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THE REPUBLIC OF UGANDA

IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA

LABOUR DISPUTE: MISCELLANEOUS CAUSE No.001 OF 2022

1. AMOS ATURO

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2. ERNEST GODWIN AGABA APPLICANTS

FOR AND ON BEHALF OF 44 OTHERS

VERSUS

SOLAR NOW UGANDA LIMITED: RESPONDENT

15 **BEFORE:**

1. THE HON. HEAD JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA
PANELISTS

1. MS. ROSE GIDONGO

2. MS. ACIRO BEATRICE OKENY

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3. MR. JACK RWOMUSHANA REUBEN

RULING

This application is brought under Section 98 of the Civil Procedure Act, Order 1 Rules 8 AND 22 of the Civil Procedure Rules as amended, seeking orders that;

25 (a) The Applicants are granted leave to sue in a representative capacity in their names and on behalf of 44 other former employees of solar Now Limited (Respondent) in an intended suit for unlawful termination, severance pay general damages, interest and costs.

30 (b) Costs of the application be provided for.

The Applicant's case:

The Applicant's case, as contained in the notice of motion and supporting Affidavit deponed by Amos Aturo, one of the Applicants, is that, 46 persons including the Applicants, were former employees of the Respondent Company as shown on the
35 list of persons and their Appointment letters attached as Annexure "A & 'B" respectively. They were all terminated by the Respondent Company in a restructuring exercise and their respective termination letters are attached and marked as Annexure "C". They contend that, the Respondent Company did not pay them severance pay as provided under the Employment Act 2006 and being
40 dissatisfied with the manner in which they were terminated, they filed a complaint with the Labour Office at Makindye vide Labour Dispute No. KCCA/MAK/LC/080/2021 and a copy is attached and marked as Annexure "D". However, the Respondent failed and or refused to attend the mediation before the Labour officer thus the labour officer failed to resolve the dispute within the statutory

45 8 weeks' time. The Applicants have the same actual existing interest in the intended
suit and are also seeking similar reliefs as shown in the intended suit. The
Memorandum of Claim which is attached and marked as annexure 'F'. They are
seeking enforcement of payment of their severance pay, general damages for breach
of contract when they were unlawfully terminated from their employment, interest
50 and costs. Therefore, they authorised the 1st and 2nd Applicants, to refer Labour
dispute No. KCCA/MAK/LC/080/2021 from Makindye labour office to the
Industrial court and to file a representative suit on their behalf and for their benefit
as well as shown in Annexure "G".

It is their case that it is in the interest of justice that, leave be granted to the 1st and
55 2nd Applicants to file a representative suit in their names for their benefit and for
the benefit of 44 other former employees of the respondent company.

REPRESENTATION

The Applicants were represented by Emmanuel Kakenga of M/s Matovu and
Matovu Advocates, Kampala.

SUBMISSIONS

Mr. Emmanuel Kakenga Counsel for the Applicants, made oral submissions and
stated that the application restated that the ex parte Application is brought under
Order 1 Rule 8 of the Civil Procedure Rules as amended. According to him all the
other forty-Four (44) Claimants authorized the 1st and 2nd Applicants under an
65 agreement authorising them to represent them in the Labour Dispute against the

Respondent. He also attached the draft Memorandum of Claim as evidence of that the intended Claimants have the same interest against the Respondent, and they have the same claims.

70 He prayed that, Court grants the Applicant's a representative order to enable them prosecute the Claim.

DECISION OF COURT

Whether the Applicants should be granted leave to sue in a representative Capacity?

75 *Order 1 rule 8 provides that; One person may sue or defend on behalf of all in same interest.*

(1) *A person may institute a representative suit on behalf of all plaintiffs or all defendants, as the case may be, who have the same actual and existing interest in the subject matter of the intended suit, for the benefit of all.*

80 (2) *An application for a representative order shall be made by an intending plaintiff or defendant who intends to represent all plaintiffs or all defendants for the benefit of all as the case may be, who have the same actual and existing interest in the subject matter of the intended suit.*

(3) *Before the court grants an order for a representative suit, the applicant shall satisfy the court that—*

(a) all the plaintiffs or defendants, as the case may be, have an actual and existing interest in the subject matter of the intended suit;

(b) all the persons represented have authorized the applicant to sue or defend in the suit, and the authorization shall be in writing duly signed by the represented persons; and

(c) the application is brought with a proposed plaint or defense, as the case may be, showing—

(i) a list of all persons so represented; and

(ii) that all persons so represented have the same actual and existing interest in the suit.

(4) Subject to sub rule (2), the court shall, in such case, give notice of the institution of the suit to all such persons either by personal service or, where, from the number of persons or any other cause, such service is not reasonably practicable, by public advertisement, as the court may in each case direct.

(5) Any person with the same interest wishing to be made a party to a representative suit may apply to the court to be made a party to the suit.

(6) For purposes of this rule, "a representative action" means a suit in which there are numerous persons having the same interest in one suit and where one or more of such persons, may, with the permission of the court, sue or be sued or may defend in the suit on behalf of or for the benefit of all persons interested."

105 We established that the intended Claimants chose to adopt an identification method
which included putting their authorization in writing, providing a copy of their
identity cards and providing their respective signatures. Order1 rule 8 (2) (b) makes
it mandatory that “... *all the persons represented have authorized the applicant to
sue or defend in the suit, and the authorization shall be in writing duly signed by the*
110 *represented persons;* ”

Whereas Counsel submitted that, all the Applicants gave their written authorization,
Claimant’s Jimmy Lamma-5, Andrew Ainomugisha-8, Amos Aturo-18, Bridget
Maseruka- 20, Jimmy Hashsa-25, Eliab Mwesigye-27, AdrikoChristopher- 43 and
Denis Odipo-44 did not provide written authorization while Emmanuel Oparo-3,
115 Rodrick Okello-6 Rogers Arupa-10, Denis Latem Ojok-13, Esther Anyait-14,
Wencelecclus Marachto-16, Amos Aturo-18, Issac Odeke-23. Hanington
Nkwankunda -28 , Eric Tuhishabe-32, Abel Ahinembazi-33, Roger Ashaba-39, John
Baptist Ssendikadiwa -42, Andrew Bagenda- 45, Claudia Taremwa- 46 provided
letters of authorization but they did not attach any identification as had been agreed.
120 Although this could be overlooked, the intended Claimants 5, 8, 18, 20, 25, 27, 43
and 44 as seen above did not comply with Order1 rule 8(2)(b) (supra), having not
provided the required written authorization to the Applicants to sue on their behalf.
In fact, there is no evidence that, they are aware that this matter is being brought to
this court in a representative capacity for and on their behalf. Sub rule (4) of Order
125 1 provides that;

"Subject to sub rule (2), the court shall, in such case, give notice of the institution of the suit to all such persons either by personal service or, where, from the number of persons or any other cause, such service is not reasonably practicable, by public advertisement, as the court may in each case direct."

130 In the circumstances, given that, 8 out of the 46 of the intended Claimants have not complied with Order 1 rule 8 sub rule 2(b)(supra), the Court in accordance with sub rule 4 (supra) hereby directs the Applicants to give notice to them, about the intended institution of the suit in the Industrial Court, the nature of the suit, as well as the reliefs sought, so that they can provide their written authorization in compliance with Order 1 rule 8 (2)(b) as (Amended). No order as to costs is made.

Delivered and signed by:

THE HON. HEAD JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA

PANELISTS

1. MS. ROSE GIDONGO

140 **2. MS. ACIRO BEATRICE OKENY**

3. MR. JACK RWOMUSHANA REUBEN

DATE: 26/09/2022

