

THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE MISC.APPLICATION NO. 139/2021
ARISING FROM LABOUR DISPUTE REFERENCE NO.179/2021 &
KCCA/CEN/LC/097/2021

BETWEEN

SHOPRITE CHECKERS (U) LIMITED APPLICANT

VERSUS

RASHID NYENDE & 44 OTHERS..... RESPONDENTS

BEFORE

1. THE HON. HEAD JUDGE, RUHINDA ASAPH NTENGYE

PANELISTS

- 1. MS. ADRINE NAMARA**
- 2. MS. SUZAN NABIRYE**
- 3. MR. MICHAEL MATOVU**

RULING

This is an application by Notice of Motion brought under **Section 33 of the Judicature Act** and **Section 98 of the Civil Procedure Act**. It seeks a declaration that Labour Dispute No. 179/2021 is incompetent and incurably defective and a nullity. It also seeks an order of this court striking out the memorandum of claim in the same Labour Dispute.

REPRESENTATIONS

The applicant was represented by Mr. Kyateka Ivan of Tumusiime, Kabega & Co. Advocates while the respondent was represented by M/s. Kellen Kibumba and Mr. Patrick Mugalula of M/s. Bamwite & Kakuba Advocates and M/S Katende, Ssempebwa Advocates respectively.

The application was supported by affidavit sworn by Jayte Slabbert, General Manager of the applicant. The affidavit states that the 1st respondent brought the claim as a representative action of an unincorporated group without leave of court or advertisement in the newspapers which was mandatory.

In an affidavit in reply by one Rashid Nyende, the 1st respondent, it was stated that Labour Dispute Reference No. 179/2021 was not filed as a representative suit, the reason every individual 's claim was properly captured with each individual's documents.

SUBMISSIONS

On 26/10/2021, both counsel attended court and they were given timelines within which to file submissions. The applicant was to file by 2/11/2021 while the respondent was to file by 9/11/2021. The applicant was expected to file a rejoinder by 12/11/2021 while the full panel was to sit and discuss the submissions on 18/11/2021. While the applicant filed the submissions on time and filed an affidavit of service indicating that the Respondent was served on the relevant date, the respondent chose to file submissions on 15/11/2021 only 3 days to the coram sitting of the court.

We will not accept this method of work. The late filing of the respondent's submission interfered with the courts timetable to peruse the same and prepare for the coram meeting on 18/11/2021. Consequently, we shall not consider the submission of the respondent in this ruling.

Counsel for the applicant submitted that contrary to averments in paragraph 3 of the affidavit in reply, pleadings in Labour Dispute Claim No. 97/2021 particularly paragraph 7 of the claim and the attached "*Consent to a representative suit*" indicated that the claim was a representative action. It was argued that the argument that the Labour Dispute was not a representative suit was not true and did not extinguish the requirement to comply with **Order 1 rule 8**.

Citing a number of authorities' counsel argued that the respondent was required to seek leave of court and give notice to those to be represented. Counsel also argued that the provisions of Order 1 rule 8 were mandatory and that the effect of not complying with the same was to strike out the suit with costs.

Order 1 rule 8 provides

“Where there are numerous persons having the same interest in one suit, one or more persons may with the permission of the court, sue or be sued, or may defend in such suit, on behalf of or for the benefit of all persons so interested. But the court shall in such cases give notice of the institution of the suit to all such persons either by personal service or where from the number of persons or any cause such service is not reasonably practicable by public advertisement as the court in each case may direct. ”

In our understanding of the above Order, the leave of the court is required only where the plaintiff or defendant intends to file a suit for and on behalf of numerous persons who have the same interest in the suit. The Order does not compel persons who have the same interest to file a representative action. The Order merely gives an option to the numerous persons to choose one or more of them to represent them in the suit. Otherwise each of the numerous persons are not prevented to sue or be sued in the same suit individually.

Paragraph 2 of the affidavit in reply states *“that when we filed our labor claim in Labour Dispute Reference no. 179/2021 we did not file it as a representative suit and that was the reason every individual’s claim was properly captured together with each individual’s documents.”*

However, under paragraph 7 of the pleadings in Labour Dispute Reference No.179/2021 it is pleaded

“The claimants shall state that on 5/6/2021 through a meeting at Arena Mall in Nsambya, the members of management unanimously instructed their chairman, a one Rashid Nyende to institute a case on their behalf (see a copy of the list of members that consented hereto attached and marked “B”)

We note the contradiction. However, having perused the cases of **Kasozi Joseph & 3 Others Vs Umeme Ltd HCCS 188/2010 (Commercial Division)**, **Ibrahim Buwembo & 2 Others Vs M/s. Utoda limited HCCS 664/2003) (Commercial Division)** and **Constitutional Petition No. 22/2009 Uganda freight forwarders Association and another Vs The Attorney General & another**, all relied on by Counsel for the applicant, we find that in all these cases there was no denial that either there was an intention by one or more of the parties to represent the others or that there was already a representative suit filed in court.

The fundamental issue in the above cited cases was whether in filing a representative action, the plaintiffs or petitioners had complied with Order 1 r 8. The issue in the instant case is

whether or not Labour Dispute 179/2021 was filed as representative action and if so whether Order 1 rule 8 was complied with.

Given that Order 1 rule 8 does not compel numerous persons to file a representative action but only gives them an option to do so, and given that under paragraph 2 of the affidavit in reply the respondent denied having filed the claim as a representative action, we form the opinion that the pleading under Paragraph 7 of the memorandum of claim that one Rashid Nyende was instructed to file a suit on behalf of the rest is not fatal to the Labour Dispute Claim as filed. The omission to name the 44 claimants on the face of the claim, in our view can be cured by amendment, leaving the rest of the claim intact. Accordingly, we do not find merit in the application.

Labour Dispute Reference No. 179/2021 shall be amended to include the 44 individual claimants. No order as to costs is made.

BEFORE

1. Hon. Head Judge Ruhinda Ntengye

PANELISTS

- 1. Ms. Adrine Namara
- 2. Mr. Susan Nabirye
- 3. Ms. Michael Matovu

Dated: 19/11/2021