

THE REPUBLIC OF UGANDA
THE INDUSTRIAL COURT OF UGANDA HOLDEN AT KAMPALA
LABOUR DISPUTE REFERENCE NO. 189 OF 2015
(Arising from LABOUR DISPUTE NO. Of)

BETWEEN

MASABA RICHARD..... CLAIMANT

AND

TORORO ARCHDIOCESE..... RESPONDENT

BEFORE

1. The Hon. Chief Judge, Asaph Ruhinda Ntengye
2. The Hon. Judge, Linda Lillian Tumusiime Mugisha

Panelists

1. Mr. Rwomushana Rauben Jack

2. Ms. Rose Gidongo

3. Mr. Anthony Wanyama

RULING ON PRELIMINARY POINT

BACKGROUND

By notification of complaint dated 9/01/2014 from the Labour department, Mbale, the Chairman, Board of Governors (B.O.G) & Treasurer of the Respondent were informed of the complaint of the claimant about his termination of employment without a hearing and asked for the respondent's comments by 14/01/2014.

According to a letter addressed to the Commissioner for Gender, Labour & Social Development dated 8/4/2014, though the respondent had agreed to settle the matter they had

failed to settle the same and therefore the Ag. Labour Officer Mbale was referring the same to the Industrial court.

By a document dated 7/8/2015 the Claimant referred the dispute No. CB/027/2015 to this court the Labour Officer having failed to dispose of it within eight weeks after it was reported.

The necessary papers were drawn and filed by both parties and the matter was fixed for hearing.

Objection

At the hearing counsel for the respondent raised an objection touching the jurisdiction of the Labour Officer at Mbale. Counsel argued that the reference of the Labour officer to this court was not valid and was null and void abinitio since according to counsel, the Labour Officer had no jurisdiction. According to him the Labour Officer seized with jurisdiction was the one of Manafwa District. He relied on **Article 2(1) of the constitution, Employment Act, 2006, section 7 of the Labour disputes (Arbitration and Settlement) Act**. He argued that in accordance with **section 9(4) of the Employment Act**, Manafwa district ought to have a Labour officer thereat and Manafwa having been the claimant's work place, the Labour Officer thereat was the one seized with jurisdiction. According to him, the claimant was forum shopping when he left Manafwa and lodged the claim at Mbale and therefore the proceedings at Mbale were ultravires and were of no legal effect.

Reply to objection

In reply counsel for the respondent argued that jurisdiction was a creature of statute which could not be inferred. He submitted that there was no legal requirement that a Labour complaint had to be filed before a Labour Officer in a District that the claimant worked. He argued that the dispute having been reported to the Commissioner who gave an award in mediation but refused to refer the same to court, the Labour Officer at Mbale had jurisdiction and the reference was valid. He submitted that the **Civil Procedure Act and Rules** made there under did not apply to the Labour Officer. He argued that a person anywhere in this country was at liberty to lodge a complaint to a Commissioner of Labour.

Decision of Court

Section 9 of the Employment Act, 2006 provides

“(1) Subject to any written law relating to the appointment of a person to the Public Service, there shall be appointed a Commissioner who shall be responsible for the implementation of the provisions of this Act, acting under the directions of the Minister.

(2)

(3) The commissioner shall have all the powers of a Labour Officer including those set out in sections 11, 12, 14 and 15.

(4) Every District Service Commission shall appoint a District Labour Officer and such other officers as may be necessary for purposes of administering this Act.

(5) For the avoidance of doubt, every District shall have at least one District Labour Officer.

Our reading of the above section informs us that the geographical demarcation of Labour officers is for administrative purposes. The fact that the Commissioner is empowered to act as a Labour Officer in our view means that a complainant from any geographical location in the country can lodge a complaint to such commissioner whether the said Commissioner is in the same location as the complainant or not. Presently we take judicial notice that a Commissioner is stationed at Kampala.

Consequently, strictly speaking, one may not be accurate in asserting that a Labour complaint may only be handled by a Labour Officer within the work place of the claimant.

Whereas ordinarily and for better and quicker implementation of the provisions of the Employment Act, a Labour complaint ought to be handled by a Labour Officer in the work place of the complainant, we do not subscribe to the contention of counsel for the respondent that lack of geographical jurisdiction makes the proceedings of a Labour Officer null and void and without any legal effect especially when there is no designated Labour Officer in a particular District.

In adjudication of cases we definitely agree with the submission of counsel for the respondent that forum shopping ought to be discouraged since in our view it constitutes abuse of court process.

However the court record does not show that at the time the complaint was raised at Mbale there was a Labour Officer stationed at Manafwa and therefore it is not certain that lodging a complaint at Mbale court constituted forum shopping.

In our considered opinion once there is no designated labour officer in a particular District proceedings before a Labour Officer in an immediate neighboring District do not constitute forum shopping and cannot be declared null and void with no legal effect.

Accordingly the reference to this court by the Labour Officer sitting at Mbale was proper since the proceedings before the said Labour Officer were not null and void. Consequently the Preliminary Objection is overruled.

No order as to costs is made.

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Dated: 6/july/2018