

THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
MISCELANOUS APPLICATION. 30/2017
RISING FROM LABOUR DISPUTE 238/2016

ABB LTD **CLAIMANT**

VERSUS

LAGU EMMANUEL & ANOTHER **RESPONDENT**

BEFORE

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

Panelists

- 1. MR. EBYAU FIDEL**
- 2. MS. HARRIET MUGAMBWA NGANZI**
- 3. MR. F. X. MUBUKE**

RULING

On the 2/05/2017 this Court made a ruling without reasons granting the application with costs to be borne by the applicants for causing the double filing the claims in two different courts. The following are the reasons:

This is an application is brought by notice of motion, under Section 6 and 98 of the Civil procedure Act Cap 71, Section 33 of the Judicature Act and Order 52 rule 1 and 3 of the Civil Procedure Rules, for a declaration that Labour Claim No. 238 of 2016 filed in the Industrial Court on the 4/11/2016 be stayed pending the final determination of Civil Suit No. 700 of 2016 which was filed in the Commercial Division of the High Court on the 15/09/2016. The application claims that the matter in the Commercial Division is between the same parties and purporting that the matters in issue in the Labour Claim were substantially in issue in Civil suit No. 700 of 2016 in the High Court civil division.

Through an affidavit in support of the application deponed by Simon Kazunda, dated 27th March 2017, the applicants Counsel Mr. William Kasozi asserted that allowing the labour claim to proceed could pose a danger of the different Courts making conflicting decisions on the same issues and also lead to a multiplicity of suits. He argued that tests applied for stay of proceedings were laid down in the case of **SPRING INTERNATIONAL HOTEL VS HOTEL DIPLOMAT & BONNY KATATUMBA HCCS 227 OF 2014**, as follows:

1. Whether there is a previously instituted suit between the same parties?
2. Whether the matter in issue is directly or substantively in issue in a previously instituted suit?
3. Whether the suit is pending in a court that has jurisdiction to grant the relief claimed?

He insisted that **Civil Suit No. 700 of 2016** in the Commercial Court had been filed much earlier than **Labour Claim No. 238 of 2016** which was filed in the Industrial Court. That the facts in CS700 of 2016 before the Commercial Court were

substantially the same as those in Labour claim 238 of 2016 before this Court and the “irregular charges” that were being challenged as a basis for unlawful and unfair dismissal in the memorandum of claim in the labour claim are all based on the same facts before the Commercial Court under Civil suit 700 of 2016, the charges being that money in form of bonuses was erroneously overpaid to the Respondents. That the witnesses in both matters are the same and they would be traveling from South Africa to testify in both cases.

Counsel further argued that the Respondents filed labour claim No. 238 of 2016 on 4/11/2016 and yet the suit before the Commercial Court had been filed on the 15/09/2016 which was clearly much earlier than the labour claim.

He asserted that the High Court was still dressed with jurisdiction to determine labour disputes even after the establishment of the Industrial Court although it is not the preferred Court. He relied on **UBC VS RUTHURA, AGABA KAMUKA MISC APP 638 OF 2014 AND HILDA MUSINGUZI VS STANBIC BANK HCCS NO. 124 OF 2008.**

He argued that it was an abuse of Court process for the 2 people who facilitated what he called an erroneous payment of the bonuses, refused to pay back the bonuses that were paid in what he said was an error to now run to the Labour Court to claim they were unlawfully dismissed and claim big damages. He asserted that running to this court was a means for them to avoid paying back the money they took in error so that the claims may cross out. He relied on **UGANDA LAND COMMISSION VS JOHN MARK KAMOGA SC NO. 08 OF 2004.**

In the alternative counsel prayed that to avoid a multiplicity of suits this Court had the power under order 11 rule 1 to consider consolidating the suits under a

consolidation order. He relied on **ANKOD VS PHILIPO MALINGA SCCA NO. 6 OF 1987 REPORTED FROM 1992 -1993 HCB, 91.**

He therefore prayed that Court considers staying the proceedings in **Labour Claim No.238 of 2016** pending the determination of **Civil Suit No. 700 of 2016** pending before the Commercial Division.

Ms. Deborah Takola Counsel for the Respondents through 2 affidavits deponed by Emmanuel Lagu and Kamanyire Moses both dated 1/03/2017, vehemently opposed the application. She considered the application a total abuse of Court process aimed at wasting Courts time and prayed it is dismissed.

She submitted that Labour Claim No. 238 of 2016 originated from labour complaint No.140/2016 filed before the labour officer on the 13/07/2016. It proceeded with mediation before the labour officer in Nakawa and on the request of Counsel for the Applicants, it was transferred to the labour office in Kawempe. According to her, the parties entered into a consent agreement on the 6/10/2016 and agreed that the matter would be filed in the Industrial Court if it was not resolved by the Labour Officer. However before the mediation by the labour officer was concluded the Applicants filed Civil Suit 700 of 2016 in the Commercial Court which in her view was an abuse of Court process. She insisted that Civil suit No. 700 of 2016 was filed after the Labour Claim. She submitted that the Labour Claim was a reference to this Court and not an original suit because this court did not have original jurisdiction. She made reference to Section 93 of the Employment Act which made it mandatory for any Labour complaint to be lodged to the Labour Officer first and that's why they started with the Labour Officer. She opined that the matter before the Commercial Court was brought as an

afterthought. And therefore Court should find that LD No. 238 of 2016 had been filed earlier than C.S No. 700 of 2016, therefore rendering the application of section 6 of the CPA wrongly applied.

Co-counsel Mr. Kauzi with reference to the affidavits deponed by both respondents, submitted that whereas the claim in Labour Claim 238 of 2016 was for remedies for unlawful termination from work the remedies sought in C.S No. 700 of 2016 were for the recovery of money. According to him these causes of action were very different. He also submitted that the issues before this court were different from those in the Commercial Court under C.S No. 700 Of 2016.

According to him this Court was dressed with the jurisdiction to entertain employment matters which the Commercial Court does not have. He relied on the case of **UBC Vs Ruthira Kamukama** (supra). He asserted that LD No. 238 of 2016 was purely an employment matter that this Court had jurisdiction to handle and to grant the remedies sought for.

On the abuse of court process he submitted that there was a consent agreement to have the matter referred to this court in the event that the Labour officer failed to resolve it and therefore this application was only intended to delay and deprive the respondents Justice.

In rejoinder counsel Mulindwa argued that the matter before the Labour Officer was not a suit. He submitted that the definition of suit had been defined by the rules committee and in this case a suit only commenced when the matter was filed in this Court. Therefore the date when the matter was filed in this Court was well after C.S No. 700 of 2016 had been filed in the Commercial Court. He relied on **MATCO STORES AND OTHERS VS GRACE MUHWEZI & ANOR C.S NO 90 & 91**

OF 2001. He insisted that the Complaint before the labour officer was not a suit and even if there was a consent agreement, to refer the matter to the Industrial Court, the matter only became a suit after it was filed in the Industrial Court.

According to him what is required for determination is that the matter filed in this Court is directly to be determined in the commercial court and the remedies need not be the same as decided in Springs international(Supra). He concluded that in the circumstances Court should exercise its power to stay the proceedings in the proper administration of justice or consolidate the suits to avoid multiplicity of suits. The application should be allowed.

DECISION OF COURT

We have carefully listened to both submissions read the record and the law and find as follows:

Before we consider the subject matter regarding this application. We think it is important to clear the air about whether a complaint filed before a labour officer amounts to a suit or not?

Learned Counsel for the Applicants strongly argued that a matter filed before a Labour Officer is not a suit as defined by the rules committee and in this case a suit only commenced when the matter was filed in this Court. We respectfully disagree with counsel for the following reasons:

Labour justice is unique both in substance and procedure because its primary focus is social justice and equity, hence the establishment of a unique Specialized Industrial Court with the status of a High Court. The Court however is a Court of reference and references lie from the Labour Officer.

Section 93 of the Employment Act as rightly pointed out by the Respondents is worded in mandatory language to require that any labour complaint must be lodged to the Labour Officer who is expected to hear and to settle the matter by conciliation or mediation and a reference of the matter is only made to the Industrial Court when the Labour Officer fails to resolve it within 8 weeks after it was reported to him or her.

Therefore Sections 12, 13 and 14 of the Employment Act 2006 and Section 4 of the Labour Disputes (Arbitration and Settlement) Act 2006, by implication made the Office of Labour Officer the first court of instance in Labour disputes. Section 13 of the Employment Act provides that;

“13. Labour officer’s power to investigate and dispose of complaints

(1) A Labour officer to whom a complaint has been made under this Act shall have power to-

(a) Investigate the complaint and any defence put forward to such a complaint and to settle or attempt to settle any complaint made by way of conciliation, arbitration, adjudication or such procedure as he or she thinks appropriate and acceptable to the parties to the complaint with the involvement of any Labour Union present at the place of work of the complainant; and

(b) Require the attendance of any person as a witness or require the production of any document relating to the complaint after reasonable notice has been given

(c) Hold hearings in order to establish whether a complaint is or is not well founded in accordance with this Act or any other law

applicable and the Labour officer shall while conducting the hearing employ the most suitable means he or she considers best able to clarify the issues between the parties

(d) Presume the complaint settled if the complainant fails to appear within a specified period

(e) Adjourn to another date

This section provides for the role of the Labour Office on receipt of a complaint. Regulation 7 of the Employment Regulations 2011 provides for the form in which the complaint shall be brought to the Labour officer and although it is not brought by plaint as defined by the rules committee our interpretation of Section 13 is that the complaint before the labour office is a registered labour dispute which has all the characteristics of a suit. The complaint contains the facts that constitute the cause of action or claim and remedies sought upon which the labour officer must make a decision. It is our considered opinion that this is not different from a suit which is brought by plaint as defined by the rules committee. Besides, Section 2(x) of the CPA provides that:

“Suit means all civil proceedings commenced in any manner prescribed.”

The uniqueness of the industrial Court however requires that once a reference is made pleadings proceedings regarding a case are by filing of a memorandum of claim by the claimant and a response to the memorandum of claim by the respondent. This does not render complaint before the labour officer incompetent as a suit.

With regard to the issue whether the labour dispute should be stayed pending the matter in the Commercial Court,

Section 6 of the Civil Procedure Act states that:

***“No Court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title where that suit or proceedings is pending in the same or any other court having jurisdiction in Uganda to grant the relief claimed.*”**

We believe that the issues under labour claim No. 238 of 2016 which was filed in the Industrial Court and the issues under Civil Suit No.700 of 2016 are substantially the same although the remedies sought in each are different. It is not in dispute that the parties are the same. We found that the subject matter or basis of the cause of action in both cases is substantially the same because **the determination of the issue whether the Respondents were unfairly /unlawfully dismissed on irregular charges as set by the Applicants disciplinary tribunal under Labour Claim 238 of 2016, would involve the determination of the questions a) whether the amounts of money overpaid by the Applicants to the Respondents were paid by mistake or in error and b) whether the Respondents were entitled to the money overpaid to them as claimed in the case under Civil suit 700 of 2016 before the Commercial Court.**

That notwithstanding however we take exception with the way Counsel for the Applicants rushed to file civil suit No 700 of 2016 in the Commercial Court before the mediation instituted by the Labour Officer was concluded. We have already decided that his reasoning that he filed the case before the Commercial Court because a matter lodged before a Labour Officer was not a suit as defined under

section 2 of the CPA was untenable. The implication of Counsels action was an abuse of court process that should not be condoned. Counsel as an officer of Court had an obligation to complete proceedings before the Labour Officer before rushing to the commercial Court to file a fresh suit.

The Respondents however did not rebut the fact that the matter in the Commercial Court was in advanced stages with a possibility of out of Court settlement nor did they make any effort to stay the proceedings in the Commercial Court. This being the case we are inclined to allow this application for stay of proceedings. We do not see any justification for disallowing the application well aware of a similar matter in another Court of competent Jurisdiction. The application is therefore allowed.

That notwithstanding however even though the application met the tests applied for stay of proceedings as espoused in **Spring International hotel vs Hotel Diplomat & Bonny Katatumba HCCS 227 of 2014** , we have faulted the applicants for filing a similar matter in another Court of competent jurisdiction. In the premises they shall pay costs of the application.

Signed and delivered.

1.THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE

2.THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA

Panelists

1.MR. EBYAU FIDEL

2. MS, HARRIET MUGAMBWA NGANZI

3. MR. F. X. MUBUKE

DATED: 2ND MAY 2017