**THE REPUBLIC OF UGANDA**
**IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA**
**LABOUR DISPUTE REFERENCE NO. 223 OF 2019**
**(ARISING FROM KCCA/RUB/LC/235/2019)**

**BETWEEN**

**FRANCIS DOMINIC MERU…….....…….CLAIMANT**

**VERSUS**

**NAKASERO HOSPITAL LTD.…..……..…..RESPONDENT**

**BEFORE**

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

**PANELISTS**

1. Ms. Adrine Namara
2. Ms. Susan Nabirye
3. Mr. Matovu Micheal

## RULING ON A PRELIMINARY OBJECTION

This ruling arises out of a preliminary objection raised by counsel for the respondent.

The background of the objection is as follows:

The claimant filed a complaint of unlawful dismissal and prayed for (inter alia) general damages. The matter was expected to come before the labour officer for mediation but because the respondent was not interested in any mediation, the

labour officer fixed the matter for adjudication, having ignored a request to refer the same to this court on the ground that the respondent was not interested in mediation.

Both parties appeared before the labour officer and the claimant adduced his evidence and closed his case. Before any further hearing could take place the claimant requested the Labour Officer to refer the matter to this court for lack of jurisdiction to award general damages. When once again the labour officer ignored this request, the claimant preferred a reference to this court for failure of the Labour Officer to dispose of the complaint within 8 weeks.

The respondent's preliminary objection to the reference to this court of the complaint is on two grounds:

**(1) That the reference is unlawful having been based on illegal grounds.**

**(2) That the reference is unlawful and premature having been at the time when the dispute was still under adjudication by the Labour Officer.**

The claimant was represented by Mr. Enoth Mugabi of Enoth Mugabi advocates & Solicitors while the respondent was represented by Mr. Zere James of M/s. Sebalu & Lule Advocates and Legal Consultants.

**Submissions**

It was contended for the respondent that the only legal basis of a reference to this court was under **Section 5 of the Labour Disputes (Arbitration and Settlement) Act** (**LADASA**) and that in the instant case it would have been under **Section 5(3)** within 8 weeks which was not the case. According to counsel the reference was because the labour officer did not have powers to grant a remedy of general damages which is not provided for under the said **Section of the law.**

Counsel also contended that the reference was premature being at a time when the matter was undergoing adjudication. It was argued for the respondent that the claimant having adduced evidence and closed his case was estopped from denying the legality of proceedings which he willfully participated in after the Labour Officer denied his request. Counsel argued that allowing the matter to proceed in this court would grant the claimant opportunity to adduce evidence to address the gaps pointed out in cross examination. He submitted that the Labour Officer properly proceeded with adjudication under **Section 13(1) of the Employment Act** after he was notified that the parties were not interested in mediation. Counsel argued that the claimant should have taken advantage of S**ection 5(3) of LADASA** before adducing evidence and that referring the dispute to this court while it was undergoing adjudication was an abuse of court process made in bad faith to prejudice the respondent which was indicated by the amended trial bundle containing additional evidence not originally before the labour officer.

In reply to the above submissions, counsel for the claimant argued that the preference to this court was based on the fact that the labour officer had not yet resolved the matter in 14 weeks from the date of filing the complaint as provided for by **Section 5(1)(a) of LADASA.**

He contended that the reference was also because of the deliberate refusal and none response by the same labour officer to refer the matter as had been requested by the claimant and his having unlawfully and illegally handled both mediation and adjudication contrary to the legal precedents of this court.

It was his strong submission that the adjudication hearing by the labour officer was unlawful, illegal and collapsed upon the Registrar opening a new file in LDR 223/2019.

Counsel strongly argued that in accordance with the authority of **Engineer John Eric Mugyenyi Vs Uganda Electricity Generation Company Limited Civil Appeal 167, Court of Appeal**, the Labour Officer had no jurisdiction to determine the claim.

**Decision of court**

**Section 5 of the LADASA** provides;

**"5. When Labour Officer may refer dispute to Industrial Court**

**(1) If, four weeks after receipt of a 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 reaching 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 (1), 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 the parties to the dispute may refer the dispute to the Industrial Court.'**

**Section 4 of the same law** provides for dispute resolution by a labour officer using a conciliation method within 2 weeks after receipt of a complaint. The section gives power to the labour officer to meet and resolve the dispute by conciliation or appoint a conciliator to do the same or refer the dispute back to the parties with

proposals on how to settle the same or reject the complaint with reasons having regard to certain circumstances.

Under **Section 5 of LADASA**, mentioned above, when four weeks after the receipt of the complaint the labour officer has not resolved the dispute by conciliation, any of the parties may request for a reference to this court and the labour officer is obliged to refer the matter. The same **section** under **subsection (3)** provides for 8 weeks after the complaint is lodged for any of the parties to refer the matter to this court.

We do take cognizance of the provision of **Section 13 of the Employment Act** which provides:

**'13. Labour Officer's power to investigate and disposee of complaints**

(1) A labour officer to whom a complaint has been made under this Act shall have the power to;

(a) Investigate the complaint and any defense put forward to such a complaint and to settle or attempt to settle any complaint made by way of conciliation, arbitration, adjudication or such procedure as he or she thinks appropriate and acceptable to the parties to the complaint with the involvement of any Labour Union present at the place of work of the complainant; and

(b) Require the attendance of any person as a witness or require the production of any document relating to the complaint after reasonable notice has been given;

(c) Hold hearings in order to establish whether a complaint is or is not well founded in accordance with this Act or any other law applicable and the labour officer shall, while conducting the

hearing employ the most suitable means he or she considers best able to clarify the issues between the parties.

**(d)** Presume the complaint settled if the complainant fails to appear within a specified period; or

**(e)** Adjourn the hearing to another date

**(2)** The labour officer shall, while exercising powers under paragrapf(a) state the reasons for his or her decision on a complaint.

when reading **Section 4 and 5 of the LADASA and Section 13 of the Employment Act,** we form the opinion that before the labour officer entertains a complaint he/she has to decide which of the methods he is to employ in determining the dispute. Once he/she settles for the conciliation and mediation method, then he/she has to proceed under **section 5 of the LADASA** and he/she cannot after failure of this method purport to employ the Arbitration or Adjudication method as prescribed under **Section 13 (1) of the Employment Act.** This was the position of this court in the cases of **SURE TELECOM VS BRAINE AZEMCHAP, L.D.A 008/2015 and PRESIDENTIAL INITIATIVE ON BANANA INDUSTRIAL DEVELOPMENT VS NTEGE AIDA& 11 OTHERS L.D.A 07/2015**

In the instant case it is clear that when the Labour Officer invited the parties to a mediation meeting the respondent intimated that she was not interested in mediation and on this ground the claimant requested the labour officer to refer the matter to this court. This request dated 2/11/2018 from counsel for the claimant states:

**"We humbly move that you deem it fit to refer the matter for hearing/determination by the Industrial court in terms of Section 5 the Labour Dispute (Arbitration and Settlement) Act 8/2006, following our information through the claimant of confirmation by the respondent, through their Advocates (counsel James Samuel Zeere) to the Labour Officer on 21st November 2018 by telephone call, of non interest in mediation".**

Whereas it was the submission of counsel for the claimant that the reference to this court by the claimant was based on illegal grounds, the claimant submitted that the references was lawful having been referred more than 14 weeks from the date the claim was registered and the labour officer having deliberately refused to respond to the request to refer to the same.

True, the labour officer declined to refer the matter to this court by not responding to the request of the claimant in the above letter. We agree with the submission of counsel for the respondent that non interest in mediation is not a reason or ground envisaged under **Section 5 of LADASA** for the labour officer to refer the matter to this court. At the same time, we appreciate the fact that the request was made long after the complaint was registered with the labour officer who had not resolved the matter as provided under **Section 5 of LADASA.**

However, when the labour officer declined to respond to the request and instead notified both parties of the Adjudication hearing, the claimant filed his witness statement in preparation of the Adjudication which was fixed and eventually hearing commenced.

There is nothing on the record to suggest that the claimant either at the time or before he filed his witness statement or at the time of hearing was still interested in the transfer of the complaint to this court. This, in our considered view, portrays the intention of the claimant to abandon his idea of referring the complaint to this court for failure of the labour officer to dispose of the same as provided for under **Section 5 of the LADASA.** We do not think that the provision of Section 5 of LADASA constricts the claimant to abide by his own reference and proceed to have the hearing in this court. The party who requests for a reference to this court in our view has a right to withdraw the request and proceed with the complaint before the labour officer as originally planned and this could be done directly in writing or by conduct of the party who filed the request. By filing witness statements and willfully participating in adducing evidence both in chief and in cross examination after filing a request to refer the same matter to this court the claimant's conduct amounted to withdrawing the request since nothing suggested to the contrary. The question of having referred the matter to this court under **Section 5** therefore did not arise.

Counsel for the claimant submitted that the labour officer handled both mediation and adjudication at the same time.

This is far from the truth. The record, as well as the claimant's own letter above requesting for a reference to this court show that after the parties were invited for a mediation session and before the session took place, counsel for the respondent intimated he was not interested in mediation upon which the claimant requested for a reference.

We therefore agree with the submission of counsel for the respondent that no mediation took place before the labour officer who was then entitled under **section 13 1(a) of the Employment Act (supra)** to choose Adjudication as a method of resolving the complaint.

Relying on the authority of **Engineer John Mugyenzi, Civil Appeal 167/2018**, **Court of Appeal,** Counsel for the claimant argued that the labour officer had no jurisdiction to entertain the dispute and therefore it was properly referred to the Industrial court. He strongly submitted that the holding of the court of Appeal that

> **"The labour officer had no jurisdiction to award general, special or punitive damages. Neither did he have the jurisdiction to determine whether the termination of employment was malicious. His jurisdiction was limited to establishing whether the Employment Act had been infringed and to order compliance…'** ousted the jurisdiction of the labour officer to entertain the claim.

In a letter dated 27th June 2019 counsel for the claimant brought the attention of the labour officer to the above case as he wrote

> **"…The claimant in his claim seeks damages which the labour officer has no jurisdiction to determine and therefore we pray that your esteem officer refers the above claim to the Industrial Court to adjudicate and finally determine the same"**

In reply to the above submission, counsel for the respondent strongly argued that there was no law empowering this court to entertain a dispute on the grounds that the labour officer had no powers to award a remedy.

It is true that the labour officer has no jurisdiction to award general damages or any damages. The jurisdiction of the labour officer in terms of giving remedies is expressly provided for under **Section 78 of the Employment Act** which details what compensation is to be awarded by a labour officer and this excludes General damages. As counsel for the respondent correctly stated even before the authority of **Eric Mugyenzi** (supra) this court had earlier ruled in the cases of **Netis Uganda Vs Charles Walakira, D.L. Appeal 22/2016 and Namayanja Vs St. Rapheal . Frances Hospital Nsambya, D.L. Appeal 19/2015** that the labour officer does **not** have such jurisdiction**.**

Having said all the above, we do not share the view of counsel for the respondent that the labour officer may not refer an issue where he has no jurisdiction to this court.

In the case of ACTION AID UGANDA VS DAVID MBAREKYE TIBEKINGA .L.D.A 028/2016 this Court held: ' **If the Labour officer considers that the claimant deserved more than he or she is empowered to grant as compensation under section 78 of the Employment Act, such labour officer may refer the question of damages to the court. There is nothing illegal or improper…….'**.

Consequently, in the instant case it was not outside the jurisdiction of the labour office to entertain the claim merely because he had no jurisdiction to offer a remedy of general damages. He was at liberty to entertain the same and if necessary refer the issue of damages to this Court. As emphasized by the Court of Appeal in the **Eric Mugyenzi case**, a labour officer is not a Court of Judicature to be bound by the rules, regulations and methods ordinarily applied by a Court of law.

Accordingly, whereas in the ordinarily courts of law a Court may not refer a matter to a higher Court on the basis that such Court has no jurisdiction and such Court is only required to dismiss or strike out such a claim, the labour officer is at liberty to refer the same to this court.

For the above reasons we dismiss the submission of counsel for the claimant that he properly referred the matter to this court on the basis that the labour officer had no jurisdiction.

Lastly we would like to agree with the respondent that the reference having been made after the claimant had called evidence and closed his case was prejudicial to the respondent. We agree that if this was to be allowed the claimant would get advantage to call fresh evidence and close gaps that could have arisen in cross-examination. As already pointed out the record suggests that the claimant abandoned his idea of referring the matter to this Court and proceeded to adduce evidence and so this court cannot accept him to abandon the proceedings before the labour office only to replicate them in this court which could only amount to abuse of Court process.

In conclusion we find the preliminary objection sustainable and it is hereby sustained. The record will be reverted to the labour officer to continue with the adjudication of the dispute.

No order is to costs is made.

**Delivered & Signed by:**

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

**PANELISTS**

1. Ms. Adrine Namra ……..…
2. Ms. Susan Nabirye ……..
3. Mr. Matovu Micheal ……..

Dated: 14/08/2020