

**THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR MISC. APPLN. NO. 47 OF 2019
(ARISING FROM MISC. APPLN. NO. 001 OF 2018)**

HENRY MAGEMBE.....CLAIMANT

VERSUS

MAKERERE BUSINESS SCHOOL (MUBS).....RESPONDENT

BEFORE

1. Hon. Chief Judge Ruhinda AsaphNtengye
2. Hon. Lady Justice Linda TumusiimeMugisha

PANELISTS

1. Mr. Ebyau Fidel
2. Ms. Harriet Mugambwa Nganzi
3. Mr. F. X. Mubuke

RULING

This application brought by Notice of Motion and supported by an affidavit prays for review and setting aside of Miscellaneous Cause 001/2018 between the same parties as well as costs of the application.

Brief Background

The applicant filed Misc. Cause 001/2018 on 26/7/2018. The application was fixed for hearing on 16/10/2018 at 9.30am. The application sought (inter alia) a declaration that the applicant was an employee of the respondent and orders compelling the respondent to pay to the applicant certain benefits that according to the applicant accrued to him under the Employment Act. The respondent deposed an affidavit opposing the application.

On 29/11/2018 Mr. Kirunda appeared on brief for Mr. Nsubuga for the respondent and M/s Nakigudde appeared on brief for the applicant who was also present.

After a prayer by M/s. Nakigudde for either a hearing date or filing written submissions, this court noted that:

“the matter did not go through the labour office. The parties should reconsider the method of filing the labour disputes in this court”.

On 29/2/2019 none of the parties were in court and neither was any of their lawyers. This court dismissed the application because in the absence of the parties there was no explanation why it was in court having not been referred to this court in accordance with the law.

According to the affidavit in support of the instant application, the original suit was for judicial review seeking prerogative remedies against decisions taken against the applicant that amounted to constructive dismissal. The same affidavit in support is to the effect that the suit was referred to this court by the High court but when it came up for hearing counsel for the applicant was in a criminal session. According to the affidavit the dismissal of the application was a mistake apparent on the face of the record since an application for judicial review before the High Court did not require a reference from the Labour Officer.

There is no doubt that this court is court of reference with powers to determine matters referred to it for hearing or on appeal from the Labour Officer or under any other law. (See **Section 08 of the Labour Disputes(Arbitration and Settlement) Act 2006**).

This court has held that as a result of the powers of the High court under the **Judicature Act section 39 and section 98 of the Civil Procedure Act**, matters properly referred by High court are matters legally referred to this court under the above cited law. (See the case of **GEORGE KATENDEIGWA Labour dispute reference 144/2014**)

On careful scrutiny of Misc. Appln. 001/2018, it was an application for Judicial review which did not cite or attach any decision or proceedings of any tribunal that the applicant intended this court to review. The application intended this court to declare the applicant as an employee of the respondent and grant him

remedies as if he was in fact an employee of the respondents on the ground that the respondent had failed to deposit his salary and that he had orally been informed that his employment was terminated.

Because of the inherent jurisdiction of the High court, we will exonerate the applicant from blame for having filed his complaint directly to the High court instead of this Court albeit by way of judicial review.

The claimant however did not in any way show that the matter had either been in the High Court or had been referred from the High court. Neither did he show that it had been to the labour officer, except that during the hearing in the instant application he showed that it arose from **Misc. Cause 135/2018 of the Civil Division**.

Before this court therefore, the original application seemed to have been originated at the Industrial Court and not in the High court since there were no supporting documents on the record to reveal this fact and in the absence of any of the parties to offer any explanation this court dismissed it.

In the instant application, the applicant has attached a letter ref. CD/MC/135/2018 dated 25/6/2018 from Ag. Ass. Reg. from Civil Division addressed to the Registrar, high court. The letter reads:

"The above matter falls under the jurisdiction of the Industrial court hence I am forwarding the file to you for further management and onward transmission to the Industrial court. By copy of the letter the parties are advised to make a follow up therein."

It seems to us that the applicant understood making a follow up to mean immediately filing **Misc. Appln. 001/2018** since there is nothing to suggest that the Registrar High court or Chief Registrar forwarded the file to this court following an order of a Judge of the Civil Divisions as affirmed by the applicant in paragraph 3 of the affidavit in the instant application. No order of any Judge is on the record. This court was therefore in order and rightly dismissed application 001/2018. There was nothing to suggest that the original suit was a reference from the High Court

In his submission counsel for the applicant argued strongly that this court has jurisdiction to entertain matters of judicial review.

This court in our considered opinion, although with powers of the High court, is a specialized court established by an Act of Parliament to deal specifically with matters concerning employment between an employer and an employee as prescribed under **the Employment Act and the Labour disputes (Arbitration & Settlement) Act 2006**.

Whereas we agree that the complaint of the applicant falls squarely within the powers of this court, we do not think that it was properly brought before the court as a judicial review matter. It is, in our view, an ordinary labour complaint which should have followed the ordinary procedure for filing matters in this court.

We agree with the claimants as to what is provided in Article 42 of the constitution:

“Any person appearing before any administrative official or body has a right to be treated justly and fairly and shall have a right to apply to a court of law in respect of any administrative decisions taken against him or her”.

In our considered opinion before an aggrieved party moves the Court under the above Article of the Constitution, there must be prima facie evidence of the administrative decisions taken against the aggrieved party. Upon perusal of all the documents in regard to this application and the previous dismissed application, there is no administrative decision or proceedings that the applicant seeks this court to subject to judicial review.

The application amounts to an allegation that whereas the claimant took the relationship between him and the respondent as that of an employee and employer, the respondent took it to be not as such but referred to the claimant as an **“independent contractor”**.

We think it will be futile to reinstate an application that seeks (as affirmed in paragraph 2 of the affidavit in support of the instant application):

“...prerogative remedies against the respondents ... for its unfair and arbitrary decisions taken against me amounting to constructive dismissal and non-payment of any terminal benefits whatsoever”,

well knowing and aware that such arbitrary decisions as mentioned are not anywhere on the file. Consequently we refuse to reinstate the application which is dismissed with no orders as to costs .

Signed by:

1. Hon. Chief Judge Ruhinda AsaphNtengye
2. Hon. Lady Justice Linda TumusiimeMugisha

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Panelists:

1. Mr. Ebyau Fidel
2. Ms. Harriet Mugambwa Nganzi
3. Mr. F. X. Mubuke

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Dated:17/05/2019