

REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
MISC. APPLICATION No. 17 OF 2020
[ARISING FROM LDC NO. 30/2017)

BETWEEN

MAKERERE UNIVERSITYAPPLICANT

VERSUS

- 1. CHARLES LUBOWA**
- 2. W. N. E. KISAMBIRA MASASA**
- 3. Y. B. KAGWA**
- 4. J. C. KIGULI**

MAYANJA.....RESPONDENT

BEFORE

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

PANELISTS

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

RULING

This application brought under **Section 98 of the Civil Procedure Act, under Order 1 rule 10(2) and Order 52 rule 1 & 3 of the Civil Procedure Rules** seeks orders of this court that:

- (a) The Attorney General be joined as a co-defendant in Labour Dispute Claim No. 30/2017.
- (b) Costs of the application be provided for.

An affidavit attached to the application was sworn by one Yusuf Kiranda, the applicant University Secretary to the effect that the Government of Uganda through the Ministry of Public Service and Cabinet Affairs in 1976 issued a circular, and in 1980 the Ministry of Education appointed the Oninde salary review committee, both of which affected the applicant's salary structures which are in issue in the main Labour dispute Claim, making the Government of Uganda through the Attorney General a necessary party to the suit.

An affidavit in reply was sworn by W.N.E. Kisambira to the effect that the Attorney General was not a necessary party since the respondents had no cause of action against her, and since the applicant never sought the involvement of the Attorney General ever since the suit was filed. According to the affidavit in reply the application was a ploy to delay justice.

The applicant was represented by Mr. John Fisher Kanyemebwa of M/s. Katera & Kagumire Advocates while the respondent was reported by Mr. Bakunda Yusuf of M/s. Godfrey S. Lule Advocates.

SUBMISSIONS

According to the applicant, the Attorney General is a necessary party to the proceedings for the applicant to effectively put up a defence to the claim. The applicant relied on **Kavondo Mohammed & 3 Others Vs Administrator General & 2 Others Miscellaneous Application 626/2016** per Justice Percy Tuhaise J (as she then was) and **Departed Asians Property Custodian Board Vs Jeffer Brother Ltd. SCCA 9/1998.**

According to the respondent, the applicant seeks to join the Attorney General merely because the applicant wants the testimony of the Attorney General or of a person under the influence of the Attorney General and not because the applicant cannot set up a defence effectively without the Attorney General as a co-defendant. For this matter according to counsel, the application falls short of the Standards set by the authorities cited by counsel for the applicant. In counsel for the respondent's view, the applicant should have taken out a third party notice under **Order 1 rule 14 of the Civil Procedure Rules** against

the Attorney General with a view that the A.G contributes or indemnifies it against any Award of the court.

DECISION OF COURT

Order 1 rule 10(2) of the Civil Procedure Rules provides:

“10. Suit in name of wrong plaintiff ...

1)

2) The court may at any stage of the proceedings either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as a plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”

The affidavit sworn by one of the applicants in paragraph 4 referred to documents related to salary structure of the applicants having been issued by the government of Uganda and in paragraph 10 of the affidavit it refers to the salary structure being in issue in the substantive suit. This being the case and the Attorney General being a legal party that represents government in courts of law, we find that in accordance with the decisions of **Departed Asians Property Custodian Board Vs Jaffer Brothers and Kayondo Mohammed & 3 Others Vs Administrator General** (supra) the Attorney General is a necessary party for this court to effectually adjudicate and settle all questions in LDC 30/2017.

We reject the submission of the respondent that the application merely seeks the testimony of the Attorney General or an officer under the influence of the Attorney general, with the result that this application is allowed with no order as to costs. The applicant shall amend the pleadings by including the Attorney general as co-defendant and serve the respondent within 14 days from the date of this ruling. Order accordingly.

Delivered & signed by:

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

PANELISTS

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

DATED 29/01/2021