

REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE CLAIM No. 03 OF 2019
(ARISING FROM CS NO. 582/2017)

BETWEEN

KAMUHANDA ESAU.....CLAIMANT

VERSUS

NATIONAL BANK OF COMMERCE.....RESPONDENT

BEFORE

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

PANELISTS

1. Mr. Ebyau Fidel
2. Mr. F.X. Mubuuke
3. Ms. Mugambwa Harriet Nganzi

RULING ON PRELIMINARY OBJECTION

BACKGROUND

The claimant filed civil suit No. 12/2007 in the High court at Mbarara. Because it underwent several transfers to different circuits of the High court including Kabale and Civil Division, it was registered under different numbers but subsequently it was registered as civil suit 582/2017 in the Civil Division.

It was later on referred to this court by the High court via letter dated 30/10/2018 addressed to the Deputy Registrar of this court by the Registrar of the High Court stating:

“The above mentioned file is hereby forwarded to the Industrial Court where its jurisdiction falls”.

The file was subsequently registered by the court as Labour Dispute Ref. 003/2019. On 9/3/2021 when the matter came up for mention, Mr. Muwonge Kassim appearing for the respondent sought to file submissions on a preliminary objection. He was allowed and indeed he filed the same and served Mr. Twikirize Timothy for the claimant who also filed submissions in reply.

We have carefully perused the submissions of both counsel.

The main thrust of the preliminary objection is that the suit is improperly filed before this court and as such it is barred in law as the claim is not in this court by way of a reference envisaged under **Rule 3 (1) and (2) of the Labour Disputes (Arbitration and Settlement) (Industrial Court Procedure) Rules S.1. No. 8/2012.**

It was strongly argued by the respondent in support of the preliminary objection, that the claimant should have filed a complaint before the Labour Officer who would have properly referred the matter to this court under **Section 8 of the Labour Disputes (Arbitration and Settlement) Act 2006.**

It was also argued that since the cause of action arose in 2006 and yet the claim in this court was lodged in 2019, it was outside the limitation period and barred by **section 71(2) of the Employment Act.**

In opposition to the preliminary objection, the claimant contended that at the time of filing the claim, the Industrial court was not operational and therefore the suit was properly filed in the High Court which had unlimited original jurisdiction.

After perusal and analysis of the submissions of both counsel we hereby reiterate the position that the High Court has unlimited original jurisdiction and in that capacity a suit filed in the High Court cannot be rendered incompetent or void on the ground that the High court has no jurisdiction. The fact that any other court or tribunal has jurisdiction to entertain a matter does not by itself oust the jurisdiction of the High court. Consequently, whereas we agree with the respondent that under the **Labour Dispute (Arbitration and Settlement) Act 2006**, a complaint ought to have been lodged with the Labour officer first, the fact that a suit was filed in the High court instead would not render the suit incompetent or void. This is especially so when the suit was filed in the High court at Mbarara on 22/1/2007, one year after the promulgation of the Employment Act and 7 years before the operationalization of the Industrial Court.

Both the **Employment Act** and the **Labour Dispute (Arbitration and Settlement) Act**, give jurisdiction to the labour office to entertain a complaint provided that in the event of failure to resolve it within a particular time or having resolved it but the aggrieved party seeks an appeal, reference or appeal is made to the Industrial court.

Therefore, the Industrial Court having not been in operation by the time the cause of action occurred in the instant case, and the High Court having original and unlimited jurisdiction, the claimant was justified to have filed the suit in the High court at the time he did.

We feel strongly that in referring the cases originally filed in the High Court to this court, the High Court exercises its powers under the judicature Act and that therefore this is in line with **Section 8 of the LADASA** which provides:

1). The Industrial Court shall:-

a)

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

It is under the above provision that this court started operations in 2014 by beginning with the cases referred by the civil division of the High court.

We are not acceptable to the contention of counsel for the respondent which directly is opposed to the beginning of the court and consequently to the validity of the references that started off the court. While handling **Miscellaneous Application 84/2015 (arising from M.A 24/2015 and L.D.R 26/2015) Uganda Telecommunications Employees Union & 95 others vs Uganda Telecom limited(UTL) and NSSF** this Court observed that the Hon. Lady Justice Lydia Mugambe in Misc. Cause 77/2015 held (inter alia)

“Because civil suit no. 79/2015 was irregularly transferred to the Industrial Court, it should be returned to this Court and closed by the Registrar since all the substantive issues therein were addressed in civil suit 68/2015 and all parties in the Industrial Court were completely heard.....”

While declining to return L.D.C 26/2015 to the High Court this Court stated

“The Order raises issues of Jurisdiction of this Court and whether the High Court could quash decisions or proceedings of this Court. It also raises the question as to whether decisions made by this Court in all cases referred to this Court in similar circumstances were by reason of Misc. cause 77/2015 quashed for having initially been irregularly transferred to this Court and whether the decision of the High Court delivered on 29/2015 overtook the labour claim in this Court rendering it res judicata....it is our opinion that this Court....will stay proceedings in this Court pending the Court of Appeal decision which we believe will provide guidance on the above issues and any other related issues....”

The above matter of Uganda Telecom and NSSF has not, to our knowledge, been disposed of by the Court of Appeal. Accordingly, the preliminary objection is overruled.

No order as to costs is made.

DELIVERED & SIGNED BY:

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

PANELISTS

1. Mr. Ebyau Fidel
2. Mr. F.X. Mubuuke
3. Ms. Mugambwa Harriet Nganzi

Dated: 14/05/2021