THE REPUBLIC OF UGANDA

IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA

LABOUR DISPUTE MISCELLANEOUS APPLICATION NO. 087 OF 2022
(Arising from Labour Dispute No. 200 of 2014)

ENTEBBE HANDLING SERVICES LIMITED T/A::APPLICANT
NATIONAL AVIATION SERVICES (NAS)

VERSUS

OKELLO JANE::RESPONDENT

BEFORE.

THE HON. JUSTICE ANTHONY WABWIRE MUSANA:

PANELISTS;

Ms. ADRINE NAMARA,

Ms. SUSAN NABIRYE &

Mr. MICHAEL MATOVU.

RULING.

1.0 This ruling is in respect of an application for review and setting aside the Award and Orders of the Industrial Court in Labour Dispute No. 200/2014 and for provisions of costs. It was brought under Sections 82 and 98 of the Civil Procedure Act Cap.71, Section 14 and 33 of the Judicature Act Cap.13, and Order 52 rules 1, 2 and 3 of the Civil Procedure Rules S.I 71-1(CPR).

2.0 The Applicant filed affidavits in support and rejoinder whose gist was that the award had an error apparent on the face of the record in that the 50% of basic pay over 4 years was not UGX 22,074,741/= but UGX 19,584,000/=. The Respondent opposed the application and maintained that the award was properly computed.

3.0 We will first consider a preliminary point raised by the Applicant. Ms. Cleopatra Babirye, appearing for the Respondent, took issue with the Applicant's view that Ms. Jane Okello's affidavit in reply dated the 19th September 2022 was too argumentative and ought to be struck out. In Counsel's view, the affidavit was properly within the confines of Order 19 rule 3 **CPR**. Mr. Patrick Lubwama, appearing for the Applicant, did not make any comments on the point in his submissions nor did he point out the argumentative portions of the affidavit. We have reviewed the said affidavit. It is a detailed affidavit setting out the facts of the dispute from 2013 to date. It also contains the deponent's views of the application. Order 19 Rule 3 **CPR**, requires affidavits to be confined to such facts as the deponent is able of his or her own knowledge to prove and shall not unnecessarily set forth matters of hearsay or argumentative matter. The Supreme Court observed that *"An affidavit as we understand it is meant to adduce evidence and not to argue the application ... An affidavit should contain facts*

and not arguments or matters of law."[1] Our perusal of the said affidavit does not find it to contain matters of hearsay or arguments of law.

4.0 The question for determination in this application is whether there are sufficient grounds for the review and setting aside the award in LD No. 200/2014.

5.0 Before the Court sets aside an award, order or decree, it must be satisfied that;

i) There has been a discovery of new and important matter of evidence which after the exercise of due diligence was not within the Applicant's knowledge or could not be produced by him/her at the time the decree was passed or the order made,

ii) There is some mistake or error apparent on the face of the record, or;

iii) For any other sufficient cause[2]. Musota .J(as then was) observed "*Regarding sufficient reason, this means a reason sufficient on grounds analogous to those in the rule*" [3]

6.0 The Respondent suggested that there was no error apparent on the face of the record. Ms. Babirye submitted that the application was misconceived and the applicant had likely misconstrued the award of the Court. This is not, in our considered view, a well-grounded argument. The purpose of a review concerns itself with self-evident errors or omissions on the part of the Court and which are apparent on the face of the record. A party brings an application for review on account of new evidence, some error or sufficient cause. The Applicant proposed an error in the award in LD No. 200/2014.

6.1 In defining an error apparent on the face of the record, the Supreme Court of Uganda [4] stated thus;

> ***"…in order that an error may be a ground for review, it must be one apparent on the face of the record, that is, an evident error which does not require any extraneous matter to show its incorrectness. It must be an error so manifest and clear that no court would permit such an error to remain on the record. The error may be one of fact, but it is not limited to matters of fact, and includes error of law***"

6.2 The Applicant advanced the view that a proper computation of the Respondent's basic monthly pay of **UGX 816,000/= (Uganda Shillings Eight Hundred Sixteen Thousand)** for 4(four) years would have returned a total of **UGX 19,584,000/= (Nineteen Million Five**

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[1] See S.C.M.A No. 7/2018 **MALE MABIRIZI VS ATTORNEY GENERAL**.

[2] See H.C.M.A NO.98/2005 **FX MUBUUKE VS UEB HIGH COURT MISC. APPLICATION NO. 98 OF 2005** and HCMA NO. 40/ 2007 **JOYCE L. KUSULAKWEGUYA VS. HAIDER SOMANI & ANOTHER HCMA**

[3] See H.C.M.A NO. 497 of 2014 **KALOKOLA KALOLI VS NDUGA ROBERT** at page 5

[4] See the case of **EDISON KANYABWERA VS PASTORI TUMWEBAZE [2005]2, EA at P.86**

Hundred Eighty Four Thousand Four Hundred Shillings) and not **UGX 22,074,741/= (Twenty Two Million Seventy Four Thousand Seven Hundred Forty One Shillings)**. In terms, the proposition before this Court is that there was an arithmetical error in computing the award, on the part of the Court. This Court is therefore invited to revisit the award. At page 9 of the award, the Industrial Court awarded 50% basic pay for 4 complete years and awarded **UGX 22, 047,741**. In reviewing the award, at a basic monthly pay of **UGX 816,000/=** multiplied by 4 years would return the sum of **UGX39, 168,000/=**. On the premise of an award of 50 %(*fifty per centum*) of this sum, the Court would have awarded **UGX 19,584,000/=**. This is, in our view, the correct computation and is clearly self-evident on the record. It does not require any elaborate argument to expose. We find that it is a simple arithmetic error.

7.0 Having so found, this application succeeds, in part. The Award and Order entered and delivered on the 14th of August 2020 by the Industrial Court in Labour Dispute No. 200 of 2014 Okello Jane Vs. Entebbe Handling Services in respect of 50% of payment basic pay of 4 years amounting to **UGX 22,074,741/=** is hereby set aside. The award of **UGX 22,074,741/= (Twenty Two Million Seventy Four Thousand Seven Hundred Forty One Shillings)**. is substituted by an order for the Applicant to pay the Respondent 50% of payment basic pay of 4 years amounting to **UGX 19,584,000/=(Nineteen Million Five Hundred Eighty Four Thousand Four Hundred Shillings)**. All the other orders flowing from the award are maintained. We have not been persuaded to review the award of interest. Interest on the sum of **UGX 19,584,000/=** shall be computed at 15 % p.a from the date of the award until payment in full.

8.0 Ordinarily, costs follow the event. Given that the application only succeeds in part, and arises from an arithmetical error apparent on the face of the record, there shall be no order as to costs.

Dated at Kampala this 20th day of October 2022

ANTHONY WABWIRE MUSANA, Judge _____

PANELISTS

1. **Ms. ADRINE NAMARA,** _____
2. **Mrs. SUZAN NABIRYE &** _____
3. **Mr. MICHAEL MATOVU.** _____

Ruling delivered in open Court in the presence of:

1. Mr. Allan Luwaga for the Applicant.
2. Mr. Moses Sakira and Mr. Farouk Ssengoba for the Claimant and
3. In the presence of the Claimant.

Court Clerk: Mr. Samuel Mukiza.