

THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE MISC.APPLICATION No. 140/2017
ARISING FROM LABOUR DISPUTE NO.024/2015

BALABA BILL **APPLICANT**

VERSUS

DAISY OWOMUGASHO & THE COUNTRY
DIRECTOR THE HUNGER PROJECT

UGANDA **RESPONDENT**

BEFORE

- 1. THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE**
- 2. THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA**

PANELISTS

- 1. MR.RWOMUSHANA RAUBEN JACK**
- 2. MR. ANTHONY WANYAMA**
- MS. ROSE GIDONGO**

RULING

This application is brought by notice of motion under Order 1 rule 10 and Order 52 rule 2 and 3 of the Civil Procedure Rules and the Labour Disputes (Arbitration and Settlement) Act, 2006 for orders that:

1. On account of the bona fide mistake not attributable to the applicant the Respondent as named in this application (Appellant in the main Appeal) be struck off the court record and be immediately substituted /replaced with the name of the right party, i.e Hunger Project Uganda in order to enable the court effectually and completely settle all the questions involved in the appeal.

2. That the costs of the suit be provided for.

The grounds of the application are set out in and affidavit deponed Mr. Charles Okoth Owor as follows:

1. That the deponent is an Advocate of the Courts of Judicature and he swore the affidavit in that capacity.
2. That his law firm was instructed by the applicant to represent him as a Respondent in the appeal arising from the decision of the Labour Officer at Iganga District.
3. That he and his colleagues have carefully perused the record of proceedings, the judgement by the Labour Officer Iganga and the pleadings forming the materials in the appeal and found that the defendant Ms. Daisy Owomugasho's name and office was included in the suit by mistake of Counsel who prepared the pleadings.
4. That this is known as misnomer which can be cured by striking out the name of the party wrongly included in the suit to enable the proper determination of the matters in controversy between the parties.
5. That the reading of the pleadings, proceedings and judgement indicate that the conduct and determination of the complaint before the labour officer was handled with the Hunger Project which in everyone's mind was the other party in the suit irrespective of the misnomer.
6. That the striking off of Daisy Owomugisha's name even at this stage, will not occasion any injustice to any party, when the same is substituted with the Hunger Project which is a known NGO and a corporate body.

It was counsel's submission that the Applicant lodged a complaint against the Respondent for determination of his employment status with the Respondent and for unlawful termination. On 19/11/2015, the labour Officer found in his favour. On 6/4/2016, he applied for execution. On 14/4/2016, the Respondent applied for stay of execution. Citing Section 98 of the Civil Procedure Act and Order 1 rule 10 of the CPR he argued that the Applicant's employer was the Hunger project Uganda and not the 1st Respondent.

According to him if the parties are maintained the way they are, it will render the Claimant's Judgement nugatory and therefore deny him the fruits arising out of the labour officer's

judgement hence the application to substitute the same with the Hunger Project who was the employer and it is not in doubt.

He cited **Charles Van Der Perre Vs Pinnacle Security Ltd/SPC Protectorate and 65 No.599 pf 2013**, to support his argument. He prayed that he application is allowed.

The Respondent's did not reply.

DECISION OF COURT

Section 98 of the Civil procedure Act provides that:

"Nothing in this Act shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process."

Order1 rule 10 provides that:

"10.1 Suit in name of wrong Plaintiff: addition and removal of parties.

...

2) The Court may at any stage of the proceedings either upon or without the application of either party, and on such terms as may appear to the court to be just , order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out and the name of any person who ought to have been joined , whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added."

In the instant case the matter of controversy between the parties as stated was disposed of by the Labour officer. The Respondents'as stated therein, not being satisfied with the decision of the labour officer lodged an appeal against the decision. Although Order 1 rule 10 (2) empowers court at any stage of the proceedings to substitute parties improperly joined in a matter, this only applies to ongoing suits before the court and not to matters on appeal. To allow for the substitution of parties at the stage of appeal would be to condemn the new party unheard. The right to a fair hearing as provided under Article 28 of the Constitution of Uganda is sacrosanct. Article 28(1) provides for the right to fair hearing as follows that:

"In the determination of Civil rights and obligations or any criminal charge, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law."

Counsel for the applicant had an opportunity to apply for the substitution of parties when the matter was before the labour officer, but he did not do so.

Although the Respondent should not suffer on account of a mistake of Counsel, because he is not expected to know the law regarding the naming of parties in a suit/case, it should be emphasized that substitution of parties after a decision has been rendered is not tenable in law for the reasons already stated above. That is that the party joined at the stage of the appeal will not be privy to the proceedings from which the objections on appeal arise to his or her prejudice.

In the circumstances this application cannot stand and it is dismissed with no order as to costs.

Heard and Delivered by:

1. THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE
2. THE HON. JUDGE, LINDA LILLIAN TUMUSHIME MUGISHA
PANELISTS

1. MR. RWOMUSHANA RAUBEN JACK

2. MR. ANTHONY WANYAMA

3. MS. ROSE GIDONGO

DATE: 10/02/2020

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