

**THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
MISC. APPL. NO. 15 OF 2021
[ARISING FROM MISC. APPL. NO. 117 OF 2020]**

BETWEEN

MAKERERE UNIVERSITYAPPLICANT

VERSUS

- 1. CHARLES LUBOWA**
- 2. W.N.E KISAMBIRA MASABA**
- 3. J.C. KIGULI MUYANJA.....RESPONDENT**

BEFORE

1. Hon. Chief Judge Ruhinda Asaph 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 by notice of motion under **Section 17 of the Labour Disputes (Arbitration and Settlement) Act 2006 (LADASA)** seeks for orders that

- 1) The ruling of this court in Miscellaneous Application No. 117/2020 be reviewed.
- 2) The order directing the applicant to amend pleadings in labour dispute claim 30/2017 to add the Attorney General as a co-defendant be set aside and be

substituted with an order directing the respondent/claimant in labour claim 30/2017 to include the Attorney General as co-defendant.

3) The costs of this application be provided for.

The application was supported by an affidavit to which the respondent filed a reply in opposition to the application.

Both the applicant and respondent filed written submissions in support of their varying positions and cited various legal authorities.

We have carefully perused both the application and the affidavit in support as well as the affidavit in opposition. We have also perused carefully and internalized the submissions of both counsel.

The gist of the case for the applicant is that there is an error on the face of the record since the Attorney General can only be added as a co-defendant through amending the respondent's memorandum of claim citing the Attorney general as co-defendant. Counsel argued that the order by this court to add the Attorney General as a co-defendant can only be implemented by the respondent.

It was the respondent's case that an application of this nature could not be made under **Section 17 of the LADASA** and that this Section of the law did not support the application which according to counsel was not fit for review. Counsel argued that the respondents could not be ordered against their wishes to amend their pleadings.

Section 17 of the LADASA Act 2006 provides

"Where any question arises as to the interpretation of any Award of the Industrial Court within twenty-one days from the effective date of the Award or where new and relevant facts concerning the dispute materialize, a party to the Award may apply to the Industrial Court to review its decision on a question of Interpretation or in the light of the new facts."

We agree with the respondent that **Section 17 of the LADASA** is in respect to Interpretation of an Award of this court where new and relevant facts materialized after the Award was made.

We form the strong opinion that an Award of the court must be distinguished from a ruling of the court. Whereas a ruling of the court may not be necessarily an end by itself, an Award of the court is necessarily an end of litigation on the subject and unlike a ruling it always originates extraction of a decree which is executable. Ordinarily a ruling is an answer to intermediate questions that arise before the end of litigation.

Consequently, we do not agree with the applicant that every ruling is an Award of the court capable of raising interpretation issues constituting a review as spelt out under **Section 17 of the LADASA**.

The ruling in miscellaneous application 117/2021 that allowed joining the Attorney General was not a final order constituting an Award of this court. It was an answer to the question whether or not the Attorney General could be joined as a co-defendant before litigation of the suit between the parties as earlier filed in court could proceed. The ruling was not an end in itself since the suit was alive with or without the ruling.

In any case we do not find any aspects of interpretation of the ruling in Misc. Appl. 117/2020 which clearly gave leave to the applicant to join the Attorney General as co-defendant. The fact that the applicant was mistaken that it could not in law be able to amend its pleadings to include the Attorney General as co-defendant, in our view does not call for review of the court's order. Neither does it form a mistake on the face of the record.

Most importantly, there is nothing further from the truth and the law that a court can order amendment of pleadings by a party against such party's wishes, especially when it is by adding a co-defendant. A party files pleadings against another party only on the basis that such party has a cause of action against the other party.

It would be outrageous of the court if it were to assume that one party has a cause of action against the other and for that matter cause filing of a suit against the said party.

Consequently we agree with the respondent that the court cannot be moved to issue orders that force the respondents to amend their memorandum of claim and or to add a defendant to their claim against the respondents' wishes.

The application fails with no orders as to costs.

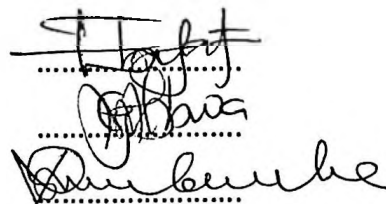
Delivered & Signed by:

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



PANELISTS

1. Mr. Ebyau Fidel
2. Ms. Mugambwa Harriet Nganzi
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Dated: 14/05/2021