

THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE MISC. APPL. NO. 001 OF 2020
[ARISING FROM MGLSD/LC/414/2020)

BETWEEN
JENIFFER BAMUTURAKI MUSIIME.....APPLICANT

VERSUS
UGANDA NATIONAL AIRLINES
CORPORATION.....RESPONDENT

BEFORE

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

PANELISTS

1. Mr. Bwire John Abraham
2. Ms. Julian Nyachwo
3. Mr. Mavunwa Edison Han

RULING

This ruling arises from the above mentioned application which seeks a temporary injunction to restrain the respondent from filling the position of Director, (commercial) until the hearing and determination of a labour complaint filed as MGLSD/LC/2020 before a labour officer in the Ministry of Gender, Labour and Social Development.

The applicant was represented by Mr. Albert Mukasa from M.& K Advocates while the respondent was represented by Mr. Ocaya Thomas from K.& K Advocates

According to the affidavit in support of the application, the applicant on 4/4/2019 entered in a contract of service with the respondent as Director, commercial but on 23/10/2019 was terminated unfairly and the job was advertised in the local press whereupon he filed a complaint before the labour officer which is pending determination. In an affidavit in reply by one Joseph Sebbowa, the respondent affirmed that the claimant was terminated within the probationary period and that therefore the application together with the main claim had no probability of success, the claimant having been lawfully terminated. It was further affirmed that even if the main claim was successful, the claimant would not suffer irreparable damage that could not be compensated by the respondent.

Submissions

The claimant did not file any submissions by the time this court put pen to paper despite having been given timelines within which each part would file submissions.

It was argued on behalf of the respondent that by failing to file submissions the claimant demonstrated her non interest in prosecuting the application.

It was contended that the claimant having been terminated lawfully within the probationary period there was no status quo to be maintained. Relying on the authority of **Geilla Vs Cassman Brown (1973) and Kiyimba-Kaggwa Vs Katende (1985) HCB 43**, the respondent contended that the applicant did not make out a case for grant of an injunction as the grounds of the same were not proved.

Decision of Court:

Section 67 of the Employment Act provides:

- (1)Section 66 does not apply where a dismissal brings an end to a probationary contract.**
- (2)The maximum length of a probationary contract is six months but it may be extended for a further period of not more than 6 months with the agreement of the employee.**
- (3)An employer shall not employ an employee under a probationary contract on more than one occasion.**

(4) A contract for a probationary period may be terminated by either party by giving not less than 14 days' notice of termination or by payment, by the employer to the employee, of seven days wages in lieu of notice.

In the instant case the offer of appointment of the claimant by the respondent is dated 1/4/2019 and it was for 3 years effective from the date of assumption of duty. The offer was subject to a probationary period of 6 months and was accepted by the claimant on 4/4/2019. According to the respondent the probationary period ran up to 31/10/2019 and the claimant was terminated on 25/10/2019 within her probation.

In our calculation, and assuming the claimant assumed duty on 4/4/2019 when she signed the acceptance of the terms of the contract, the probationary period of 6 months would have ended on 4/10/2019 and not 31/10/2019 as the respondent seems to suggest. In strict terms of **Section 67 of the Employment Act** mentioned above, if the respondent was to be within the law, the termination of employment would have been on or before 4/4/2019. Consequently we do not accept the contention of counsel for the respondent that the termination was lawful having been done within the probationary period.

Having said all the above, **Section of the Labour Dispute (Arbitration & Settlement) Act 2008 (LADASA)** provides:

“8 functions of the Industrial Court

(1) The Industrial court shall

(a) Arbitrate on labour disputes referred to it under this Act.

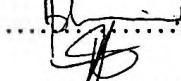
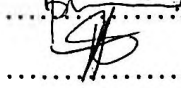
(b) Adjudicate upon questions of law and fact arising from references to the Industrial court by any other law.

This application, arising from a labour dispute pending before a labour officer was not shown to have been brought before this court in accordance with the above section of the law. It is an original cause in this court, having not been referred to this court in any way under **Section 5 of LADASA** or under any other law.

Jurisprudence about injunctions is that the same are awarded by a Court before which the main suit or the main Cause is pending. The Order is meant to keep the status quo until the same Court disposes the main suit or Cause from which the injunction application arises. In the instant application the main Cause from which it arises is

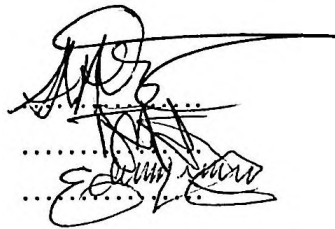
pending before a labour officer and therefore this court is not is not the proper forum for the application. Secondly and most importantly, **Section 8 of LADASA** in our opinion establishes this court as a reference court, hearing disputes that are referred to it. The court has no jurisdiction to hear original causes. Consequently the claimant should have impressed upon the labour officer to refer the dispute to this court under **Section 5 of LADASA** or the claimant herself should have under the same section referred the same to this court. Filing an original cause in this court was so irregular and rendered the same incompetent since this court had no jurisdiction. For this reason, without deliberating on the merits of the application, the same is dismissed. No order as to costs is made.

Delivered and signed by:

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

PANELISTS

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Dated: 05/05/2020