



**THE REPUBLIC OF UGANDA**  
**IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA**  
**LABOUR DISPUTE REFERENCE NO. 120 OF 2020**  
*(Arising from Labour Dispute No. KCCA/RUB/LC/580/2019)*

**OCHIENG PETER:.....CLAIMANT**  
**VERSUS**

- 1. PARLIAMENTARY COMMISSION:.....RESPONDENTS**  
**2. ATTORNEY GENERAL**

**BEFORE:**

- 1. THE HON. JUSTICE ANTHONY WABWIRE MUSANA**

**PANELISTS:**

- 1. Ms. ADRINE NAMARA,**  
**2. Ms. SUZAN NABIRYE &**  
**3. Mr. MICHAEL MATOVU.**

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**RULING**

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**Introduction**

- [1] On 20<sup>th</sup> day of March 2023, when this matter came up for scheduling, Mr. Moses Mugisha, State Attorney, appearing for the 2<sup>nd</sup> Respondent, notified us of his intention to raise a preliminary objection on the jurisdiction of this Court to entertain the claim as against the 2<sup>nd</sup> Respondent. Counsel addressed court by way of succinct oral submissions for which the Court is grateful.

**Submissions of the 2<sup>nd</sup> Respondent**

- [2] It was submitted that the claim before us did not arise from a contract of service between the Claimant and the 2<sup>nd</sup> Respondent. As such, this Court has no jurisdiction to hear and determine the matter. We were referred to Section 2 of the Employment Act 2006(*from now EA*), for the definition of an employee which means

*'any person who has entered into a contract of service or an apprenticeship contract, including, without limitation, any person who is employed by or for the Government of Uganda, including the Uganda Public Service, a local authority or a parastatal organization but excludes a member of the Uganda Peoples' Defence Forces'*

- [3] We were also referred to Section 8 of the Labour Disputes (Arbitration and Settlement) Act 2006 (from now LADASA) which establishes the jurisdiction of the Industrial Court. Counsel cited the case of **Kyaka Fred & Anor v Attorney General LDR 128 of 2016** in support of a restricted jurisdiction of the Industrial Court and the case **Uganda Telecom Ltd v Adrate Orute M.A 21/2015** for the proposition that jurisdiction is a creature of statute and a court cannot exercise a Jurisdiction that is not conferred upon it by law. Counsel submitted that there is no employment contract between the Claimant and the 2<sup>nd</sup> Respondent. The Claimant was employed by the 1<sup>st</sup> Respondent. Counsel asked that the matter be dismissed as against the 2<sup>nd</sup> Respondent, with costs.

#### **Submissions of the Claimant**

- [4] Mr. Steven Turyatunga, appearing for the Claimant, joined issue with Respondent contending that the 2<sup>nd</sup> Respondent was sued because his agents arrested the Claimant for stealing a decoder belonging to the 1<sup>st</sup> Respondent. He was convicted and sentenced to a custodial term of 8 months or a fine of UGX 600,000/=. He successfully appealed against both the conviction and sentence which were set aside by the High Court of Uganda on 18<sup>th</sup> November 2019.
- [5] It was submitted that the arrest, inconvenience and humiliation was by agents of the 2<sup>nd</sup> Respondent whose presence was necessary to assist the Court in quantifying damages. It was contended that if the 2<sup>nd</sup> Respondent's presence was dispensed with, there would be no one to answer for the human rights violations of the Claimant.
- [6] Mr. Turyatunga conceded that there was no employment contract between the Claimant and 1<sup>st</sup> Respondent but emphasized that the 2<sup>nd</sup> Respondent was a key participant informing the cause of action. He asked that the 2<sup>nd</sup> Respondent be retained as a party for purposes of answering the claims to general and exemplary damages.

#### **Submissions in Rejoinder**

- [7] In rejoinder, we were referred to Section 93(6) EA which provides for a claim in tort arising from an employment relationship. Mr. Mugisha submitted that the present claim did not extend beyond the employment contract. He was positive that a remedy could be sought in any other Court and reiterated his earlier prayer.

#### **Decision of the Court**

- [8] The crisp question for determination is whether the Court has jurisdiction to entertain, hear and determine the Claimant's claim against the 2<sup>nd</sup> Respondent.

We agree with the particularly apt dictum in the **Ozoo Brothers Enterprises Ltd v Ayikoru Milka**<sup>1</sup> case where Mubiru J posited that the primary requirement of the system of justice is that a Court adjudicating a dispute must be clothed with jurisdiction. In a passage extracted from a Kenyan case<sup>2</sup> Nyarangi JA, opined that a court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction. The Appellate Division of the East African Court of Justice<sup>3</sup>, borrowing from the dictum of Nyarangi JA (ibid) opined that 'jurisdiction is a most, if not the most, fundamental issue that a court faces in any trial. It is the very foundation upon which the judicial edifice is constructed; the foundation from which springs the flow of the judicial process. Without jurisdiction, a court cannot take even the proverbial first Chinese step in its judicial journey to hear and dispose of a case.' Put simply, without jurisdiction, the Court's hands are tied.

[9] Before delving into the substance of the objection, we wish to make some necessary reference to the relevant provisions of the law. Section 2 EA defines an employee as 'any person who has entered into a contract of service'. In other words, there has to be an employer-employee relationship upon which to found a labour dispute amenable to arbitration or adjudication by the Industrial Court under Section 8 of LADASA. Mr. Turyatunga conceded to the absence of a contract of employment as between the Claimant and 1<sup>st</sup> Respondent. This concession, cements, in our view, a view to upholding the objection. There was no contract of employment and as such there would be no labour dispute to arbitrate or adjudicate upon. Flowing therefrom, the objection would be upheld and the claim would collapse. That would be all there is to this matter. But for completeness, we shall visit the objection substantively.

[10] In paragraph 4(b) of the memorandum of claim, the Claimant seeks a declaration that the arrest, detention, prosecution, conviction and sentence by the 2<sup>nd</sup> Respondent was unlawful. At paragraph 6 of the memorandum of claim, he pleads that he was dismissed from his job and subjected to criminal prosecution and remand for four years. He was humiliated and his personal liberty violated for which he seeks general, punitive and exemplary damages. He also particularized his claim for general damages. The claim against the 2<sup>nd</sup> Respondent is clearly in tort. In terms, it is a claim for false imprisonment and malicious prosecution. We think it useful to briefly expound on these causes of action:

(i) False imprisonment consists of the restraint of the liberty of a person, for example by confining him in a prison or within walls, or by forcibly detaining him in an open place.<sup>4</sup> The civil tort of false imprisonment

<sup>1</sup> H.C. Civil Revision No. 0002 of 2016

<sup>2</sup> Owners of Motor Vessel Lillian "s" v Caltex Oil Kenya Limited [1989] KLR 1

<sup>3</sup> Attorney General of the United Republic of Tanzania v African Network of Anima Welfare Appeal No. 3 of 2011 EACJLR 2005-2011 395 at 399

<sup>4</sup> Bullen, Leake & Jacobs 'Precedents of Pleadings' 17<sup>th</sup> Edn Vol1 at pages 42 and 43.

consists of unlawful detention of the Plaintiff for any length of time whereby he is deprived of his personal liberty. It must be total restraint.<sup>5</sup>

- (ii) Malicious prosecution occurs where there is no legal reason for instituting criminal proceedings. It occurs as a result of the abuse of the minds of judicial authorities whose responsibility is to administer criminal justice. According to Odunga's Digest on Civil Case Law and Procedure page 5276, the essential ingredients to prove malicious prosecution are as follows (a) The criminal proceedings must have been instituted by the defendant, (b) The defendant must have acted without reasonable or probable cause (c) The defendant must have acted maliciously and (d) The criminal proceedings must have been terminated in the plaintiff's favor.<sup>6</sup>

[11] Returning to the claim as set out in paragraph 4(b) and particularized in paragraph 6 of the memorandum of claim, it might well be that the Claimant has an articulable complaint against the 2<sup>nd</sup> Respondent in false imprisonment and malicious prosecution. And, it was conceded, rightly, by Mr. Mugisha, that such a claim would not be in this Court. In our view, the system of written pleadings performs an important function in the administration of justice. The purpose of the memorandum of claim is to articulate in as clear a manner, the claim or cause of action of the claimant and the relief sought. In the case before us, Section 2 EA and Section 8 LADASA limit the actions that this Court can determine to matters of or arising from the employment relationship. The absence of an employment relationship would render a claim baseless before this Court. Objectively considering the pleadings before us, the claim or cause of action as set out in the memorandum of claim does not point to an employment contract or indeed a tort arising out of an employment relationship as between the Claimant and 2<sup>nd</sup> Respondent. It is our determination, therefore, that the present claim does not fall within the ambit of 93(6) EA.

[12] From these observations, we are unable to accept the Claimant's assertion that the 2<sup>nd</sup> Respondent is a necessary party to the present proceedings. In attempting to suggest human rights violations, the Claimant is conjuring a forcible entry into the jurisdiction of this Court. We accept the 2<sup>nd</sup> Respondent's submission that this Court would have no jurisdiction to entertain, hear and determine the claim as against the 2<sup>nd</sup> Respondent. We are of the persuasion that a Court of law derives its jurisdiction from its establishment statute or constituent law. Under Section 8 of LADASA, the Industrial Court arbitrates on labour disputes referred to it and adjudicates upon questions of law and fact arising from references to the Industrial Court by any other law. In that regard, we agree with the dictum

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<sup>5</sup> Per Ssekaana J in *Bwogi v Orient Bank (U) Limited & Anor.* (Civil Suit 3 of 2014) [2019] UGHCCD 122 See also Civil Suit N0. 154 of 2009 *Mugwanya Patrick vs The Attorney General of Uganda.*

<sup>6</sup> *Kaggwa v Kagoya & Anor* (Civil Suit 397 of 2014) [2019] UGHCCD

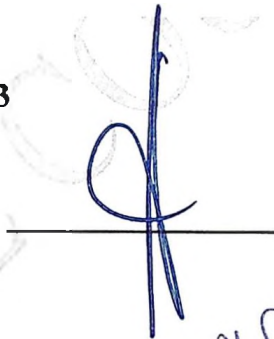
expressed in the case of **Kyaka Fred & Others V Attorney General Labour Dispute Reference (supra)**<sup>7</sup> where it was held that the Industrial Court is a specialized Court dealing with matters to do with employees and employers regarding the employment relationship between them. Its jurisdiction extends only to labour dispute directly connected with Employment and arising from the Employment relationship as provided for under the Employment Act. In objectively considering the matter before us, we have no hesitation would hold that there is no labour dispute to hear and determine.

[13] Having objectively considered the preliminary point raised by the 2<sup>nd</sup> Respondent, we have no hesitation in upholding the objection to the jurisdiction of this Court to hear and determine the claim in tort. Labour Dispute Reference No. 120 of 2020 is dismissed as against the 2<sup>nd</sup> Respondent with no order as to costs.

Delivered at Kampala this 31<sup>st</sup> day of March 2023

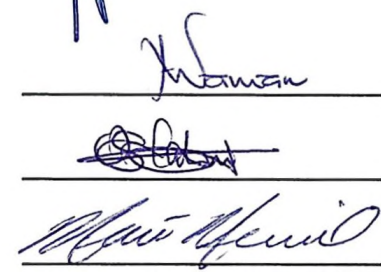
**SIGNED BY:**

1. ANTHONY WABWIRE MUSANA, Judge



**THE PANELISTS AGREE:**

1. MS. ADRINE NAMARA,
2. MS. SUZAN NABIRYE,
3. MR. MICHAEL MATOVU.



Delivered in open Court in the presence of:

1. Mr. Steven Turyatunga for the Claimant. Claimant in Court.
2. Ms. Ivy Kemigisha for the 1<sup>st</sup> Respondent.
3. Ms. Racheal Ampaire holding brief for 2<sup>nd</sup> Respondent

Court Clerk. Ms. Matilda Nakibinge.

<sup>7</sup> The case was cited by the Respondent.