

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

MISC. APPLICATION NO. 638 OF 2014

UGANDA BROADCASTING CORPORATION ::::::::::: APPLICANT

VERSUS

RUTHURA AGABA KAMUKAMA ::::::::::: RESPONDENT

BEFORE: HON. JUSTICE STEPHEN MUSOTA

RULING

The applicant Uganda Broadcasting Corporation (UBC) brought this application by Chamber Summons under Order 9 rule 3 sub rule 1 (g) and (2) of the Civil Procedure Rules and Section 93 of the Employment Act as well as Section 98 of the Civil Procedure Act for orders that:

1. The court has no jurisdiction of the applicant/defendant in respect of the subject matter of the claim and relief or remedy sought in Civil Suit 268 of 2012.
2. The claim in Civil Suit No. 268 of 2012 as against the applicant/defendant be struck out with costs.
3. Costs of the application be provided for.

The Chamber Summons was supported by the affidavit of Thomas Ochaya an advocate of the High Court working with M/S Kiwanuka & Karugire Advocates counsel for the applicant. Mr. Ochaya deponed that:

1. The respondent in the main suit complains that she was victimized and discriminated for having performed her duties illegally reduced in rank without just cause and hearing and was unlawfully terminated by the applicant.
2. That this court has no jurisdiction over the applicant/defendant in respect of the subject matter of claim and the relief or remedy sought in Civil Suit 401 of 2014.
3. The only remedy available to the respondents/plaintiffs is by way of complaint to the Labour officer.
4. Only the Labour officer has jurisdiction to hear and determine a complaint by a person alleging that any party to the agreement is in breach of the obligation owed under the employment act.
5. In case a party is aggrieved by the decision of the Labour officer, the aggrieved party has an option to appeal to the Industrial Court under the Employment Act.
6. The remedies sought by the respondent/plaintiff in the main suit are provided for under the Employment Act and the jurisdiction to grant those remedies lies with the Labour Officer and Industrial Court on appeal.
7. That any orders made by this court in the main suit shall be null and void.

In the respondent's affidavit in reply sworn on 20th February 2015, she opposed the application and deponed:

- (i) That this court has wider powers and unlimited jurisdiction granted by the 1995 Constitution to hear and determine a claim.
- (ii) This court's orders can never be issued in vain as it has original unlimited powers to grant remedies to all litigants to the claim of this nature.
- (iii) The prayers sought are purely meant to avoid determination of the matters in controversy between the applicant and the respondent and to ensure this court never gets an opportunity to call the applicant's high handed and bullish conduct to order.

At the hearing of this application, the applicant was represented by Mr. Elton Mugabi and the respondent by Mr. Simon Tendo Kabenge who made oral submissions in support of their respective cases.

In his submissions, Mr. Elton Mugabi reiterated the grounds in support of the Motion. He argued that the constitution does not operate in isolation since the same parliament enacted the Employment Act, it was aware of the constitution.

Learned counsel further submitted that Section 93 of the Employment Act had the effect of varying the constitution as regards the jurisdiction of the High Court in employment matters and the said Section is not in contravention of Article 139 of the constitution as it simply added to it as regards jurisdiction of the High Court. Finally that the Employment Act was not enacted in vain.

In reply, Mr. Tendo Kabenge maintained the opposition to the application and submitted that the application is incompetent for being served out of time. That Order 12 rule 3 (2) of the Civil Procedure Rules provides that service of interlocutory applications to the opposite party has to be made fifteen days from the date of filing yet this application was filed on 18th December 2014 but only served on 9th February 2015. That even if the court followed the case of **Hussein Bada Vs Iganga District Land Board**. Since the application was issued on 20th January 2015, the days expired on 7th February 2015. Learned counsel further submitted that Article 139 (1) of the constitution is not amendable by an Act of Parliament. That the only way jurisdiction can be removed or limited or varied is by the Constitution itself. It was his submission that Section 93 conflicts with Article 139 of the Constitution and so far as it limits the unlimited jurisdiction of the High Court to hear employment matters as a court of first instance. That this court has powers to handle employment disputes and the applicant is only avoiding proceeding with the matter.

Mr. Tendo Kabenge further contended that Section 93 of the Employment Act applies where there is an infringement of any of the rights planted under the Act i.e under Sections 51 and 61. That the respondents' complaint is not about rights under the Employment Act and does not constitute the complaints listed in the Act and as such Section 93 would still not apply to the suit before court.

In rejoinder, Mr. Elton Mugabi learned counsel for the applicants submitted that the application was signed on 20th January 2015 and fixed and that the days started running when the application was signed. Further that 7th February 2015 was a Saturday and service could not be effected. Further that the respondent filed a reply so they will not be prejudiced if the application is considered.

Regarding the Supreme Court case of **201 Employees Of G4S Security (U) Ltd Vs G4S (U) Ltd SCCA No.18 Of 2010**. Learned counsel submitted that its facts are distinguishable from the instant case. That in the instant case the Industrial Court is functional and in existence. That the circumstances then were that if Section 93 was exercised, there would be no right of appeal. That since the Industrial Court is functional then Section 93 does not contravene the Constitution.

I have considered the application as a whole and the submissions by respective counsel. I will start with the issue raised by learned counsel for the respondent that the application was served onto them after the expiry of fifteen days within which service should have been made. Whereas I agree with learned counsel that fifteen days prescribed by the rules expired on 7th February 2015 and the application was served on the 16th February 2015 out of time, the respondents were not prejudiced in any way since the respondents replied to the application. It would be unjust to deny the applicants the right to be heard when there is no evidence of prejudice to the respondents caused by the late service. In the interest of justice I will decide this application on its merits.

Regarding whether this court has jurisdiction to entertain the respondent's grievances, I agree with the submissions by learned counsel for the respondent that this court has unlimited original jurisdiction in all causes. However, this position of the law was not meant to deny lower courts and quasi judicial forum the mandate to adjudicate over matters which the different legislations empower them to do. For easy access to justice and proximity to the public it is reasonable and is court policy that causes should be instituted in the lowest mandated forum possible before resort is had to the High Court to avoid unnecessary expenses.

It is trite law that jurisdiction of the High Court is exercised in conformity with a written law as provided in the Judicature Act. Therefore by parliament enacting other subordinate legislation conferring jurisdiction to different forum to adjudicate over disputes does not in any way diminish the fact that the High Court has unlimited jurisdiction.

Section 93(1) of the Employment Act 2006 provides that:-

“Except where the contrary is expressly provided for by this or any other Act, the only remedy available to a person who claims an infringement of any of the rights granted under this Act shall be by way of complaint to a Labour Officer”.

Section 94 of the same Act provides for appeals as follows:

- 1. “A party who is dissatisfied with a decision of the Labour Officer on a complaint made under this Act may appeal to the Industrial Court in accordance with the section.***
- 2. An appeal under this section shall lie on the question of law and with leave of the Industrial Court on the question of fact forming part of the decision of the Labour Officer”.***

The import of these provisions is not that this court has no jurisdiction to entertain the respondent's claim. This is because the Constitution of Uganda confers unlimited jurisdiction on the high court in all matters as provided in article 139 (1) of the constitution. Section 93 of the Employment Act which gives jurisdiction to the Labour Officer does not in any way oust the unlimited original jurisdiction of the High Court.

This is the position enunciated in the case of *M/s Rabo Enterprises (U) Ltd and M/s Elgon Hardware Ltd Vs Commissioner General Uganda Revenue Authority CA No. 51 of 2003* wherein the lead judgment of Okello J. A (as he then was) held *inter alia* that:

“An Act of Parliament cannot oust the jurisdiction of the High Court except by an amendment of the Constitution”.

In the same way, the conferment of the appellate jurisdiction on to the Industrial Court does not in any way affect the original jurisdiction of the High Court. The same applies to the conferment of jurisdiction on the Labour Officer in regard to Labour disputes by the Employment Act.

Much as this court has unlimited jurisdiction if one looks at the intention of parliament in conferring jurisdiction on the Labour officer and the creation and operationalisation of the Industrial Court with appellate jurisdiction it would be prudent if these two institutions are put to good use. This is our current court policy. Avoiding these institutions would be defeating the intentions of the legislature since the Industrial Court is now operational. I find it proper to refer this matter to the Labour Officer for appropriate handling.

Consequently I will order that the respondent’s claim be referred to the Kampala District Labour Officer for redress. Each party shall meet its own costs.

Stephen Musota

J U D G E

24.08.2015