THE REPUBLIC OF UGANDA

THE INDUSTRIAL COURT OF UGANDA HOLDEN AT MASAKA
LABOUR DISPUTE APPEAL NO. 029 OF 2017
(*ARISING FROM LABOUR DISPUTE NO.055 OF 2017*)

BETWEEN
AIG UGANDA LIMITED..... APPELLANT

AND

JAMES MAGURU..... RESPONDENT

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

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

AWARD

This is an appeal from the decision of the labour officer sitting at KCCA. The background is that the respondent was employed by the appellant and on 4/10/2016 the appellant entered into a separation agreement detailing benefits of the respondent. These benefits were not paid and the respondent filed a claim before a labour officer who started mediation proceedings. Those proceedings failed to result into a settlement so the labour officer referred the matter to another labour officer for adjudication.

Counsel for the appellant objected to the hearing process on the ground that the matter had been before the labour officer for more than 8 weeks and that counsel had asked the court to refer it to this court. The labour officer overruled counsel and fixed the matter for hearing on 17/8/2017 at 9.00 a.m. Counsel was not satisfied and hence this appeal.

One ground of appeal was framed:
The labour officer erred in law when he failed and/or declined to refer the matter to the Industrial Court for adjudication upon application by the appellant pursuant to section 5 of the Labour Disputes (Arbitration and Settlement) Act 2006 which creates a mandatory obligation on the Labour officer to refer a Labour dispute to the Industrial court at the request of either party if the dispute has not been resolved within 4 weeks of its receipt.

It was argued on behalf of the appellant that **section 5(1) of the Act** was in mandatory terms and the labour officer had a mandatory obligation to refer the dispute to this court at the request of either party if the dispute was not resolved within 4 weeks of its receipt. He relied on **Namayanja Vs St. Raphael of St. Francis Hospital Nsambya L. D. Appeal No. 19/2015**. He argued that it was in blatant disregard of the law when after the labour officer

was requested to refer the matter to Industrial court, instead invited the parties to appear for an adjudication on 1/8/2017. In his submission, referral of a case by a labour officer is subjected to instances where efforts to conciliate and resolve the dispute have failed as provided for under **section 4(c) of the Act and section 13 of the Employment Act** including mediation. In counsel's view the labour officers reference to **section 13 of the Employment Act** as a ground of refusal to refer the matter to this court was fundamentally flawed and his ruling should be set aside.

In reply counsel for the respondent argued strongly that the law on referring a dispute to the industrial court as stipulated in **section 5 of the Labour Disputes (Arbitration and Settlement) Act** is that the said section only applies where a labour officer has followed section 4 of the **LADASA** in appointing a conciliator and meeting with them and that **section 4 and 5** have to be read together. In his submission, those provisions do not apply where the Labour officer is conducting an adjudication provided for under **section 13 of the Employment Act.**

In his view, there is no merit in the submission that **section 5 of LADASA** encompasses all methods of dispute resolution since adjudication which involves scheduling, conducting hearing, submissions and writing an award cannot be handled within 4 weeks as provided for under **section 5 LADASA.**

Counsel concluded by saying
"To say that any party can abandon adjudication proceedings which are mandatory and not voluntary like it is with mediation will be ousting the jurisdiction of the labour officer and conferring it on the parties to choose as and when they can appear either in labour office or in Industrial court."

We have had the benefit of reading and internalising the submissions of both counsel and we are grateful to them.

Section 93(i) of the Employment Act, 2006 provides
"Except where the contrary is expressly provided for by this or any other Act, the only remedy available to a person who claims an infringement of any of the rights granted under this Act shall be by way of a complaint to a labour officer."
Section 93(7) Of the same Act provides
" Where within 90 days of the submission of a complaint under this Act to a labour officer, he or she, has not issued a decision on the complaint or dismissed it the complainant may pursue the claim before the Industrial Court"

Section 4 of the Labour Disputes (Arbitration and Settlement) Act provides:
"A labour officer shall, within two weeks after receipt of the report made under section 3(a)

(1) Deal with the report in any one or more of the following ways

a) Meet with the parties and endeavour to conciliate and resolve the dispute
b) Appoint a conciliator to conciliate the parties in dispute and inform the parties, in writing, of the appointment
c) Refer the dispute back to the parties with comments and proposals to the parties of the terms upon which a settlement of the labour dispute may be negotiated;

d) Reject the report and inform the parties accordingly, stating the reasons for rejecting the report, having regard to

(i) The insufficiency of the particulars set out in the report, or the nature of the report.

(ii) The insufficiency of the endeavours made by the parties to achieve a settlement of the dispute; or

(iii) Any other matter which cannot be dealt with under this Act.

(e) Inform the parties to the dispute that the report comprises matters Which cannot be dealt with under this Act.

Section 5 of the **Labour Disputes (Arbitration and Settlement) Act** provides:

"(1)If, four weeks after receipt of the Labour dispute.

(a) The dispute has not been resolved in the manner set out in section 4 (a) or (c); or

b. A conciliator appointed under section 4(b) considers that there is no likelihood of receiving any agreement, the labour officer shall, at the request of any party to the dispute, and subject to section 6, refer the dispute to the Industrial Court

(2) Notwithstanding subsection I, the period of conciliation may be extended by a period of two weeks, with the consent of the parties.

(3) Where a labour dispute reported to a labour officer is not referred to the Industrial court within eight weeks from the time the report is made, any of the parties or both parties to the dispute may refer the dispute to the industrial court.

It seems to us that when the complaint was first made to a labour office, it was properly handled within **section 4** above mentioned because the record suggests that mediation was attempted on 16/05/2017 although it failed to produce the desired results. The complaint having been filed on 3/03/2017, it means that by the time counsel for the appellant requested the labour officer to refer the matter to this court it was 81 days after receipt of the claim, which according to counsel for the appellant entitled the appellant to refer the matter to this court and which by virtue of **section 5 of the LADASA** disqualified the labour officer from further handling the matter**.**

We would like to agree with counsel for the respondent that **section 4 and 5 of the LADASA** must be read together but we add **section 93 (7) of the Employment Act** which should as well be read together with 4, and 5.

Whereas **section 93 (7)of the Employment Act** gives a larger latitude of 90 days to the complainant to keep within the labour officer's jurisdiction, **section 5 of the LADASA** provides that either of the parties can refer the dispute to this court if within 4 weeks (28 days) it is not resolved in the manner set out in **section 4**.

We take cognisance of the fact that **Section 13 of the Employment Act** gives jurisdiction to the labour officer to resolve the labour disputes by way of conciliation, arbitration, adjudication or such procedure as he or she thinks appropriate and acceptable to the parties.

This court has held that it is not acceptable for the same labour officer to employ more than one method of dispute resolution in the same case with the same facts. Therefore mediation method having failed before one Mukiza Emmanuel, it was proper that the matter was referred for adjudication before another labour Labour Officer one Kassaga Hannington.

In our considered opinion **section 93(1)** provides for the longest period within which a party (complainant) can exercise the option of pursuing the case before this court once the matter is not disposed of by the labour officer. It does s not matter under this section what method the labour officer is using, for as long as 90 days have elapsed after the complaint was lodged.

We think that after the complainant has pursued the matter in this court, it is up to this court to make appropriate orders or directions depending on the circumstances especially as to how far and to what extent the dispute before the labour officer has reached towards resolution.

However, under **section 4 of the Labour Disputes (Arbitration and Settlement) Act,** the labour officer is expected to deal with the complaint or report in certain ways – using specific methods of dispute resolution and these methods include: conciliation (which could as well be regarded as mediation). The section excludes other methods mentioned under **section 13 of the Employment Act** (Mediation, Adjudication and Arbitration). We form the opinion that the legislature intended to apply the timelines mentioned in **Section 4, LADASA** only to conciliation/mediation.

Whereas we agree to the submission of counsel for the appellant that resolving the dispute is not restricted to conciliation, in our considered opinion resolving the dispute under **section 4 of LADASA** is categorical – using conciliation (or mediation). We do not therefore accept the contention of counsel for the appellant that the word **"resolve"** in **section 4(a) of LADASA** encompasses all steps (or methods of dispute resolution as stipulated under section 13 of the Employment Act). If this had been the intention of the legislature, they would not have singled out a particular method of dispute resolution and imported it into **section 4**. It is clear to us that the section was meant to cater for settlements outside the formal adversarial system of litigation. Consequently, we agree with the submission of counsel for the respondent that the mandatory nature of **section 5 LADASA** affects a labour officer who is handling the dispute using the method described under **section 4**.
We agree with counsel for the respondent that adjudication proceedings take more time than other proceedings and may not be handled within the four weeks provided under **section 5 LADASA**.
In our view, the reason that **section 5(2) of LADASA** gives an extension of 2 weeks is for emphasis that the method of dispute resolution envisaged is that of conciliation.

Whereas even during Arbitration, or adjudication proceedings, the law allows any of the parties to refer the dispute or pursue the matter before this court, if no decision has been made within a certain time, we do not think that it would be appropriate for this court to interfere with the proceedings going on before the labour officer unless it is established that substantive justice is at stake.

We must assert, however, that the labour officer having failed to resolve the matter within the ambits of **section 4,** if she/he intends to forward the matter to another labour office, it must be done before any of the parties exercises his/her right under **section 5(1)** to refer the matter to this court.

In the instant case we note that the mediation failed on 16/05/2017 and on 25/05/2017 MMAKS Advocates under **section 5 of the LADASA** requested the dispute to be referred to the Industrial Court and it was received on the same date, presumably by the first labour officer who handled the matter under **section 4(a) of the LADASA**

Surprisingly on 5/07/2017, another labour officer wrote to the parties calling them for adjudication proceedings.
It is not clear when the matter was referred to another labour officer for adjudication but in our opinion it should have been immediately after the mediation had failed. In the circumstances it is not farfetched to conclude that it was upon receipt of the letter from counsel for the appellant seeking a reference to this court, that the first labour officer one Emmanuel Mukiza Rubasha decided to send the matter for adjudication.
This was clearly to frustrate the efforts of the appellant to seek justice in this court as provided for under **section 5 LADASA.** It is not therefore possible for this court to agree with counsel for the respondent that this matter was already in the adjudication stage and that because of this both **sections 4 and 5 of LADASA** did not apply.

The timelines set out in the Employment Act and the LADASA in our view were meant for the labour officer to resolve labour complaints as first as possible and unnecessary delays in dispute resolution contrary to the specific provisions of the law cannot be acceptable. In the instant case it was an unnecessary delay when the first labour officer apparently transferred the dispute to the second labour officer after 49 days from the date of failure of mediation and after receipt of the letter of reference to this Court.

Consequently it was irregular and in disregard of the law when the first labour officer one Mukiza having received a request from counsel to refer the matter to this court, ignored it and instead referred it to the second labour officer (although such reference is not on the record). Consequently the adjudication proceedings before the second labour officer cannot be protected by **section 4 and 5** even if both sections are read together as counsel for the respondent suggested.

The Adjudication proceedings having commenced after receipt of a request to refer the matter by the first labour officer are void; and consequently the ruling arising there from is hereby set aside. The matter shall be handled by this court as if it were referred to this court under **section 5 of the LADASA**.

No order as to costs is made.

Signed by:

1. Hon. Chief Judge Ruhinda Asaph Ntengye …….

2. Hon. Lady Justice Linda Tumusiime Mugisha …….

PANELISTS

1. Mr. Ebyau Fidel …….

2. Ms. Rose Gidongo …….

3. Mr. Anthony Wanyama …….

DATED. 10/8/2018