

5

THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA AT KAMPALA

CORAM: MWONDHA, TIBATEMWA-EKIRIKUBINZA, CHIBITA, MUSOKE, MADRAMA; JJSC

10 **CIVIL APPEAL NO 7 OF 2019**

BETWEEN


UGANDA RAILWAYS CORPORATION APPELLANT

AND

EKWARU D. O. AND 1330 (5104) OTHERS RESPONDENT

15 *(Appeal arising from the judgment of the Court of Appeal at Kampala Civil suit No 23 of 2007 before Owiny- Dollo, DCJ, Kakuru, and Musota JJA delivered on the 17th April, 2019)*

20 **JUDGMENT OF MWONDHA, JSC**

I have had the benefit of reading in draft the judgment of my learned brother Chibita JSC. I concur with his analysis, reasoning and decision that the appeal is allowed and the proposed orders made. 

25 I will add that the decision of the Court of Appeal cannot be sustained for the following reasons:-

(1) The Court determination of this appeal depended entirely on what law was applicable to the facts of the case and the issue of when the cause of action arose.

30 It is clear from the Record of Appeal and in particular the plaint. Paragraph 5(b) states as follows:- “ on various dates from the year 1986 to the year 2004 the plaintiff and those they represent were retrenched, made redundant or had their services unlawfully terminated by the defendant (now appellant).

35

5 The plaint clearly states in paragraph 2 as follows:- “The defendant is a
Scheduled Corporation established by the Uganda Railways Corporation Act
[Cap331] ... In my view for the purposes and intents the Uganda Railways
Corporation Act is the law applicable not the Limitation Act S.3(I). The
Limitation Act is a general law and its object is provided as, “An Act to
10 provide for the limitations of certain actions and arbitrations and for matter
incidental thereto and connect there with.”

It is trite law that the general law cannot be applicable when there is a
specific law. It is the specific Act and regulations made under it by the Act
15 or Board under which the respondents were recruited. The general Law can
only be turned to, if the specific Act is silent which was not the case in this
case. The Board adopted the Public Service Regulations but the adoption of
the regulations did not turn the employees into Public Servants as envisaged
in the Public Service Act.

20 (2) On the issue of S.52 of Uganda Railways Corporation Act being
discriminatory which was not the case, it was not the duty of the Court of
Appeal to pronounce itself on such when discrimination was not pleaded in
the plaint. The Court of Appeal pronouncement amounted to amending the
25 pleadings.

If S.52 of the Act was unconstitutional, the remedy was in filing a
Constitutional Petition to declare the provision unconstitutional by the
respondents.

30 (3) On the point of law on the limitation, the point law raised by the
appellants Counsel touched on the foundation of the suit/appeal. It drew
the attention of Court to the illegality in as far as jurisdiction is concerned.
Definitely the Courts below were not seized with the jurisdiction to hear the
35 suit and the eventual appeal.

5 It is trite law that proceedings undertaken by a Court without jurisdiction
are a nullity/null and void. See **Punjab v. Davinder Singh Bhullar and
others 2012 Cr L T Supreme Court of India (decision on 7 December,
2011)** cited with approval in the **SCCA No 18 of 2017 Mohamed
Mohamed Hamid v. Roko Construction**. The position laid down is that if
10 a judgment has been pronounced without jurisdiction, the inherent powers
(under rule 2(2)) of this Court Rules) can be exercised to recall such an order
for reasons that in such an eventuality the order becomes a nullity... In
such an eventuality the judgment is manifestly contrary to the audi alteram
partem rule of Natural Justice.

15

(4) On the issue of increased number of respondents from 1330 to 5104, I
find the submissions of the learned Counsel for the respondents' baffling.
He submitted that the 3771 respondents' names were already listed as Ex
P1 which was an attachment to the pleadings and so failure to add them on
20 the 1330 was inconsequential. In the plaint paragraph 3(a) at page 159 of
the Record of Appeal stated, "the plaintiffs bring claim on their own behalf
and on behalf of 1330 former employees of the defendant's Corporation
whose names are listed in the schedule referred to in paragraph 3(b) below.

25 Paragraph 3(b) below states, "this honourable Court has in **Miscellaneous
Application No135 of 2004** permitted the plaintiff to file a representative
suit against the defendant on their own behalf and on behalf of the said
1330 former employees. A photocopy of the said respective order to which
the said schedule is annexed and marked annexure "A" Emphasis is mine

30

Paragraph 4 of the Plaint stated:- The plaintiffs claim against the respondent
is for a declaration that the plaintiffs for themselves and 1330 others. They
represent being former employees of the defendant are entitled to ..."

35 Counsel for the respondent submitted that the 3771 were already listed on
Ex PI which was attached on the pleadings.

5

There is such a sharp contradiction and inconsistency in learned Counsel's submissions which bring out darkness surrounding the dispute. If the respondents were already there the plaint could not be consistently refereeing to 1330 employees and the 4 employees who filed the application for the representative suit. The additional employees were irregularly added without any amendment.

Or 6 rule 7 of the Civil Procedure rules forbids departure from previous pleadings. It provides:-

15 **"No pleading shall not being a petition or application except by way of amendment raise any new ground of claim or contain any allegation of fact consistent with the previous pleadings of the party pleading that pleading."** This rule was affirmed in the cases also of **Jamir Properties Ltd versus Dar-es-salaam City Council [1966] EA. 281** and **Struggle Ltd v. Pan African] Insurance Co. Ltd [1990] All 46 at page 47.**

20 The Court stated, **"the parties in Civil matters are bound by what they say in their pleadings which have the potential for forming the record narrower, the Court also is bound by what the parties have stated in the pleadings as to the facts relied on by them. No party can be allowed to depart from the pleadings."**

It is apparent that other respondents (3771) added as Counsel for the respondent submitted were not added or included in accordance with the law.

30

There was no way the omission not to amend would be curable without amendment of the plaint. It is clear that Court of Appeal erred in law and fact in their decision.

The Appeal would be allowed and the Cross Appeal dismissed in its entirety with no order as to costs as proposed in the lead judgment of Chibita JSC.

5 **Decision of the Court**

Since three of the Justices on Coram concurred with my learned brother Chibita JSC judgment, and two Justices partially concurred and partially dissented.

10 Accordingly by majority decision of 3 Justices concurring, the appeal is allowed in the terms proposed in the lead judgment of Chibita JSC.

Dated at Kampala this6th..... day ofDecember..... 2023

15

20

.....*Mwondha*.....
Mwondha
JUSTICE OF THE SUPREME COURT