



THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
MISCELLANEOUS APPLICATION NO. 146 OF 2022
ARISING FROM LABOUR DISPUTE APPEAL NO.004 OF 2022
(All arising from Labour Dispute Complaint No. MGLSD/LC/564/2020)

BOLLORE TRANSPORT & LOGISTICS (UGANDA) LTD:::::::::APPLICANT
VERSUS

MUSAU WAITA :::::::::::RESPONDENT

BEFORE:

THE HON. JUSTICE ANTHONY WABWIRE MUSANA

PANELISTS:

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

RULING

Introduction

- [1] This ruling concerns an application seeking a declaration, inter alia, that Labour Dispute Appeal No. 004 of 2022 was brought on grounds of fact and mixed law and fact, without leave of Court. The application was brought under **Section 94 of the Employment Act, 2006** (*from now EA*), Section 98 of the Civil Procedure Act Cap 71(*from now CPA*), Order 51 r.1 and 2 of the Civil Procedure Rules S.I 71-1(*from now CPR*) and Rules 23 and 24 of the Labour Disputes (Arbitration and Settlement) (Industrial Court) Rules, 2012 (*from now LADASA Rules*).
- [2] Mr. Gerald Batanda, Advocate, filed an affidavit in support. The gist of this affidavit is that he was privy to the proceedings before the labour officer and that

the grounds of appeal were based on fact or mixed law and fact and were raised without leave of Court.

- [3] The Respondent opposed the application and maintained that the grounds of appeal were matters of, or raised valid points of law. He asked that the Court dismisses the application and hears the appeal on merit.
- [4] From the pleadings and submissions of the parties, the issue for determination, as framed by M/s. Signum Advocates, appearing for the applicant, would be;
- *Whether Labour Dispute Appeal No. 004 of 2022 raises matters of fact or mixed law and fact?*

Submissions of Counsel for the Applicant.

- [5] It was submitted that under Section 94 (2) EA, an appeal lies 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 and that these provisions were couched in mandatory terms.¹ As to the distinction between a matter of law vis a vis a matter of fact, Counsel proposed that a matter of law is a question of the proper law to apply to facts of the case, to be determined by the Judge while a matter of fact is defined as one involving a judicial inquiry into the truth of the alleged facts.² To buttress the argument, Counsel referred to the Industrial Court's holding that matters of law are those that determine the course of justice in the courts of law while matters of fact allow for investigation of evidence and for drawing of proper inferences from such evidence at the hearing of the appeal.³
- [6] It was suggested that the Respondent had not raised any issues that required the interpretation of the law but only that the labour officer misinterpreted a point of law and thus led to a wrong course of justice. It was posited that a determination reached through an analysis of facts and an evaluation of evidence ceases to be matter of law and becomes one of fact. Further, that under section 94 EA and rule 24(2) of the LADASA Rules, an appeal is restricted to matters of law.⁴
- [7] We were invited to find that the failure to seek leave of Court was an illegality which was not curable under Article 126(2)(e) of the Constitution.⁵

¹ Bureau Veritas Uganda Limited vs. Davlin Kamugisha, LDMA No. 54 & 64 of 2017

² Counsel relied on The Essential Law Dictionary and Black's Law Dictionary 8th Edition

³ Kampala Playhouse Ltd & 20 Ors vs Oligo James & 18 Ors LDMA No. 18 of 2021

⁴ Karahukayo & 4 Ors v Continental Tobacco(U) Ltd LDA No. 15 of 2015

⁵ Counsel cited Kasirye Byaruhanga & Co Advocates vs UDB S.C.C.A No. 2 of 1997 and Utex Industries v A.G for the proposition Article 126(2)(e) is not a magic wand in the hands of defaulting litigants.

- [8] It was also submitted for the Applicant that the principles of admission and estoppel as cited by the Respondent were misplaced. That there was no clear and unambiguous statement of admission.⁶
- [9] The applicant denied that the application was frivolous or vexatious.⁷

Submissions of the Respondent

- [10] M/s. Rwabogo & Co. Advocates, appearing for the Respondent, submitted that the appeal against the decision of the labour officer rested solely on matters of law. Grounds 1, 2 and 3 of the Memorandum of Appeal highlight contractual principles of law in relation to variation.⁸ Counsel submitted that Sections 59(4) and 60 (a) of the EA require written notice of an agreed change to a contract. The change being that compensation of currency fluctuation was reduced into writing and as such there was a question of law to determine.
- [11] In relation to grounds 4 and 5, it was submitted that ground 4 raised the issue of waiver⁹ and the confidentiality clause in the compensation agreement. In relation to ground 5, Counsel advanced the view that the labour officer ignored the market rates for repatriation of the Respondent, his family members and property to Mombasa, Kenya.
- [12] The Respondent also argued that there was a ground for evaluation of evidence.¹⁰
- [13] Finally, as to final computation of terminal benefits, it was submitted that the Respondent played no part in the negotiation or computations of the sum paid to him. We were asked that the remaining balance is computed by the Applicant. We were invited to find that the Memorandum of Appeal was appropriate.

Analysis and decision of the Court.

- [14] It is trite that appeal is a creature of statute. Under section 94(2) EA, 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 LADASA Rules. These provisions 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**,¹¹ cited by the Applicant, the Industrial Court, citing the English case of **Geogas SA vs. Tranno**

⁶ Nelson Kawalya v Sebankita Hamis H.C.M A No 1534 of 2020

⁷ Counsel referred to the case of Nabyonzi Rachel v Namiro Suzan & Anor H.C.MA No. 883 of 2020

⁸ Mujuni Ruhemba v Skanka Jensen(U) Ltd C.A No.56 of 200 in support of the proposition that an oral variation of a written contract leaves the written contract intact and enforceable.

⁹ Black's Law dictionary 8th Edn Page 1611 for a definition of waiver.

¹⁰ Onyango Robert v Security Group(U)LDA No. 040 of 2020

¹¹ (Op cit) Per Asaph Ruhinda Ntengye H.J, Linda Lillian Tumusime Mugisha J, Panelists Hon. F Ebyau, Hon. F.X Mubuuke and Hon. H.N Mugambwa

Gas Limited(the Baleares) 1993 1 Lloyds Rep 215 at 228, emphasized the rationale of the provisions of Section 94(2) EA¹². The Court posited:

"We believe that the framers of Section (92)(2)(see footnote twelve below)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 is that an appeal on questions of fact or mixed law and fact without leave of this Court, is incompetent.

- [15] We think it is important to delineate a question or point of law as against a question of fact or mixed law and fact. The applicant suggested that a matter of law is a question of the proper law to apply to facts of the case, to be determined by the judge while a matter of fact is defined as one involving a judicial inquiry into the truth of the alleged facts. We agree with this restatement of the law. However, in a range of decisions, the Appellate Division of the East African Court of Justice (EACJ) expounds the definition on the point of law while considering the propriety of appeals brought before that Court. In the case of **Attorney General of Burundi and the Secretary General EAC and Hon. Fred Mukasa Mbidde**¹³ an error on a point of law occurs when a trial Court (i) misapprehends or misapplies a pertinent law or principle of law, (ii) misapprehends the nature, quality, and substance of the evidence or (iii) draws wrong inferences from the proven facts. What can be discerned from the above decision, therefore, is that issues or points of law relate to the interpretation and application of the law to the facts while a question of fact relates to the findings as a result of the evaluation of evidence.
- [16] In the case before us, Labour Dispute Appeal No. 004 of 2022, arises from Labour Complaint No. MGLSD/LC/564/2020 at the Office of the Commissioner Labour Industrial Relations and Productivity. On a complaint that he was terminated on 31st July 2020 due to redundancy and staff restructuring, the Respondent sought compensation for loss due to currency fluctuation for the period 2015 to 2020, NSSF benefits, transport and repatriation. The Labour Officer determined that the Respondent was not entitled to compensation for fluctuation, NSSF benefits or annual transport. In respect of repatriation, the Labour Officer found the claim for US\$ 2000 and UGX 4,374,000 to be high and

¹² The Industrial Court must have been making reference to Section 94(2) of the Employment Act, 2006. Section 92(2) of the Act penalty for failure to pay severance allowance.

¹³ Appeal No. 02 of 2019. See also Simon Peter Ochieng & Anor v Attorney General of Uganda Appeal No. 4 of 2015{2015-2017} EACJR 509

awarded US\$1500 and UGX 1,435,000 respectively. Aggrieved by this decision, the Respondent lodged a Notice of Appeal on 21st February 2022. This was followed by a Memorandum of Appeal filed on the 2nd of March 2022.

[17] The Memorandum of Appeal listed 5 grounds of appeal. In the application now before us, we must determine whether the grounds of appeal are questions of law to be addressed by the Industrial Court, or matters of fact or mixed law and fact for which leave ought to have been sought before the filing of LDA No. 004 of 2022. To answer this question, it is imperative to employ the full text of the grounds. The grounds read as follows:

- (i) That the Labour Officer erred in law, when she misdirected her mind and came to the erroneous conclusion that the written contract of employment between the Appellant and the Respondent was orally varied.
- (ii) That the Labour Officer erred in law, when she misdirected her mind and came to erroneous conclusion that, the written contract of employment between the Appellant and Respondent could orally be varied by virtue Section 67 of the Contract Act 2010
- (iii) That the Labour Officer erred in law, when she failed to evaluate the evidence of the Respondent and thus coming to a wrong conclusion that by contract renewal letter dated 13th February 2015, it contained clear evidence that, the parties had a series of discussion that varied the contract
- (iv) That the Labour Officer erred in law, when she misdirected her mind and thus coming to erroneous conclusion that the Appellant had waived his right to demand for compensation resulting from currency fluctuation loss as he never demanded for the same for close to 5 years
- (v) That the labour officer erred in law, when she misdirected her mind and thus coming to erroneous conclusion that, the respondent had offered reasonable and sufficient repatriation payments of personal effect ignoring the market rates that had been provided by the Appellant.

[18] In our view, grounds 1, 2 and 3 of the Memorandum of Appeal relate to the Labour Officer's finding that a written contract was varied, orally. The question invites application, consideration, interpretation or interrogation of the provisions of Section 67 of the Contract Act 2010. The section provides that where any right, duty, or liability would rise under agreement or contract, it may be varied by the express agreement or by the course of dealing between the parties or by usage or custom if the usage or custom would bind both parties to the contract. The grounds (1-3) as framed are in our view, pointed to a matter of law or relate to a question of and application of the law. It was not a decision of a labour officer arrived at after an evaluation of the evidence presented by the

parties. We would hold that grounds 1, 2 and 3 relate to a point of law from which an appeal lies.

[19] In our view, grounds 4 and 5 relate to findings of fact by the Labour Officer. They are based on analysis and evaluation of evidence and are therefore mixed law and fact for which leave would be required. Ground 4 is specifically on the Labour Officer's finding on the Respondent not making a demand for compensation for fluctuation of currency. It is not a point of law but a finding on fact. Similarly, in arriving at the conclusion on Ground 5, the Labour Officer considered the market rate as presented by the Respondent versus what the Labour Officer considered reasonable. It was a clash of facts. The Respondent proposed US\$ 2800 for transport for household items and UGX 4,374,000 for transport for his family members. The Labour Officer found these to be unreasonable and awarded US\$ 1500 and UGX 1,435,000 respectively. In both these instances and borrowing from the test enunciated by the EACJ, Labour Officer is not faulted for (i) misapprehending or misapplying a pertinent law of the principle of law, (ii) misapprehending the nature, quality, and substance of the evidence or (iii) drawing wrong inferences from the proven facts. The Labour Officer's findings, were conclusions of fact. In the case of **Karahukayo & 4 Others vs. Continental Tobacco (U) Ltd**¹⁴, in considering an appeal, this Court did not accept grounds of appeal that purport to be of both fact and law. It would follow that Grounds 4 and 5 of the Memorandum of Appeal were filed without leave and are incompetent.¹⁵ Accordingly, we would strike out grounds 4 and 5 of the appeal.

[20] Before taking leave of this matter, we note that it would be important for parties seeking appellate relief before the Industrial Court to observe the rules relating to drafting grounds of appeal. The rules require a more measured approach to drafting grounds of appeal. In **Attorney General v Florence Baliraine**¹⁶ the Hon. Kenneth Kakuru. JJA (as he then was) was at a loss to ascertain a trial Judge's error in law or fact. His Lordship observed that grounds of appeal must concisely specify the points which are alleged to have been wrongly decided and struck out two general grounds for offending Rule 86(1) of the Court of Appeal Rules. This viewpoint was reechoed in some detail in the case of **Nyero Jema v Olweny Jacob & 4 Others**¹⁷ where Mubiru J found the two grounds of appeal to be too general and offending the provisions of Order 43 r (1) and (2) CPR, which require a Memorandum of Appeal to set forth concisely the grounds of the objection to the decision appealed against. Every memorandum of appeal is required to set forth, concisely and under distinct heads, the grounds of objection

¹⁴ Labour Dispute Appeal No. 15 of 2015

¹⁵ Dr. Sheikh Ahmed Kisuule v Greenland Bank(in liquidation) SCCA No 11 of 2010

¹⁶ C.A.C.A No. 79 of 2033

¹⁷ High Court Civil Appeal No. 0050 of 2018

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. We are of a similar persuasion that parties seeking appellate relief before this Court would be well advised to be more pointed in drafting their grounds of appeal against decisions of labour officers.

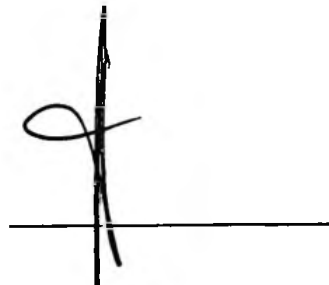
Orders of the Court

- (i) It is declared that grounds 4 and 5 of Labour Dispute Appeal No. 004 of 2022 are grounds of mixed law and fact filed without leave of this court. Accordingly, they are struck out.
- (ii) Labour Dispute Appeal No. 004 of 2022 shall be limited to grounds 1,2 and 3 as listed in the Memorandum of Appeal. To aid in expeditious disposal, the appeal shall be called immediately after this ruling for directions.
- (iii) As the application succeeds, only partially, there shall be no order as to costs.

Dated at Kampala this 24th day of March 2023

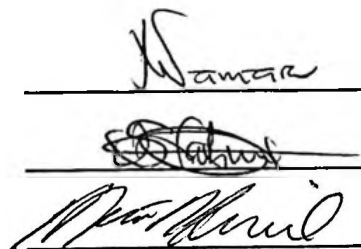
SIGNED BY:

ANTHONY WABWIRE MUSANA, Judge



THE PANELISTS AGREE:

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



Ruling delivered in open Court in the presence of:

- 1. Ms. Teopista Wakabahenda for Respondent.
 - 2. The Respondent is in Court.
- Court Clerk: **Ms. Matilda Nakibinge.**