

THE REPUBLIC OF UGANDA

IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA

LABOUR DISPUTE REFERENCE NO. 062 OF 2020

(Arising from KCCA/RUB/LC/102/2018)

SCOVIA KYOMUHENDO:.....CLAIMANT

VERSUS

NDEJJE UNIVERSITY:.....RESPONDENT

BEFORE:

THE HON. JUSTICE ANTHONY WABWIRE MUSANA

PANELISTS:

1. Mr. JIMMY MUSIMBI
2. Ms. SUZAN NABIRYE &
3. Mr. MICHAEL MATOVU

RULING

- 1.0** When this matter came up for mention on 8th day of September 2022, Mr. John Mugalula, for the Claimant, reported to Court that the matter was only partly heard by the Labour Court. We noted that the record of the lower court showed that there had been a process of adjudication and the parties had filed their final submissions. We directed Counsel to address us on this process of adjudication in KCCA/RUB/LC/102/2018.
- 2.0** In his address to the Court on the 3rd day of October 2022, Mr. Mugalula admitted that evidence had been presented before the Labour Officer and the Claimant had been cross-examined. He also noted that at the time the Respondent was expected to make its case, the Labour Officer referred the matter to the Industrial Court.

3.0 Mr. Rodney Nganwa holding brief for Mr. James Zeere for the Respondent confirmed that the process of adjudication had commenced before the Labour Officer. He maintained the view that the referral to the Industrial Court was premature.

4.0 The background to this reference shows that it was filed on 10th day of March 2020 on grounds of wrongful/unfair termination and seeking terminal benefits, payment in lieu of notice, leave, severance pay inter alia. It arose out of KCCA/RUB/LC/102/2018. The case report dated 26th February 2020 prepared by Mr. Mukiza Emmanuel Rubasha suggested that the matter was called for mediation several times between June 2018 and February 2020 and on all occasions the respondent was inconsistent with attendance. By a letter dated 18th December 2020, the Lower record was forwarded to the Registrar of this Court. There is attached a detailed record of proceedings which shows that;

- (i) By a letter dated 21st May 2018, the Labour Officer/Kampala invited the parties to adjudication proceedings. The proceedings were to commence with opening of proceedings, filing of witness statements, submission of evidence, witness presentation, cross- examination, filing of submissions and completion by way of the Adjudicator's ruling.
- (ii) On the 20th June 2019, a scheduling conference was held. Three issues were framed for determination viz:
 - (a) Whether the Claimant was given adequate notice,
 - (b) Whether the termination of the Claimant was justified and lawful and;
 - (c) What remedies are available to the parties.
- (iii) The complainant (*now claimant*) presented her case and was cross-examined by Counsel for the Respondent and re-examined by her lawyer. The Claimant closed her case.
- (iv) The record shows that the Respondent filed a witness statement through Kiyingi Elijah, its University Secretary but did not present the

witness. The Respondent also filed a trial bundle dated 20th January 2020.

- (v) The record also contains submissions filed by both the claimant and the respondent.
- (vi) The record does not contain a decision of the labour officer.

5.0 Under **Section 13(1)(a) of the Employment Act 2006**, a labour officer to whom complaint is reported, has the power to investigate the complaint, settle or attempt to settle the complaint by way of conciliation, arbitration or adjudication or such other procedure as he or she thinks fit. The Court of Appeal¹ expressed the view that conciliation or mediation would lead to a settlement agreeable to the parties. It is this Court's view that arbitration or adjudication would lead to an award or decision.

6.0 It is trite that a labour officer is entitled to refer a matter to the Industrial Court if he or she thinks that a substantial question of law has arisen. However, under Regulation 8(3) of the Employment Regulations, upon completion of the hearing proceedings, a labour officer shall make an order binding on both parties and state the reasons for his or her decisions on the complaint. As noted above, there is no decision and yet there is proof that hearings were conducted, evidence taken and recorded, submissions filed and no decision rendered. It is not clear as to what led the labour officer to the conclusion that a question had arisen which mandated a referral to the Industrial Court. It is our view that the proper course of action would have been to render a decision upon the materials presented before the Labour Officer. The present reference was made after the claimant had closed her case. Filing a reference in the Industrial Court after proceedings have taken root and progressed towards judgment, is in our considered view, a replication of proceedings which ought to be discouraged.²

7.0 We therefore find this matter to be prematurely before the Industrial Court. The file is sent back to the Labour Officer with directions for expeditious disposal and decision with the materials on the lower record.

¹C.A.C.A No. 167/2018 ENGINEER ERIC MUGENYI VS UGANDA ELECTRICITY GENERATION CO LTD

² LDR No.223/2019 FRANCIS DOMINIC MERU VS NAKASERO HOSPITAL LTD

It is so ordered.

Delivered and signed at Kampala this 28th day of October 2022

ANTHONY WABWIRE MUSANA, Judge

PANELISTS

1. Mr. JIMMY MUSIMBI

2. Ms. SUZAN NABIRYE

3. Mr. MICHAEL MATOVU

Delivered in open Court in the presence of:

MR. JOHN MUGALULA for the Claimant.

In the absence of the Claimant, the Respondent and the Respondent's Counsel.

Court Clerk. Mr. Samuel Mukiza.