

THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE NO. 353 OF 2019
(ARISING FROM LABOUR DISPUTE COMPLAINT NO.
KCCA/RU/LC/560/2019)

SAMANTHA MWESIGWACLAIMANT

VERSUS

1. ATTORNEY GENERAL

2. GASHIRABAKE CHRISTOPHER.....RESPONDENT

BEFORE

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

PANELISTS

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

RULING ON A PRELIMINARY OBJECTION

The objection in this matter is:

- (a) The Labour officer did not deal with the report in the manner prescribed by law.

- (b) The labour officer did not refer the matter to the Industrial court.
- (c) The labour officer did not communicate the dispute to the 2nd respondent as required by law.

REPRESENTATIONS

The claimant was represented by Mr. Isaac Sali Mugerwa of M/S Kaddu & Partners Advocates . The second respondent was represented by Mr. Maxim Mutabingwa of M/S Mutabingwa & CO, Advocates while the first respondent was represented by Mr. Johnson Natuhwera and Mr. Moses Mugisha from Attorney General's Chambers.

It was strongly argued by counsel for the 2nd respondent that because of the above failures on the part of the labour officer, the claim was filed in this court prematurely. He relied on **Section 93 (2), and (6) of the Employment Act** as well as **Section 3 and 4 of the Labour Disputes (Arbitration and Settlement) Act, LADASA.**

In reply counsel for the claimant argued strongly that having filed the complaint with the labour officer it was served onto the Ministry of Justice and Constitutional Affairs as the employer of the claimant. According to counsel the referral of the matter was by the claimant herself since the labour officer had not handled the matter within the statutory time. Counsel relied on **Section 4 and Section 5 of the LADASA.**

According to the 1st respondent, the claimant was not terminated from service but she absconded from duty. This being the case she is still an employee of the government of Uganda and therefore the case before the courts is premature. The first respondent contended that it was not a party to proceedings before the labour officer.

On perusal of the lower court record submitted to the Registrar on 26/1/2019 by Mr. Mukiza Emmanuel Rubasha, a labour officer, we find a reference of Labour Dispute No. KCCA/RUB/LC/560/2019 in the following terms:

- 1. The Labour Officer is of the opinion that a substantial question of law or fact has arisen in the proceedings and is therefore unable to resolve the dispute.**
- 2. The question or issues are:**
 - a. Whether the termination of the claimant was unfair and unlawful.**
 - b. Whether the complainant is entitled to any other remedies?**
- 3. The Labour officer desires the Court to determine and dispose of the dispute.**

The issue as to whether a reference from a labour officer was competent before this court was raised before the court in **Hima Cement Ltd Vs Uganda Building Construction, Civil engineering Cement and Allied Workers Union, Labour Dispute Miscellaneous Application 01/2020 (Fort Portal).**

Relying on the case of **Eric Mugenyi Vs Uganda electricity Development Corporation (UEDC) C.A. 157/2018,** Court of Appeal, this court held that where a labour officer believes that a question of law or fact arises from materials before him or her which form the complaint which he or she is not able to handle, he or she is at liberty to refer it to Industrial court.

As seen in the reference to this court, it is not correct to state that the labour officer did not refer the dispute to the court. The reference to this court is clearly by one Mukiza, a labour officer. Although the grounds or reasons of referring the matter to this court may not relate to the labour officer's lack of jurisdiction or incapacity to hear the matter, the fact that it was referred to this court by a competent authority made it a proper referral.

Section 5 of the LADASA provides

“5. When labour officer may refer dispute to Industrial court-

1. ..
2. ...
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.”**

This provision in our view gives the parties authority to refer the dispute to this court even when the labour office has not dealt with the same in any way. This implies that the labour officer’s failure to deal with the report or complaint in a manner prescribed under **Section 4(a) or (c) or 4(b)** does not preclude the parties to refer the same to this court and such failure does not make the reference premature or incompetent once referred to this court.

We do not find the non-participation in the proceedings before the labour officer by the 1st respondent, a hindrance from participation in the proceedings before this court. The complaint before the labour officer was against the Deputy Solicitor General who by law is necessarily represented in courts of law by the 1st respondent. The mere fact that the Attorney General was not served with the complaint by the labour officer would not nullify the claim against the A.G. before this court since the claim was served on her. None service of the claim or complaint against a party in the current circumstances, in our view, can only result in an order to serve the same and not in invalidating the whole claim. We appreciate the legal principal that a party to the proceedings is entitled to be served before a tribunal or court makes any orders against such party. In the instant case, although there is no evidence of service of the complaint to the respondents by the

labour officer, on referring the matter to this court both respondents were served and both filed replies to the claim.

In the case of **Industrial Promotion Services Versus Nelson Kasingye Agaba and Leather Industries of Uganda. Labour dispute 001/2020(JINJA),**

when this Court was considering a preliminary objection that the court had no jurisdiction over the 2nd respondent because no summons was issued to it and neither did it appear before the labour officer, this court observed at page 6 of the ruling in the last paragraph

“.... where a matter is referred to this court by a labour officer the court deals with it as if it was not entertained by the labour officer at all. That is why the parties are required to file fresh pleadings and the original complaint before the labour officer is not a pleading in this court. Therefore, parties are not restricted to the exact complaint or exact reference by the labour officer since the claim is taken as pleaded in this court and not as a complaint before the labour officer.”

Accordingly, we do not find merit in the preliminary objection which is hereby overruled. No order as to costs is made.

Delivered & Signed by:

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

PANELISTS

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

Dated: 16/04/2021

