

**THE REPUBLIC OF UGANDA
THE INDUSTRIAL COURT OF UGANDA HOLDEN AT KAMPALA
LABOUR DISPUTE REFERENCE NO. 54 OF 2016
(ARISING FROM LABOUR DISPUTE NO. 338 of 2016)**

BETWEEN

**UGANDA ELECTRICITY AND ALLIED WORKERS UNION.....
CLAIMANT**

AND

UMEME LTD..... RESPONDENT

BEFORE

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

PANELISTS

1. Mr. Ebyau Fidel
2. Mr. Anthony Wanyama
3. Ms. Rose Gidongo

RULING

This ruling arises from an oral application by Counsel waniale that the proceedings in this court be stayed until the court of Appeal determines the legal question raised by his client through him.

The background is that the claimant filed the above Labour dispute reference and when it came up for hearing Mr. Waniale raised a preliminary legal objection to the effect that this court had no jurisdiction to entertain certain aspects of the claim since they had not been referred to this court in accordance with **section 8 of the Labour Disputes (Arbitration and Settlement) Act.**

In a ruling of this court delivered on 26/3/2018, the court pointed out that section **8 of the Labour Disputes (Arbitration and settlement Act)** referred to labour disputes as a whole and that this court was not bound by particular aspects of the dispute referred to it but was empowered to look at the whole claim as filed by the claimant under **Rule 5 of the rules** of the court. The objection was therefore overruled.

The claimant was not satisfied with this court's ruling and seeks to stay proceedings as the court of Appeal determines the same issue.

He heavily relied on **rule 23 of the Labour Disputes (Arbitration and settlement) (Industrial Court Procedure) Rules 2012.**

In reply counsel for the respondent seemed to agree that the cited rule 23 gives the respondent a right of appeal but added that the matters in this court could only be determined on merit. He pointed out that the respondent could appeal on the main decision other than on the preliminaries.

Rule 23 cited above provides

- (1) Where a party is dissatisfied with a decision of the court, he or she may appeal to the court of Appeal.**
- (2) An appeal shall be from a decision of the court to the court of Appeal only on a point of law or to determine whether the court had jurisdiction over the matter.**
- (3) Appeals under this rule shall be made under the judicature (court of Appeal) Rules, S.1. No. 13-10.**

It is our strong conviction that the above rule should not be read in isolation of **section 8 (2) of the Labour Dispute (Arbitration and settlement) Act 2006** which provides;

“The Industrial Court shall dispose of the Labour Disputes referred to it without undue delay”.

As a general rule the court is expected to determine all issues before it finally and substantively in such a way that a party that is not satisfied with the final ruling of the court exercises his/her right of appeal against the decision. Preliminary questions or matters ordinarily do not determine the suit or claim finally and substantively.

However the court is expected to entertain and determine these preliminary questions of law and once in the opinion of the court they go to the root of the case so as to finally dispose of it, the matter is disposed of at that stage.

In the submission of counsel for the respondent **rule 23 of the rules of this court** is couched in mandatory terms. According to him, any dissatisfaction a party in this court has on a decision about a point of law or an issue relating to the jurisdiction of this court, irrespective of when or how the decision of the court is made, entitles such a party to appeal to the court of appeal as of right.

We respectfully disagree with this interpretation. It is our considered opinion that the “**decision**” in rule 23 of the rules of this court refers to a “**final decision**” and not a decision made on a preliminary point of law.

This is because when **rule 23 of the rules of this court** is read together with **section 8 (2) of the Labour Disputes (Arbitration and settlement) Act 2006** cited above, the intention of the legislature is clearly to avoid delays of disposal of labour disputes in this court. Allowing an appeal on a preliminary objection in our considered view will be amounting to delaying the determination of the dispute in this court. We take judicial notice that given the busy schedule of the court of Appeal, the appeal may take so long to be determined as determination of the merits of the same matter will be pending in this court.

We agree with counsel for the respondent that the merits of the case having been determined by this court, should any of the parties not be satisfied an appeal shall be on the merits to the court of Appeal which will finally determine the matter.

We form the opinion that in the event that the court of Appeal decided that this court was incompetent, the matter will have finally been determined because it will not come back to this court. On the other hand, if the court of appeal decided that this court in fact was

competent, the matter will fly back in the face of this court to determine the merits which will be causing backlog in the system.

Consequently in the spirit of **section 8 (2) Labour Disputes(Arbitration and Settlement) Act** and in the spirit of providing a system of avoiding or reducing on the clogging of the Industrial court system, **rule 23** of the rules of this court does not provide for an appeal against a preliminary ruling of this court as of right and in the same spirit the application to stay proceeding in this court pending the outcome of an appeal to the court of Appeal on a preliminary point is rejected by this court which will proceed to hear the claim on merits. No order as to costs is made.

SIGNED BY:

1. The Hon. Chief Judge, RuhindaAsaphNtengye
2. The Hon. Judge, Linda Lillian Tumusiime Mugisha

PANELISTS

1. Mr. Ebyau Fidel
2. Mr. Anthony Wanyama
3. Ms. Rose Gidongo

Dated: 26/MARCH/2018