

**THE REPUBLIC OF UGANDA**

**IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA**

**LABOUR DISPUTE No.189/2014**

**ARISING FROM HCT-CS-235/2013**

**MUBINJA JOHNSTON ..... CLAIMANT**

**VERSUS**

**1. THE BOARD OF TRUSTEES OF UGANDA GOLF CLUB**

**I. GEORGE ENGADDU**

**II. HAIDER SAMONI**

**III. DR. MARTIN ALIKER**

.....

**RESPONDENTS IV. PROF. JUSTICE KANYEIHAMBA**

**V. JOLLY KAREMERA**

**2. UGANDA GOLF CLUB**

**BEFORE**

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

**PANELISTS**

**1. MS. JULIAN NYACHWO**

**2. MR. ANTHONY WANYAMA**

**3. MR. JOHN ABRAHAM BWIRE**

**RULING**

**BACKGROUND**

The claimant brought this matter against the respondent's for payment of salary of the residue contract for 26 months, accumulated leave, 2 months' salary in arrears, 3 months' notice in lieu,

severance pay, general damages, interest and costs of the suit, for unlawful termination. Before the matter was set down from hearing the respondents applied to raise 3 preliminary objections. Court granted him leave to orally submit on the objections.

### **REPRESENTATIONS:**

The claimant was represented by Mr. Oyugi Onono Quirinus of Alliance Advocates, plot 40, Nakasero Road and Mr. Komackech Geoffrey of Victoria Advocates and Consultants plot 3, Dewinton Road, was for the Respondents.

### **PRELIMINARY OBJECTIONS.**

1. Counsel argued that according to Order 7 (1) (e) of the Civil Procedure Rules, the claim did not in any way raise a cause of action against the 1<sup>st</sup> respondents because the claimants pleadings do not mention them. He argued that it was for this reason that they did not reply to this claim. He therefore prayed that the claim against them should be struck out in accordance with Order 6 rule 30. He further submitted that the suit lists 2 respondents yet they should be 6 because the claimant purports to sue the board of Trustees in their individual capacities. He insisted that they should have been served individually but they were not.
2. Counsel contended that the Claimants employment Contract had not been attested by a Magistrate or Authorized Officer as provided under Section 14 (a) of the Employment Act yet he was a foreigner thus rendering it unenforceable. He asserted that the holding of **PROF SYED HUQ VS ISLAMIC UNIVERSITY IN KAMPALA. SCCA No.47 OF 1995**, was to the effect that where there were foreign elements in an employment contract it had to be attested in accordance with the law. Counsel stated that the contract that the claimant who is a Kenyan brought before this court was not attested. He also cited **THOMAS ROBINSON VS C. A. V COMMISSION**. It was his submission that in **MAKULA INTERNATIONAL LTD V HIS EMINENCE CARDINAL NSUBUGA AND ANOTHER**, once an illegality had been established it cannot be sanctioned by a court of law. He therefore prayed that this objection succeeds.
3. He further submitted that the claimant was illegally employed in the services of the respondent because he did not possess a work permit at the time of his employment. It was his submission that there was an attempt to procure one for him but it was not issued

therefore the employment was illegal and he could not claim from an illegality and court should not allow it. He Cited MAKULA (supra)

In reply Mr. Oyugi stated that the objections were made in bad faith and were intended to deny the claimant his entitlements for the period he had served the respondents.

1. With regard to the objection that no cause of action had been raised against the 1<sup>st</sup> respondents counsel citing **AUTO GARAGE VS MOTOKOV (1971) EA**, stated that the claimant was employed by the respondents as a green keeper after he emerged a successful candidate for the job and both signed an agreement which the respondents cannot be seen to retract from at this point. He was paid for his services and therefore this objection should be disregarded since court had discretion to do so.
2. Counsel refuted the claim that the respondents were not served and insisted that the 1<sup>st</sup> respondent's lawyers had appended their stamp on the affidavit of service, therefore it was not true that they had to be served individually. He prayed that court disregards this objection.
3. With regard to the recruitment Counsel asserted that when parties have entered into an agreement with obligations in the contract and the document is prepared by the respondents and signed by the Chief Executive they cannot turn around in 2017 and raise issues out of the contract. He insisted that the claimant did not originate the agreement although he agreed to abide by the terms of the contract and the staff manual. According to counsel the issue of illegality should have been dealt with earlier and the claimant was an east African with a right to employment. He noted that the respondents had paid USD 180 for processing the claimant's work permit and it was the responsibility of the respondents to avail the claimant with the necessary documents for his employment. Therefore the Preliminary objection was made in bad faith.

## **DECISION OF COURT**

We shall resolve the objections in the order in which they were raised.

### **Objection No. 1 No cause of action against the 1<sup>st</sup> respondents?**

After carefully listening to both counsel, analysing the record and the law applicable we find as follows;

Paragraph 2 of the claimant's memorandum of claim makes reference to the 2<sup>nd</sup> Defendant/Respondent that is Uganda Golf club and makes no mention of the 1<sup>st</sup> respondents. The 1<sup>st</sup> respondents are not mentioned under paragraphs 4 (a-e) which sets out the facts constituting the cause of action and how they arose. The 1<sup>st</sup> respondents are only mentioned under paragraph 6, in which the Claimant sets out the actions he took to address the facts constituting the cause of action.

***Order 7 rule 1 (e), provides that the plaint shall contain particulars- ...***

***e) the facts constituting the cause of action and when it arose***

We therefore are inclined to agree with counsel for the respondents that the claimant did not raise any cause of action against the 1<sup>st</sup> respondents.

In the premises the 1<sup>st</sup> respondents are struck out of the claim in accordance with Order 6 rule 30 and order 11(1).

***Order 6 rule 30 states that***

***30. Striking out pleading***

***The court may, upon application, order any pleading to be struck out on the ground that it discloses no reasonable cause of action or answer and, in any such case, or in case of the suit or defence being shown by the pleading's to be frivolous or vexatious, may order the suit to be stayed or dismissed or judgment entered accordingly, as may be just.***

***Order 11(1) provides for the rejection of a plaint if it does not disclose a cause of action.***

**Objection 2. Attestation of the contract?**

We found counsels argument about the need to attest the claimants' contract because he was a foreigner untenable for the following reasons. Firstly Section 14 (a) of the employment Act, on which counsel relied to make his argument does not exist. Section 14 of the Employment Act 2006 provides for the Labour officers powers to prosecute and is not related to the attestation of foreign contracts as stated by counsel. A reading of **PROF SYED HUQ VS ISLAMIC UNIVERSITY IN KAMPALA. SCCA No.47 OF 1995**, showed that the law applicable at the time was the Employment Decree which was repealed by the current

Employment Act 2006 and therefore it is not applicable to the instant case. It seems to us that the requirement to have contracts with a foreign element attested was repealed by the current Employment Act 2006 because there is no provision to that effect. In the premises we find no merit in this objection. It is decided in the negative.

**Objection 3; Possession of a work permit?**

According to *immigration.go.ug*, all foreign nationals intending to work in Uganda must ensure that they are in possession of the relevant work permit.

The record clearly shows that the claimant entered into a contract with the 2<sup>nd</sup> respondent, Uganda Golf Club and that the terms and conditions under the contract were drawn by the respondent.

It is not disputed that the respondent made an attempt to procure a work permit for the claimant but the permit was not issued. We believe that the act of attempting to procure the claimant's work permit meant that the respondents had undertaken the responsibility of getting it as part of the contract of employment. We are persuaded by the reasoning in **MWANGI NGUMO VS KENYA INSTITUTE OF MANGEMENT INDUSTRIAL CAUSE NUMBER 851 OF 2009[2009] LLR 270 (ICK)** which is to the effect that if a contract is drawn by the employer and even if not drawn by the employer, it cannot be shown that the employer entered into it under duress or coercion, any ambiguities in the contract should be construed against the one who drew the contract. (**Contra Proferentem rule**).

It is our considered opinion therefore that the respondents are estopped from asserting that the contract was illegal. The objection is overruled.

In conclusion we find that the claimant has not disclosed any cause of action against the 1<sup>st</sup> respondents therefore the 1<sup>st</sup> Respondents are struck off the claim.

However, Objections 2 and 3 are overruled with no order as to costs. The matter shall be heard on its merits.

Delivered and signed by;

**1.THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE**

**2.THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA**

**PANELISTS**

**1. MS. JULIAN NYACHWO**

**2. MR. ANTHONY WANYAMA**

**3. MR. JOHN ABRAHAM BWIRE**

**Date: 26/MARCH/2018**