



THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE CLAIM NO. 75 OF 2023
(Arising from KCCA LABOUR DISPUTE NO. 081 of 2017)

NDHEGO PAUL :.....CLAIMANT

VERSUS

POSTBANK UGANDA LTD:.....RESPONDENT

Before:

The Hon. Mr. Justice Anthony Wabwire Musana,

Panelists:

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

Representations:

1. Mr. Ivan Wanume of M/s. Naafi & Wanume Advocates for the Claimant.
2. Mr. Juma Omollo of M/s. Arcadia Advocates for the Respondent.

RULING

Introduction

- [1] When this matter came up for a pre-session hearing on the 28th of September 2023, Mr. Omollo rose, on a preliminary point of law, arguing that there is a pending appeal (*Labour Dispute Appeal No. 008 of 2020*), which renders this suit (*claim*) illegal based on the provisions of Section 6 of the Civil Procedure Act Cap.71 (*from now CPA*). Learned Counsel contended that the 1st Labour Officer who handled and decided the matter was *functus officio*. Therefore, the reference generated by the Labour Officer was without jurisdiction, is a nullity, and incapable of originating a claim.
- [2] In reply, Mr. Wanume submitted that the reference emanates from the award of the Labour Officer on the claim for damages and not a letter of reference. He

submitted that there was no competent appeal before the Court. Mr. Wanume argued that an appeal is commenced through a notice of appeal by Section 79 CPA. The record of proceedings was made available on the 27th of February 2023, and there is no proper appeal five months later. Relying on the decision of this Court in **Autotune v Barozi Swaldo LDMA 92/2022**, where this Court struck out an appeal that was filed out of time, Mr. Wanume prayed that LDA No. 008 of 2020 be struck out, and the Court resolves the reference.

- [3] In rejoinder, Mr. Omollo submitted that there was a claim for damages in the memorandum of claim (*from now "MOC"*). Specifically, and in paragraphs 11 (a) to (i) of the MOC, there were claims for aggravated damages, repatriation, costs, money from a pension scheme, long service award, the outstanding loan sum, and for salary to be paid from the date of termination to the date of retirement. It was his view that this claim was null and void. Counsel also submitted that the question of damages had not been referred to this Court but that the entire claim had been referred to this Court. Counsel also submitted that it was not true that an appeal must be commenced by a notice of appeal. Rule 24(5) of the Industrial Court Procedure Rules provided for the commencement of an appeal in the 5th Schedule to the Rule. The reliance on the CPR was not tenable, and the Autotune case was inapplicable. It was suggested that by letter dated 3. 05. 2022, the Registrar of this Court made note of the Appeal and that there was no communication from the Court that the record of proceedings was ready. It was Counsel's view that the claim was suspect and should be dismissed.

Analysis and decision of the Court

- [4] Following the arguments of Counsel, this Court must address whether Labour Dispute Reference No. 75 of 2023 and Labour Dispute Appeal No. 008 of 2020 are properly before it. For these purposes, the procedural history of KCCA Labour Dispute No. 081 of 2019, leading up to the reference and appeal, would be essential.

Labour Dispute Reference No. 75 Of 2023

- [5] It is common to both parties that on the 7th day of April 2017, the Claimant lodged a complaint of unfair termination with the Commissioner of Labour, Industrial Relations and Productivity at the Ministry of Gender, Labour and Social Development. Following a hearing and filing of written submissions on the 28th day of February 2020, Mr. Mukiza Emmanuel Rubasha, Labour Officer, found that the Claimant had been unfairly terminated. In a thirteen-page award, Mr. Mukiza awarded the Claimant four weeks wages of UGX 6,071,057/= for violation of Section 66 of the Employment Act, 2006 (*from now EA*), UGX 42,497,399/= as severance allowance, UGX 6,071,057/= as basic



compensatory order, UGX 18,213,171/= as additional compensation and UGX 6,071,057/= as payment in lieu of notice. In respect of the prayer for damages, the Labour Officer observed that:

"Having found that the claimant was unlawfully terminated and given the claimant's prayer that the issue of damages is referred to the Industrial Court, I refer the same to the Court for determination. In any case, the power of the Labour Officer to determine labour disputes is only limited to awarding statutory remedies and damages is not one of them."

- [6] On the 7th day of July 2020, M/s. Musangala & Co. Advocates extracted a decree. By letter dated 24th April 2023, the Registrar of this Court required Mr. Wilson Jingo, Labour Officer at Nakawa, to provide the Lower Court Record for Complaint No. KCCA/CEN/LC/081/2017 following the filing of Labour Dispute Reference No. 075 of 2023. By a letter dated 26th April 2023, Mr. Jingo forwarded the Lower Court Record. On the 4th day of May 2023, M/s. Naafi, Wanume Advocates, filed a Memorandum of Claim on behalf of the Claimant. A notice of claim was issued under the hand of the Registrar of this Court on the same day.
- [7] The law for filing a reference before this Court is quite precise. First, under **Section 13(1)(a) EA**, a Labour Officer to whom a complaint is reported has the power to investigate the complaint, settle or attempt to settle the complaint by way of conciliation, arbitration or adjudication, or such other procedure as he or she thinks fit. The Court of Appeal¹ expressed the view that conciliation or mediation would lead to a settlement agreeable to the parties. In contrast, arbitration or adjudication would lead to an award or decision.²
- [8] Where a decision or award has been rendered, under **Regulation 8(3) of the Employment Regulations, 2011 (from now ER)**, a Labour Officer is entitled to refer a matter to the Industrial Court if he or she thinks a substantial question of law has arisen³. The regulations further provide that upon completion of the hearing proceedings, a Labour Officer shall make an order binding on both parties and state the reasons for his or her decisions on the complaint.
- [9] From the procedural history of this matter, the Labour Officer rendered his award on the 28th of February 2020 and expressly referred the issue of damages to this Court. The Labour Officer also declined to award costs and salary arrears as he did not have jurisdiction to grant them. We have reproduced the said reference in paragraph 5 above. In our view, the labour officer was cognizant

¹ C.A.C.A No. 167/2018 Engineer Eric Mugenyi Vs Uganda Electricity Generation Co Ltd

² LDR 062 Of 2020 Scovia Kyomuhendo V Ndejje University

³ Ibid.

and mindful of his jurisdiction and, therefore, correctly referred the issue of damages to this Court in the body of the award. He did not have the jurisdiction to award damages and correctly declined to make any award on any damages. We are fortified in this view by the decision of the Industrial Court in **Netis Uganda v Charles Walakira**,⁴ where the Court was of the considered opinion that if the Labour Officer considers the compensation deserved by the dismissed employee is beyond what he or she is empowered to give under **section 78EA**, he or she has the option to refer the issue to this Court.⁵ We find that the reference for damages in Labour Dispute Reference No. 75 of 2023 is properly before this Court.

- [10] The only question is whether the Claimant sought more than what was referred to this Court. A review of the MOC shows that the Claimant is seeking multiple remedies, including claims for aggravated damages, repatriation, costs, and money from a pension scheme, long service award, the remaining loan sum, and for salary to be paid from the date of termination to the date of retirement. Whether these claims are sustainable is the subject of the reference and would not be appropriately dealt with at this stage of the proceedings.

Labour Dispute Appeal No. 008 Of 2020

- [11] Following the award on the 28th of February 2020, on the 11th day of March 2020, the Respondent lodged a notice of appeal in this Court. The Registrar of this Court endorsed the same on the same day. By letter dated 3rd July 2020, the Registrar of this Court sought the Lower Court Record from the Labour Officer. In a letter dated the 23rd of October 2020, M/s. Arcadia Advocates, acting for the Respondent, referred to their letters dated the 4th of March 2020 and 14th of July 2020, seeking a certified copy of the award and proceedings to enable them to prepare the Appeal. There were further letters dated 22nd April 2021 voicing the Respondent's frustration at being unable to obtain a copy of the record of proceedings. On 25th February 2022, Counsel for the Claimant suggested that the Respondent was not interested in pursuing the appeal. By a letter dated the 3rd of May 2022, Mr. James Lwanga, Manager of Employment Management and Team Leader, KCCA Labour Officers, informed the Registrar of this Court of the missing record in following Mr. Mukiza's transfer from the labour office. By letter dated the 8th of July 2022, the Registrar of this Court referred the parties to the Commissioner of Labour to follow up on the missing record.
- [12] Finally, by a letter dated 21st March 2023, Ms. Hilda Nakagga forwarded the lower file to the Registrar of this Court. There was no indication of any record of proceedings or award. By letter dated the 2nd of August 2023, Counsel for the

⁴ LD No. 22 of 2016

⁵ See also Jessica Namayanja Kissekwa v St Raphael of St Francis Hospital LDA No. 019 of 2015 and Action Aid Uganda v David Tibekinga LDA No. 028 of 2016

Respondent indicated that they had now received information that the record was now available. They asked the Registrar of this Court to avail a certified copy of the record to enable a prosecution of the appeal.

- [13] It is against this history that Mr. Wanume suggests a defective appeal.
- [14] Under Section 94(4) EA, the Minister is mandated to make provision for the form that an appeal to this Court may take. This form, under Regulation 45ER, provides that a person aggrieved by a decision of a Labour Officer may, within thirty days, give notice of appeal to the Industrial Court in the form prescribed in the Seventeenth Schedule. The prescribed form reads as follows:

Regulation 45(1)

THE EMPLOYMENT ACT 2006 ACT NO. 6 OF 2006
(Section 94 of the Act)

Date

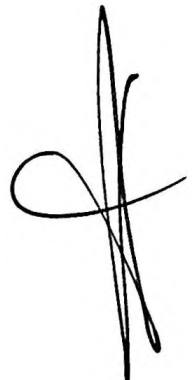
To: THE REGISTRAR
INDUSTRIAL COURT

APPEAL TO THE INDUSTRIAL COURT

In accordance with the provisions of Section 94 of the Employment Act, 2006 Act No. 6 of 2006 and Employment Regulations, 2011 an appeal is hereby made against the decision taken by the Labour Officer concerning.....on 2011 at

The matter was discussed and investigated in accordance with the procedure laid down in the law. Notwithstanding, we are dissatisfied with the final decision taken by the Labour Officer the grounds for appeal are—

- 1.....
- 2.....
- 3.....
- 4.....



We therefore notify the Court in accordance with the provisions of Section 94 of the Act that this matter be brought before the Court for appeal.

*Name and Signature.....
Employer or Worker*


*GABRIEL OPIO,
Minister of Gender, Labour and Social Development"*

- [15] The filing of an appeal before this Court, therefore, is commenced, as correctly pointed out by Mr. Omollo, by a notice of appeal. From the record, the Claimant filed the notice of appeal on the 11th day of March 2020. The notice did not contain any grounds of appeal. The notice was well within the 30 days provided under Regulation 41(1) ER.
- [16] The form in the seventeenth schedule provides a listing of the grounds of appeal. The notice of appeal filed by the Respondent did not list any grounds of appeal. It follows, therefore, that our observation in **Autotune Engineering v Barozi Swaldo**⁶ that where there is a lacuna in the rules, the procedure under the CPA and CPR is adopted may not apply to the present case because there is a specific provision of the Industrial Court Rules on procedure of appeals. Mr. Omollo's argument that CPR is not tenable would be acceptable to the extent that there is a specific procedure for commencing appeals from the decision of a Labour Officer to the Industrial Court. The procedure of commencing an appeal is by way of filing a notice of appeal containing the grounds of appeal as provided under Regulation 45(1) ER.
- [17] Under Regulation 45(2) ER, within 14 days of receipt of the notice of appeal, the Registrar of this Court is required to ask the Labour Officer to furnish the Industrial Court and the parties involved with the hearing proceedings and the decision of the labour officer. As noted in the procedural history of this matter, the Registrar of this Court wrote to the Labour Officer seeking the Lower Court Record on the 3rd of July 2020, some two months after the notice of appeal had been filed. Between March 2020 and April 2021, Counsel for the Respondent wrote several letters seeking the record of proceedings. On the 8th of July 2022, the Registrar of this Court referred the parties to the Commissioner of Labour to follow up on the missing record. On 21st March 2023, Ms. Hilda Nakagga forwarded the file to the Registrar of this Court. There was no indication of any record of proceedings or award in that file. On the 2nd of August 2023, Counsel

⁶ Autotune v Barozi Swaldo & Ors Labour Dispute Miscellaneous Application No. 92 of 2022

for the Respondent indicated that they had received information that the record was now available and asked the Registrar of this Court to avail a certified copy of the record to enable prosecution of the appeal. Under this sub-regulation, it was incumbent upon the Labour Officer to furnish the Respondent with the record of appeal. The record does not indicate that the Respondent has received a record of proceedings to date.

- [18] Under Regulation 45(3) ER, the Labour Officer must present the information in sub-regulation (2) within twenty-one days after being required to submit the same. From the procedural history of this matter and the appeal file, the Lower Court Record was not forwarded to the Registrar of the Court in respect of the appeal. It is, however, evident that the Lower Court Record in respect of the reference was sent under a cover letter dated 26th April 2023 by Mr. Wilson Jingo. This was well over three years after Mr. Mukiza had made an award. The delay would not be attributable to either party.
- [19] In our view, the provisions of Regulation 45ER are unambiguous. An appeal is commenced by a notice of appeal, which lists the grounds of appeal. A memorandum of appeal would, therefore, not be the primary document of an appeal, as is the case with the commencement of an appeal under Order 43(1) CPR. The Respondent filed a notice of appeal in time but did not list the grounds of appeal. Counsel made the point in their various letters of the need to obtain the record of proceedings to enable them to prosecute the appeal. An appeal to the High Court is completed by filing a memorandum of appeal within 30 days. While it has been customary for the Industrial Court to admit a memorandum of appeal, it would be sufficient, in our view, for a party to commence their appeal by way of the notice of appeal listing the grounds of appeal as per the seventeenth schedule ER. Therefore, it is our finding that the Respondent complied with Regulation 45 but, for no fault of its own, could not obtain the record of proceedings to prosecute the appeal.
- [20] We think that the circumstances of this case require the intervention and exercise of discretion in the matter. The provision of Regulation 45 places the responsibility of obtaining the record of proceedings on the Registrar of this Court. The Labour Officer must also notify the parties of the proceedings and furnish them with a copy of the decision. In the present case, proceedings were not available for over three years after the decision of Mr. Mukiza Rubasha. This delay cannot be attributed to any inadvertence or negligence of the Respondent.
- [21] Under Section 79(1)(b) CPA, the appellate Court may, for good cause, admit an appeal though the prescribed limitation period has elapsed. We think it proper that this Court exercises discretion towards enabling the Respondent to



prosecute the appeal. We are fortified in adopting this approach by two decisions of the High Court in similar matters: First, in **Otim William v Akwanu Silver**⁷, the Honourable Dr. Justice H. P. Adonyo found illness to be sufficient cause for reinstating a dismissed appeal. Secondly, in **China Civil Engineering Corporation Ltd v Bubera General Construction Ltd**,⁸ where the Respondent had commenced an appeal by way of a notice of appeal and filed a memorandum of appeal without leave, the Honourable Mr. Justice Musa Ssekaana observed that the High Court, under section 79 (1) (b) CPA has the discretion to invoke its power for good cause, to admit the appeal though the period of limitation prescribed elapsed and that the Respondent should demonstrate good cause which must relate and include the factors which caused inability to file the appeal within the prescribed period of 30 days.

- [22] In the matter before us, the delays cannot be attributable to the Respondent. Therefore, exercising our discretion under Rule 6 of the Industrial Court Procedure Rules, time is extended for the Respondent to file a notice of appeal listing the grounds of appeal. The Respondent (*the Respondent in Labour Dispute Appeal No.008 of 2020*) is directed to file a completed notice of appeal listing the grounds of appeal within 21 days from the date of this ruling. The same shall be filed and served on the Claimant together with a record of appeal as the lower record is now available in the files before this Court.

Final Disposition

- [23] Both Counsel sought a dismissal of either case. Mr. Wanume sought a dismissal of the appeal, while Mr. Omollo sought a striking out of the MOC. Having found that these matters were properly filed before this Court, the provisions of Section 6 CPA would become applicable. The Section provides as follows:

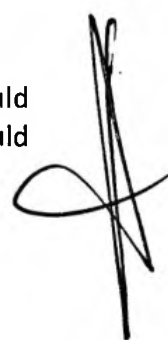
"6. Stay of the suit.

No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where that suit or proceeding is pending in the same or any other court having jurisdiction in Uganda to grant the relief claimed."

To avoid the possibility of two conflicting decisions, we determine that it would be more practicable to dispose of the appeal first because its disposal would

⁷ H.C.M.A No. 35 of 2022

⁸ H.C.C. Appeal No. 23 of 2020



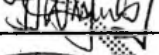


either confirm or vary⁹ the award of the Labour Officer from which the appeal emanates. The outcome of the appeal would determine the direction of the reference. In the circumstances, we direct the hearing and disposal of LDA No. 008 of 2020 and order that the proceedings in LDR 75 of 2023 be stayed pending the final determination of the appeal. There shall be no order as to costs in keeping with the default rule. There are no exceptional circumstances of misconduct that would warrant an order of costs.

Signed in Chambers at Kampala this 2nd day of November, 2023.



Anthony Wabwire Musana,
Judge, Industrial Court

The Panelists Agree:

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

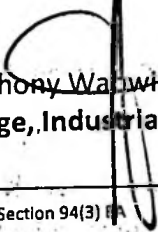
2nd November 2023

Appearances:

- 1. Mr. Ivan Wanume for the Claimant.
 - 2. Claimant in Court.
 - 3. Mr. Brian Kambaho for the Respondent:
- Court Clerk: Mr. Christopher Lwebuga.

Mr. Ivan Wanume: Matter for ruling, and we are ready to receive it.

Court: Ruling delivered in open Court.


Anthony Wabwire Musana,
Judge, Industrial Court

⁹ See Section 94(3)

