

THE REPUBLIC OF UGANDA

IN THE INDUSTRIAL COURT OF UGANDA

LABOUR DISPUTE REFERENCE NO. 031/2015

(Arising from labour dispute MGLSD NO. 272 of 2014)

**M/S UGANDA SCIENTIFIC RESEARCHERS AND ALLIED WORKERS
UNIONCLAIMANT**

VERSUS

- 1. UGANDA NATIONAL BUREAU OF STANDARDS**
- 2. DR. BEN MANYINDO, EXEC. DIRECTOR. UNBSRESPONDENTS**
- 3. DR. WILLIAM SSALI, FORMER CHAIRMAN NBS**

RULING

BEFORE:

- 1. THE HON. RUHINDA ASAPH NTENGYE, CHIEF JUDGE**
- 2. THE HON. JUSTICE TUMUSIIME LILLIAN LINDA MUGISHA, JUDGE**

PANNELLISTS

- 1. MR. EBYAU FIDEL**
- 2. MS. HARRIET MUGAMBWA**
- 3. MR. FRANK XAVIER MUBUKE**

The claimant as a registered labour union constitutes a membership that includes the 1st respondent which is a statutory body capable of being sued. The second respondent by the time of this claim was the chief executive of the first respondent whereas the third respondent was the chairman of the governing council of the first respondent.

In the memorandum of claim the claimant prayed for issue of declaratory orders that all labour decisions taken by the respondent without involving the claimant were unlawful; she also prayed for compliance orders, compensation and reinstatement of the claimant's members, general and punitive damages as well as costs.

Before the matter could proceed on merits the respondent raised the following preliminary objections;

1. The memorandum of claim disclosed no cause of action against the 2nd and the 3rd respondents,
2. The Industrial Court had no jurisdiction over the claim being an action seeking a recognition of the claimant by the 1st respondent.
3. The claim was not properly before the court in the absence of a recognition and collective agreement.

SUBMISSIONS

In submission counsel for the respondent argued the objections in the order they appear but we shall start with the second objection that is whether this court has jurisdiction.

Counsel argued that the forum for a claim seeking recognition of a registered labour union by the employers of the members of such union was the Registrar of labour unions and not the Industrial Court. He submitted that it was only when the Employer failed to comply with the Registrar's order that the aggrieved labour union could refer the matter to the Industrial Court. Counsel relied on section 24 (3) and (6) of the Labour unions Act.

In reply counsel for the claimant argued that rather than take away the Court's jurisdiction the law cited by counsel for the Respondent actually vested the Industrial Court with jurisdiction. He submitted that the dispute was first raised with the Commissioner for labour who at law was the Registrar of labour unions and eventually the permanent secretary of the ministry of labour requested for a report on the dispute from the first respondent and later on the first respondent sat to consider the petition. He submitted that therefore the argument that the dispute was not referred to the commissioner first was escapist.

In support of the argument that this Court has jurisdiction he relied on section 2 of the Labour Dispute and Settlement Act and section 6(1) and (7) (3) of the Labour unions Act. He argued that the respondent having initially advised the labour officer at Makindye to transfer the dispute to the Industrial Court for involving serious questions of law, the same respondent could not turn around and challenge the jurisdiction of the same Court.

In rejoinder counsel for the respondent argued strongly that there was no co-relation between the Registrar of labour unions and the Commissioner of labour.

RESOLUTION OF OBJECTION NO. 2

It was not denied by the respondent that the matter was first raised with the commissioner of labour through a petition dated 17/9/2014. It seems to us that the only question is whether the said commissioner was the same officer referred to as registrar in section 24(6) of the Labour Act.

Section 13(1) of the Labour Unions Act provides

"The minister shall by Statutory Instrument appoint a Registrar of Labour Unions who shall be a senior public officer and who shall be responsible for the functions conferred upon the registrar"

The same Act provides for the powers of the registrar in section 14-53 which include registration of labour unions, disciplining of the union leaders as well as cancellation of the registration of the said Unions.

Section 24(3) of the said Act provides:

"Where an employer refuses to deal with a registered organization in accordance with subsection (1)(d) , then the registered organization shall complain to the Registrar, who shall immediately call upon the employer to show cause in writing within twenty one days why the employer is not complying with this Act"

Section 24(6) of the same Act provides

"Where the employer or registered organization fails to comply with an order made under subsection (5) or where the Registrar declines to make the order the aggrieved party may refer the matter to the Industrial Court"

Neither the claimant nor the respondent provided this court with any Statutory Instrument appointing a Registrar in accordance with section 13(1) of the Labour Unions Act.

Nonetheless we take judicial notice that a number of Labour Unions exist under the Labour Unions Act and are registered with the Ministry of Gender Labour and social development under the hand of the Commissioner for Labour.

It is our considered opinion therefore that the Commissioner being a senior public officer carried out the responsibilities of registrar of labour unions and this was (and most likely still is) with the approval of the Minister of Gender Labour and Social Development.

There is evidence on the record to show that a petition was addressed to the Minister of Trade, Industry and Commerce and it was subsequently acted upon by the Ministry of Gender Labour and Social development's Commissioner as already pointed out.

It is our considered opinion that the whole process of initiating communication about issues to do with the relationship between the claimant and the 1st respondent and the subsequent actions by the permanent secretary and the commissioner in the Ministry Minister of Gender Labour and Social developments as well as the 1st respondent satisfied the provisions of section 23(3) and (6) of the Labour Unions Act because it was in good faith.

The claimant (and any other third parties) reasonably believed (and still believe) that the Commissioner was (and still is) the registrar of labour unions. **THE AUTHORITY OF THE COURT OF APPEAL/CONSTITUTIONAL COURT, CONSTITUTIONAL PETITION**

NO. 10 OF 2008, JIM MUHWEZI AND THREE OTHERS VS THE ATTORNEY GENERAL AND ANOTHER, It was held inter alia that:

" ... Any defect in the appointment of the holder of that office does not nullify everything he does in office as long as they are within the Constitutional Mandate of that 4

office. In that regard it would be absurd to nullify everything Justice Mwendha did in office for a period of four years merely because her appointment was not in accordance with the Constitution."

In the same vain it would be absurd to nullify the decisions of the commissioner regarding the registration and management of labour Unions simply because he had no instrument of appointment from the Minister of Gender labour and Social development. This being the case we think it is equitable and just not to falter the claimant or any other third party for having relied on the commissioner's actions. The Minister however should regularize the appointment of the registrar for labour Unions.

Consequently, we hold that the claim was properly lodged in this court. Objection no, 3 is therefore over ruled.

RESOLUTION OF OBJECTION NO. 3

The third objection related to the issue as to whether the claim was properly before this court in the absence of a recognition and collective bargaining agreement.

Counsel for the respondent submitted that failure of the claimant as a labour union to attach a recognition and collective bargaining agreement to the memorandum of claim was fatal to the claim which according to him must be dismissed. He relied on rule 5(7) of the Labour Disputes and Settlement (Industrial court) Civil Procedures/rules

Counsel for the claimant submitted that there was attached a recognition agreement between the Government of Uganda and the claimant which according to counsel for the claimant was binding onto the respondent since the latter was an autonomous body of Government.

Counsel for the respondent countered in rejoinder that the respondent being a body corporate with perpetual succession and a capability to sue and be sued as well as hire its own employees was distinct from government and was therefore not party to the recognition agreement filed in court.

Having carefully digested both counsel's submissions we find that indeed the respondent is an autonomous body of government which is not denied. We do not find it acceptable that government could recognize a labour union only to be denied by a branch or body of the same Government.

Article 2 of the recognition agreement filed in court provides:

"The government accords full recognition to

- a. The Union as the properly constituted and representative body representing the interests of union members in matters concerning their terms and conditions of service.
- b. All properly constituted branches of the unions as may be set up"

Since the respondent is an agency of government we find the above provision binding on her and the inference in the argument of counsel that the respondent is entitled to disregard it and enter in to another one diametrically different not convincing and not acceptable. We therefore hold that there was a recognition agreement attached in accordance with rule 5(7) of the Labour Disputes and Settlements (Industrial Court) Civil Procedures/rules. Objection3 is over ruled

RESOLUTION OF OBJECTION NO.1

It was argued on behalf of the respondent that the 2nd and 3rd respondents were not employers of the claimant's alleged members and therefore there was no contractual relationship between them and hence no cause of action existed. Counsel for the respondent went ahead to submit that the 2nd and 3rd respondents having been disclosed agents of the 1st respondent who was the Principle they as agents could not be liable. Counsel relied on section 2 of the Employment Act and the authority of **OBUNTU CONSULTING LIMITED versus PLAN BUILD SERVICES LTD, H.C.M.A. NO.173 of 2014 as well as TORORO CEMENT CO LTD versus FROKINA INTERNATIONAL CO. LTD S.C.C.A. NO.2 of 2001.**

Counsel for the claimant on the other hand argued that, the 2nd and 3rd respondents were sued in their official capacities hence the disclosure of their respective offices. He argued also that since the suit sought '**DECLARATION**' implementation of the same would require both in their official capacities.

Lastly Counsel argued that in light of the allegation of bad faith against the said respondents it was up to them to demonstrate good faith.

We agree with the submission of counsel for the respondent that an agent of a disclosed principle may not be sued in his personal capacity. But we think that where there exists an allegation that such an agent may have acted outside the normal course of his duty as an agent then he or she must be personally accountable. In his submission counsel for the claimant contended that it was in bad faith that both the 2nd and 3rd respondents as claimed in paragraph 6(m) and (j) amended the Human Resource Manual. In our considered opinion this allegation in the claim demands an

explanation whether the said respondents were acting in their capacity as agents of the disclosed principle or on their own whims. This can only be clarified when the matter is heard on its merits. The allegation in our view discloses a cause of action against the said respondents and the third objection therefore is overruled.

In the result the claim shall proceed on its merits.

SIGNED

1. Hon Justice Ruhinda Asaph Ntengye,
Chief Judge

2. Hon. Lady Justice Linda Lillian Tumusiime Mugisha,

Judge.

PANELISTS

1. Mr. Ebyau Fidel
2. Ms. Harriet Mugambwa.
3. Frankie Xavier Mubuuke

Delivered on 1st October 2015