

**THE REPUBLIC OF UGANDA**  
**IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA**  
**LABOUR DISPUTE REF. 305/2019**

**BETWEEN**

**BUYONDO MIKE & 117 OTHERS .....APPLICANT**

**VERSUS**

**UGANDA CLAYS LIMITED.....RESPONDENT**

**BEFORE**

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

**PANELISTS**

1. Mr. Bwire John Abraham
2. Ms. Julian Nyachwo
3. Mr. Katende Patrick

**RULING ON A PRELIMINARY OBJECTION**

This ruling arises from a preliminary objection raised by the respondent on the following points:

- a) The claim is misconceived, frivolous and vexatious.
- b) The claim does not disclose a cause of action.
- c) There is gross misjoinder of parties.
- d) There is gross misjoinder of causes of action.
- e) Procedural irregularity and impropriety.
- f) Time limitations for some of the claimants.

The respondent complained that the particulars of unlawful and unfair termination were not set out in the Memorandum of Claim. According to counsel for the respondent what is stated in paragraph 4 (b) of the claim cannot be the only particulars of the claim since according to her some of the claimants were terminated before the date mentioned and for different reasons including resignation. Counsel contended that the claim was vexatious and frivolous because as stated in the response to the memorandum of claim termination was for various reasons.

She asked court to refer to annexure “C” and “D” of the reply. It was the respondent’s contention that the claim did not disclose a cause of action because its basis was a forgery amidst police investigations and the claimants failed to attach documents on which the claim was based particularly a clause in the Collective Bargaining Agreement which supported each calculation they computed as terminal benefits which according to counsel were baseless and exaggerated figures.

On rejoinder of parties, counsel for the respondent submitted that the claimant’s rights did not arise out of the same transaction or series of transaction as spelt out in **Order 1 rule 1 of Civil Procedure Rules** since the Claimants had different contracts signed and concluded in different periods of time and terminations were for different reasons. According to counsel, from the memorandum of claim some claimants resigned, retired, died or were terminated on certain grounds making the causes of action being based on different transactions.

The respondent also complained that there was procedural irregularity in the nature and manner of reference of the claim from the labour officer in that the complaint before the labour officer was different from the complaint before this court. The last complaint of the respondent was that some of the claimants filed their claim outside the limitation period.

In reply counsel for the claimants argued strongly that the claim was not frivolous since it showed the basis as being terminal benefits in accordance with the Collective Bargaining Agreement and paragraph 4 showed clearly the claim. In his submission, counsel for the claimant relied on the case of **Auto Garage Vs Motorcar 1971 EA 514 cited in Tororo Cement Co. Ltd Vs Frokina International Ltd SCCA 2/2001** which spelt out characteristics of a cause of action and which according to counsel are embedded in paragraph 4 of the claim.

According to counsel for the claimants, there was no misjoinder of parties and causes of action since the basis for Joinder of the claimants in the same claim was **Order 1 rule 1 of Civil Procedural Rules**. On procedural irregularity and Time limitation, the claimant respectively argued that the file was properly referred to this court by the Labour Officer and that the respondent having not highlighted the claimants affected by the limitation period, it was on a fishing expedition.

We have perused carefully the submission of both counsel. We form the opinion that most of the submissions of the respondent touch on the merits of the case instead of the preliminary objection raised. For example, the respondent submitted.

***“This cannot be the only particular claim in a claim of this nature. Moreover, this is untrue because as can be ascertained from their memorandum of claim, several of the claimants were terminated even before the period stated above, others resigned in different periods of time.....”***

We form the opinion that this submission is irrelevant in as far as proving the frivolous nature of the claim is concerned since the claim is fundamentally about terminal benefits. We wonder whether the respondent was in a better position than the claimants to know that there were more particulars in the claim than revealed by the claimants themselves. We thought this was a matter of the merits of the claim. The same applies to the submission that the claimants failed to file individual claims after the labour officer had directed them to do so or that they did not attach certain documents.

We are not convinced that the claim is frivolous or vexatious since it is based on a demand of terminal benefits and breach of a Collective Bargaining Agreement whose existence is not denied by the respondent or a fact which can be established in the merits of the claim. We are convinced that there exists a cause of action based on the fact of termination which is not denied. There is an allegation of existence of employment contracts as well as breach of the same by the respondent and these three aspects fall within the case of **Tororo Cement Co. Ltd Vs Frokina International Ltd SCCA 2/2001 (supra)**. Characteristics of a cause of action were described in this case as: **existence of a legal right, breach of that right, and breached by the respondent or defendant**

The mere fact that the claimants were employed on different dates and terminated in different circumstances would not prevent them from joining their causes of action under **Order 1 rule 1 CPR** which empowers the plaintiffs or claimants to be joined in one suit or claim where relief sought arises from the same act or transaction alleged to exist or where a common question of law arises.

The claimants alleged to have been employed by the respondent and to have been entitled to terminal benefits arising from a Collective Bargaining Agreement. They alleged that they were terminated by the same employer. It is our finding that this is within **Order 1 rule 1 of the Civil Procedure Rules**.

We do not see any impropriety or irregularity in the manner the dispute was referred to court or in the contents of the memorandum of claim. The **Labour Dispute (Arbitration and Settlement) Industrial Court Procedure) Rules 2012** provide for a procedure of lodging a claim in this court and nothing suggests that the claim must be in the same terms and same construction as it were before a labour officer.

**Rule 5 (1) of the Rules of Court** provides for memorandum of claim to set out the nature and particulars of each item of the claim involved in the dispute. The case of **Engineer John Eric Mugyenzi Vs Uganda Electricity Generation Co. Ltd Civil Appeal 096/2015** at the bottom of page 20 of the Judgment is of the legal proposition that the submission of the labour officer to the Industrial court can not only arise from a letter of complaint but includes questions referred to him which may not be in the letter of complaint but in the pleadings filed in the Industrial Court.

We do not find anything in the memorandum of claim that is outside the questions referred to this court by the Labour officer in the instant case which were

***“Whether the complainants claim that they were unfairly and unlawfully terminated and payment of their terminal benefits was not based on the Collective Bargaining Agreement (CBA) is genuine”***

In the final analysis we find that the objection has no merit and it is hereby overruled.

However, for the sake of ascertaining the existence of the claimants there is need for them either to each personally file witness statements in court or file for a representative Order before the case is finally set down for hearing. No order as to costs is given.

**Delivered & Signed:**

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

**PANELISTS**

1. Mr. Bwire John Abraham .....
2. Mr. Katende Patrick .....
3. Ms. Julian Nyachwo .....

Dated: 21/05/2021