

**THE REPUBLIC OF UGANDA**  
**IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA**

**LABOUR DISPUTE REFERENCE No. 008/2021.**

**ARISING FROM MGLSD/LC/393/2020**

**NAKIVUMBI SHINA & 9 OTHER                      ..... CLAIMANT**

**VERSUS**

**LEATHER INDUSTRIES LTD                      ..... RESPONDENT**

**BEFORE:**

**1. THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA**

**PANELISTS**

**1.MS. ROSE GIDONGO**

**2.MS. BEATRICE ACIRO**

**3. MR. JACK RWOMUSHANA**

**RULING**

**BRIEF FACTS**

The Claimants were employed by the Respondent Company in different positions from 2010 to 2018. According to them on 30/7/2020, they were severally and jointly , arbitrarily and summarily terminated from employment. They pray for a declaration that they were unlawfully/wrongfully and unfairly terminated by the respondent, for payment in lieu of notice, payment of severance allowance, payment of severance fine, payment in lieu of hearing , NSSF benefits, special damages, general damages, aggravated damages , punitive and exemplary damages , interest and costs of the suit.

On 15/03/2022, when the matter was called for pre-session hearing both parties were in court.

The Claimants were represented by Mr. Gregory Byamukama holding brief Mr Cyrus Kinobe of M/s Nassiwa & Co Advocates Jinja and the Respondent was represented by Mr. Brain Emurwon of Emurwon & Partners Advocates, Kampala.

Before the matter could proceed Mr. Emurwon, Counsel for the Respondent raised 3 Preliminary objections, hence this ruling

The Preliminary Objections were as follows:

**1. Late service of witness statements**

Mr. Brian Emurwon Counsel for the Respondent, contended that whereas the Claimants witness statements had been filed on the Court record on 26/11/2021, only 5 out of the 8 witness statements were only served onto the Respondent on 10/03/2022, which was contrary to the directive by court that all documents must be filed by 4/03/2022. He argued that it would be prejudicial to his client for them to proceed at such short notice. He contended further that all attempts to reach his client's representative were futile therefore he has not been able to discuss the statements with his clients for him to be able to file the Respondent's statements as well.

In reply Mr. Gregory Byamukama who was holding brief for Cyrus Kinobe, for the Claimant submitted that, Counsel for the Respondent conceded that he received the witness statements on 10/03/2022. He contended that, he only received service of documents in some of the matters he was appearing in today, but notwithstanding, he had no objection to prepare to proceed on the said matters. Therefore, Counsel Emurwon had no reason to raise this objection when he had nearly 5 days to prepare and this will not prejudice his client in anyway. He

argued that court has discretion to extend time and prayed that court is kind enough to allow late service so that the matter can proceed.

## **DECISION OF COURT.**

Both Counsels were made aware that this matter was scheduled to be heard in a time bound session at the Jinja High Court from 14-25 March 2022. Therefore, both Parties were required and expected to ensure that all pleadings were filed on or before 04/03/2022. It is absurd that the Claimants filed their witness statements on the record on 21/11/2021 and only served them on to the Respondent on the 10/03/2022, moreover outside the time prescribed by this court.

Although this is a court of equity and therefore it has discretion to exercise some flexibility with regard to procedure, this discretion must be exercised judiciously. It is the legal position that rules of procedure and directives of Court must be complied with.

Counsel for the Claimant has not given any reasons why the Respondent was served late moreover when the witness statements were filed in court on 21/11/2021. Article 28 of the Constitution entitles all parties to a suit to a fair, speedy and public hearing and this includes being served with the each other's pleadings within the time prescribed by statute or as directed by Court.

Even if Mr. Byamukama is holding brief, he ought to know that, an application for extension of time cannot be granted without showing sufficient cause for the parties' failure to file documents within the time lines set by statute or as directed by Court. A mere application from the bar as he did today, is not sufficient without adducing evidence to prove that there was justifiable cause for the delay in filing. (see **Eriga Jos Perino vs Vuzzi Azza Victoe & 2 Others HCCA No.**

**09/2009 and Moyo Civil Suit No 015/2004, which cited *Shanti vs Hindocha and others* [1973] EA 207).**

We reiterate that, the Claimants were aware that, this is a time bound session therefore, they were obliged to comply with the directive to file and serve all their pleadings and pre trial documents on or before 4/03/2022, as directed. We respectfully do not accept the submission by Mr. Byamukama that, that Counsel had nearly 5 days to prepare and therefore he had no reason to object. As already stated, this is a time bound session of 10 days which the Claimants were aware of. There is no reason why they did not serve their statements onto the Respondent's in time yet they filed them on the record on 21/11/2022. The Respondents are entitled to sufficient and equal amount of time to file their statements as well.

In the circumstances, the Claimants having not served the Respondent within the time, as directed by court and having not shown sufficient cause why they did not serve the same, as directed by Court, this matter cannot proceed during this session, because the Respondent is entitled to equal time to be able to file and serve its pleadings. It is therefore referred to the next convenient session of this court.

For completeness we shall proceed to resolve other objections.

## **2. Non-service of joint scheduling**

Mr. Emurwon Counsel for the Respondent, contended that, the Claimants had not served the Respondents with a draft scheduling memo for the matter to be scheduled, therefore the matter is not scheduled.

In reply Counsel Byamukama, insisted that, he was not in personal conduct of the matter, but given that it is a joint scheduling memorandum it was the responsibility of both parties. However, he submitted that he was not aware

whether counsel in personal conduct had shared a proposal with the Respondent or not. He however personally undertook to prepare the Joint Scheduling Memorandum.

## **DECISION OF COURT**

Order 12 rule 1 provides for Scheduling conference. It is intended to sort out points of agreement or disagreement, the possibility of mediation, arbitration and any other settlement. It is mandatory to schedule conference under Civil cases. Although scheduling conference should be in the hands of the Judge, due to its unique nature, the Industrial court decided that the parties should schedule by filing a Joint Scheduling Memorandum. This memorandum is to enable parties identify issues for disagreement between them, evidence to be relied on and witnesses are identified and time tables for the progress of the case are set.

The role of court is to set time schedules or filing the Joint scheduling memorandum. Furthermore, although the parties are expected to develop a Joint Scheduling Memorandum, the Claimant is expected to initiate the process, by preparing a draft and serving it on the Respondent. This however, does not preclude the Respondent from initiating its own scheduling memorandum. Therefore, where the Respondent has not received a draft from the Claimant it should prepare its own Scheduling notes. Therefore, the Respondent in the instant case having not received a draft has gone ahead and initiated its own scheduling memorandum. We found nothing to indicate that the Respondent filed its own memorandum and it served it on the Claimant's, to make their input and they refused.

We therefore find no merit in this Objection, it is overruled.

### **3.Power of Attorney to be construed strictly**

Counsel contended that, annexure “T” on the Claimant’s trial bundle at page 38 is a power of attorney, at page 39, it lists the donors of the powers as, Atala Harriet, Ensada Francis, Namudide Lydia and Okirori, Mukembo Musafaru and the powers of Attorney gives powers to sue , appear and act in the suit and that authority is give to Nakivumbi, Shina suudi, Rura Oruma and Ochan O. According to him it does not give powers to Nassiwa & Co. Advocates representing 5 people who are donors of this powers of Attorney. He argued that the 3 persons listed are not members of Nassiwa and Company Advocates therefore the power of attorney is incompatible with Nassiwa and Company Advocate’s assertion that they are representing the 5 claimants. He insisted that the powers of Attorney do not give authority to Nasswa & Co Advocates who purport to represent the Claimants. According to him, powers of Attorney must be construed strictly.

In reply, Mr. Byamukama, argued that a power of Attorney is giving powers to the said persons to sue and appear and it does not restrict them from instructing Counsel to sue and appear. According to him, the Power Attorney empowers the 3 , to instruct Counsel to further their cause as directed in the power of Attorney.

He informed Court that all the Claimants were in Court so they could ably confirm that they have no objection to the said representation. It was also his submission that, if Court is willing the said power of Attorney can be revoked so that the Claimants can also file notice of instruction to show who is representing them.

He contended that the all the objections do not go to the root of this case and they are a ploy to have the matter pushed to the next session. He insisted that, even if he was holding brief, the matter should proceed.

In rejoinder, Mr. Emurwon insisted that powers of attorney are strictly construed and in this case, the powers of attorney does not give authority to appoint someone to act and plead on behalf of the Claimants.

## DECISION OF COURT

The Supreme Court in **Fredrick J. K Zaabwe vs Orient Bank Ltd and 4 Others SCCA No 04/2006** cited Black's law dictionary for the definition of Power of Attorney as follows:

*“ power of attorney” as “an instrument in writing whereby one person as principle, appoints another as hi agent and confers authority to perform certain specified acts or kinds of act on behalf of principal ... an instrument authorising another to act as one’s agent or attorney ... such power may be either general(full) or special (limited).”*

The Court went to further to elaborate that:

*“The point to note is that the donee of a power of attorney acts as agent of the donor. He cannot use the power of attorney for his own benefit. The privy counsel decision on an appeal arising from the Supreme Court of Canada in the case of IMPERIAL BANK OF CANANDA VS BEGLEY [1936] 2 All ER 367 is good authority for the principal that where an agent who has been given power of attorney to do certain things, uses the power to do something for proper purpose, but the act done is for the agents’ own purposes to the exclusion and detriment of the principal, the actions of the agent will be outside the scope of the power of attorney and are not even capable of ratification by the principal.”*

The donee in a power of attorney acts as agent of the donor. He or she cannot use the power of attorney for his own benefit. The words of Lord Mac Nagthen,

**Byrant, Powis and Byrant Ltd vs La BANQE DO PEUPLE cited in Fridmans Law of Agency** which were cited in **Zaabwe**(supra) are that:

*“in short the authority conferred by a power of Attorney is that which is “within the four corners of the instrument either in express terms or by necessary implication.”*

We have carefully considered the power of Attorney at page 38 of the Claimant’s trial bundle marked “T”, and established that indeed the 3: **Nakivumbi Shins Sauda, Oola Irene Oroma and Ochan Paul**, were appointed as the :

*“authorised representatives (attorneys in fact to sue, appear , plead a or act on our behalf or for our behalf in the suit of Labour Dispute reference No. LD/008/21, arising out of **NAKIVUMBI SHINA SAUDA AND 9 OTHEREA VS LEATHER INDUSTRIES OF UGANDA LIMITED (MGLSD/LC/393/2020** filed to the INDUSTRIAL COURT OF UGANDA HOLDEN AT JINJA.*

*ALSO, the above authorized appointees shall have full power and authority in respect of all proceedings of the aforementioned labour Dispute before all Courts of Judicature of Uganda until the dispute is disposed of..”*

The contention of Mr. Emurwon as we understand it is that, the donees must personally appear on for and behalf of the and not by Nassiwa & Co Advocates. We respectfully disagree.

Whereas the Powers of attorney must be strictly construed, the acts to be done determine the powers authorised, of attorney in the instant case give the 3 donors full powers to sue, plead, appear and act on behalf of the 5 donors. This authority in our considered view does not preclude the donees from instructing Counsel to



enable them under take the acts they were authorised to do, for and in behalf of the donors of the powers of Attorney.

We have carefully scrutinized the acts they were authorised to do, so as to determine whether by engaging Counsel they were outside the confines of the powers of Attorney and therefore Nassiwa & Co Advocates are not authorised to represent the Donors.

The acts are: *“to sue, appear, plead a or act on our behalf or for our behalf in the suit of Labour Dispute reference No. LD/008/21,..”* These are acts are ordinarily undertaken by lawyers/Advocates and the donees are not lawyers. By engaging lawyers to enable them undertake these acts as to enable them exercise the authority granted to them by the Donors, the Donees were within the authority conferred upon them by donors.

Therefore, by engaging Nassiwa &Co Advocates, to sue, plead and appear for and on behalf of the donors, the donees were operating within the authority conferred by the Powers of Attorney. In the circumstances, Nassiwa & Co Advocates are properly authorised to sue, appear and plead for and behalf of the donnors.

It would be illogical for the donors to expect the donees who are not lawyers to sue, plead and appear on their behalf without the assistance of Counsel. We are convinced that the powers of attorney by implication conferred upon the donees authority to engage Counsel to sue, plead and appear in the suit in LDR No. 008/21. For emphasis, they were within the authority conferred upon them by the powers of attorney and as stated by Lord Mac Nagthen, in **Byrant, Powis and Byrant Ltd vs La BANQE DO PEUPLE** cited in **Fridmans Law of Agency (supra)** that:

*“in short the authority conferred by a power of Attorney is that which is  
“within the four corners of the instrument either in express terms or by  
necessary implication.”*

Therefore, having been within the powers conferred by the authority granted under the powers of attorney to engage Counsel, Nasssiwa & Company Advocates are lawfully engaged and have authority to sue, plead and appear for and on behalf of the donors.

We therefore find no merit in the objection. it is overruled.

In conclusion as earlier discussed this matter is referred to the next session because of the late service of witness statements on to the Respondent which disenabled him to respond and prepare his case. The Respondent is however directed to file his responses before the next session. Both parties must prepare the Joint scheduling memorandum as well.

delivered and signed by:

**1.THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA .....**

**PANELISTS**

**1.MS. ROSE GIDONGO .....**

**2.MS. BEATRICE ACIRO .....**

**3. MR. JACK RWOMUSHANA .....**

**DATE: 23/03/2022**