

REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE No. 128 OF 2016
(ARISING FROM KCCA/CEN/LC/133/2016)

BETWEEN

1. KYAKA FRED

2. KOMA LEE NOEL

.....**CLAIMANT**

VERSUS

ATTORNEY

GENERAL.....RESPONDENT

BEFORE

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

PANELISTS

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

RULING ON PRELIMINARY OBJECTION

BACKGROUND

By memorandum of claim, the claimants stated that in July 1996 they were issued with letters of appointment whose effective employment dates would begin with when they were recruited and

sent for training as employees of internal security organization. Allegations of misappropriation of funds were levelled against 1st claimant and allegations of cheating final Swahili exam paper against 2nd respondent. Both were not given a fair hearing as provided for under the Employment Act before being dismissed. They prayed for various remedies as enlisted in the claim.

When the matter came up on 23/11/2020 with Mr. Jordan Asodio representing the claimants and state Attorney Lawrence Mugisha representing the respondent, the latter raised a preliminary objection as to the jurisdiction of this court. Both counsel were given scheduled dates to file written submissions up to 8/2/2021.

It was the submission of the respondent that this court lacks jurisdiction to adjudicate this claim as provided for under **Section 2** and **Section 3 of the Employment Act** in as far as the claimants were members of the Peoples Defense Forces. According to counsel the 1st Claimant holds an Army No. RA/184394 and 2nd Claimant holds No. 164032.

Counsel relied on the authority of **Uganda Telecom Limited versus Adratere Oreste, M.A 002/2015 (Arua)**.

Counsel for claimants on the other hand submitted that the Section of the law and the High court precedent relied upon by the respondent were not applicable to the instant case.

Counsel argued that the International Security Organization having been established under the Security Organization Act, Cap. 305, the claimants were employees of the Organization and not employees of the Uganda Peoples Defense Forces. According to counsel these institutions are separate and distinct.

In his own words

“The claimants were issued with appointment letters as officers of the internal security organization....they served as officers of the organization until...dismissal/termination. They have not at any given time been members of the Uganda peoples Defense Forces and cannot be clothed as such merely to avoid liability. The claimants were recruited as civilians to serve.....”

We have looked at the appointments of both claimants. Whereas Kyaka Fred was appointed as “**operative officer**” Koma Lee Noel was appointed as “**an employee**”. Kyaka Fred was deployed to Busia as Deputy District Internal Security Officer and Koma Lee was deployed to Moroto as Senior Operative Officer.

Under Section 3 of the Uganda Peoples Defense Forces Act 2005 “officer” means

- a) A person commissioned by the President to the Defense Forces.
- b) Any person who is attached or seconded as an officer to the Defense Forces.

Under Regulation 3 of the Security Organizations (Terms and conditions of service) regulations statutory Instrument 305-1.

“**Officer**” means an officer of a security organization of or above the rank of assistant intelligence officer.

On careful perusal of the memorandum of claim, it is clear that the claimants’ appointments were only effective after training as Internal Security Organization personnel. Although it is not clear in the memorandum of claim as to whether the training was of Defense Forces, on further perusal of the documents on record, a letter from Minister of Security, Wilson Muruli Mukasa, dated 22/1/2013 addressed to Director General ISO refers to the first claimant as RA184394 pte Kyaka Fred and the second claimant as RA164032 pte Koma Lee Noel. We take Judicial notice of the fact that the numbers and rank attributed to the claimants belong to the Defense Forces especially so when the said numbers and ranks were not denied by the claimants. This being the case it is evident that the claimants joined ISO either after being recruited into the Peoples Defense forces or during or after joining ISO. It is more probable than not that both claimants were deployed or recruited as officers in ISO but remained attached to the Defense Forces as prescribed under **Section 3(b) of the Uganda Peoples Defense Forces Act 2005.**

Given the submission of the respondent that both claimants were at the rank of Private in the Armed forces with RA numbers and given that this assertion was not rebutted in submission, it is our opinion that the claimants though deployed in ISO as Operative Officers, in the absence of evidence that they were discharged from the army, they were still members of the Peoples Defense Forces even when they were at the same time ISO operatives. We do not accept the submission

of counsel for the claimants that they were never members of the People's Defense Forces. It is clear that they were not in ISO as civilians. The question to be answered is whether this Court has Jurisdiction.

Section 2 of the Employment Act defines employee as:

“any person who has entered into a contract, including without limitation, any person who is employed by or for the Government of Uganda including the Uganda Public Service, a local authority or a parastatal organization **but excludes a member of the Uganda Peoples Defense Forces**”

Section 3 of the Employment Act provides

“3, Application of the Act

- 1)
- 2) **This Act does not apply to...**
 - a)
 - b) **The Uganda People s' Defense forces, other than their civilian employees.”**

The jurisdiction of this court is provided for under **Section 8 of the Labour Dispute (Arbitration and settlement) Act** which provides as follows

“8 Functions of the Industrial Court

- 1) The Industrial Court shall-***
 - a) arbitrate on labour disputes referred to it under this Act; and***
 - b) adjudicate – upon questions of law and fact arising from references to the Industrial Court by any other law***
 - c) the Industrial Court shall dispose of the Labour disputes referred to it without undue delay.”***

This Court therefore is a specialized Court dealing with matters to do with Employees and Employers regarding the Employment relationship between them. Its Jurisdiction extends only to labour dispute directly connected with Employment and arising from the Employment relationship as provided for under the Employment Act.

The Hon Justice Stephen Mubiru in **Uganda Telecom Limited Vs Adratere Oreste, Misc. Appln. No. 0021/2015 (Supra)** held

“It is trite law that the Jurisdiction of courts is a creation of statute. A court cannot exercise Jurisdiction that is not conferred upon it by law. Therefore, whatever a court purports to do without Jurisdiction is a nullity ab initio.....”

Consequently, given the exclusion of subjecting members of the Defense Forces to the Employment Act as provided under both **Section 2 and 3 of the Act** and given the jurisdiction of this court under **Section 8 of the Labour Disputes (Arbitration and Settlement Act) 2006**, we find this court lacks jurisdiction and we therefore uphold the preliminary objection.

The claim is dismissed for being filed in a court without jurisdiction. 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. Bwire John Abraham
2. Mr. Katende Patrick
3. Ms. Julian Nyacwo

Dated: 31

31/03/2021