



THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT MBALE
LABOUR DISPUTE REFERENCE NO. 01 of 2021
(ARISING FROM LD No.001/2021)

OPIO JOHN EMMANUEL :: CLAIMANT

v

TESO CO-OPERATIVE :: RESPONDENT

Before:

The Hon. Head Judge. Linda Lillian Tumusiime Mugisha

Panelists:

1. Hon. Charles Wacha Angulo,
2. Hon. Harriet Mugambwa Nganzi &
3. Hon. Rose Gidongo.

Representation:

1. Mr. Daniel Okalebo of M/s. Okurut, Okalebo, Outeke & Co. Advocates for the Claimant.
2. Mr. Simon Opolot holding brief for Mr. Samuel Isodo of M/s. Isodo & Co. Advocates for the Respondent.

RULING

Background

- [1] The Respondent is a cooperative Union registered under the laws of Uganda. It is an independent organisation, with a mission to encourage better farming, particularly in improving farming methods and land utilisation. It is based in Soroti.

The Cooperative Union employs staff to carry out its operations and manages them in accordance with its Human Resources Manual and Bye-laws.

- [2] The Respondent employed the Claimant as its Production and Marketing Officer from 18/08/2019 to 31/07/2022. However, he was terminated before the expiry of his contract. He brought a claim against the Respondent for unlawful termination. At the pre-session hearing on 16/05/2024, Counsel for the Respondent informed Court that the Respondent intended to raise a Preliminary Point of Law and the Claimant was aware of the same. Court directed the parties to prepare for oral submissions on 18/06/2024. On 18/06/2024, both Counsel made oral submissions on the point of law hence this ruling.

Submissions

- [3] Mr. Opolot counsel for the Respondent raised a point of law to the effect that this matter was incompetent before this court because it arose from a claim under Section 55 of the Teso Cooperatives Union Byelaws, which provides that any dispute arising out of the byelaws or business of the union which cannot be settled by the committee or the General meeting shall be referred to an arbitrator or arbitrators as provided under section 73 of the Co-operatives Act. According to him, the Claimant did not file his matter before an Arbitrator as provided under section 73 of the Cooperatives Act (supra) therefore it was premature before this court. He relied on *Dr. Kagoro Kaijamurubi v Jeremy John Graham*, CS No. 48 of 2021, on page 14, for the legal proposition that where arbitration is provided for, parties need not file suits except where the arbitrator decides the matter. He contended that the Claimant was an employee of the Union, therefore his dispute ought to have been filed before the Arbitrator, before being brought to this court, which was not the case.
- [4] In response, Mr. Okalebo Counsel for the Claimant, submitted that Order 9 rule 3(1) of the Civil Procedure Rules(CPR), provides that, when challenging the jurisdiction of the Court, an applicant must give notice of 15 days of his or her intention to seek court's leave to declare that it has no jurisdiction over the subject matter of the Claim before it, and should follow the procedure laid down under sub rule 2 of rule 3 and that the application shall be by chamber summons. He contended that there was no evidence that the Respondent filed an application challenging the jurisdiction of this court to handle this matter as

provided under Order 9 rule 3 and Order 9 rule 3(6) provides that failure to do follow the procedure meant that the party concedes to the jurisdiction of the Court.

[5] He further argued that the Respondent filed a written statement of defense which is still on court record and there is no application challenging jurisdiction. Therefore, considering Order 9 rule 3(supra), the Respondent is estopped from challenging Jurisdiction. He relied on *Anywar Charles & 4 others v Gulu University*, CS No. 16 /2022, for the same legal proposition.

[6] It was further his submission that, Section 73 did not apply to the Claimant's case because he is not a member of the cooperative Union and as such it was cited out of context. He insisted that although the section provided for "Officer", it was not defined. According to Counsel, the fact the Labour Disputes (Arbitration and Settlement) Act provides for mediation and conciliation, this was within the ambit of what was required under the Cooperatives Act and the Union Bye laws. In any case when the matter was filed before the Labour officer for settlement/mediation, the Respondents refused to avail themselves of the procedure, because according to them it was being done under the wrong forum. He contended that had the Respondent intended to conciliate under another forum, they should have stated so or protested jurisdiction earlier, but they did not do so. Therefore, having refused to mediate before the Labour officer, the Respondent had locked herself outside of the mediation proceedings and cannot come now to dispute the jurisdiction of this court.

[6] He further argued that in any case, this matter arises out of a Labour Dispute which was referred to this court after it was properly filed before the Labour Office, in accordance with the law. In the circumstances court should find that the application lacks merit and it should be dismissed.

[7] In rejoinder, Mr. Opolot insisted that the Claimant did not invoke the statutory requirements provided by law and even if the matter was before the Labour officer, there is nothing on the record to indicate that it was referred for arbitration first or that there were any disagreements with any arbitrator before it was referred to this court. In any case, a point of law can be raised at any time before, during, before and after the trial and in its response the Respondent indicated that it would raise a point of law at the hearing. He prayed that Court finds that the application no merit.



Decision of Court

The issue in contention is *whether this court has jurisdiction to determine a claim which should have been resolved by arbitration.*

- [8] It is trite that a Court adjudicating a dispute must be dressed with jurisdiction to do so. Although the jurisdiction of a Court of law, is not ousted easily or fleetingly, where it is established that the law does not confer it with Jurisdiction, to handle a matter before it, there is no alternative but to halt the proceedings. (See *Ozzu Brothers Enterprises v Ayikoru Milka*, Civil Revision No.002 of 2016).
- [9] It is also true that persons have the freedom to contract and in so doing the parties to the contract determine their rights and obligations under the contract. Therefore a contract of employment contains rights and obligations that are established by the parties themselves. Although these rights, obligations, and other aspects of the employment relationship may vary depending on the employee's status in the organisation or by collective bargaining agreements or changes in the Human resources policies, these variations must be agreed by the parties to the contract. In *Giorgio Zenegalia v Sari Consulting Ltd*, LDR No. 229 of 2019, this Court stated that in interpreting a written contract, courts have to take into consideration the intention of the parties at the time the contract was signed as well as the law prevailing at the time the contract was made, as well as the law prevailing at the time it is being interpreted by court.
- [9] It is not in dispute that the claimant in the instant case was an employee of the Respondent Cooperative Union which is registered under and governed by the Cooperative Societies Act Cap 112. It is also not in dispute that he executed a contract of employment with the Respondent Cooperative Union. It is also an agreed fact that the Respondent Cooperative Union is registered under the Cooperative Societies Act and it has its own Bye-laws.
- The Respondent contends that, whereas Section 73 of the Cooperative Societies Act provides that where any dispute touching the business of a registered society arises, in certain circumstances, it shall be referred to an arbitrator, the Claimant in the instant case did not do so, therefore the matter was improperly before this Court and it should be dismissed. We had an opportunity to consider the Section which provides for the circumstances where a matter must be referred to an Arbitrator as follows:

"...

- a) Among members, past members and persons claiming through members, past members and deceased members;
- b) Between a member, past member or person claiming through a member, past member or any officer or past officer of the society.
- c) Between the society or its committee and any officer or past officer of the society or
- d) Between the society and any other registered society, the dispute shall be referred to an arbitrator for decision.

Therefore, the claimant being an employee fell with the category that would require referral to the Arbitrator.

- [10] Counsel for the Claimant refuted the assertion that the Preliminary objection had merit, on the grounds that Section 73 did not apply to the Claimant because he was an employee and not an officer and the term "officer" was not defined under the Act.

We had an opportunity to peruse the Act and established that contrary to this assertion, Section 2 of the Act defines "Officer" to include ".....a chairperson, secretary, treasurer, member of a committee, employee(emphasis added) or other person empowered under any regulations made under this act or the byelaws of a registered society to give directions regarding the business of a registered society."

- [11] He further argued that the Preliminary Objection should be rejected on grounds that the Respondent/Applicant had not followed the correct procedure as provided under Order 9 rule 3 of the Civil Procedure Rules and *Anywar Charles and 4 Others v Gulu University* HCCS No 16 of 2022, which we found distinguishable with the instant case because whereas his lordship Philip Odoki was of the considered view that indeed the applicant, who sought to oust the jurisdiction of the Court having not proceeded in accordance with Order 9 rule 3, was estopped from objecting about jurisdiction, he went ahead and resolved the merits of the Preliminary point of law.

- [12] It is trite that Article 126 2 (e) enjoins Courts in the interest of justice to resolve substance rather than form. In the circumstances we are enjoined to pronounce ourselves on the jurisdiction of this court regarding this matter, considering Section 73 of the Cooperative Societies Act, clause 55 of the Respondent's

byelaws and Section 6 of the Labour Disputes (Arbitration and Settlement Act) (LADASA). Section 6 of the LADASA explicitly provides that:

"...where there are any arrangements for settlement by conciliation or arbitration in a trade or industry, between a Labour union and one or more employers, or between one or more employers' organizations, the Labour officer shall not refer the matter to the Industrial Court but shall ensure the parties follow the procedure for settling the dispute laid out in the conciliation or arbitration agreement, which may apply to the dispute.

- [13] Section 73 of the Cooperative Societies Act makes it mandatory for a dispute to be referred to an arbitrator for a decision, where among other circumstances, it arises between the Society and any officer, who includes an employee.

In addition, Clause 55 of the Respondent byelaws provides that:

"Any disputes out of these byelaws or the business of the Union which cannot be settled by the committee, or the General Meeting, shall be referred to an Arbitrator or Arbitrators as provided under Section 72 of the Statute."

The citation of the wrong Section, notwithstanding, it is clear that the gist of this clause is in line with Section 73 of the Cooperatives Societies Act, as cited by Counsel for the Respondent.

- [14] It was Mr. Okalebo's submission that when the matter was placed before the Labour officer for conciliation, the Respondent insisted that it would only get involved if it was placed before the correct forum. This left no doubt in our minds that the Respondent from the onset brought it to the attention of the Labour officer, that his office was not the correct forum, but the Labour Officer insisted on handling the matter instead of referring it for arbitration as provided for under section 6 of the LADASA (supra).

- [15] We also established that Section 73 (8) of the Cooperatives Act provides that, the provisions of the Arbitration and Conciliation Act (ACA), apply to such disputes, to the extent it is not inconsistent with the Act and to an arbitration under the Act. In the circumstances, considering the wording of section 6 of the LADASA (supra), Section 73 of the Cooperative Societies Act and Clause 55 of the Respondent's bye-laws, Section 5(1) of the ACA would apply to the circumstances of this case. Section 5(1) provides that:

" A Judge or magistrate before whom proceedings are being brought in a matter which is the subject of an arbitration agreement, shall if a party so applies after filing of a statement of defense and both parties having been given a hearing, refer the matter back to the arbitration unless he or she finds (a) that the arbitration agreement is null and void, inoperative or incapable of being performed; or b) that there is not in fact any dispute between the parties with regard to the matters agreed to be referred to arbitration."

- [16] It is not in dispute that the Claimant/Respondent in the instant case, was an employee of the Respondent, as its Production and Marketing Officer from 18/08/2019 to 31/07/2022 and that he was terminated before the expiry of his contract. He brought a claim against the Respondent for unlawful termination. Therefore, the dispute arises out of his employment relationship with the Respondent/Applicant, under the contract of employment, in which he submitted to the procedures for resolving such disputes as provided for under clause 55 of the Respondent's byelaws and Section 73 of the Cooperative Societies Act under which the Respondent is registered. As already discussed, it is the position of the law under Section 6 of the LADASA that where such a matter is before the Labour officer it should not be referred to the IC but to the Arbitrator.
- [17] It is also glaring clear that the Labour Officer entertained the Complaint before him in total disregard to section 6 of the LADASA, and yet the terms of the contract of employment enjoined him to abide by the dispute and settlement procedures as agreed by the parties under the contract. In this case he did not refer the dispute for arbitration yet the contract indicated that it should be as provided under under Section 73 of the Cooperatives Societies Act and Clause 55 of the Respondent's bye-laws.
- [18] In the circumstances, we conclude that the preliminary objection that this Court lacks jurisdiction to entertain, hear, and determine the instant case, because it is the subject of an arbitration agreement, has merit.

Orders of Court:

1. The matter is referred for arbitration as provided for under section 73 of the Cooperative Societies Act, clause 55 of the Respondent's bye-laws and Section 6 of the LADASA.

2. Labour Dispute Reference No. 01 of 2021 is dismissed for being improperly and premature before this court.
3. No order as to costs is made.

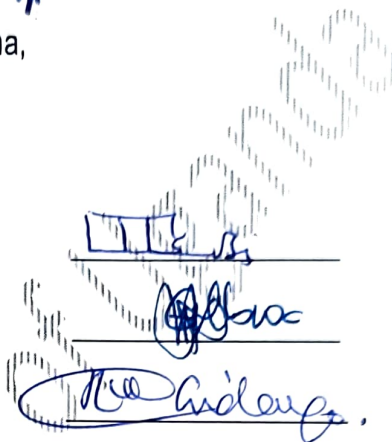
Signed in Chambers at Mbale this **25th** day of **June 2024**.



Hon. Justice Linda Lillian Tumusiime Mugisha,
Ag. Head Judge

The Panelists Agree:

1. Hon. Charles Wacha Angulo,
2. Hon. Harriet Nганzi Mugambwa &
3. Ms. Rose Gidongo.



25th June 2024
9:30 am

Appearances

1. For the Claimant: - Mr. Okalebo Daniel.
2. None for the Respondent.
3. Court Clerk: - Mr. Christopher Lwebuga.

Delivered and signed by:



Hon. Justice Linda Lillian Tumusiime Mugisha,
Ag. Head Judge, Industrial Court