clearly give the labour officers and the Industrial Court by way of reference the jurisdiction to handle employment claims arising out of contracts of service and breaches of provisions of the Act.

Counsel referred to the case of **201 former employees of G4S Security Services Uganda Ltd Vs G4S Security Services Uganda Ltd [2012] UGSC 6** where court held 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”.*

Counsel also referred case of **Uganda Broadcasting Corporation Vs Kamukama [2005] UGHCCD 121** where court held that;

*“Much as this court has unlimited jurisdiction if one looks at the intention of parliament in conferring jurisdiction on the Labour officer and the creation and operationalisation of the Industrial Court with appellate jurisdiction it would be prudent if these two institutions are put to good use. This is our current court policy. Avoiding these institutions would be defeating the intentions of the legislature since the Industrial Court is now operational. I find it proper to refer this matter to the Labour Officer for appropriate handling”.*

Counsel concluded that the employment claims therefore are handled by the Industrial Court by way of reference from the labour officers. It would be defeating the intention of the legislature if employment claims were brought before any court a claimant deems fit, yet specific remedies and courts with jurisdiction were created for that purpose.

**Submissions by Counsel for the Plaintiff in reply to the preliminary objection.**

Counsel for the Plaintiff submitted that the Respondent waived his right to raise a preliminary objection when he failed to file an application to court intimating that they wish to raise a preliminary objection.

Counsel referred to Order 9 rule 3 (1) (g) of the CPR which provides that;

*“A defendant who wishes to dispute the jurisdiction of the court in the proceedings by reason of any such irregularity as is mentioned in rule 2 of this Order or on any other ground, shall give notice of intention to defend the proceedings and shall, within the time limited for service of a defence, apply to the court for—*

*A declaration that in the circumstances of the case 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”;*

Counsel referred to the case of **Sentamu Joseph Vs Jibu Corporate Uganda Limited HCCS No. 51 of 2021** where court held that;

*“It is clear from the above provisions that a defendant who wishes to dispute jurisdiction of a court has two options; either to file a notice of intention to defend the suit or to file the written statement of defence itself. But whichever option the defendant takes; he/she must file an application seeking for a declaration that the court has no jurisdiction in the matter. The latter is mandatory”.*

Counsel submitted that since there was no application to dispute the jurisdiction of the court, the court should find that the Defendant has no locus standi to raise this preliminary objection. Counsel prayed that since the Defendant did not make the

necessary application, the filed Written Statement of Defence should be treated as a submission to the jurisdiction of this court.

Counsel further submitted that this court has unlimited original jurisdiction conferred to it by Article 139 of the constitution of the Republic of Uganda.

Counsel referred to the case of **Absa Bank Limited & 2 Others Vs Electro Maxx (U) Limited & Another HCMA No. 241 of 2020** where court held that;

*“I find so because, the jurisdiction of this Court is well known and is granted by the Constitution and the Judicature Act. It cannot therefore be taken away by procedural rules. The better argument is that the purpose of the rule cited was to decongest the Judges’ dockets. That is true. But that cannot fetter a trial Judge’s powers under Section 33 of the Judicature Act and Section 98 of the CPA”.*

Counsel submitted that the Employment Act does not define what a court is. In other words court is open for consideration whether it means a court of judicature, subordinate court or industrial court. It therefore means a court of judicature or a subordinate court and does not refer to the Labour Officer or the Industrial Court. That this lacuna was addressed in **Engineer John Mugyenzi Vs UEGCL, Civil Appeal No. 167 of 2018**.

Counsel concluded that this court has jurisdiction to entertain this matter.

### **Analysis of Court.**

*Whether this suit is improperly before this court and ought to be dismissed on that basis?*

In the case of **Eng. John Eric Mugyenzi Vs Uganda Electricity Generation Co. Ltd CACA No. 167 of 2018** where court held among others that; -

*“a labour dispute can be filed in a court of judicature having jurisdiction such as high court of Uganda*

*Court further stated that the labour officer from the foregoing does not have jurisdiction to award general or punitive damages.....”*

In the instant case, the plaintiff in his plaint seeks for general damages which cannot be granted by the labour officer, therefore this suit is properly before this court and shall proceed on its own merit.

**Conclusion.**

In the premises, the preliminary objection is overruled with the following orders;-

1. The suit is properly before Court.
2. Let the suit proceed on its merit.
3. Costs to be in the cause.

Dated, signed, sealed and delivered by email at Kampala this **28<sup>th</sup>** day of **March 2023**.

**Hon. Emmanuel Baguma**

**Judge**