

THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
MISC. APPL. NO. 045 OF 2021
[ARISING FROM LABOUR DISPUTE REFERENCE NO. 209/2021]

1. DR. DEUS KAMUNYU MUHWEZI
2. ROBERT KAKURU
3. JOSHUA J. KIDEGA.....APPLICANT

VERSUS

MAKERERE UNIVERSITY.....RESPONDENT

BEFORE

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

PANELISTS

1. Mr. Rwomushana Reuben Jack
2. Ms. Rose Gidongo
3. Ms. Beatrice Aciro Okeny

RULING

This is an application by way of an amended notice of motion filed on 27/04/2021. The application seeks an order for stay of execution of the decision of the labour officer in labour Complaint No. KCCA/KWP/LC52/2021 until the disposal of Appeal No. 9/2021.

It also seeks an order of a temporary injunction restraining the respondents from taking any disciplinary measures until the disposal of Appeal No. 9/2021 and an order for extension of time to allow the filing of an appeal or validation of an amended notice of appeal filed on 26/5/2021. As usual the application seeks an order for costs.

Briefly the background of the application is that the applicants being employees of the respondent were engaged in an Industrial action at their place of work over the distribution of 50Bn shillings released by government for increase of salaries of

academic staff. The respondent not amused by the method and process of the applicants' engagement in the Industrial action, and insisting that it was illegal, threatened disciplinary action against the applicants. On 15/3/2021 the applicants through their lawyers filed a complaint to the Labour Officer alleging that the respondent had breached **Sections 6(1) 6(3) 75(9) and 76 of the Employment Act** and asked the Labour Officer to halt any intended disciplinary action against the applicants and to carry out an inquiry to ensure that legal obligations were followed. The labour officer in her letter of the same date informed the respondent about the complaint and halted the intended disciplinary action pending completion of investigation by her office. On 18/3/2021 counsel for the applicants wrote to the Labour Officer complaining about 2 letters from the respondent dated 16/3/2021 and 17/3/2021 which according to him were false and requested to address the labour Officer on matters raised (in the letters) before close of business on Monday 22/3/2021.

On 23/03/2021, the labour office delivered her ruling which was not amusing to the applicants who filed Appeal No. 9/2021 on 24/3/2021 and later this application on 24/04/2021.

This application is supported by an affidavit sworn by Dr. Deus Kamunyu Muhwezi, one of the applicants. An affidavit in reply was sworn by one Yusuf Kiranda who works with the respondent's Directorate of legal Affairs.

On 5/5/2021 when the matter came up for hearing Mr. Hudson Musoke who was counsel for the respondent prayed that this court allows written submissions which was allowed by court. Court then issued timelines to the effect that the applicant would file submissions on 19/05/2021, the respondent would file a reply on 27/05/2021 and the claimant would rejoin on 31/05/2021.

The court panel would discuss the submission on 4/06/2021 and issue a decision on 11/06/2021.

However, although the applicant filed submissions on 20/05/2021, by the time we were discussing the matter on 4/06/2021, there were no submissions from the respondent. We shall therefore not refer to submissions of the respondent.

We have carefully perused the notice of motion and the supporting affidavit. We have as well perused carefully the affidavit in reply just like the submissions of the appellant. We have looked at the record of the labour officer including her decision. It is apparent from the application that it is an omnibus application seeking for different orders which ordinarily would be sought for via different applications.

In the submission of counsel for the applicants, this was because **Section 8(2) of the Labour Dispute (Arbitration and settlement) Act 2006** read together with **Article 126 (2)(b)** enjoined this court to administer substantive justice without delay and without undue regard to technicalities and for the sake of saving costs.

The only repose to this by the respondent is in paragraph 23 of the affidavit in reply which states

“..... the prayer for leave to adduce additional evidence is misplaced and fundamentally defective, to be brought together with an application of this nature.”

An omnibus application is not rejected merely because it seeks different orders ordinarily brought under different applications. In **Misc. Appln. 160/2014**, arising from **Misc. Appln. 106/2007 (Jinja)** Hon. Justice Namudi Godfrey proceeded to entertain an omnibus application for grant for orders of extension of time within which to lodge an application for leave and for leave to appeal. This was an application filed by **B.W. Kipiriri Vs International Investment and 5 Others**.

Accordingly, in the absence of a submission from counsel for the respondent as to how defective the application is before court and that this court should reject it, we have no reason not to entertain the same.

According to the affidavit in reply the decision of the labour officer was only declaratory and therefore there is nothing that this court is called upon to stay in execution. The affidavit in reply also expresses the contention that the application reveals only speculative danger likely to happen to the applicant which cannot be based upon by this court to make an order of stay of execution.

According to paragraph 19 of the affidavit in support of the application by Kamunyu Muhwezi the Labour officer's decision if not stayed all academic staff of public universities involved in the Industrial action face a clear danger of disciplinary or other action.

As earlier on intimated, the labour officer originally halted any disciplinary action against applicants until she investigated the complaint. In her ruling she declared (among others):

"the disciplinary procedure initiated by the respondent whether or not in relation to non- performance of duties by the claimants because of the industrial action is therefore justified.

The contention before the labour officer was whether the instituted disciplinary proceedings by the respondent against the complaints were justified. The labour officer having decided in the positive this issue, it was not a mere declaratory order as it translated into disciplinary action against the applicants which the Labour Officer had halted. Consequently, contrary to the assertion in the affidavit in reply that there is nothing to stay in execution, the application is about staying the order of the labour officer allowing disciplinary action against the applicants.

An Appeal against the decision of the labour officer was filed in this court within the time allowed. According to the affidavit of Dr. Deus Kamunyu, the evidence intended to be adduced on appeal could not be adduced before the labour officer because the labour officer hastily declared the industrial action unlawful before hearing from any witness or examining necessary documents.

On perusal of the record, it is clear that the labour officer did not call or give opportunity to the appellant to adduce any evidence. She only looked at the documents availed to her by the respondent in his submission. Counsel for the appellant pointed on the various documents that had been intended to be adduced but which could not be as a result of the haste of the labour officer.

The letter dated 18/3/2021 addressed to and received by the labour officer on the same date clearly indicates that the appellants sought to address the labour officer on the matter raised by the respondent in letters to which they had not been copied


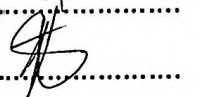
in but given to the labour officer. Their request was to be allowed audience on 22/03/2021 only the labour officer to release the ruling before the appellants addressed the labour officer. Given this scenario, we think the applicants have made a case for additional evidence on appeal.

In conclusion, we are satisfied that the application has merits and it is hereby allowed. An order of stay of the labour officer's decision will issue in effect halting any disciplinary action against the applicants pending determination of Appeal No. 009/2021.

An order allowing adducing of additional evidence on appeal is also hereby issued. No order as to costs is made.

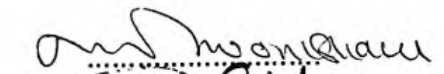
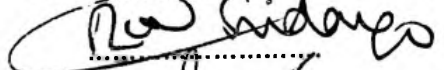
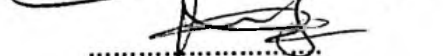
Delivered & signed by:

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


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PANELISTS

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Dated: 11/06/2021