THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
MISCELLANEOUS APPLICATION NO. 103 OF 2022
(Arising from Labour Dispute Reference No. 226 of 2019)

NAMULI GORETH ::APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY::::::::::::::::::::::::::::::::RESPONDENT

BEFORE:

THE HON. JUSTICE ANTHONY WABWIRE MUSANA:

PANELISTS:

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

RULING

Introduction

[1] On the 1st day of April 2022, the Industrial Court[1] declared that the Applicant was unlawfully terminated from employment by the Respondent. She was awarded UGX 20,000,000/= in general damages and UGX 22,423,918/= in severance pay. Aggrieved by this award, she contends that there is an error apparent on the face of the record, new evidence which could not have been

[1] Ntengye J. Head Judge, Panelists A. Namara, M. Matovu and S. Nabirye

adduced at the hearing has been discovered and that the award was entered without strict proof. For these reasons, she seeks a review of the award.

[2] The application was brought under Sections 9(5) and 17 of the Labour Disputes (Arbitration and Settlement) Act (As amended)(*from now LADASA*), Sections 82 and 98 of the Civil Procedure Act Cap. 71(*from now CPA*), Order 46 Rules 1(1), 2 and 8 of the Civil Procedure Rules S.I 71-1(*from now CPR*).

[3] The Applicant filed affidavits in support and rejoinder whose gist was that this Court mistakenly considered her 2005 monthly salary of UGX 1,319,054/= and not her subsequent and last monthly salaries at the time of termination. That in 2008, she was earning UGX 1,954,981/= per month and she was earning UGX 5,000,000/= per month at the time of her termination. That she only obtained proof of the salary of UGX 5,048,880/= after the conclusion of the hearing and delivery of the award. She prayed for reinstatement.

[4] The Respondent opposed the application. In the affidavit in reply sworn by Mr. Allan Nkoyoyo, it was deposed that the application was filed out of time, the Applicant's affidavit in support was tainted with falsehoods and fundamentally defective and out to be struck out. It was further deposed that there was no new material evidence and that any evidence of salary was in the applicant's possession. Any negligence in furnishing the same to the Court should be attributed to the Applicant. The Respondent also deposed that the application was a disguised appeal, brought in bad faith and an abuse of Court process. We invited the parties to address the Court by way of written submissions.

The Preliminary Points:

[5] We have dealt with the preliminary objection in respect of time in Miscellaneous Application No. 102 of 2022 Namuli Goreth vs Uganda Revenue Authority by which we validated the present application. It is therefore not necessary to reconsider the question of time limits in the present application.

[6] The Applicant also objected to the Respondent's locus on the ground that the Respondent had not filed an affidavit in Reply and that the application was therefore unopposed. The Court record bears an affidavit in Reply filed on the 2nd of November 2022. The objection is not consistent with the record and is accordingly overruled.

Submissions of the Applicant on the merits of the application

[7] The Applicant framed three issues for determination:

(i) Whether the award of Labour Dispute Reference No. 225 of 2019 should be reviewed in regard to severance allowance.

(ii) Whether the award of Labour Dispute Reference No. 225 of 2019 should be reviewed in regard to reinstatement.

(iii) Whether the costs of this Application should be awarded to the applicant.

[8] On issue (i) , it was submitted for the Applicant that the award on severance allowance should be reviewed on grounds of mistake or error apparent on the face of the record, discovery of new and important evidence and existence of sufficient reason. Citing Section 17 of LADASA, Section 82 of the CPA and Order 46 Rule 1 of the CPR, Counsel submitted that the error apparent on the face of the record related to the Court computing her severance pay on the basis of a lower monthly salary of UGX 1,319,054/= as opposed to UGX 1,951,981/= which was contained in her appointment letter dated 4th March 2008 which was admitted in evidence as Respondents Exhibit No.2.

[9] On issue (ii), it was submitted that the Applicant was unable to produce evidence of her monthly salary at the time of hearing the matter because she was not in possession of such evidence and could not access the same from the Respondent's office. It is now contained in Annexure E to her affidavit in Support which is the NSSF Statement showing a salary of UGX 5,048,880/=. It was submitted that she was able to obtain this evidence on the advice of her new Advocates after the date of the award. Her former Advocates had failed to plead her salary at the time of the trial. As such her severance pay would be UGX 85,830,960/=. It was suggested that this was discovery of new and important evidence.

[10] In respect of issue (iii), it was the Applicant's case that she had been exonerated by the Management Committee on 17th November 2016. Given that she was exonerated and later unlawfully terminated, it was just and fair that the Court reviews the award and reinstate her employment with the Respondent.

[11] The Applicant also sought costs of the application.

Submissions of the Respondent

[12] Citing Section 17(1) of the LADASA and Order 46 Rule 1 CPR, Counsel for the Respondent contended that the applicant had all the necessary material in her possession at the trial and could have applied for an order of discovery of documents necessary to compute her salary at the trial. The information on her current pay was available to her and she could have obtained her bank statements. Counsel cited the case of **Emma Obokullo v Walter Arnold LDMA 073 of 2016,** in support of the proposition that where the question is whether Court ought to have considered certain pieces of evidence requires arguments and is not an error apparent on the face of the record. In this regard, the inquest into whether the Trial judge and Panel should have considered the Applicant's pay slips or not does not constitute an error on the face of the record, but rather a question of re-examination of the evidence which is a matter to be handled by an Appellate Court. The Respondent contended that the Court considered the evidence and properly applied **Section 87 of the Employment Act, 2006** to the facts and the evidence. The Respondent held the view that the Applicant's request to the Court to review evidence amounted to an appeal. Counsel cited **Mukwano Industries vs Katushabe H.C.M.A 853 of 2019, Farm Inputs Care Centre Ltd v Klein Karoo Seeds Marketing(PTY) Ltd H.C.M.A No. 861 of 2021** and **Dona Kamuli v DFCU Bank Ltd** in support of the decision of the trial Court.

[13] In relation to issue 2 on reinstatement, the Respondent contended that it was only applicable in very rare circumstances where the relationship of trust between the applicant and respondent still exists and the duration between termination and resolution is recent. The Respondent cited the case of **Grace Tibihikira Makoko v Standard chartered Bank (U) Ltd LDR No. 315 of 2015** in support of this proposition. Counsel suggested that having been terminated on 18th May 2017, the environment did not support the Applicant's reinstatement. Counsel asked that the application for review be denied.

[14] Counsel sought costs of the application.

Submissions in rejoinder

[15] In rejoinder, it was submitted for the Applicant that annexure E containing a salary of **UGX 5,048,880** remained uncontroverted and therefore undisputed by the Respondent. Having awarded severance on a lower amount than was on record, Counsel for the Applicant countered that this court should review the award on the basis of the figure in Annexure E. In relation to reinstatement,

the Applicant was said to be well trained and suited to adapt in the event of reinstatement.

Analysis and Decision of the Court

[16] **The Law:**

Section 17 of the LADASA provides that where any question arises as to the interpretation of any award of the Industrial Court within twenty-one days from the effective date of the award or, where new and relevant facts concerning the dispute materialize, a party to the award may apply to the Industrial Court to review its decision on a question of interpretation or in light of the new facts. From this provision, it is discerned that an applicant seeking review under the LADASA must demonstrate;

(i) A question as to interpretation of an award and,
(ii) New and relevant facts concerning the dispute materialize.

[17] The provisions of Section 82 CPA and Order 46 CPR also set clear guidance on the grounds for review. The provisions are as follows;

Section 82 of the CPA provides that;

> *"Any person considering himself or herself aggrieved by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such an order on the decree or order as it thinks fit."*

Order 46 of the CPR provides;

"1. Application for review of judgment:-

(1) Any person considering himself or herself aggrieved;

a) *By a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or*
b) *By a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter of evidence which, after the exercise of due diligence, was not within his or her knowledge or could not be produced by him or her at the time when the decree was passed or the order made,*

or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him or her, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party, except where the ground of the appeal is common to the applicant and the appellant, or when, being respondent, he or she can present to the appellate Court the case on which he or she applies for the review."

[18] This Court has held that the provisions of the CPR are applicable to matters before the Industrial Court in instances where there is no specific procedure under the Industrial Court Rules. [2] Section 17 of the LADASA enacts very clearly the grounds for review of a decision of the Industrial Court and these are; **when a question as to interpretation of an award arises** or **where new and relevant facts concerning the dispute materialize.**

[19] According to the Black's Law Dictionary[3], interpretation is the art or process of discovering and ascertaining the meaning of a statute, will, contract, or other written document. It is to give meaning to a legal document. In the terms of Section 17 of LADASA, interpretation of an award would imply to derive or give effect and explain the expression of an award.

[20] In our view, new and relevant facts relate to facts that had not been brought to the attention of the Court at the time of the trial. Such facts must be relevant to the dispute at hand.

[21] It is our considered view that applications for review can be brought under the provisions of Section 17 of the LADASA without specific recourse to the CPA and CPR.

[22] In the case before us, the Applicant did not seek any interpretation of the award of the trial Court. This Court was not pointed at any matter that required any explanation.

[23] Similarly, this Court was not addressed in respect of new and relevant facts as set out in Section 17 of the LADASA. In terms of this provision, the

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[2] See Labour Dispute Miscellaneous Application No. 153 of 2022 Bugema Adventist Secondary School v Namuleme Erinah.
[3] Black's Law Dictionary 6th Edn Centennial Edition(1891-1991) West Publishing Co. St Paul, Minnesota at page 817

application would fail. For completeness, however, we will dispose of this question in our consideration of the application for review under the provisions of the CPR.

[24] The conditions for a grant of review under the CPR are well settled. Before the Court sets aside an award, order or decree, it must be satisfied that;

i) There has been a discovery of new and important matter of evidence which after the exercise of due diligence was not within the Applicant's knowledge or could not be produced by him/her at the time the decree was passed or the order made,

ii) There is some mistake or error apparent on the face of the record, or;

iii) For any other sufficient cause[4]. Musota .J (as then was) observed "*Regarding sufficient reason, this means a reason sufficient on grounds analogous to those in the rule*" [5]

[25] In the case before us, an award was entered on the 1st day of April 2022. The present Applicant was the Claimant in Labour Dispute Reference No. 226 of 2019. She considers himself aggrieved by the decision of the Industrial Court. The applicant would therefore be entitled to bring an application for review.

[26] It was submitted for the Applicant that the Court mistakenly calculated severance allowance on a monthly salary of UGX 1,319,054/=and not UGX 1,954,981/=. It is this that the Applicant equates to an error apparent on the face of the record. In defining an error apparent on the face of the record, the Supreme Court of Uganda [6] stated thus;

> *"...in order that an error may be a ground for review, it must be one apparent on the face of the record, that is, an evident error which does not require any extraneous matter to show its incorrectness. It must be an error so manifest and clear that no court would permit such an error to remain on the record. The error may be one of fact, but it is not limited to matters of fact, and includes error of law"*

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[4] See H.C.M.A NO.98/2005 **FX MUBUUKE VS UEB HIGH COURT MISC. APPLICATION NO. 98 OF 2005** and HCMA NO. 40/ 2007 **JOYCE L. KUSULAKWEGUYA VS. HAIDER SOMANI & ANOTHER See also** M.Ssekaana & S. Ssekaana Civil Procedure and Practice in Uganda 2nd Edn, Law Africa at page 452.

[5] See H.C.M.A NO. 497 of 2014 **KALOKOLA KALOLI VS NDUGA ROBERT** at page 5

[6] See the case of **EDISON KANYABWERA VS PASTORI TUMWEBAZE [2005]2, EA at P.86**

[27] The purpose of a review concerns itself with self-evident errors or omissions on the part of the Court and which are apparent on the face of the record. The award of the Court in Labour Dispute Reference No 226 of 2019 on the matter of severance pay at pages 6 and 7, is as follows:

> " *The Claimant having been unlawfully terminated and having been employed beyond 6 months is entitled to severance allowance in accordance with Section 87 of the Employment Act. As held in the case of Donna Kamuli v DFCU Bank LDC 02/2015 which was upheld in Bank of Uganda v Kibuuka & 4 others CACA281/2016 the claimant shall be entitled to a month's salary for every year worked. Although she claimed UGX 59,000,000/= there is no justification for this sum given that the last appointment on the record exhibited as C2 on page 17 of the claimant's trial bundle is of Officer II at a salary of 1,319,054/= per month. Accordingly, she will be paid 1,319,054 x 17 years =22,423,918/=*"

[28] It is very clear from this award that the Court was first of all, alive to the provisions of law relating to severance allowance. Secondly, the Court considered the appointments of the Applicant being the appointment of 10th April 2000 and the last appointment of 16th June 2005. The Court considered the evidence of the Claimant in arriving at its decision. The Applicant now makes the case that the Court should have considered the letter of appointment dated 4th March 2008 which was admitted as "RE2". The Applicant, as Claimant, in her witness statement in paragraph 4 stated testified that she was appointed as an officer in the customs department on 4th March 2008. She also submitted several internal memoranda of interdepartmental transfer. Under the law on review, a party brings an application for review on account of new evidence, some error or sufficient cause. In the present case, the Applicant appears to suggest an error in that the Court failed to evaluate the evidence as opposed to a self-evident error on the face of the record. In this regard, we would agree with the Respondent's submissions that this is a disguised appeal. In our view, the failure to evaluate the evidence forms a ground of appeal as opposed to a ground for review. We are fortified in this view by the decision in the **H.C.M.A NO.624-2018-Tyakuma E v Safina Matovu** where Kawesa J citing Malla – the Code of Civil Procedure (18 Ed) Vol. 1 page 1146 posited that there is a clear distinction between an erroneous decision and an error apparent on the face of the record. The first can be corrected by a higher forum; the latter can only be corrected by the exercise of the review jurisdiction. Only a manifest error would be aground for review. His Lordship, borrowed the reasoning in **AG & Ors versus Boniface Bayina HCMA NO.**

1789 of 2000 entering **Levi Outa versus Uganda Transport Company (1995) HCB 340** for the dictum *"that the expression mistake or apparent on the face of the record refers to an evident error which does not require extraneous matter to show its incorrectness. It is an error so manifest and clear that no Court would permit such an error to remain on the record it may be an error of law, but the law must be definite and capable of ascertainment*". In the present case, we find that there is no error or mistake apparent on the face of the record.

[29] The second limb of the application is that there was discovery of a new and important matter of evidence. To succeed in an application for review under this ground, the applicant must prove that the new and important matter or evidence was not within his or her knowledge or could not be produced by him or her at the time when the decree was passed. The Applicant must also demonstrate sufficient evidence of due diligence in getting all the evidence available. [7] At paragraph 5 of her affidavit in support of the application, the Applicant deposed that she verbally informed her lawyers that as Supervisor Intelligence, she was earning UGX 5,000,000 per month but her lawyers did not communicate that to Court. At paragraph 7 she deposes that she could not access the Respondent's premises to obtain documentary proof of her last salary. She also averred that her bank statement could not show the exact monthly salary due to the Respondent's internal deductions. We think that the Respondent does not make a demonstrable case for proper due diligence in obtaining the evidence of her last salary for several reasons. First, the Applicant would have had ample aid of the provisions of the law in respect of discovery and production of evidence to compel the Respondent to deliver evidence of her work record, appointments and last salary. The import of the discovery procedure is to produce fairness, openness and equality in the justice process. [8] Under Order 10 of the CPR, there are procedures for interrogatories, discovery, and inspection of documents and penalties for non-compliance with such orders.

[30] Under Section 8 (2a) (b) of the LADASA, the Industrial Court has the powers to order the discovery, inspection, or production of documents. From the record, there is no such evidence of an application for documents relating to the Applicant's last salary, if indeed it were the case that she had been denied access to the Respondent's premises. There also was no application for production of written particulars as stipulated under Section 59 of the Employment Act, 2006 which makes it mandatory for an employer written

[7] Bancroft and Another v City Council of Nairobi[1971] 1 EA 151 cited M.Ssekaana and Sn Seekaana(Op cit) page 453
[8] M. Ssekaana and SN Ssekaana(Op cit) Page 306.

particulars of employment which include wages and other entitlements. Due diligence would have required this kind of industry. We do not think the Applicant exercised the necessary due diligence in this regard.

[31] It was suggested to us that the Respondent's submissions at the trial prove that the Respondent could not produce evidence of her last monthly gross salary of UGX 5,048,880/= during the trial because she was not in possession of the same and it could not be accessed from the Respondent's office. It was submitted that the Respondent acted in bad faith and dishonestly refused to produce this evidence. We do not find this to be a very well-grounded argument. The affidavit in Support of the application does not demonstrate any bad faith on the part of the Respondent. Such bad faith could only be imputed on the Respondent had it not complied with a notice to inspect or order for discovery of documents. To this extent, we are not satisfied that there has been a discovery of a new and important matter of evidence in that the Applicant was earning UGX 5,048,880/=.

[32] It was also submitted that the Applicant's bank statement would not have explained her last salary as the Respondent made some internal deductions. We do not think this to be accurate. The Bank Statements were not attached to the Applicant's pleadings at the trial nor were they produced in evidence. Obtaining the said bank statements would have the same impediments as accessing the Respondent's premises. It is not very plausible, in our view, that the Applicant was unable to access her bank statements. The same were not attached to the present application to enable this Court to appreciate the Applicant's predicament, if any.

[33] The final argument for the Applicant is that she obtained her NSSF statement on the advice of her new Counsel, and after the Court's award. In effect, the Applicant wished this Court to believe that there was a mistake of Counsel. NSSF statements are obtained from the Social Security Fund Offices or online using the NSSFGo App of via mobile telephone using a Unstructured Supplementary Data Services(USSD)[9] The Applicant has not demonstrated that she attempted any of these methods. We also think that it would not be appropriate to try the matters dealing with salary in the NSSF statement in these proceedings whether they are controverted or not. We therefore agree with Counsel for the Respondent's submission citing the case of **Mukwano Industries vs Katushabe H.C.M.A 853 of 2019** where the case of **Capt Phillip Ongom v Catherine Nero Owota S.C.C.A No. 14 of 2001** was cited with approval. In that case it was held that it would be absurd or ridiculous

[9] Source *https://www.nssfug.org/self-service/nssfgo/last accessed 12.3.2023.10.10am*

that every time an advocate takes a wrong step, thereby losing a case, his client would seek to be exonerated, that the Applicant has not satisfied the ground for discovery of new and important evidence. We are not satisfied that the Applicant has met the threshold for a grant of the order for review.

[34] In the result, this application fails and is dismissed. We have suggested a rationale for the award of costs in employment disputes. Costs would not ordinarily follow the event in a labour dispute unless there is some form of misconduct on the part of the losing party[10]. We find no such misconduct and therefore, there shall be no order as to costs.

Dated at Kampala this 17th **day of March 2023**

SIGNED BY:
ANTHONY WABWIRE MUSANA, Judge

THE PANELISTS AGREE;

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

Ruling delivered in open Court in the presence of:

1. Mr. Zephaniah Zimbe for the Applicant.

2. The Applicant is in Court.

Court Clerk: Mr. Samuel Mukiza.

[10] LDR 109 of 2020 Joseph Kalule v GIZ (Unreported)