

**THE REPUBLIC OF UGANDA**  
**THE INDUSTRIAL COURT OF UGANDA HOLDEN AT KAMPALA**  
**LABOUR DISPUTE REFERENCE NO. 096/2015**  
**(Arising from Labour Dispute NO. 103/2015)**

**BETWEEN**

ENG. JOHN ERIC MUGYENYI..... CLAIMANT

**VERSUS**

UGANDA ELECTRICITY GENERATION COMPANY LTD.....RESPONDENT

**BEFORE**

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

**PANELISTS**

1. Mr. Ebyau Fidel
2. Ms. Harriet Mugambwa Nganzi
3. Mr. Michael Matovu.

**RULING**

This ruling arises out of a preliminary objection raised by counsel for the respondent.

Initially in court, counsel for the respondent on 17/2/2017, sought to raise the objection having served the claimant with a letter showing that an objection of limitation of actions would be raised. Counsel for the respondent argued then that limitation having not been pleaded under order 06 rule 06 of the civil procedure rules and the claimant having not prayed for ammendment of pleadings , such objection could not be raised.

We overruled counsl for the claimant and allowed the respondent to raise the objection now the subject of this ruling.( note that the same objection under the same circumstances was raised in the case of EMANUEL LUBANDI VS UGANDA ELECTRICITY GENERATION COMPANY L.D.C 095/2015). The decision in the cited case above will apply in the same measure to the facts in this case

.The claimant filed labour dispute claim No. 258/2014 in this court on 17/10/2014 which was dismissed on the basis that it had to be first filed (and handled by) a labour officer.

Subsequently a complaint was filed in the labour office on 22/4/2015. By letter of the labour officer dated 12/05/2015 the matter was referred to this court ostensibly on grounds of law because learned counsel for the claimant had asked the labour officer to forward the file to

the court under section 5(1)(a) and (b) of the Labour Disputes (Arbitration and Settlement) act 2006 on the grounds that the matter involved substantial questions of law or fact.

Before this court could substantively entertain the claim, counsel for the claimant raised a preliminary objection that the whole claim was barred by limitation of time.

Counsel argued that contrary to section **71(1) of the Employment Act** which stipulates that a complaint be lodged with the labour officer within 3 months of termination of Employment, the claimant lodged the complaint 8 months later. Relying on **APOLLO TWESIGYE VERSUS AIDS SUPPORT ORGANISATION LDC 292/2015** and **HERMEZDAS MULINDWA BABIRYE MATOVU VS STANBIC BANK HCCS 426/2004**, he submitted that the claimant's suit should be dismissed with costs. He also submitted that in accordance with the authority of **TORORO CEMENT LTD VS FORTINA INTERNATIONAL (SCCA 2/2001)** a preliminary point of law could be raised at any time even if the same point was not pleaded. He argued that in accordance with **section 71 (2) of the Employment Act**, the claimant should have shown that it was just and equitable for the complaint to be made outside the limited period of 3 months which he did not do.

In reply counsel for the claimant argued strongly that the objection ought to be overruled for failure to comply with **order 6 rule 6 of the Civil Procedure Rules**. He submitted that under this rule the respondent ought to have pleaded limitation so as not to "ambush" the claimant who had a right of reply to rebut the claim of limitation. He relied on the authority of **CAPTAIN HARRY GANDY VS CASHIER AIR CHARTER LIMITED (19560 23 EACA 139)**. He submitted that limitation under the Employment Act was subject to the exclusive discretion of the labour office and this being the case, the labour officer having exercised his discretion, this court should not interfere with this issue.

He relied on the case of **TWEHEYO VS BARURENGYERA HCCA 11/2010** as to the exercise of discretion. Distinguishing **APOLLO TWESIGYE** from this case, counsel argued that unlike in the current case, in the **APOLLO TWESIGYE** case, the labour officer had made a definitive finding that the claim was filed out time.

Counsel also argued that the only way to challenge the decision of the labour officer was by way of Appeal under **S.94 of the Employment Act**, since under **section 5 of the Labour Disputes (Arbitration and Settlement Act)** he was mandated to refer the dispute within 4 weeks of receiving the dispute if it was not resolved.

After carefully considering the submission of both counsel and after perusing the whole record, it is our finding that points of law can be raised at any time during the court proceedings and the court may make a ruling before considering the merits. The reason this is so is because in the event that a point of law may dispose of the whole case, it would be a waste of time for the court and the parties to proceed on the merits which might involve adducing evidence which is an expensive affair.

We do not subscribe to the proposition that all matters of law must be included in the pleadings and that if not so a party is precluded from raising the same during proceedings for avoidance of surprising the opposite party.

We subscribe to the view that a party having raised a point of law, the opposite party must be given opportunity to respond to the same. The authority of **TORORO CEMENT (supra)** cited by counsel for the respondent is to the effect that although " **it is proper and good practice to aver in the opposite party's pleadings that the pleadings by the other side are defective and that at the trial a preliminary point of objection would be raised .....failure to so plead does not in my opinion bar a party from raising the point**"

We are of the considered opinion that matters of law with the capacity to dispose of the whole suit or claim have to be distinguished from any other facts necessary to build the case for a party and therefore necessary for the opposite party to be aware of in the pleadings so as not to be surprised. For example the fact that the defendant was negligent and particulars of negligent ought to be pleaded in a suit for recovery of damages as a result of a negligent act of a defendant.

In the same way in a suit to recover land based on allegations of fraud particulars of fraud have to be pleaded although a legal point relating to limitation of Actions as to recovery of land or as to contractual obligations need not be pleaded and can be raised at any time during proceedings.

Consequently in the matter before us, we find that the objection as to limitation of actions was a point of law properly raised during proceedings. There was no need for it to have been pleaded before.

Section 71 of the Employment Act provides:

**“71 Unfair termination**

- (1) An employee who has been continuously employed by his or her employer for at least thirteen weeks immediately before the termination shall have the right to complain that he/she has been unfairly terminated.**
- (2) A complaint made under this section shall be made to a labour officer within three months of the date of dismissal, or such later period as the employee shall show to be just and equitable in the circumstances.**

We agree with counsel for the claimant that the above section of the law is not absolute. Indeed it is subject to the exclusive discretion of the labour officer to admit the claim out of time, as counsel asserted. This discretion was indeed recognised by this court in the case of **SURE TELECOM VS BRAIN AZEN CHAMP** Labour dispute Appeal No. 008/2015.

We must say, however, that discretion of the labour officer under the said section of the law must be exercised in the process of handling the issues at hand. In the case of judicial officers, authorities abound to the effect that such a discretion has to be exercised judiciously.

When a complaint is lodged in the Labour Officer's "court" outside the time prescribed by section 71(2) above, it is expected that the complainant shows cause why he/she lodged the complaint outside the prescribed time. The Labour Officer is expected to make a ruling/decision depending on the reasons given by the complainant. This process may be initiated either by the Labour Officer (after realising that the complaint was lodged after the prescribed time), or by the employee, or by the employer (in objection to the complaint for not complying with the said section of the law.)

Thus in the Nigerian Supreme court case of UNITED BANK FOR AFRICA VS GMBH Justice J. S. C stated:

**"In the exercise of its discretion..... the court will have regard to all the particular facts and circumstances of the particular case before it. Discretion is thus not an indulgence of Judicial whim, but the exercise of judicial judgement based on facts and guided by the law of the equitable decision.....to exercise his discretion properly the judge was bound to look at the facts and surrounding circumstances....."**

In KIWALABYE VS UGANDA cr Appeal 143/2001 (C.O.A) the court observed "The law is well established that whenever a trial court has exercised its discretion.....an appellate court will not interfere unless the discretion had been exercised unjudicially or on wrong principles. Where the trial court gives reasons the Appellate court will interfere only if the reasons given are clearly wrong or untenable. Where no reasons are given for the decision the appellate court will interfere if it is satisfied the order is wrong".

In the case of SURE TELECOM VS BRAIN AZEN CHAMP Labour Dispute Appeal 008/2015 the labour officer handled the matter although it had been filed beyond the prescribed time. The officer attempted to settle the matter by mediation but the parties failed to agree whereupon the officer asked them to file submissions upon which she made a decision.

In the wisdom of this court (and given the reasoning in Kiwalabye Vs Uganda) cited above, the fact that the labour officer did not give reasons for allowing the complaint beyond the time did not nullify the proceedings or the decision reached.

In the case of Apollo Twesigye vs Aids Support Organisation LDC 292/2015 the labour officer declined to handle the matter because it was fixed out of time. In referring the matter to this court he said:

**“Notice was filed with this office on 19/03/2015. This officer is not in position to handle the matter because it is barred by time. This is in accordance with section 71 of the Employment Act.....”**

This court in the above case stated

**“We are of the view that counsel for the claimant should have applied in the first instance to the Labour Officer to allow him to file the complaint after the prescribed time. That way the Labour Officer would have considered whether in the circumstances, the claimant had shown sufficient cause to allow him to be heard.”**

In the current case before us, counsel for the claimant himself, wrote to the labour officer asking him to refer the matter to this court. The labour officer forwarded to this court what he considered to be a record/summary of proceedings but which is essentially a request from counsel for the claimant to have the matter referred to this court. It reads thus:

**“By way of brief background, on the 22<sup>nd</sup> day of April 2015, Ms. Byenkya Kihika & Co. advocates lodged a complaint with the Labour Officer/KCCA on behalf of their client Lubandi Emmanuel against Uganda Electricity General Company Limited (Annexure “B”).**

**The claimant’s advocates wrote to us requesting that the matter be forwarded to the Industrial Court on grounds that the matter involves a substantial question of fact or law within section 5(1)(a) and (b) of the Labour Disputes (Arbitration and Settlement) Act 2006.**

**Wherefore, after careful perusal and consideration of all documents filed with his office by both sides, I discovered that there were substantial questions of law and fact which can only be resolved by the Industrial Court.”**

Section 5(1) (a) and (b) under which counsel for the claimant asked the labour officer to refer the matter to this court provides for reference after 4 weeks after receipt of the labour complaint. The complaint was filed on 22/4/2015 and the reference was dated 12/05/2015, only 3 weeks thereafter, which presupposes that the letter by counsel to the labour officer was earlier!!

The purpose of giving jurisdiction to the labour officer as a first instance intervention centre for resolving labour disputes was to resolve the same at that level and sieve those that proceed to this court. Nothing on the record shows that any attempts were done to settle the matter at the first instance level.

It seems to us that counsel for the claimant was in a hurry to have the matter out of the jurisdiction of the labour officer, raw as it was, and place it before this court most probably because he did not feel comfortable appearing before the labour officer. This is the reason why he wrote to the labour officer before the four weeks elapsed as provided for in the law. This having been contrary to the law, this court cannot condone it.

Parties must do everything possible to let the Labour Officers exercise jurisdiction in compliance with the law and only refer the matters to this court in accordance with the same law.

In the case of **Apollo Twesigye (Supra)** the labour officer was not petitioned to exercise his discretion to extend the time but he himself discovered the anomaly and declined to entertain the matter for non-compliance of the law. This court faulted the appellant for not having petitioned the labour officer.

In the case of **Sure Telecom(supra)**, the labour officer handled the matter without giving any reasons as to why he did when the complaint was filed out of the prescribed time. This court held that, failure to give reasons could not render the decision void.

Counsel for the claimant seems to impress upon court that just like in **Sure Telecom**, the labour officer in the instant case exercised his discretion by referring the matter to this court and therefore this court should not apply **Apollo Twesigye**.

In accordance with the principles enunciated in the case of **UNITED BANK FOR AFRICA VS GMBH and Kiwalabye Vs Uganda** (supra), it is our considered opinion that a labour officer can only be understood to have exercised his discretion under section 71(2) of the employment Act if he/she

- (a) Addresses his/her mind to the circumstances under which the complaint was filed out of time and makes a decision.
- (b) Entertains or handles the complaint and makes a decision even if he gives no reasons for doing so.

In the instant cases the labour officer acted on the request of counsel. He did not consider the merits of the case and neither did he address his mind on the circumstances under which the complaint had been filed out of time. Instead of counsel requesting to refer the matter to this court, he should have petitioned the labour officer to exercise his discretion to allow his client to file the complaint out of time.

Moreover, the question whether the dismissal of the claimant was malicious, unfair, wrongful and unlawful, was not a question outside the jurisdiction of the labour officer as the said officer claimed in his reference letter to this court. The labour officer in our view did not exercise his discretion unlike in **SURE TELECOM**

In conclusion, limitation of time under section 71 of the Employment Act not being absolute and being subject to the exclusive discretion of the labour officer to admit the complaint out of time, and having found that such discretion was not exercised, we hold that the complaint was filed out of time.

In addition, the claimant caused reference of the matter to this court outside the provisions of **section (5) of the Labour dispute (Arbitration & settlement) Act**.

As a result, the preliminary objection is upheld and the claim is hereby struck out with no orders as to costs.

(Note that this is a reproduction of the ruling in the **Emanuel Lubandi case(supra)** because the facts as well as the submissions were also a reproduction of the same case)

**Signed by:**

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

**PANELISTS**

1. Mr. Ebyau Fidel.
2. Ms. Harriet Mugambwa Nganzi.
3. Mr. Michael Matovu.

**Dated: 07<sup>th</sup> APRIL, 2017**