1THE REPUBLIC OF UGANDA

THE INDUSTRIAL COURT OF UGANDA HOLDEN AT MASAKA

LABOUR DISPUTE MISC. APPL. NO. 073 of 2016

(*ARISING FROM LDR NO. 23 OF 2014*)

BETWEEN

EMMA OBOKULLO ..... CLAIMANT

AND

WALTER ARNOLD..... RESPONDENT

BEFORE

1. Hon. Chief Judge Ruhinda Asaph Ntengye
2. Hon. Lady Justice Linda TumusiimeMugisha

PANELISTS

1. Mr. Ebyau Fidel
2. Ms. Harriet NganziMugambwa
3. Mr. F.X.Mubuuke.

RULING

This ruling arises from the above application and labour dispute reference respectively. It was filed by the applicant under section 82 and 98 of the CPR order 46 rr 1, 2 and 8 of CPR rules, s.171-1.

The application sought review of the orders of this court made in the above labour dispute. The application was supported by an affidavit and counsel for the applicant appeared and argued the application before this court.

In reply counsel for the respondent as well filed an affidavit in reply in opposition of the application. He also appeared before this court and opposed the application in his submission.

We have carefully listened to both counsel and we have carefully perused both our award in the original dispute and the affidavits filed by both parties. We have also perused carefully the cited authorities by both counsel.

It was argued on behalf of the applicant that there was an error on the face of the record since the court assumed that during the life of Tina, the applicant was an employee of Roko Construction which was not the case. Counsel submitted that the court assumed that the applicant was a dependant relative of the deceased Tina, living with her which was not the case.

In his submission these errors led the court to make a finding that the activities of the claimant were mere errands by a relative and not done as between employer and employee. Counsel also referred to certain documents exhibited but not referred to by this court which in his view was a mistake that could have changed the direction this court took had it referred to them.

Counsel for the respondent argued that the application was incompetent. He submitted that the finding of the court that the claimant was running errands of his aunt was not an error on the face of the record since even if court were to find otherwise it would not create an employer-employee relationship between the two.

He submitted that the fact that this court did not consider some evidence would not be a subject of a judicial review. He argued it was only discovery of new evidence and not non consideration of evidence on the record that constituted judicial review.

It is our position, just like it is with both counsel, that judicial review arises once the applicant among others, discovered new and important evidence. This evidence must not have been within his/her reach. The applicant did not in any way show the court any new matter or new evidence that was not in his possession at the time he testified. He has not shown that if such evidence was brought to the attention of court, it would be able to make the court change its mind.

Instead counsel for the applicant concentrated on re-evaluating the evidence on the record by pointing out that this court should have taken into account certain pieces of evidence or that it misdirected itself on certain f acts.

In our considered opinion, all the submissions of counsel for the applicant were as if he was arguing an appeal . As was held in the case of **BATUK K. VS SURET MUNICIPALITY AIR (1953) BONN133 which was applied in MA 497/2014 KALOKORA KAROLI VS NDUGA ROBERT BEFORE Hon. Justice Musota**.

"No error can be said to be apparent on the face of the record if it is not manifest or self evident and required an examination or argument to establish it."

It is our considered opinion that the question whether this court ought to have considered certain pieces of evidence requires arguments and therefore does not constitute an error on the fact of the record.
The same applies to the question as to whether this court directed its mind properly on whether during the life of Tina, the claimant was an employee of Roko construction.

This court considered the evidence as it was adduced by the parties. In its wisdom it declared that evidence was not sufficient to establish an employee-employer relationship between the two parties within the meaning of the Employment Act.

Whether this was a wrong decision or a right decision can only be determined by the court of Appeal.

Unfortunately as admitted by counsel for the claimant, the court of Appeal may not entertain the grievance of the claimant since it constitutes facts and not law.

Section 22 of the Labour Disputes(Arbitration and Settlement) Act provides for appeals from the court to the court of Appeal on matters of law and not of fact.

Consequently we agree with counsel for the respondent that this court is functus officio. The application is dismissed with no order to as to costs.

Signed by:

1. Hon. Chief Judge Ruhinda Asaph Ntengye .....
2. Hon. Lady Justice Linda TumusiimeMugisha .....

PANELISTS

1. Mr. Ebyau Fidel .....
2. Ms. Harriet NganziMugambwa .....
3. Mr. F.X Mubuuke .....

Dated: 14th/10/2016