

THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
MISC. APPLICATION NO. 169 OF 2020
[ARISING FROM LABOUR DISPUTE APPEAL NO. 024/2020]

BETWEEN

ALLIANCE ONE TOBACCOCLAIMANT

VERSUS

YASSIN & 5 ORTHERSRESPONDENT

BEFORE

1. Hon. Head Judge Ruhinda Ntengye

PANELISTS

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

RULING ON PRELIMINARY LEGAL POINT

The above application was filed seeking leave of this court to appeal on matters of fact but before the applicant could proceed, the respondent raised a preliminary point touching the capacity of a Human Resource Manager to swear an affidavit on behalf of the company. Counsel for respondents relied on **Article 80(1) of the Company's Act** which according to him provides for company business being ran by Directors. Counsel argued that without a Power of Attorney, one Patricia Tukahirwa had no authority to swear an affidavit and therefore the application was a nullity.

Counsel for the respondent also argued that, he had not been served with affidavits in rejoinder to affidavits of some of the respondents and that this in accordance with the authority of **Martha Vs Allen 1978 HCB 297** was tantamount to admission of evidence of the said respondents.

Counsel for the respondent contended that the application having been filed after filing the memorandum of Appeal, it was a nullity, disregarding **Section 92(2) of the Employment Act**. In his view the applicant ought to have first filed the application before the appeal.

In reply counsel for the applicant was emphatic that **under 019r1 of the CPR** any person knowledgeable about the facts of a given case had a right to swear an affidavit. She said she was only aware in court from the submission of counsel for the respondent that the respondent was not served with some affidavits which she contended were on the court record and that she could easily serve the respondent with the same.

She argued strongly that under the Employment Act an appellant was required to file the appeal within 30 days which was done by the appellant and that the application could not be illegal merely because it was filed after a memorandum of appeal.

Decision of Court

Order 19 rule 1 of the Civil Procedure Rules grants the court power to allow evidence to be adduced by affidavit. Although under the company's Act and regulations the business of the Company is ran by Directors, giving evidence in a court of law is not a management act required of a Director under the company's Act and regulations. We agree with the applicant that evidence in a court of law is given by any person who is knowledgeable about the facts which he/she is adducing in court. The mere fact that Patrick Tukahirwa was not a Director or a shareholder in the applicant company did not preclude her from adducing evidence in court.

We have perused the court file and we are satisfied that there are 5 affidavits in rejoinder. Granted that the applicant should have served the respondent with all the affidavits, we do not subscribe to the view that affidavits already on the record should be ignored totally. It serves the interest of justice if they are served onto the respondents especially so when they are affidavits in rejoinder. It would have been different if the affidavits were not on the record.

Lastly, **Section 94(2) of the Employment Act** provides for leave of the court once an appellant intends to appeal on questions of fact. **Regulation 45(1) of the Employment Regulations, 2011** provides for an appeal against the decision of the labour officer within 30 days. This court in the recent case of

KAMPALA PLAY HOUSE LIMITED & 20 OTHERS Vs Oligo James & 19 Others, Misc. Application 018/2021 (from LDA No. 04/2020) held that “there is no legal basis for the submission of counsel for the respondent that leave on matters of fact must be sought within the time specified for lodging the Appeal. An appeal having been lodged within the prescribed time in accordance with regulation 45(1) of the Employment Regulations 2011, no other time limit is provided for in the event of any other application related to the already filed Appeal.”

With the above reasons, we consider the preliminary objection as having no merits and it is hereby overruled.

Delivered & signed by:

- 1. Hon. Chief Judge Ruhinda Ntengye

PANELISTS

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

Dated: 21/09/2021