THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
MISCELLANEOUS APPLICATION NO. 124 OF 2022
(ARISING FROM LABOUR DISPUTE REFERENCE NO. 018/2020)
(Arising from Labour Dispute Complaint No. 084 of 2019)

MEERA INVESTMENTS LTD::APPLICANT

VERSUS

AKENA ALEX & MUKASA JOHN::RESPONDENTS

BEFORE:

THE HON. JUSTICE ANTHONY WABWIRE MUSANA,

PANELISTS:

1. Mr. JIMMY MUSIMBI
2. Ms. ROBINAH KAGOYE &
3. Mr. CAN AMOS LAPENGA

RULING

Introduction

1.0 The applicant brought this application under the provisions of Section 33 of the Judicature Act Cap 13, Section 98 of the Civil Procedure Act, and Order 51 Rules 6 and Order 52 Rules 1 and 2 of the Civil Procedure Rules S.I 71-1 **("CPR")** seeking to strike out the memorandum of claim and for provision of costs of the application.

2.0 Mr. Venkatacham Ramswamy Iyer filed affidavits in support and rejoinder in which he averred to the Respondent lodging a complaint at the Ministry of Gender Labour and Social Development which was handled by the

Commissioner Labour, Industrial Relations and Productivity through arbitration. Formal memorandums of claim, replies and witness statements were filed. Before the arbitration could be concluded, the Respondents referred the matter to the Industrial Court.

3.0 In the affidavits in opposition, the 1st respondent averred that upon the complaint being filed, the arbitration proceedings were converted to mediation proceedings at the request of the applicant.

Analysis

4.0 We have perused the affidavits in support, reply and rejoinder and the submissions of the respective Counsel.

4.1 The procedural history at the court of first instance demonstrates that:

(i) The respondent filed a complaint with the Labour Officer on the 6th March 2019.

(ii) By a letter dated the 3rd of April 2019, the Commissioner Labour at the Ministry of Gender, Labour and Social Development (MGSLD) issued a notification of complaint to the applicant.

(iii) By letter dated 23rd April 2019, the labour officer required the parties to appear before Mr. Buyego Ismail Kalanda for arbitration.

(iv) Further notices of arbitration hearings were issued on 25th July 2019, 3rd September 2019 and 16th October 2019.

(v) On 19th June 2019, the respondents filed a computation of entitlements for unfair termination.

(vi) In July of 2019, the respondents filed witness statements.

(vii) On 4th November 2019, the applicant filed a witness statement.

(viii) On 19th December 2019, the respondents filed its memorandum of claim.

(ix) On the 16th day of January 2020, the respondents filed a reference to this Court.

(x) On the 16th of January 2020, the labour officer referred the matter to the Industrial Court on the ground that a substantial question of law had arisen.

(xi) In his case report, the labour officer suggested that mediation had failed.

4.2 Our review of the procedural history also shows that;

(i) The Labour Officer did not determine any of the issues placed before him.

(ii) Evidence may have been placed before the labour office but was not evaluated.

(iii) The complaint was first reported to MGSLD in March 2019 and referred to this Court in January 2020.

5.0 The question that this Court is invited to consider is whether the memorandum of claim is prematurely before this Court. On its part, the applicant suggested that the matter was prematurely before this court because the provisions of **Section 6 of the Labour Disputes (Arbitration and Settlement) Act 2006(LADASA)** prohibit reference of a matter to the court where there are arrangements for settlement by conciliation or arbitration in a trade or industry, between a labour union and one or more employers or between one or more labour unions and one or more employers' organizations. The respondents submit that the provision is inapplicable to the present case. We agree with the respondents' proposition. Our difficulty in accepting the applicant's proposition is simply because **Section 6 of the LADASA** relates to a dispute involving a labour union. The present case is between employees and their erstwhile employer. In our view, the applicant's reliance on **Section 6 of the LADASA** is misplaced.

6.0 The applicant also cited the case of **FRANCIS DOMINIC MERU VS NAKASERO HOSPITAL LTD LDR NO. 223 of 2019** in support of the view that once arbitration proceedings have commenced, the applicant could not refer the case to this Industrial Court. For their part, the respondents submitted the

Meru case was clearly distinguishable in that in the Meru case the parties had closed their respective cases. We agree with the respondent's view. In the Meru case evidence had been taken, submissions filed and the parties were awaiting a decision. In the case before us, no steps beyond the preliminary filings had been taken. The Meru case is therefore distinguishable. The rationale for not permitting a reference after the close of arbitral proceedings is that it invites prejudice as the parties have had an opportunity to hear each other's respective cases and may use the reference to close gaps that have been previously identified. [1] Accordingly, we find that hearing of the arbitral proceedings had not yet commenced before the labour officer.

7.0 Further, the circumstances under which a matter may be referred to the Industrial Court are very well laid out. **Under Section 5(1) of the LADASA,** the labour officer may refer a dispute to the Industrial Court if it has not been resolved within 4 weeks or within an extended period of 2 weeks. In **Section 5(3) of the LADASA,** a party may refer the labour dispute to the Industrial Court within 8 weeks from the date it is reported and under **Section 93(7) of the Employment Act 2006**, a party may pursue a matter at the Industrial Court if there has been no decision on the complaint within 90 days from the date it is reported. In **LDR 081 of 2017 KIZZA GERALD and BWOKINO PATRICK VS CAMUSAT UGANDA LIMITED** we found that under **Section 93(7)** of the **Employment Act** a claimant had an option to seek redress at the Industrial Court if a labour officer had not determined the case within 90 days or to await a decision of a labour officer. We found that there was no requirement in the section that a labour officer must dispose of a dispute within 90 days but should he or she not to do so, then the claimant would have an option to seek a referral or refer the matter to the Industrial Court. In the case before us, the complaint was reported to the labour officer in March 2019. It was referred to this court in January 2020 without any resolution by the labour officer. This was over a period of 10 months after the statutory 90 day period. We are therefore satisfied that both the labour

[1] See also LDR 325/2019 MUNANURA GILBERT VS SURE CARE DOCTORS CLINIC & PHARMACY at page 4

officer and the respondents were well within their rights to refer the matter to the Industrial Court and that the matter is therefore not prematurely before this Court.

Order of the Court

8.0 In view of our decision in paragraph 7.0 above, this application is dismissed with no order as to costs. The court makes the following directions for the expeditious disposal of LDR 018 of 2020:

(i) The parties are directed to file a joint scheduling memorandum, witness statements and trial bundles within 21 days from the date hereof.

(ii) LDR No. 018 of 2020 is to be fixed for scheduling and hearing.

Delivered at Kampala this 3rd day of November 2022

SIGNED BY:

1. **ANTHONY WABWIRE MUSANA, Judge**

PANELISTS

1. **Mr. JIMMY MUSIMBI**
2. **Ms. ROBINAH KAGOYE**
3. **Mr. AMOS CAN LAPENGA**

Delivered in open Court in the presence of:

Mr. Swaib Male Nsereko for the Respondents and The Respondents

Court Clerk. Mr. Samuel Mukiza.