

THE REPUBLIC OF UGANDA

IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA

LABOUR DISPUTE REFERENCE 201 OF 2016
(Arising from Labour Dispute CB 415 of 2016)

OKWIR DICKENSCLAIMANT

VERSUS

RENE INDUSTRIES LTD.....RESPONDENT

BEFORE

THE HON. MR. JUSTICE ANTHONY WABWIRE MUSANA,

PANELISTS:

Ms. ROBINAH KAGOYE,

Ms. CAN AMOS LAPENGA &

Mr. JIMMY MUSIMBI.

RULING.

- 1.0 This ruling is in respect of a preliminary objection raised by Counsel for the Respondent to the effect that the matter is prematurely before this Court.
- 2.0 Ms. Grace Nabakooza, appearing for the Respondent, asserted that when the Claimant found himself dissatisfied with the ruling of Commissioner in the Ministry of Labour, he ought to have filed an appeal as opposed to a reference. The Court's attention was drawn to the ruling on pages 32-35 of the Claimant's trial bundle. Counsel cited Section 94(1) of the Employment Act, 2006, and relied on the case of **Action Aid Uganda vs David Mbarekye Tibekinga (LDA No. 028/2016)** in support of her proposition.
- 3.0 Mr. Kiprotich, appearing for the Claimant, suggested that the preliminary objection was misconceived because the Labour Officer, acting under the mandate of Section 5(1) of the **Labour Disputes (Arbitration and Settlement) Act 2006**, properly referred the matter to the Industrial Court.

- 4.0** It is a common position that on the 14th day of June 2016, Ms. Nabwire Rebbeca for the Commissioner, Labour Industrial Relations and Productivity delivered a ruling by which she found the Claimant to have been unlawfully terminated. Ms. Nabwire ordered the Respondent to pay outstanding wages, notice, compensation, severance allowance, repatriation all compounded in the sum of **UGX 11,000,000(Eleven Million Shillings)** within seven days.
- 5.0** It is also a common position that the Respondent, being dissatisfied with this ruling, submitted a notice of dissatisfaction dated the 21st day of June 2016 but does not appear to have pursued this course of action any further.
- 6.0** On the 21st of September 2016, the Labour Officer referred the matter to this Court. By notice, the Claimant also sought a reference to this Court. Each of these references was distinct; (i) The Labour Officer believed that a substantial question of law or fact had arisen and he was unable to resolve the dispute and (ii) The Claimant was of the view that the Labour Officer had failed to dispose of the dispute within eight weeks after it was reported.
- 7.0** It appears that both the Labour Officer and the Claimant were acting under a misapprehension of the law. The record is that the Labour Officer determined that the Claimant was unfairly terminated by the Respondent. A careful scrutiny the lower record shows the labour officer did not fail to resolve the dispute within 8 weeks in order to give rise to a reference within the meaning of Sections 4 and 5 of the LADASA as Mr. Kiprotich would have this Court believe. The record reflects that the Claimant filed a complaint on 29th January 2016 and a ruling was delivered on 21st March 2016 with a finding that the claimant was unfairly terminated and an order for payment of compensation. The Labour Officer considered all the materials placed before him and arrived at a decision. This decision was a determination of parties' rights and obligations based on facts and law. In this Court's view, having made a ruling, the only option open to the Claimant was to appeal to the Industrial Court. Similarly, if the Claimant was dissatisfied with the Labour Officer's ruling and order made in his favour, he ought to have appealed to the Industrial Court. Consequently, there was no failure by the Labour Officer, to resolve the dispute.
- 8.0** It is fairly well settled that under Section 13(1) of the Employment Act 2006, a labour officer to whom complaint or dispute is reported, may deal with the same by way of conciliation or arbitration and adjudication. It is the Court's view

that arbitration or adjudication lead to an award or decision while a conciliation or mediation would lead to a settlement. In the present case, the Labour Officer made a ruling under Regulation 8 of the Employment Regulations S.1 61/2011. The order was binding and to be complied with within seven days. And from this decision, the Claimant only had a right of appeal as set out in Section 94(1) of the Employment Act.

- 9.0** Precedent has produced the result that a party dissatisfied by a decision of a Labour officer may file an appeal to the Industrial Court. In **LABOUR DISPUTE APPEAL NO. 015 OF 2015 PROTEA HOTEL KAMPALA Vs NYINAKIIZA RHINA** this Court held that any award giving reliefs and orders not by consent of the parties to the dispute cannot be said to be as a result of a mediation process and is subject to appeal or revision. The distinction between the conciliatory approach and the adjudicatory approach is therefore important.
- 10.** This Court has carefully reviewed the Memorandum of Claim filed in Court on the 13th day of October 2016 and the complaint filed before the Labour Officer, the resulting ruling, and the case report dated 21st September 2022. And we make the following observations:
- (i) The remedies sought in the memorandum are not any different from the order of the Labour Officer. In terms, the Claimant is seeking the very same remedies already granted to him by the Labour Officer and has not demonstrated how he is aggrieved by the ruling and orders of the Labour Officer. Standing as it is, the Claimant has not presented a grievance against the order made in his favour.
 - (ii) Secondly, the Labour Officer did not refer any question to the Industrial Court. By way of illustration, a Labour Officer would be entitled to refer a question on damages that he or she has no jurisdiction to award under Section 78 of the Employment Act. **See Action Aid Uganda Vs David Mbarekye Tibekinga L.D.A 028/2016, Netis Uganda Vs Charles Walakira, D.L. Appeal 22/2016 And Namayanja Vs St. Raphael Of St. Francis Hospital Nsambya, D.L. Appeal 19/2015.** Or indeed, a labour officer would be entitled to refer any other matter on which he or she is not vested with jurisdiction.
- 11.** Under Section 94(3) of the Employment Act, the Industrial Court is vested with powers to confirm, modify or overturn the ruling or decision of the Labour officer. There is no definite expression or understanding of a grievance from this ruling contained in the documents submitted to this Court and it is this

Court determination that neither the Claimant nor the Labour Officer are seeking any remedy before this Court.

In the result, the preliminary objection is upheld. Labour Dispute Reference No. 201 of 2016 is hereby dismissed with no order as to costs.

Dated at Kampala this 6th day of September 2022

ANTHONY WABWIRE MUSANA, Judge

PANELISTS

1. Ms. ROBINAH KAGOYE,

2. Mr. CAN AMOS LAPENGA &

3. Mr. JIMMY MUSIMBI.
