

**THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE CLAIM NO. 179 OF 2018
[ARISING FROM MGS LD NO. LC/089/2018]
“Arising also from Mityana complaint 34/08/2014”**

BETWEEN

NAMUWOZA HANNINGTONCLAIMANT

VERSUS

UMEME LIMITEDRESPONDENT

BEFORE

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

PANELISTS

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

RULING ON A PRELIMINARY OBJECTION

The claimant lodged a claim of unlawful dismissal before the Labour officer of Mityana on 22/06/2014. On 11/09/2014 the respondent through its lawyers, Sebalu & Lule Advocates filed a reply and a hearing notice was issued for 22/10/2014.

Subsequently, according to the respondent, another hearing was scheduled for 14/11/2014 and on perusal of this latter hearing notice, it was to take place at the Ministry of Gender, Labour and social Development Headquarters Kampala. Nothing in the pleadings of the respondent shows what transpired thereafter. However according to the claimant both parties appeared on 22/10/2014 and the matter was partly heard whereupon the Labour Officer instructed the respondent to avail a copy of the Human Resource Manual before the matter could be finally determined. Subsequently the claimant, through his lawyer 2s M/s. Platform for Labour Action, requested the respondent by letter to amicably solve the dispute only to receive a reply that the matter had been resolved by mediation on 14/11/2014 when the Commissioner for Labour found the claim had no merits. According to the claimant this was not true and attempts were made in vain to get a ruling from Ministry of Gender and this culminated in filing this claim.

REPRESENTATIONS

The claimant in this matter was represented by M/s. Namigadde of Platform for Labour Action while the respondent was represented by Mr. Ferdinand Musimenta of M/s. Sebalu & Lule Advocates.

When the matter came up on 26/2/2020 counsel for the respondent sought to raise a preliminary objection that:

- 1) The claim was res-judicata.
- 2) The claim was statute barred and was filed out of time.

SUBMISSIONS

In his written submissions, counsel for the respondent reiterated the law concerning the doctrine of res-judicata and relied on various legal authorities. He submitted that the original complaint No. 34/38/2014 was heard on two occasions by the Labour Officer of Mityana and determined in favor of the respondent. He asserted that the subsequent complaint No. 089/2018 was based on the same set of facts. It was his submission that complaint No. 089/2018 from which this claim emanates, having been filed out of time from the 14/6/2014 the date of the claimant's dismissal, it cannot stand.

Counsel for the claimant could not agree with the above submissions. Her view was that under **Article 126(2)(e) of the Constitution** this court should outright reject this preliminary objection and go to the exercise of substantive justice by hearing the matter on merits. Counsel argued that complaint No. 34/38/2014 was never determined since no ruling or record of proceedings to show this fact was adduced. Counsel contended that complaint No. 34/38/2014 having been mismanaged by the Labour Officer of Mityana by failing to resolve it for a very longtime, the claimant complained to the Permanent Secretary of Ministry of Labour who instructed him to file duplicate papers of complaint No. 34/38/2014 which was then registered afresh as file 089/2014. According to counsel this was the same complaint and the same file. Counsel referred to communication of the commissioner in **Annexure "K"** maintaining the file as No. 34/38/2014.

Counsel argued strongly that the claimant filed his complaint within the time frame required by law, having been dismissed on 14/6/2014 and having lodged

his claim on 22/6/2014. It was her contention that this claim emanates from complaint 34/38/2014.

Decision of court

Section 7 of the Civil Procedure Act provides;

“No court shall try any suit or issue in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties or between parties under whom they claim, litigating under the same title, where that suit or proceeding is pending in the same or any other Court having jurisdiction in Uganda to grant the relief claimed.”

It is our considered opinion that before the doctrine of res-judicata which is as described in the above section of the law is raised, one has to have evidence that the matter in issue was heard and finally decided by a competent court or tribunal. In the absence of a ruling, or proceedings showing such final determination of the matter in issue, it was only evidence from the bar when counsel for the respondent argued that complaint 34/38/2014 was determined by the Labour Officer of Mityana. Accordingly, it is our holding that the doctrine of res-judicata does not apply. After perusal of the submissions of both counsel, we agree with counsel for the claimant that Labour complaint no. 089/2018 is in actual terms the original complaint 34/38/2014. From perusal of **Annexure “H”** to the submission of the claimant, it is clear that the claimant complained to the Permanent Secretary about his failure to trace file complaint 34/38/2014. **Annexure “K”**, referring the matter to this court by a Commissioner of labour is clearly referring to this Court **labour Dispute 34/38/2014**

Consequently, we agree with the submission of counsel for the claimant that it was upon the claimant's presenting duplicate copies of complaint 34/38/2014 after being instructed by the Permanent Secretary, that a new file No. 089/2018 was opened having originated from 34/38/2014. Since complaint 34/38/2014 was filed within 6 months of the dismissal of the claimant, it was filed within the prescribed period.

Accordingly we hold that the preliminary objection is overruled.

Since counsel ought to have known better that the doctrine of res-judicata could only be raised with evidence that the matter was previously finally determined which evidence was not available to him and yet he put the claimant to the expense of defending the same, taxed costs of this objection shall be payable personally by counsel.

Delivered & signed by:

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

PANELISTS

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

Dated: 06/09/2020