

THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
MISC. APPL. 132 OF 2019
(ARISING FROM LDA 004/2019)

VICTORIA NAMUSOKE KAWOoya.....APPLICANT

VERSUS

CAIRO INTERNATIONAL BANK LTD.....RESPONDENT

BEFORE

1. HON. CHIEF JUDGE RUHINDA ASAPH NTENGYE
2. HON. LADY JUSTICE LINDA TUMUSIIME MUGISHA

PANELISTS

1. MR. BWIRE JONH ABRAHAM
2. MS. JULIAN NYACHWO
3. MR. MAVUNWA EDSON

RULING

This application by notice of motion supported by an affidavit was filed by the applicant seeking orders of this court that;

- (a) Labour dispute Appeal No. 004/2019 is legally barred before this court.
- (b) Labour dispute appeal No. 004/2019 is totally incompetent before this court.
- (c) Labour dispute appeal No. 004/2019 be dismissed from this court.
- (d) Taxed costs be borne by the respondent.

The applicant was represented by Mr. Bernard Banturaki of M/s. Banturaki & Co. Advocates while the respondent was represented by Mr. Ivan Kyateka and M/s. Brenda Lwanga of Tumusiime Kabega & co Advocates.

An affidavit sworn by one Nansubuga Margaret on the record was to the effect that the memorandum of appeal in labour dispute appeal No. 004/2019 contained four grounds all of which were against the labour officer's findings of law and fact forming part of the final decision of labour dispute **KCCA/119 of 2018** and that this was done without leave of this court, making it *ipso facto* barred by the law.

By an affidavit in reply, one Akampulira Ocheinghs admitted filing an appeal on grounds of questions mixed with law and fact and claimed that the practice of this court was to entertain applications on matters of fact after the appeal has been filed and is pending hearing.

Submissions

Relying on **Section 94 of the Employment Act** as well as a variety of cases counsel for the applicant submitted that Labour dispute **Appeal NO. 004/2019** in this court was incompetent having been filed without first seeking leave of this court since it was based entirely on grounds mixed with fact and law. He argued that a requirement to seek leave under **section 94 of the Employment Act** was not a procedural matter but of substantive law.

Mr. Kyateka for the respondent contended that this court could hear the application for leave even if the appeal has already been filed. According to counsel this court could discard issues of fact and sever them from issues of law so as to save the appeal. He argued that this Court could only accept a notice of Appeal if

it was brought together with the memorandum of appeal and the application for leave could only be filed after filing the memorandum of appeal.

Decision of court

There is no doubt and both counsel are agreed that under **section 94 of the Employment Act**, an appeal lies to this court on questions of law and that if the appellant seeks to be heard on questions of fact, such appellant has to seek leave to include questions of fact in the appeal. It is not true, and we have not received any evidence to suggest that this court only hears applications for leave to file grounds of appeal based on questions of fact only after filing the appeal.

For avoidance of doubt **section 94(2) of the Employment Act** provides

“An Appeal under this section shall be on a question of law, and with leave of the Industrial Court, on a question of fact forming part of the decision of the labour officer”.

In the court of appeal case of **Baingana John Paul Vs Uganda Criminal Appeal 068/2010** the court stated:

“The appellant therefore had no right of appeal in respect of issues of fact or issues of mixed law and fact. We were inclined to strike out all the grounds of Appeal. However, we find that ground 1 and 2 raise some issues of law, the poor drafting notwithstanding, we shall therefore proceed to determine them.”

The following were the two grounds of appeal that the court of Appeal in the above case considered to raise some issues of law and proceeded to determine them after rejecting six other grounds based on both law and fact;

“1. The learned appellate Judge erred in law and fact to uphold the trial magistrate’s decision to use a retracted extra judicial statement of a co accused against the appellant.

2. The learned appellant Judge erred in law and fact when he failed in his duty to re-evaluate the evidence thereby occasioning a miscarriage of justice”

Relying on the above case in the case of **Netis Uganda Ltd Vs Charles Walakira Labour Dispute appeal No. 22/2016**, this court after rejecting all the other four grounds of appeal on the basis that they were of a mixture of law and fact stated

“However ground No. 5 is about evaluation of evidence which according to the case of Baingana John Paul (supra) is a question of law, despite the ground having been drafted as being a mixture of law and fact.”

While considering the same issue in **Equity Bank Uganda Lt Vs Mugisha Musimenta Rogers, Labour dispute appeal 26/2017**, this court after citing the Baingana case (supra) stated;

“It seems to us that in the above case the court went an extra mile to scrutinize the grounds and reach a decision that ground 1 and ground 2, despite poor drafting constituted some elements of law and decided to proceed to determine them after striking out the rest of the grounds.

It is our strong and considered opinion ...that in the above matter the court went an extra mile because it was considering a criminal appeal which applied different standards and which affected the parties differently from Civil Appeals like the instant appeal.

Consequently we will not be dragged into the question whether if the word“fact” was removed from a ground of appeal, such a ground would still constitute both issues of fact and law or whether such a ground of appeal would only constitute a legal issue so as to be within the ambits of section 94(2) of the Employment Act...”.

In the case of Onyango Robert Vs Security Group (U), Labour dispute appeal No. 040/2018 this court stated

“Ground I alleges improper evaluation of evidence on the record by the Labour officer thus arriving at an erroneous decision. Revaluation of evidence is an inherent obligation of the appellate court and in the case of Baingana J. P Vs Uganda –Cr- Appeal 068/2010 (COA) failure to evaluate evidence was held to be a matter of law which the court on appeal could derive into:

On perusal of the grounds of appeal attached to this application, ground No. 3 states

“The labour officer erred in law and in fact when he failed to properly evaluate the evidence on record thereby arriving at the erroneous finding that the respondent was unlawfully dismissed from employment.”

Although this court will not attempt to sever facts from law as provided in any ground of appeal, given the decision of the court of Appeal in Baingana J. P Vs Uganda (supra) it is proper that this ground as a ground of a point of law be entertained by this court. Note also that in the case of Karahukayo David & 4 others Vs Continental Tobacco Uganda LTD. Labour Reference appeal 15/2015, this court held that it would not accept grounds that purport to be both of fact and of law unless it was obviously and essentially clear that only a matter of law was in issue. The court went ahead to ignore grounds 1, 2 and 3 but accepted ground 4 which stated:

“The labour officer erred in law and fact when he initiated mediation proceedings and later went ahead to decide and determine the dispute without according the parties a hearing contrary to the principles of natural justice.”

In ignoring ground No. 2 in the above case, this court did so in per *in curium* of the decision in Baingana J. P Vs Uganda because ground 2 was about failure of the labour officer to evaluate evidence.

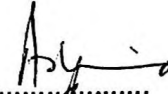
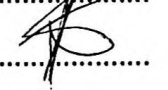
This court in the case of Karahukayo David & 4 others Vs. Continental Tobacco Uganda LTD accepted ground No. 4 because it was obvious and clear that a mixture of mediation and adjudication proceedings by a labour officer was a matter of law. In the same way, we believe the court of Appeal in the Baingana case accepted ground number one because using a retracted extra judicial statement of a co accused against an appellant was a matter of law.

Accordingly the application partly succeeds and partly fails. Labour Dispute Appeal will only be heard on the ground of whether the Labour officer failed to evaluate

available evidence thereby reaching a wrong decision. The rest of the grounds are incompetent before this court. No order as to costs is made.

DELIVERED & SIGNED:

1. HON. CHIEF JUDGE RUHINDA ASAPH NTENGYE
2. HON. LADY JUSTICE LINDA TUMUSIIME MUGISHA


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PANELISTS

1. MR. BWIRE JONH ABRAHAM
2. MS. JULIAN NYACHWO
3. MR. MAVUNWA EDSON


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Dated: 21/08/2019.