THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE NO. 088 OF 2021
[ARISING FROM LDR NO. 84/2021]
[HOIMA/LD.168/1/2019]

BETWEEN

NSENGA MOSES R.....CLAIMANT

VERSUS

ALLIANCE ONE TOBACCO UGANDA LTD.....RESPONDENT

BEFORE

1. Hon. Head Judge Ruhinda Asaph Ntengye

PANELISTS

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

RULING

This is a chamber summons praying for an order of this court that the respondent be ordered to furnish security for satisfaction of a decree that may be passed against her in the sum of Ugx. 1,474,593,944/= (One billion four hundred seventy four million, five hundred ninety three hundred thousand, nine hundred and forty four only).

In the alternative the applicant prays that the same amount held in an account in the Stanbic Bank be withheld by the bank.

The application is supported by an affidavit sworn by Mr. Nsenga Moses R., the applicant. An affidavit in reply is sworn by one Patricia Tukahirwa of M/S. Shonubi, Musoke & Co. Advocates.

When the matter came up in court on 01/10/2021 Mr. Bariyo Allan together with Ms. Sofia Kigozi appeared for the applicant and Ms. Nabaale Sheilla appeared for the respondent on brief for Ms. Byarugaba Kusiima.

The court gave direction to the parties to file written submissions.

Submissions

It was the applicant's submission that whereas he was awarded a sum of 25,162,602/= by the labour officer the same labour officer referred to this court the issue of damages in the sum of 1,474,593,944/= for determination and the applicant filed a memorandum of claim and cross Appeal. It was argued that the respondent was planning to exit the jurisdiction of court as per notice annexures C and D to the affidavit in rejoinder. The applicant relied on **Order 40 rule 5 CPR** and the authority of **Makubuya Enock Willy Vs Songdoh films (U) Ltd and Kim Sun Young, M.A 321/2018** as per Justice Musa Sekaana of the High Court.

It was submitted that failure to grant this application would defeat ends of justice and amount to abuse of court process since the applicant would be denied fruits of his would be decree of 1,474,593,944/= inclusion of the already existing decree of 25,162,602/=.

In reply to the above submissions, the respondent argued that it was erroneous of the labour officer to recommend/refer 1,474,593,944/= to this court as he had no jurisdiction to award the same and that this was a speculative portion of the Award which could not form part of a crystallized amount for purposes of security for satisfaction. The respondent denied that she was planning to exit jurisdiction.

The respondent asserted that **Labour Dispute Referance 84/2021** did not exist and was only a creation of the applicant and that since there is no pending suit from which this application arises, as required under **040 of the CPR**, it should be dismissed. According to counsel for the respondent, there was no evidence to support assertions in paragraphs 6-8 of the affidavit in support of the application.

Relying on **Coil Limited Vs Transtrade Services Limited, Misc. Appn. 0014/2016** the respondent argued that the applicant should have undertaken to make good the damage that would occur if it turned out that in the first place the application should not have been granted.

It was contended that the applicant did not file an affidavit in rejoinder and that consequently evidence in the affidavit in reply was not opposed.

Decision of Court

We have carefully perused the chamber summons together with the affidavit in support as well as the affidavit in reply. We also noted the contents of the affidavit in rejoinder filed on 07/10/2021. Order 40 rule 5 of the CPR provides

> **"Where at any stage of any suit the court is satisfied by an affidavit or otherwise that the defendant with intent to obstruct or delay the execution of any decree that may be passed against him or her -**
>
> **(a) Is about to dispose of the whole or part of his or her property**
> **(b) Is about to remove the whole or any part of his or her property from the local limits of the jurisdiction of the court; or**
> **(c) Has quitted the jurisdiction of the court leaving in that jurisdiction property belonging to him or her, the court may direct the defendant, within a period of time to be fixed by it either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the court, when required the property or value of the property or such portion of it as may be sufficient to satisfy the decree, or to appear and show cause why he or she should not furnish security."**

According to the respondent there is no suit pending in this court from which this application arises as demanded by the above rule of the CPR and therefore the application should be dismissed right away.

After careful perusal of all documents, we find that this application was filed on 24/05/2021 and **Labour Dispute Reference 84/2021** (from which the application arises) was filed on 07/10/2021. This means that on 1/10/2021 when the parties appeared before this court to argue the application and when the court gave the parties timelines with which to file submissions, there was no pending suit before this court. The suit/Memorandum of Claim was filed on 07/10/2021, the day that the applicant filed a rejoinder to the affidavit in reply.

In our considered opinion **O40 r 5 of the CPR** is about attachment before judgement in a suit that is already filed in court. As was correctly put in the case of **Makubuya Enock Willy Vs Songdoh,** cited by counsel for the applicant,

> **"an attachment before judgement practically takes away the power of alienation and such a restriction on the exercise of the undoubted rights**

of ownership ought not to be imposed upon an individual except upon clear and convincing proof that the order is needed for the protection of the plaintiff."

The protection of the plaintiff mentioned in the above case arises only and only when there is a suit against a defendant in court. We are not convinced that this court can justifiably issue an order of attachment under **Order 40 r 5 CPR** in an application that was filed more than 2 months before the memorandum of claim from which the application ought to have arisen.

We accordingly agree with the respondent that this application is incurably defective for having been filed long before the suit.

Without indulging into the merits of the application which we think is futile, it is hereby dismissed with no orders as to costs.

Delivered & signed by:

1. Hon. Head Judge Ruhinda Asaph Ntengye .....

PANELISTS

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

Dated: 12/10/2021