

IRENE MUWANGUZI ::::::::::::::::::::CLAIMANT

UGANDA PRINTING AND PUBLISHING CORPORATION:RESPONDENT

The Hon. Mr. Justice Anthony Wabwire Musana

THE PANELISTS:

1. Hon. Jimmy Musimbi,
2. Hon. Robinah Kagoye &
3. Hon. Can Amos Lapenga.

REPRESENTATION:

1. Mr. Francis Karooro of M/s. A.L Advocates for the Claimant.
2. Mr. Amos Masiko of M/s. Ortus Advocates for the Respondent

RULING

Introduction

- [1]** This ruling concerns a series of preliminary objections raised by the Respondent regarding the propriety and sustainability of the claim.
- [2]** The background facts are that on 21st November 2014, the Claimant was appointed Managing Director of the Respondent for three years. She was put on probation for six months. On the 7th of May 2015, the Respondent's Board advised the Claimant that she would not be confirmed. The office of the Inspector General of Government intervened, and the Claimant held office until the 16th of September 2016, when the Minister for the Presidency directed her to hand over before the 21st of September



2016. The proceedings and orders of the High Court of Uganda in Miscellaneous Cause No. 65 of 2016 in an action for judicial review, kept the Claimant in office until 22 June 2018, when the Respondent's Board offered the Claimant a fresh contract with a new probationary term of six months. At the end of this probation, the Respondent's board sought to extend the probationary period for two more months. The Claimant served until the 6th of May 2019, when she arrived at the Respondent's premises to find the office locked. Aggrieved, she filed High Court Civil Suit No. 466 of 2019 at the High Court of Uganda, Civil Division.


- [3] The procedural history of this case is that by letter dated the 10th of February 2020, the Deputy Registrar of the Civil Division of the High Court forwarded the file of Civil Suit No 466 of 2019 to the Registrar of the High Court. By letter dated 14th February 2020, the Ag. Registrar of the High Court transferred the file to Registrar of the Industrial Court. In the amended memorandum of claim, the Claimant sought various declarations, including a declaration that she was confirmed in the position of Managing Director of the Respondent, that her probationary contracts dated 11th June 2018 and the extension of 13th January 2019 were illegal and unlawful, declarations that she was never appraised, her contract did not expire, salary arrears, general and aggravated damages, orders compelling her reinstatement and injunctive relief. The Respondent opposed the claim.
- [4] When the matter came before this Court on the 7th of June 2023, we invited the parties to address the Court on the preliminary objections through written submissions. The objections hinge on the following issues:
- (i) Whether the claim is properly before this Court?
 - (ii) Whether the Industrial Court has jurisdiction to entertain the claim?
 - (iii) Whether the Claim is barred by limitation?

The Court proposes to resolve issues one and two together and has considered the submissions in rendering this ruling. The Court is also grateful to Counsel for the succinct submissions and authorities cited.

Analysis and Decision of the Court

Issues one and two: Propriety and Jurisdiction of the Court.

Submissions of the Respondent

- [5] The Respondent submitted that the claim is improperly before this Court in so far as there is no reference to this Court by a Labour Officer. That the dispute should have commenced by way of a complaint to the labour officer, and this Court did not have
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jurisdiction to hear this matter as a Court of first instance. Counsel relied on **Section 93 of the Employment Act, 2006**(from now EA), Section 3 of the Labour Disputes (Arbitration and Settlement) Act, 2006(from now LADASA), and the cases of **Okurut Joseph v New Bubajjwe P.S LD 4 of 2015** and **Wembabazi Beatrice v The Electoral Commission H.C.M.C No. 15 of 2020** in support of the propositions that the claim was premature.

- [6] Counsel also submitted, citing **Sections 93(7) EA** and **5(1) LADASA** that a reference could only be made to this Court if it was first filed before a Labour Officer. It was, therefore, incompetently before this Court.
- [7] It was also submitted that without a complaint before a Labour Officer, neither the Industrial Court nor any other Court had jurisdiction to entertain the dispute as a Court of first instance. Counsel cited the case of **Kaggwa Michael v Apire John HCMA No. 142 of 2022** to support this proposition.

Applicant's submissions

- [8] In reply, M/s A.L Advocates, appearing for the Applicant, contended that **Section 93(1) EA** did not provide for the exclusive jurisdiction of Labour Officers in entertaining claims for infringement of rights or breaches of obligations under EA. In Counsel's view, the provision limits the jurisdiction of Labour Officers to disputes arising from the EA. Counsel cited the case of **Ozoo Brothers v Ayikoru Milka H.C.Civ Rev No.0002 of 2016** where **Mubiru J** held that District Labour Offices were created as an alternative and concurrent rather than an exclusive forum to determine labour disputes. Counsel submitted that the present controversy arose from the case of **Justus Barugahare v Board of Directors of UPPC and Irene Muwanguzi H.C.M.C No. 466 of 2019**, where a consent judgment had been set aside. The Claimant then filed a suit against the Respondent for consequential orders. The Respondent applied to have the matter transferred to the Industrial Court as it was a labour dispute. Counsel contends that the Court has original jurisdiction to hear and determine this matter.

Submissions in rejoinder

- [9] In rejoinder, it was submitted that the Industrial Court is clothed with jurisdiction to only handle appeals from the decisions of Labour Officers under **Section 94EA**. The Respondent relied on **Uganda Revenue Authority v Rabbo Enterprises (U) LTD S.C.C.A No. 12 of 2004**, where the Supreme Court was considering the jurisdiction of the Tax Appeals Tribunal vis a vis the High Court and held that the High Court exercises its jurisdiction subject to other provisions of the Constitution. Mr. Masiko contended that under Article 40 of the Constitution, Parliament enacted the Employment Act 2006 to govern employment disputes, giving appellate powers to the Industrial Court. Counsel

argued that the **Ozuu Brothers** case is distinguishable because it was decided before the **URA v Rabbo** case, the Plaintiff did not seek to enforce any rights under the EA, and the case dealt with concurrent jurisdiction of the Magistrates' Courts and the labour officer in respect of common law remedies. Counsel asked this Court to rely on the **URA v Rabbo** case and find that this matter is improperly before this Court.

Determination of the Court

- [10] The objection raises an important question of the establishment and jurisdiction of the Industrial Court. It is trite that a court must determine whether it has jurisdiction because to purport to act with jurisdiction is an act in vain. Jurisdiction refers to the power of the court to hear and entertain an action or proceedings¹. Indeed, the court cannot take any further steps until it establishes whether it has jurisdiction.
- [11] There has been very good jurisprudence on these questions, as we shall show below, but we must consider the statutory foundation of the Industrial Court.
- [12] First, the Industrial Court is established under Section 7 of the Labour Disputes (Arbitration and Settlement of Disputes) Act, 2006(from now LADASA). That establishment is derived from Article 129(1)(d) of the Constitution of the Republic of Uganda(from now the 1995 Constitution), which confers upon the Legislature the power to establish subordinate courts. Mr. Masiko's reliance on Article 40 of the Constitution is not entirely accurate because it is Article 129 that empowers Parliament to establish Courts. Article 40 lists the broad foundational rights upon which the Employment Act is enacted. Article 129(1)(d) confers on Parliament the power to establish such subordinate courts as Parliament may by law establish. Under Article 129(3), Parliament may make provisions for the jurisdiction and procedure of the Courts, and it is from these Constitutional arrangements that Sections 7 and 8 of LADASA are borne. In other words, while the High Court is established under Article 139 of the Constitution, the Industrial Court is established by an Act of Parliament, Section 7 of the LADASA. To this end, it does not enjoy unlimited original jurisdiction in all labour disputes.
- [13] Therefore, under Section 8 LADASA, the functions of the Industrial Court are provided for. They are set out as follows:

“(1) The Industrial Court shall-
 (a) arbitrate on labour disputes referred to it under this Act; and

¹ Ibid



(b) adjudicate upon questions of law and fact arising from references to the Industrial Court by any other law. (Underlining and emphasis supplied)

- [14] Under this provision, the Industrial Court has the power to arbitrate all disputes referred to under the Act. References to the Court under the LADASA are provided under Section 5, where a labour officer may refer a matter that has not been resolved four weeks after it is first received or by a party eight weeks from when a report is made. This is the exercise of referral jurisdiction. A referral² is an act or an instance of sending or directing to another for information, service, or consideration from which we would attribute a meaning of referral jurisdiction as a jurisdiction to attend to matters directed to this Court.
- [15] Under **Section 94EA**, a party dissatisfied with a decision of a labour officer may appeal to the Industrial Court. Black's Law Dictionary 11th Edition defines appellate jurisdiction as the power of a court to review and revise the lower court's decision. The other significant import of Section 8 LADASA is the expression referred to under "**any other law.**" In our view, the matters are not limited to references to labour and employment law only and may include matters related to defamation arising from the employment relationship. We are fortified in this view by the decisions of the Industrial Court in the cases **George Katendeigwa v Samsung**³ and **Avram Avivi v SBI**⁴ where this Court has held that it had jurisdiction to hear and proffer declaratory relief in respect of property in social security benefits.
- [16] However, the foremost expressions of the Courts of Judicature on composition, character, and jurisdiction of the Industrial Court have been pronounced by the Court of Appeal of Uganda and the Constitutional Court. There are two significant cases;
- (i) First, in the case of the Justices **Ruhinda Asaph Ntengye & Justice Linda L. Tumisiime Mugisha v Attorney General**,⁵ the Constitutional Court observed that the Industrial Court is one of the Courts of Judicature as per Article 129 of the Constitution, having been established by Parliament in the exercise of Article 129(1)(d) of the Constitution. The Court made the following findings:
- (a) The Industrial Court is a subordinate Court with concurrent jurisdiction with the High Court of Uganda.

² Blacks Law Dictionary 11th Edn by Brayn Garner Thomson Reuters page 1533

³ LDC No 144 of 2014

⁴ LDR 208 of 2021

⁵ See Asaph Ntengye J. and Linda L. Mugisha J. vs A.G Constitutional Petition No. 33 of 2016



- (b) The Industrial Court has an appellate hierarchy equal to the High Court, while it is not a superior Court.

This implies that while the Industrial Court does not have unlimited original jurisdiction in labour disputes, it has appellate and referral jurisdiction. The Appeals come to the Industrial Court from matters arbitrated by the Labour Officers or by way of referral from the matters mediated upon by the Labour Officers or referred to this Court by any other law.

- (ii) The second significant case on the point is the case of **Engineer John Eric Mugenzi v Uganda Electricity Generation Co. Ltd** where the Court of Appeal directed that the Industrial Court should use its jurisdiction to adjudicate on issues of fact or law under **Section 8(1)(b) and 8(2) of the LADASA** to handle all labour disputes referred to it including claims for general, special and punitive damages which come under any other law and can be adjudicated by the Industrial Court. **Kakuru JJA** (as he then was) held that such matters include issues of fact and law arising from the references to the Court by any other law and admonished that litigants should not be confused about to where to file their claims.
- [17] The sum effect of the above decisions is that the Industrial Court has both referral and appellate jurisdiction. Matters may be referred to this Court by parties to a labour dispute before a labour officer or may come to this Court by way of appeal from a decision of a labour officer or by way of reference from the labour officer, a party to a claim, the High Court, or any other agency of the Executive arm of government. Such reference would fall under the category of under any other law. Indeed, a series of decisions have been referred to the Industrial Court by the High Court.
- [18] In our view, not all labour disputes come to the Industrial Court following an initial filing before a labour officer. It is inaccurate to suggest that that is the exclusive avenue by which a dispute arrives at the Industrial Court. That is not the essence of referral jurisdiction. A reference or an appeal from the decision of a labour officer are but some of several avenues by which a party may approach the Industrial Court for redress. In the **Okurut** case cited by the Respondent, the High Court did not refer the matter to the Industrial Court but observed that the parties were at liberty to file their suit in the right forum subject to the limitation period.
- [19] We also think that the case of **Wembabazi Beatrice v the NRM Election Disputes Tribunal H.C.M.C No. 15 of 2020**, cited by the Respondent, relates to judicial review of an organization's internal policy and does not apply to the circumstances of the present case.



- [20] Applying the dicta of the above cases and law to the present matter, the record shows that it was referred to this Court by the Registrar of the High Court Civil Division. Therefore, it follows that the Industrial Court would be exercising its referral jurisdiction in entertaining this matter; for this reason, we would overrule the objection to jurisdiction. Considering the provisions of Section 8(2) LADASA and following the dicta in the cases cited above, this Court would be clothed with the requisite jurisdiction to determine the labour dispute element of the claim not as an original claim but as a reference by any other law. In other words, the High Court of Uganda has referred the matter to the Industrial Court. By such reference, this Court would have jurisdiction to entertain the case. To this extent, therefore, the preliminary objection would be overruled.

Whether the Claim is barred by limitation

Submissions of the Respondent

- [21] The Respondent submits that all disputes must be filed before the labour officer within three months, as provided under **Section 71 (2) EA**. The Respondent contends that the matter was never heard before a labour officer. The cause of action seeking declaratory relief arose in June 2018, while the claim for salary arrears dates to 2014.

Submissions of the Claimant

- [22] The Claimant contends that because the matter was referred to the Industrial Court by the High Court, **Section 71(2) EA** is inapplicable. In Counsel's view, the case falls within Section 3(1)(a) of the Limitation Act Cap. 80, which sets a time limit of six years from the date the cause of action arose.

Rejoinder

- [23] In rejoinder, the Respondent contends that the Limitation Act cap. 60 is inapplicable to the time limits set under the Employment Act 2006. Counsel cites the case of **Eaton Towers Uganda Ltd v A.G & Anor H.C.M.C No. 84 of 2019** for the proposition that specific legislation overrides general legislation where two legislations conflict.

Determination

- [24] It is the position of the Industrial Court that a labour dispute may be placed before a labour officer at any time within six years from the date the cause of action arose. In the case of **Kakinda Lwanga v Attorney General**⁶ the Industrial Court applied Section

⁶ LDR 019 of 2014



3(2) of the Civil Procedure (Miscellaneous Provisions) Act Cap which limits an action founded on contract against government to 3 years to an employment dispute against the Attorney General. In **Osilo Jackson v Industrial Security Services Limited**,⁷ a claim filed ten years after the dismissal was held to be time-barred.

- [25] Similarly, in the case of **Juliet Kyesimira vs. Stanbic Bank Ltd**,⁸ the provisions of Section 3(1)(a) of the Limitation Act Cap. 80 were found to apply to employment contracts. The Court observed that while Section 71 of the Employment Act 2006 permitted a labour officer to extend the time to file a complaint beyond three months, such extension could not exceed the six years stipulated in the Limitation Act. The Industrial Court has, therefore, settled the position that labour disputes may be brought to Court within six years from the date the cause of action arose.
- [26] In the present matter, the Claimant first filed High Court Civil Suit No. 0466 of 2019 in 2019. At that time, the cutoff date would be the year 2013. In this purview, the Respondent's objection to the applicability of the Limitation Act to employment and labour disputes would be unsustainable. And having found that the matter is properly before this Court by way of reference, we would overrule the objection on the ground of limitation.
- [27] In closing, the Respondent made some remarks about the Claimant's cause of action. This was not raised under a distinct head of a preliminary objection. Still, the Respondent picked specific periods between 2014 and 2019 to suggest that the Respondent was not in office and should not be entitled to claim salary arrears. The legal proposition that an employee is only entitled to salary for work done is well grounded. However, we think that these are matters of evidence and stand unproven. The Claimant has filed a claim for several declarations. Evidence to prove the basis for the declaratory and other relief has not been taken, tested in cross-examination or evaluated. We think that a determination of entitlement at this time would be premature. The very essence of a preliminary objection has been well-defined. In **Mukisa Biscuits Manufacturing Co Ltd. vs. West End Distributors Ltd**,⁹ it was defined as follows:

"So far as I am aware, a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of the pleadings, and which if argued as a preliminary point may dispose of the suit."

Therefore, it follows that the objection must be on a pure point of law and not any facts that must be ascertained.¹⁰ The objection does not call for proof of facts and

⁷ LDR No. 210 of 2015

⁸ LDR 103 of 2017

⁹ (1969) EA 696

¹⁰ Per Sir Charles Newbold in **Mukisa Biscuits (Ibid)**. See also **Yaya Obur and Ors C.A 81 of 2018**

evidence. In this regard, we do not accept the prayer to hold that the Claimant was not in office for the periods 16th September 2016 - July 2018 and May 2019- October 2019.




[28] In the final analysis, the claim is properly before this Court through a referral from the Civil Division of the High Court. Ms. Muwanguzi's claim was filed within six years from the date the cause of action is alleged to have arisen. Matters relating to the cause of action would be subject to proof in trial. As a result, the objections to the propriety of the claim are overruled. Labour Dispute Claim No. 01 of 2022 shall be set down for hearing. There shall be no order for costs per the dicta in *Joseph Kalule v GIZ*.¹¹

Delivered, dated, and signed in chambers at Kampala this 1st day of Sept, 2023.


Anthony Wabwire Musana,
Judge, Industrial Court

THE PANELISTS AGREE:

1. Hon. Jimmy Musimbi,
2. Hon. Robina Kagoye &
3. Hon. Can Amos Lapenga

Ruling delivered in open Court on 1st day of September 2023 in the presence of:

1. For the Claimant: Mr. Francis Karooro
Claimant is in Court.
2. For the Respondent: None

Court Clerk: Mr. Samuel Mukiza.


Anthony Wabwire Musana,
Judge, Industrial Court

¹¹ LDR 190/2020