THE REPUBLIC OF UGANDA

THE INDUSTRIAL COURT OF UGANDA HOLDEN AT KAMPALA

MISC. APPLN. NO. 211 of 2018

(*Arising from Labour Dispute Reference NO. 237/2018*)

UGANDA INVESTMENT AUTHORITY…….**..... CLAIMANT**

VERSUS

JOLLY K. KAGUHANGIRE……..……**RESPONDENT**

RULING

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

PANELISTS
1. Mr. Rwomushana Reuben Jack
2. Ms. Rose Gidongo
3. Mr. Anthony Wanyama

This is an application by notice of motion seeking a third party notice to the respondent.

We have listened to counsel carefully and we have perused the notice of motion as well as the affidavit in support

Accordingly to the affidavit sworn by one Basir Ajer, the respondent handpicked one Carol Karungi as her **Executive Director** and paid the said Karungi more than she ought to have paid her. Reading between the lines it occurs to us that the appointment of Carol could have been to the position of **Assistant Executive Director**. The respondent was then directed to terminate the contract of the said Karungi which directive she defied and eventually the respondent was interdicted and thereafter the said Carol who had been illegally appointed by the respondent was terminated by the applicant.

It is the contention of the applicant that the respondent be joined as a party to explain her role since Carol Karungi sued the applicant vide Labour Dispute Reference 237/2018 (supposedly for unlawful termination).

The law relating to 3rd party notice was clearly explained Bamwine J (as he then was) in the case of **M/s. Panyahululu Co. Ltd Vs M/s. New Ocean Transporters Co. Ltd & Others – HCCS No. 523/2006** as he himself referred to the case of **D.S.S Motors Ltd Vs Afri Tours and Travel Ltd HCCS NO. 12/2003** and he stated

> **"……I understand the law to be that in order that a third party be lawfully joined, the subject matter between the third party and the defendant must be the same as the subject matter between the plaintiff and the defendant and the original cause of action must be the same. In other words the defendant should**

have a director right to indemnity as such, which right should have, generally, if not always arisen from contract express or implied".

There is no doubt in our minds that the applicant terminated one Carol Karungi because they believed she was irregularly and illegally appointed by their own Jolly K. Kaguhangire, the respondent in this application. The applicant had instructed the respondent to terminate her but for reasons best known to her, she refused thereby causing her own interdiction. The question is, **having been interdicted herself, of what use will she be in the Labour Dispute Ref. 237/2018 when the applicant believes that the said Carol deserved termination for having been illegally appointed?**. The respondent is not alleged by affidavit or otherwise to have been party to the dismissal. On the contrary she is alleged to have resisted the termination of the said Carol. The presumption is that the applicant considered all the circumstances surrounding the appointment of Carol and concluded that such appointment was so irregular and illegal that it could not stand and therefore terminated it. We do not think that the issue of the respondent indemnifying the applicant would arise since the termination of Carol in Labour Dispute Ref. No. 237/2018 was according to the applicant purely on her having been illegally appointed. The reason as to why the respondent appointed Carol in our considered opinion may not be necessarily explained by the respondent being a party to LDR 237/2018 and it is remotely connected to the reason of termination of Carol's contract. We are positive that she could easily explain her role either as a witness for either of the parties or as an independent witness if either of the parties deems fit. The subject matter in LDR No. 237/2018 in our view is the lawfulness or unlawfulness of termination of employment to which the respondent is not a party.

The irregularity or illegality of the appointment is the real cause of the termination and not the refusal of the respondent to effect the termination as ordered by the Board of applicant.
The case of **NBS TELEVISION VS UBC HCCS 246/2012** in which Hon. Justice Hellen Obura relied on the case of **M/s PANYAHULULU(supra)** is in our view based on different facts. In the NBS case the respondent represented to the applicant that it had acquired certain rights without disclosing any limitations to the said rights thereby inducing the applicant to pay for and utilize the said rights for which it was sued. In the instant case the applicant from the very beginning was convinced that the appointment of Carol was illegally done by the respondent and went ahead to terminate the same. Whatever reasons the respondent had to appoint her would not reverse the decision of the applicant yet in the **NBS case** the disclosure of the limitations had a lot to do with the applicants decision to pay for and utilize the contested rights

We have not therefore been convinced that a case has been made for the respondent to be party to the proceedings in LDR 237/2018. The application fails. No order as to costs.

Signed by:

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

PANELISTS

1. Mr. Rwomushana Reuben Jack ……..

2. Ms. Rose Gidongo ……..
3. Mr. Anthony Wanyama ……..

Date: 28/2/2019