THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
MISC. APPLN. NO. 018 OF 2021
(ARISING FROM LABOUR DISPUTE APPEAL No. 04/2020

BETWEEN

KAMPALA PLAY HOUSE LIMITED & 20 OTHERS.....APPLICANT

AND

OLIGO JAMES & 19 OTHERS.....RESPONDENT

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

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

RULING

This is an application by notice of motion brought under **Section 98 of the Civil Act, Section 92 of the Eml;oyment Act, Rule 24(2) of the Labour Disputes (Arbitration and Settlement)(Industrial Court Procedure) Rules, Order 52 rule 1 & 3 of the Civil Procedure Rules.**

It seeks for orders that

(1) Leave be granted to the applicants to appeal to the Industrial Court in labour Dispute Appeal 14/2020 on points of law and fact.

(2) Leave be granted to the applicants to raise issues of law not raised before the labour officer in Labour Dispute KCCA/LC/11/2019.
(3) Leave be granted to the applicants to amend the Memorandum of Appeal in Labour Dispute Appeal No. 14 14/2020 and additional grounds of Appeal and further clarify on the existing grounds of Appeal.

The application was supported by an affidavit sworn by one Ann Namara who later on swore an affidavit in rejoinder after an affidavit in reply or in opposition had been sworn and filed by one Mumbere Bright, one of the respondents.

REPRESENTATIONS

The applicant was represented by Mr. Francis Gimara and M/s. aboto Judith of ALP advocates while the respondent was represented by Mr. Nuwandinda J. Rwambuka of M/s. Rwambuka & Co. Advocates.

The background of the application as put by the labour officer in the Award is that the respondents were employed by the applicants at different times as security guards and supervisors by virtue of specific contracts.
They were all terminated on 31/1/2019 and their termination letters indicated restructuring as a reason for termination. When they filed a complaint to the labour office, the labour officer decided in their favor giving them various remedies, including repatriation, retirement package, overtime and compensation. The applicants being aggrieved filed an Appeal to this court raising further grounds on points of law only. As pointed out above, the application seeks to include points of fact and to raise further grounds of appeal by amending the memorandum of appeal.

It was the submission of counsel for the applicant that there were errors of fact embedded in the Award of the labour officer necessitating further inquiry into the truth of facts. He referred us to paragraphs 6-12 of the affidavit in support of the application. It was his assertion that the labour officer's decision was premised on a misunderstanding of the evidence adduced. Relying on **Mubiru Martin Vs Red Cross Society, L.D. Appeal No. 28/2018 and Action Aid Uganda David Mbarakye**

Tibekinga, L.D. Appeal No. 28/2016 he argued that the manner in which the Labour Officer handled the facts (as he evaluated evidence) was in a selective Manner and therefore a reason for the applicant to file this application.

Relying on **Musisi Gabriel Vs Edco Limited & Anor, HCMA 386/2013 and Ministry Amar Singh Vs Serwani Wofunira Kulubya (1963) EA 408**, counsel argued that a matter of law could be brought up anytime and where questions of illegality are brought to attention of court they override all other considerations and court is bound to investigate such claim of illegality. This argument was in support of counsel's application for leave to raise new issues of law not raised before the labour officer.

In support of the application to amend the Memorandum of Appeal, counsel argued strongly that the amendment was for purposes of including new questions of law. According to counsel the amendment is intended to better articulate the grounds of appeal and does not introduce a new cause of action but only seeks to clarify the appellant's grievances already covered under grounds 2(a) and 3 (annexture **"B"),** the initial memorandum of Appeal.

In reply to the above submissions, it was the contention of counsel for the respondent in his submissions that there was no need of leave of this court to appeal on question of fact since (according to counsel) the grounds regarding evaluation of evidence were already contained in the memorandum of appeal as shown in grounds 1-4. Counsel contended that questions of fact forming part of the decision of the labour officer were not brought out by the application or the applicants. Counsel argued that the application was filed over 200 days from the 3/7/2020 instead of the allowable 30 days.

As to new issues of law counsel argued that the applicants ought to have given reason as to why they did not raise the same before the labour officer and a reason as to why they were not originally included in the memorandum of Appeal. According to counsel, there is no law which permits the applicant to raise matters on appeal which were never raised in the labour office or which the labour officer

did not refer to this court for trial. Counsel argued that the question of overtime for the period before 2013 was not an illegality.

We have carefully perused the application together with the affidavit in support. We have as well carefully perused the affidavit in reply together with the affidavit in rejoinder. We have at the same time carefully perused the submissions of both counsel. The application seeks three different orders of this court and we shall deal with the same as they were argued:

(a) Leave for an order to argue points of mixed law and fact.

Under **Section 94 of the employment Act** an appeal against the decision of the Labour Officer lies to this court only on matters of law. An appellant can only appeal to the court on matters of fact or mixed law and fact with leave of this court. In seeking leave of this court, the applicant must satisfy the court as to why he/she intends to argue points of fact or of mixed law and fact.

The contention of the applicant is that not all the evidence on record was considered by the labour officer and according to counsel this led to finding that some of the respondents were not employed by the 1st applicant. It is also contended that the labour officer premised his decision on a misunderstanding of the relevant evidence.

The contention of the respondent on the other hand is that the grounds regarding evaluation of the evidence were already in the memorandum of Appeal and that question of fact forming part of the decision of the labour officer were not shown by the applicant. Counsel for the respondent vehemently argued that leave to appeal on matters of fact must be sought within the time allowed to appeal against the decision of the labour officer which was not the case.

Under paragraph 10 of the affidavit in support of the application, the deponent swore that

"there are material errors in the findings of fact made by the labour officer in the Award vide Labour Dispute No. KCCA/LC/114/2019 which have occasioned a miscarriage of justice to the applicants and on them financial liability."

On perusal of the grounds of Appeal (attachment **"B"** to the application) it is clear as counsel for the respondent submitted that they are about evaluation of evidence by the labour officer. The question is whether evaluation of evidence having been one of the grounds of appeal, cannot be at the same time a reason for grant of leave to appeal on matters of fact under **Section 94 of the Employment Act.**

It is our considered opinion that evaluation of evidence constitutes a look at the facts as they relate to the relevant subject in the dispute, and in reaching a decision, one has to apply the facts to the relevant law. Therefore there is a very thin layer between evaluation of evidence as a point of law or as a point of fact. We think this is the reason why the court of Appeal in **Baingana J. P. Vs Uganda Court of Appeal 068/2010** held that failure to evaluate evidence was a matter of law. In this Baingana case, the court of Appeal singled out evaluation of evidence from among other grounds that related to a mixture of law and fact and entertained it while striking out the rest of the grounds.

Following this decision, this court in **Onyango Robert Vs Security Group (U) LDA No. 040/2018, Mubiru Martin Vs Red Cross Society LDA No. 028/2018**, decided that where a ground of appeal stated evaluation of evidence as an error in both law and fact on the part of the labour officer, such a ground would have constituted a matter of law.

Given the thin line between questions on fact and of law in evaluation of evidence as discussed above, we accept the contention of counsel for the applicant that the contents of paragraphs 6-12 of the affidavit in support of the application present a case requiring further judicial inquiry who the truth of facts adduced before the labour officer. The fact that the grounds of appeal alluded to evaluation of evidence which as already stated constitutes a look at the facts did not constitute a bar from raising the same as reason for grant of this application.

There is no doubt that the Appeal against the decision of the labour officer was filed within the required 30 days. There is no legal basis for the submission of counsel for the respondent that leave to appeal on matter of fact must be sought within the time specified for lodging an appeal. An appeal having been lodged against a decision 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 further application related to the already filed Appeal.

We therefore agree with the deponent in an affidavit in rejoinder at paragraph 2 thereof that there are no statutory timelines within which leave to appeal on matters of law and fact must be sought. For the above reasons, an application for leave to appeal on points of mixed law and fact is hereby granted.

(b) Leave to raise new issues of law not raised before the labour officer.

The main thrust of the objection by the respondent is that the applicant gave no reason as to why the supposed issues of law were not pleaded in the original reply of the claim, why they were not raised during the trial process before the labour officer, and during filing of the memorandum of appeal. Counsel for the respondent argued that there was no law permitting the applicants to raise matters on appeal which were never raised before the labour officer.

Legal issues unlike issues of fact are the ones that determine the course of justice in the courts of law. It is the legal issues and the way they are resolved that determine the justice of the case. Consequently, as was decided in the cases of **Mukula International Ltd. Vs His Eminence Cardinal Nsubuga & Another Court of Appeal Civil Appeal 04/1981 (reported in (1982) HCB) and Musisi Gabriel Vs Edco Limited and George Regui Kamoni H.C.M.A 386/2013 arising from appeal 52/2010** a court of law cannot sanction an illegality and any illegality once brought to the attention of the court, it overrides all other questions of pleading. The same decisions are for the legal proposition that illegalities at questions of law could be raised at any time during the proceedings.

Given the above authorities the submissions by counsel for the respondent that the applicants should have advanced reasons as to why they had not raised the legal issues earlier on is not acceptable. Whether the question of overtime for the period 2013 was an illegality or not, in our opinion touches on the merits of the case. However, the fact that both counsel have raised arguments on the same means that the court may not overlook it, the applicant having pointed out that it has an illegality that ought to be investigated. Accordingly the application for leave to raise new issues of law is hereby granted.

(c) Leave to amend the memorandum of Appeal.

The main contention of the respondent is that the application should have been by chamber summons and not by Notice of Motion.

Counsel argued that amendment of pleadings is provided for under **Order 6 rule 19** which was the proper law under which the application should have been filed.

Whereas we agree that the application should have been brought under **Order 6 rule 19**, the authority of **Musisi Gabriel Vs Edco Limited & Anor, HCMA No. 386/2013** is for the legal proposition that **Order 43 rule 4 of the CPR** permits a party to seek court's leave to argue a ground of appeal not initially included in the memorandum of Appeal. The argument of counsel for the respondent that Order 43 rule 2 applies to High Court and not to the Industrial court is devoid of merit since this court is mandated to apply the civil procedure rules where there is a lacuna in the **Labour Disputes (Arbitration & Settlement) (Industrial Court Procedure) Rules 2012.**

We have perused the intended amended memorandum of Appeal and we are not convinced in the least that it constitute a new cause of action as counsel for the respondent argued. The added grounds of appeal are alleged questions of law which were not originally included in the Memorandum of Appeal and as already discussed such legal issues could be brought up at any time during the proceedings and they cannot therefore be subject to time limitation as long as they are filed before the disposal of the Appeal. Accordingly the application for leave to amend the Memorandum of Appeal is hereby granted.

In conclusion the application succeeds and for quick disposal of the appeal the amended Memorandum of Appeal filed as attached **"C"** is hereby validated. No order as to costs is made.

Delivered & Signed by:

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

PANELISTS

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

Dated: 02/07/2021