

**THE REPUBLIC OF UGANDA**

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

**MISCELLANEOUS APPLICATION NO. 38 OF 2022**

(Arising from Labour Dispute Appeal No. 008 of 2022 and KCCA/KWP/LC/133 of 2021)

**THE AIDS SUPPORT ORGANISATION (U) LTD:.....:APPLICANT**

**VERSUS**

**DR. KENNETH MUGISHA :.....:RESPONDENT**

**BEFORE:**

THE HON. JUSTICE ANTHONY WABWIRE MUSANA

**PANELISTS:**

1. Ms. ADRINE NAMARA,
2. Ms. SUSAN NABIRYE &
3. Mr. MICHAEL MATOVU.

**RULING.**

**Introduction**

- 1.0** This ruling is in respect of an application for leave to appeal against the decision of the labour officer, Kawempe Division, Kampala Capital City Authority, in Labour Complaint KCCA/KWP/008/2022 dated 21<sup>st</sup> March 2022, on questions of mixed law and fact. It was brought under Section 94 of the Employment Act, 2006 and Order 51 r.1 and 2 of the Civil Procedure Rules S.I 71-1(CPR)
- 2.0** Mrs. Lydia Cathy Tamale, the Chief of Human Resources and Administration of the Applicant, filed an affidavit in support. The gist of this affidavit is that the Labour officer made errors of fact, and as such, the grounds of appeal require a review of the facts in the labour officer's decision.
- 3.0** The Respondent opposed the application and filed a very factual affidavit in reply supporting the decision of the labour officer.

### **Submissions of Counsel for the Applicant.**

- 4.0** Ms. Florence Nalukwago, appearing for the Applicant, submitted that the Labour Officer made errors of fact in (i) finding that Paragraph 2.13.3 of the Applicants Human Resource Manual applied to the Respondent, granted three months' pay in lieu of notice as opposed to transition, ignored the Respondent's resignation, misdirected herself on facts relating to the respondent's illness, occupational health and safety and wrongly imputed a renewal of contract among other things. Counsel also submitted that, as a result, the Labour Officer misdirected herself and granted several awards to the Respondent.

### **Submissions of Counsel for the Respondent**

- 5.0** Mr. Karoli Ssemogerere, appearing for the Respondent, was of the view that the application was an afterthought, the Applicant having filed the appeal and seeking to leave to appeal on questions of fact thereafter. He submitted that the appeal was incompetent and that the application for leave was an attempt to cure serious and repeated contraventions of the Employment Act 2006. He prayed that the application be dismissed.
- 6.0** We will consider the competence of the appeal and the application for leave to appeal.

### **Competence of the Appeal/Merits of the Application.**

- 7.0** Under Section 94(2) of the Employment Act 2006, an appeal shall lie on a question of law, and with leave of the Industrial Court, on a question of fact forming part of the decision of the labour officer. The provision is reproduced in Rule 24 of the Labour Disputes (Arbitration and Settlement (Industrial Court Procedure) Rules 2012(hereinafter the LADASA Rules)
- 8.0** The procedural history of the matter before us is that:
- 8.1** the Respondent filed Labour Complaint KCCA/KWP/008/2022, relating to constructive dismissal against the Applicant. On 21<sup>st</sup> March 2022, Ms. Namaanwa Ruth Kulabako, the labour officer, Kawempe Division, Kampala Capital City Authority, found for the Respondent and awarded various remedies. Dissatisfied with the said decision, on the 29<sup>th</sup> March 2022, the

Applicant filed Labour Dispute Appeal No. 008 of 2022 in this Court, listing 12 grounds of appeal. On 12<sup>th</sup> April 2022, the Respondent filed a memorandum responding to the grounds of appeal. The Respondent essentially affirmed the decision of the labour officer. Advisedly, the Respondent ought to have filed a notice affirming the decision of the labour officer.

**8.2** On the 31<sup>st</sup> day of March 2022, the Applicant filed the present application seeking leave to appeal the decision of the labour officer on matters of fact or mixed law and fact. In his response to this application, the Respondent questions the competence of the appeal and suggests that the application is intended to cure an irregularity. In terms, the Appeal was filed on questions of fact without leave of this court and is therefore incompetent.

**9.0** The provisions of Section 94(2) of the Employment Act, 2006, and Rule 24 LADASA Rules are unambiguous. An appeal on a question of law lies as of right while on questions of fact or mixed law and fact, lie with leave of the Industrial Court. In the case of **Bureau Veritas Uganda Limited vs. Davlin Kamugisha**,<sup>1</sup> this Court, citing the English case of **Geogas SA vs. Tranno Gas Limited(the Baleares) 1993 1 Lloyds Rep 215 at 228**, emphasized the rationale of the provisions of Section 94(2)<sup>2</sup> of the Employment Act. The Court posited:

*“We believe that the framers of Section (92)(2)<sup>(see footnote two below)</sup> of the Employment Act, 2006 were aware of the importance of preserving the autonomy of the Labour Officer as an arbitrator, hence the mandatory provision that a party seeking to appeal based on fact must first seek leave of court to do so. We believe the legislature intended that the facts would be evaluated by the lower Courts and the Appellate Court would be left to evaluate points of Law.”*

The import of the provisions as espoused in the decision of this Court is that an appeal on questions of fact without leave is incompetent.

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<sup>1</sup> Labour Dispute Miscellaneous Application No. 54 & 64 of 2017

<sup>2</sup> We are of the view that while the ruling reads Section 92(2), the Court was making reference to Section 94(2) of the Employment Act, 2006. Section 92(2) of the Act penalty for failure to pay severance allowance. The context of the ruling does not reflect a reference to the content of Section 92(2).

- 8.1** Mr. Ssemogerere submitted, correctly, that an appeal to this court is commenced by a notice of appeal filed within 30 days of the decision of the labour officer. Under Regulation 45 of the Employment Regulations, 2011, a notice of appeal from a decision of a labour officer is to be filed within 30 days. The statute does not make similar provisions for an application for leave to appeal. The present application was filed on the 31<sup>st</sup> day of March 2022, 2 days after the memorandum of appeal had been filed and six days after the notice of appeal had been filed. It would be essential to determine whether the grounds of appeal are grounds of law or questions of fact to address the competency and the application for leave to appeal.
- 9.0** Our reading of the provisions of Sections 94(2) of the Employment Act, 2006 and Rule 24 of the LADASA Rules is that the intending appellant must satisfy the Court that the question or questions of fact upon which they intend to anchor their appeal, must have formed part of the decision of the labour officer. But what are questions of law as distinct from questions of fact? In **Kampala Playhouse Limited & 20 Others vs. Oligo James & 18 Others**,<sup>3</sup> this Court held that legal issues, unlike issues of fact, are the ones that determine the course of justice in the courts of law. It is the legal issues and the way they are resolved that determine the justice of the case. According to **Black's Law Dictionary 8<sup>th</sup> Edition**, the judge determines a matter or question of law. In contrast, a matter of fact involves a judicial inquiry into the truth of the alleged facts or assertions. In this context, the questions of law are addressed by the Industrial Court, and matters of fact are addressed and deliberated upon by the labour officer.
- 9.1** In the matter before us, the notice of motion, affidavit in support, and submissions did not attach the memorandum of appeal nor point to the specific grounds of appeal on questions of fact or mixed law and fact. It is unhelpful of Counsel not to be particular. Specificity is an imperative of trial advocacy. This is why rules of procedure require a much more prolific approach to drafting grounds of appeal. The Courts frown upon inaccurate penmanship. In the case of **Nyero Jema Vs. Olweny Jacob & 4 Others**<sup>4</sup> Mubiru J found the two Grounds of appeal to be too general and offending the provisions of Order 43 r (1) and (2) of The Civil Procedure Rules, which

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<sup>3</sup> LDMA No. 018 of 2021

<sup>4</sup> High Court Civil Appeal No. 0050 of 2018

require a memorandum of appeal to set forth concisely the grounds of the objection to the decision appealed against. His Lordship admonished that every memorandum of appeal is required to set forth, concisely and under distinct heads, the grounds of objection to the decree appealed from without any argument or narrative, and the grounds should be numbered consecutively. Properly framed grounds of appeal should specifically point out errors observed in the course of the trial, including the decision which the appellant believes occasioned a miscarriage of justice. In the present matter, the memorandum of appeal filed on the 29<sup>th</sup> day of March contained 12 grounds of appeal. Counsel for the Applicant should have indicated, in the said memorandum, which grounds she sought leave to appeal from. It would have been prudent to file a memorandum of appeal indicating the grounds of law as distinct from the grounds based on mixed law and fact or fact for which leave would be sought. This generality likely affected both Counsel submissions as they tended to argue what might be the appeal itself and not the application for leave to appeal. The practice of generalization is to be discouraged.

- 9.2** Be that as it may, we have perused the memorandum of appeal. Grounds (a), (b) relate to statutory provisions on the powers of the labour officer to hear, determine and refer a complaint to the Industrial Court, grounds (c) and (d) relate to the method and procedure for dealing with a complaint, grounds (e),(f), (j), (k) relate to awards by the labour officer, ground (g) relates to failure to evaluate evidence, ground (h) relates the labour officers misdirection of renewal of the contract, ground(i) relates to shifting the burden of proof and ground (l) relates to bias. What must be made clear is that a ground of appeal on a matter of law relates purely to a question of law and not a decision of a labour officer arrived at after an evaluation of the evidence presented by the parties. Grounds(a),(b),(c),(d), (g)(h)(i), and (l) are matters of law for which leave would not be required. On this basis, Labour dispute Appeal No. 008 of 2022 is properly before this Court. Grounds(e)(f)(j) and (k) relate to awards of the labour officer, which are based on analysis of facts and evaluation of evidence and are therefore mixed law and fact for which leave would be required. In their general arguments, both Counsel made lengthy arguments bordering on the appeal itself. In the case of **Karahukayo & 4 Others vs. Continental Tobacco(U) Ltd**<sup>5</sup>, in considering an

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<sup>5</sup> Labour Dispute Appeal No. 15 of 2015

appeal, this Court did not accept grounds of appeal that purport to be of both fact and law. In the present case, the awards are based on findings of fact. This Court would be asked to revisit the correctness of those awards. For this reason, we are inclined to and hereby grant the application for leave to appeal the decision of Ms. Namaarwa Ruth Kulabako, the labour officer, Kawempe Division, Kampala Capital City Authority in KCCA/KWP/008/2022, on questions of fact.

**Orders of the Court**

**10.** It is, therefore, our order that the application succeeds. However, the Court is of the persuasion to expedite the appeal. In that regard, the Court issues the following orders and directions:

(1) The Applicant is granted leave to appeal on questions of fact or mixed law and fact.

(2) The Applicant shall file and serve the memorandum of appeal together with skeletal arguments within 7 days from the date hereof.

(3) The Parties shall appear before the Court on 27<sup>th</sup> of January 2023 for further directions.

(4) Costs of the application shall abide by the outcome of the appeal.

**Dated at Kampala this 16<sup>th</sup> day of January 2023**

**ANTHONY WABWIRE MUSANA, Judge**

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**PANELISTS**

**1. Ms. ADRINE NAMARA**

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**2. Ms. SUZAN NABIRYE**

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**3. Mr. MICHAEL MATOVU**

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Ruling delivered in open Court in the presence of:

**1. Mr. Karoli Ssemogerere for the Respondent.**

**2. Ms. Florence Nalukwago for the Applicant**

Court Clerk: **Mr. Samuel Mukiza.**