

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

(Coram: Mugamba, Buteera, Muhanguzi, Tuhaise, Chibita, JJSC)

CIVIL APPLICATION NO. 29 OF 2019

5 DFCU BANK LTD:..... APPLICANT

VERSUS

DONNA KAMULI:..... RESPONDENT

(Arising from Supreme Court Civil Appeal No. 01 of 2019)

RULING OF THE COURT

10 DFCU Bank Ltd, the applicant, instituted this application by a Notice of Motion under rules 78, 42 (1) and 42 (1), 43 of the Judicature (Supreme Court Rules) Directions and Section 6 of the Judicature Act Cap. 13 for orders that: -

15 (1) The Notice of appeal arising out of Court of Appeal Civil Appeal No. 121 of 2016 DFCU Bank Ltd. V Donna Kamuli filed in this court be struck out.

(2)The costs of and incidental to this application be provided.

20 The notice of motion is supported by an affidavit which was sworn on 25th November 2019 by Isaac Mpanga, a legal officer of the applicant, which states as follows: -

"I, Isaac Mpanga of C/o Mpanga Advocates, 4th floor, DFCU Towers, Plot 26 Kyadondo Road Nakasero, P.O Box 1520, Kampala hereby take oath and state:

25 *1. That, I am a male adult Ugandan of sound mind, a legal officer of the applicant and who is very well conversant with the matter herein and depone this affidavit in that capacity and in support of the notice of motion.*

30

2. *That, the respondent instituted a labour reference No. 2 of 2015 Donna Kamuli v DFCU Bank (arising from MGLSD 274 of 2015) against the applicant in the industrial court. A copy of the memorandum of claim is attached herewith marked "A".*

35

3. *That, the industrial court determined the matter in favour of the respondent. The applicant was aggrieved with the award and appealed to the Court of Appeal Vide Civil Appeal No. 121 of 2016. A copy of a memorandum of appeal is attached and marked "B".*

40

4. *That, the court of appeal on 30th of October 2019 rendered judgment in Civil Appeal No. 121 of 2016 arising from Labour Dispute Claim No. 002 of 2015 in favour of the applicant. A copy of the decree is attached herewith marked "C".*

5. *That, on the same day 30th of October 2019, the respondent lodged a notice of appeal against the decision of the Court of Appeal. A copy of the notice is attached herewith and marked "D".*

45

6. *That, I am advised by the applicant's lawyer, M/s AF Mpanga Advocates, which advice I verily believe to be true that the notice of appeal should be struck for the following reasons;*

50

a) *An appeal is a creature of statute and there is no statutory provision that provides for a right of appeal against decisions of the court of appeal exercising its appellate jurisdiction over awards of the industrial court.*

b) *As a result, there is therefore no right of appeal against decisions of court of appeal exercising its appellate jurisdiction over awards of the industrial court.*

55

7. *That, I depone this affidavit in support of the application that the notice of appeal should be struck out and whatever is stated herein is true and correct to the best of my knowledge and belief save for information and advice which is stated herein above to be revealed to me by the sources named."*

60 The application was opposed by the respondent, Donna Kamuli, who
swore an affidavit in reply on the 17th day of March 2020 stating as
follows: -

65 *"I, Donna Kamuli of C/o Shonubi Musoke & Co. Advocates, SM Chambers,
Plot 14 Hannington Road, P.O Box 3213, Kampala, Uganda do solemnly
swear and state as follows: -*

1. *That I am a female adult Ugandan of sound mind.*
2. *That I am the respondent in the above application and the appellant in
civil appeal no. 01 of 2020. I am therefore well versed with the facts
pertaining to this matter and swear this affidavit in that capacity.*
- 70 3. *That I with the assistance of my lawyers, M/s Shonubi Musoke & Co.
Advocates have perused the contents of the application filed in this
court on the 26th November 2019 and the supporting affidavit. I
respond as follows;*
- 75 4. *That paragraphs 1 and 2 are noted. That in further response to
paragraph 2, following failed mediation before the labour officer, the
commissioner for labour referred the claim to the industrial court for
further management. A copy of the reference is attached hereto and
marked Annexure "A".*
5. *That paragraphs 3-5 are noted.*
- 80 6. *That the contents of paragraph 6 are denied in their entirety and the
applicant shall be put to strict proof to the contrary. That in specific
response thereto, I am advised by my lawyers of the following:*
 - a) *That the right of appeal from the decisions of the Court of Appeal to
the Supreme Court is provided for under the general legislative
85 framework right from the Constitution of the Republic of Uganda;*
 - b) *That there is no impediment in the applicable set of laws to deter an
aggrieved person such as the respondent from seeking relief in the
supreme court;*
 - c) *That in the absence of such express prohibition, the right of further
90 appeal is of right and guided by the legislative framework in place.*

d) *That the applicant in fact lodged a notice of cross appeal in respect of the respondent's appeal, Annexure "B".*

95 e) *That the above notwithstanding and strictly without prejudice to the above, the respondent seeks leave of court to pursue an appeal from the decision of the court of appeal to the supreme court.*

7. *That I swear this affidavit in reply in opposition to the application that the notice of appeal should be struck out and all the reliefs sought therein.*

100 8. *That whatever I have stated herein above is true and correct to the best of my knowledge and belief, save for the paragraphs whose sources I have disclosed therein."*

Background.

105 The brief Background to this application as gathered from the court records available inclusive of the affidavits filed in this application are as follows:

The respondent instituted a memorandum of claim against the applicant in the Industrial Court of Uganda for a declaration that her termination and/or dismissal by the applicant was wrongful/unfair/or unlawful.

110 In this respect she sought orders for payment of: -

(i) Damages being compensation for the wrongful/unfair and/or unlawful termination.

(ii) All overtime hours worked by the respondent while she was in the employment of the applicant.

115 (iii) All terminal dues owed to the respondent following the wrongful/unfair and/or unlawful termination including the entire contribution in the provident fund as at the time of termination, and

(iv) Severance allowance;

- 120 (v) General damages for inconvenience, mental torture, emotional
unrest, punitive damages for the high-handed manner in which
her termination was conducted;
- (vi) Interest at the commercial rate from the date of filing until
payment of the decretal sum in full; and
- 125 (vii) Costs of the suit.

The Industrial Court determined the matter in favour of the
respondent. Being dissatisfied with that decision, the applicant filed
Civil Appeal No. 121 of 2016 to the Court of Appeal seeking an order
that the judgment of the Industrial Court be set aside and costs of
130 the appeal and the court below be paid by the respondent. The
Court of Appeal determined the appeal in the applicant's favour and
set aside the judgment of the Industrial Court. The respondent
thereupon filed a Notice of Appeal to this Court. The applicant filed
this application seeking an order to strike out the Notice of Appeal
135 filed by the respondent in Civil Appeal No. 1 of 2020 which sought to
challenge the judgment of the Court of Appeal.

Representation.

When this application was called for hearing, Mr. Peters Musoke,
Mrs. Bridget Sendi and Mr. Nicholas Mwasame appeared for the
140 respondent while Mr. Brian Kalule represented the applicant. Both
parties were not in court.

Submissions for the applicant.

Counsel submitted that a right of appeal is a creature of statute as
was held in **Attorney General Vs. Shah (1971) EA 50**. He also relied
145 on Article 132 (2) of the Constitution and Section 6 of the Judicature
Act Cap.13 that prescribes the appellate jurisdiction of this court.
Counsel argued that the notice of appeal lodged by the respondent
does not fall within the two limbs of section 6 of the Judicature Act.

Further he submitted that the appeal to the Court of Appeal was
150 neither a matter originating from the judgment of the High Court nor
a matter from the Court of a Magistrate Grade one or a Chief
Magistrate. In support of this argument, counsel relied on
**Constitutional Petition No 33 of 2016, Justice Asaph Ruhinda
Ntengye & Anor Vs. Attorney General**, where court confirmed the
155 hierarchy of courts under Article 129 of the Constitution to be the (a)
Supreme Court, (b) Court of Appeal, (c) High Court and (d) such
subordinate courts that Parliament may by law establish and that the
Industrial Court is such subordinate court.

Counsel argued that there is no other law prescribing appeals to the
160 Supreme Court from the Court of Appeal and the argument by the
respondent, that the right of appeal is prescribed by the Constitution
and other laws, has no basis because apart from the Judicature Act
there is no other law that provides the right of appeal to this court.

In support of the argument that the respondent does not have a
165 right of appeal, counsel relied on **Babcon Uganda Limited Vs. Mbale
Resort Hotel Ltd, SCCA No. 6 of 2012; Housing Finance Ltd. Vs.
Uganda Revenue Authority, CACA No. 22 of 2012; Baku Raphael
Obudra & Obiga Kania Vs. Attorney General, SCCA No. 1 of 2005
and George Kasedde Mukasa & Ors Vs. Holiday Hotel Ltd. & Ors,**
170 **CACA No. 93 of 2019.** He prayed court to allow the application and
strike out the Notice of Appeal and Civil Appeal No 1 of 2020 (Donna
Kamuli Vs. DFCU Bank Ltd.) with costs.

Submissions for the Respondent.

Counsel submitted that the Industrial Court has concurrent
175 jurisdiction with the High Court when handling employment matters
and that as such a right of appeal lies as of right. He submitted that
the Industrial Court is established by Article 129 (d) of the
Constitution and Section 7 (1) of the Labour Dispute (Arbitration and
Settlement) Act, 2006. He argued that in **Justice Asaph Ruhinda**

180 **Ntengye & Justice Linda L. Tumusiime Mugisha Vs. Attorney
General Constitutional Petition No. 33 of 2016**, the Constitutional
Court held that: -

185 *“The Industrial Court is one of the courts of Judicature as per Article
129 of the Constitution. Furthermore, Section 16 (1) of the Labour
Dispute (Arbitration and Settlement) Act 2006 provides that: “an
award or decision of the Industrial Court shall be enforceable in the
same way as a decision in a civil matter in the High Court”.*

Counsel further submitted that Articles 132 (1) & (2) of the
Constitution and Sections 4 & 6 of the Judicature Act, Cap. 13
190 stipulate that the Supreme Court shall be the final court of appeal
and that an appeal shall lie to this Court from such decisions of the
Court of Appeal. He argued that the appeal to the Court of Appeal
was a first appeal and Appeal No.01 of 2020 to this court is a second
appeal from the decision of the Industrial Court in exercise of its
195 original jurisdiction as in all matters comparative to the High Court.

Counsel submitted that unless it is expressly provided by law, an
order made by the High Court is appealable. In support of this
argument, counsel relied on **Makula International Ltd Vs. Cardinal
Nsubuga & Anor CACA, No. 4 of 1981** and **Pius Nuwagaba Vs. Law
200 Development Centre, Civil Appeal No. 03 of 2006** and further
pointed out that there is no provision that expressly excludes/bars
the right of appeal in employment matters to this court.

It was further submitted for the respondent that the intention of the
legislature under Section 22 of the Labour Dispute (Arbitration and
205 Settlement) Act (LADASA) was not to bar appeals to this court
because if it intended to do so, it would have expressly provided for
it in the same section as in the case under section 14 (3) of the
Parliamentary Elections (Amendment) Act 2010. Counsel relied on
Pepper Vs. Hart (1993) 1 AllER 42 at Pg. 50 where Lord Bridge held
210 that: -

215 *“The object of the court in interpreting legislation is to give effect so far as the language permits to the legislature. The days have long passed when the courts adopted a strict constructionist view of interpretation which required them to adopt the literal meaning of the language. The courts now adopt the purpose approach which seeks to give effect to the true purpose of legislation and are prepared to look at much extraneous material that bears on the background against which the legislation was enacted”.*

220 Counsel referred to **NPART Vs. Kapeeka Coffee Ltd & Anor, SCCA No. 8 of 2001**, where this court entertained an appeal from the decision of the Court of Appeal sitting as the first appellate court from the decision of a Tribunal, yet Section 15 of Non-Performing Assets Recovery Trust Act, provides that: -

225 *“An appeal from the decision of NPART Tribunal lies before the Court of Appeal”.*

230 In counsel’s view, the case bears similarity to the Labour Dispute (Arbitration and Settlement) Act because the Non-Performing Assets Recovery Trust Act does not expressly make reference to the right to lodge an appeal with this court where a party is dissatisfied with the decision of the Court of Appeal. Counsel asked court to dismiss the application with costs to the respondent but that if court finds that the respondent does not have the right of appeal, it should nevertheless grant leave to the respondent to appeal to this court.

235 In rejoinder, counsel for the applicant relied on **Quinn Vs. Leatham [1901] AC 495,506** where it was stated that a case is only authority for what it actually decides. He argued that the case of NPART cannot be relied on since the question of right of appeal was not raised. He reiterated his earlier prayers.

Consideration of the application by Court.

240 We have perused the records and considered the submissions by both counsel. We have also read a number of authorities from this

court on the right of appeal particularly those cited by both learned counsel. What runs through all these authorities is the fact that the law and the principles in this area (right of appeal) is well settled.

245 The law governing applications for striking out a Notice of Appeal for a particular reason is set out in Rule 78 of the Rules of this court which reads as follows:

250 *“A person on whom a notice of appeal has been served may at any time, either before or after the institution of the appeal, apply to the court to strike out the notice or the appeal, as the case may be, on the ground that no appeal lies or that some essential step in the proceedings has not been taken or has not been taken within the prescribed time.”*

255 In summary, an applicant must satisfy one or two and/or all the three grounds mentioned in the above rule to justify the striking out of an appeal/Notice of appeal, namely: -

1. That no appeal lies
2. That some essential step in the proceedings has not been taken
3. That some essential step in the proceedings has not been taken
260 within the prescribed time.

265 In this case, the applicant filed this application on the ground that no appeal lies as of right to this court. A number of cases determined by this court have laboured to explain the principle of right of appeal some of which were filed by both counsel. We shall rely on them in this application.

In **Baku Raphael Obudra & Anor Vs. Attorney General, Supreme Court Constitutional Appeal No. 1 of 2005**, Odoki CJ (as he then was) held: -

270 *“It is trite law that there is no such a thing as inherent appellate jurisdiction. Appellate jurisdiction must be specifically created by law. It cannot be inferred or implied.”*

The relevant law that prescribes appeals to this court is Article 132 of the Constitution. It reads: -

“132. Jurisdiction of the Supreme Court

275 ***(1) The Supreme Court shall be the final Court of Appeal.***

(2) An appeal shall lie to the Supreme Court from such decisions of the Court of Appeal as may be prescribed by law.”

280 The prescribed law enacted by Parliament under Article 132 (2) of the Constitution is the Labour Dispute (Arbitration and Settlement) Act 2006 which provides for appeals from the Industrial Court under section 22. It stipulates as follows: -

“22. Appeals from the Industrial Court.

285 ***An appeal shall lie from a decision of the Industrial Court to the Court of Appeal only on a point of law, or to determine whether the Industrial Court had jurisdiction over the matter”.***

In our understanding, this section does not specifically provide appellate jurisdiction to this court from the decision of the Court of Appeal in exercise of its appellate jurisdiction in matters arising from the Industrial Court. We agree with the observations of Tsekooko, JSC (as he then was) in **Baku Raphael (Supra)**, when he stated that: -

290 ***“If Parliament intended at the time that this court should hear election petition appeals from the decisions of the Court of Appeal, Parliament would have surely included it here and not make a passing reference in Article 40. There is no provision for further appeal”.***

295 Similarly, in this case, Parliament did not intend to confer appellate jurisdiction to this court in matters originating from the Industrial Court.


300 A right of appeal is a creature of statute (See: **Zubeda Mohamed & Anor Vs. Wallia & Anor, Supreme Court Civil Reference No. 07 of 2016**). Therefore, an appellant must appeal under a specified provision of the law. Counsel for the respondent argued that the

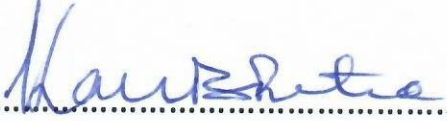
Industrial Court has a concurrent jurisdiction with the High Court and therefore, the respondent has a right to appeal to this court. We do not agree with this argument because of the fact that the Industrial
305 Court has concurrent jurisdiction with the High Court, does not *ipso facto* make the Court a High Court.

Further, we agree with the submission of the applicant's counsel that the case of **NPART Vs. Kapeeka Coffee Ltd & Anor (supra)** is distinguishable from this one because the issue of whether the
310 appellant had a right of appeal to this court was not raised for court's determination and court did not pronounce itself on it.

We therefore find that the respondent has no right of appeal in this matter. We accordingly allow this application with costs to the applicant. The notice of appeal in Civil Appeal No. 01 of 2020 is
315 hereby struck out.

Dated at Kampala this.....7th..... day of.....December.....2020.


.....
320 **PAUL MUGAMBA**
JUSTICE OF THE SUPREME COURT


.....
325 **RICHARD BUTEERA**
JUSTICE OF THE SUPREME COURT

330



.....
EZEKIEL MUHANGUZI

335 JUSTICE OF THE SUPREME COURT



.....
NIGHT PERCY TUHAISE

340 JUSTICE OF THE SUPREME COURT



.....
MIKE CHIBITA

345 JUSTICE OF THE SUPREME COURT