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THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

(CORAM: ODOKI, C.J., TSEKOOKO, KITUMBA, TUMWESIGYE, KISAAKYE, JJ.S.C.)

CIVIL APPEAL NO.18 OF 2010

BETWEEN

201 FORMER EMPLOYEES OF G4S

SECURITY SERVICES UGANDA LTD.
(Excluding those who withdrew their complaints) ……APPELLANTS

AND
G4S SECURITY SERVICES UGANDALTD::::::::::::::::::::::::::RESPONDENTS

[Appeal arising from the Judgment of the Court 0f Appeal at Kampala (Mpagi-Bahigeine, D.C.J., Byamugisha and Kavuma, JJ.A.) dated 29 July, 2010 in Civil Appeal No. 680/2009J.

JUDGMENT OF DR. KISAAKYE, JSC.

This appeal was instituted by former employees of G4S Security Services Uganda Ltd. against the judgment of the Court of Appeal in Civil Appeal No. 68 of2009. The Court of Appeal reversed the decision of the High Court that entered judgment and allowed execution of a partial award of Uganda Shillings 122,800,000/= made by the Kampala District Labour Officer in the appellants' favour.

The background to this appeal is as follows. The appellants, originally totaling to 201 former employees of the respondent company, lodged a labour dispute no. CB 954/2006 with the Kampala District Labour Office in November 2006. In their complaint, they claimed that the respondent company had breached several provisions of their employment contracts and the Employment Act 2006. They sought payment for their repatriation from Kampala to their respective homes; long service awards; and for overtime weekly rest, sick leave, annual leave and emergency leave allegedly not taken.

After several unsuccessful efforts to mediate between the parties, the Labour Officer invoked her powers under sections 13 and 93 (3), (4), (5) and (8) of the Employment Act, 2006 and decided to arbitrate the appellants' claims for long service awards and repatriation only. On 28th February 2007, the Labour Officer gave an award in favour of individual appellants for repatriation and long service awards which cumulatively totaled to Shillings 122,800,000 /=.

Aggrieved by the decision of the Labour Officer, the respondent filed a Notice of Appeal on the 16th March 2007 indicating its intention to appeal the award before the Industrial Court. It also filed a notification of a dispute in the Industrial Court and later filed Miscellaneous Application No.1 of 2007 in the Industrial Court Registry, seeking for an order of stay of execution of the Labour

2Officer's award. The appellants filed an affidavit in reply. Neither the respondent's appeal nor its application for a stay of execution could be heard because the Industrial Court was not yet functional.

On 17th December 2007, the appellants filed Misc. Applica No. 653 of 2007 in the High Court seeking for an order that the award of the Kampala District Labour Office be executed by order of the High Court. The application was heard by Justice Magezi who entered judgment for the appellants for Uganda Shillings 122,800,000/= and ordered that the appellants were free to execute the judgment in the manner provided by the law. She also ordered the costs of the application to be borne by the respondent.

Dissatisfied with the decision of the High Court, the respondent filed Civil Appeal No. 68 of2009 in the Court of Appeal, which allowed the appeal and reversed the decision of the High Court.

The appellants were dissatisfied with the judgment of the Court of Appeal, and filed this appeal on four grounds of appeal but later abandoned ground 2 of appeal. The remaining three grounds are reproduced and considered later in this Judgment. The appellants sought for the following orders from this Court:

a) That the appeal be allowed; *b) That the decision and orders of the Court of the Appeal be set aside;*

d) *That the Supreme Court re-evaluates the evidence and come to its conclusion; and*

e) *That the respondent pays the appellants' costs in the Court of Appeal and the Supreme Court.*

The appellants were represented by Godfrey Mafabi, while Andrew Kagongo appeared for the respondents. Both counsel filed written submissions.

Before considering the submissions of the parties, I have deemed necessary to highlight the relevant legal provisions that provide the context from which this appeal arose.

In 2006, Parliament enacted the Employment Act, 2006 and the Labour Disputes (Arbitration & Settlement) Act 2006, which both came into force on 7th August 2006. Section 93(1) of the Employment Act 2006, provides as follows:

*"(**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 a complaint to a Labour Officer. "***

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

> *"(1)* ***A party who is dissatisfied with the decision of a Labour Officer on a complaint made under this Act may appeal to the Industrial Court in accordance with this section.***
>
> ***(2)*** ***An appeal under this section shall lie on a question of law, and with leave of the Industrial Court, on a question of fact forming part of the decision of the Labour Officer.***
>
> ***(3)*** ***The Industrial Court shall have power to confirm, modify or overturn any decision from which an appeal is taken and the decision of the Industrial Court shall be final.*** *"*

Clearly, the above provisions intended to oust the jurisdiction of the ordinary civil courts in Uganda by ensuring that employment matters are only handled by Labour Officers and the Industrial Court. It is also evident that these sections conflict with the article 139(1) of the Constitution in so far as they limit the unlimited original jurisdiction of the High Court to hear employment matters as a court of first instance. Article 139(1) of the Constitution of Uganda (1995) confers on the High

Court unlimited original jurisdiction and appellate jurisdiction as follows:

> ***"The High Court shall, subject to the provisions of this Constitution, have unlimited original jurisdiction in all matters and such appellate and other jurisdiction as may be conferred on it by this Constitution or other law. "***

This position is reiterated in section 14(1) of the Judicature Act, Cap. 13, Laws of Uganda, which also provides as follows:

> ***" The High Court shall, subject to the Constitution, have unlimited original jurisdiction in all matters and such appellate and other jurisdiction as may be conferred on it by the Constitution or this Act or any other law. "***

This court pronounced itself on the position of the law with respect to the supremacy of Article 139(1) of the Constitution of Uganda in ***Commissioner General, Uganda Revenue Authority v. Meera Investments Ltd., Supreme Court Civil Appeal No. 22 of 2007.*** This case involved provisions in the Tax Appeals Tribunal Act, (Cap. 345, Laws of Uganda), that are similar to those found in the Employment Act.

Commenting on these provisions and the argument by counsel for the Uganda Revenue Authority that the High Court's original jurisdiction to hear tax related disputes had been ousted by section 14(1) of the Tax Appeals Tribunal Act, Justice Kanyeihamba, JSC *(as he then was)* had this to say on the supremacy of Article 139(1) of the Constitution:

> ***"This provision remains superior and mandatory until altered or modified by that other law which ... can only be an Act made by Parliament or a constitutional amendment by the same authority. "***

In *Meera, (supra)*, the court cited with approval the decision of the Court of Appeal in ***Ms. Rabo Enterprises (U) Ltd & Ms. Mt Elgon Hardwares Ltd. vs. Commissioner General, Uganda Revenue Authority, Court of Appeal Civil Appeal No. 55 of 2003***, where Okello, J. A. *(as he then was)* stated thus:

> *"**Clause 1 of article 139 of the Constitution ... confers unlimited original jurisdiction in all matters. This is made subject to only the provisions of the Constitution. This meant that the original jurisdiction of the High court can only be changed by amending the Constitution. "***

Later in the same judgment, the said Justice Okello further expounded on this position of the law as follows:

> ***"An Act of Parliament cannot repeal, alter or reverse a provision of the Constitution unless it is an Act to amend the Constitution. This is grounded on the fact that the Constitution is the Supreme law of the land."***

Let me now turn to consider the submissions of the parties in this appeal.

Counsel for the appellants submitted on grounds 1, 3, and 4 separately. Counsel for the respondent on the other hand argued grounds 1 and 3 together and ground 4 of appeal separately. I will consider grounds 1 and 3 together and ground 4 separately.

Grounds 1 and 3 of appeal were framed as follows:-

1. ***That the learned Justices of the Court of Appeal erred in law when they failed to properly re-evaluate the evidence on the record and thereby leading to a miscarriage of Justice.***

3. ***That the learned Justices of the Court of Appeal erred in law when they failed to evaluate the evidence on record and coming to their own conclusion.***

As will appear shortly, these two grounds are about the same thing.

With respect to ground 1 of appeal, counsel for the appellants cited as an example of the failure of the learned Justices of Appeal to re-evaluate evidence, the court's observation that the learned trial judge had solely dealt with the issue of whether or not she had jurisdiction to issue an order for execution of the award.

Counsel further contended that had the learned Justices properly reevaluated the evidence on record, they would have found, among others, that there was no impediment barring the trial judge from ordering for execution of the Labour Officer's award to the appellants; that there was no evidence on record to show the respondents had opposed the appellants' application for execution during the hearing of Misc. Application No. 653 of2007, and that the respondents had not filed any application for stay of execution in the High Court up to the time the learned trial Judge made her ruling.

With respect to ground 1 of appeal, counsel Relying on the case of ***Pandya vs. R.*** **(1957)** ***E.A.*** **336**, counsel submitted that the learned Justices' failure to re-evaluate the above evidence on record amounted to an error in law, and that the court had failed in its duty as a first

a llate court.

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p Lastly, counsel submitted that the learned Justices' failure to properly reevaluate the

e evidence resulted in a miscarriage of justice. Counsel argued that the learned Justices erred when they referred to the

respondent's pending Misc. Application No.1 of 2007 which had been filed in the Industrial Court as if it had been pending before the High Court and yet this application had never been presented to the learned trial judge for determination. Counsel for the appellants defended the decision of the trial judge which, he argued, she arrived at after taking into account the application and the evidence which was before her.

In making his submissions, counsel for the appellants relied on the. authorities of ***Kifamunte vs. Uganda, Supreme Court Criminal Appeal No. 10 of* 1997**, on the duty of the Court of Appeal to re-evaluate the evidence on the court record and ***Begumisa vs. Tibebaga, Supreme Court Civil Appeal No.* 17 *of 2002***, where the principle of re-evaluation of evidence was reiterated. He prayed to court to allow the appellants' ground one of appeal.

Turning to ground No.3 of appeal, counsel for the appellants reiterated his submissions on ground 1 and prayed that this ground of appeal be allowed.

Counsel for the respondent opposed the two grounds of appeal. He supported the findings and decision of the Court of Appeal. He submitted that the learned Justices of Appeal properly evaluated the evidence on record to the effect that after the award was made, the respondent filed a Notice of Appeal in the Kampala District Labour

Office intending to appeal the award that the appellants were seeking to execute. Furthermore, he argued that the learned Justices of Appeal also took note of the fact that the respondent had filed an application for stay of execution in the Industrial Court. Lastly, he submitted that the learned Justices of Appeal also re-evaluated the evidence to the effect that since the Industrial Court had not yet been established, the respondent's application for stay of execution was still pending by the time the learned trial judge ordered that the execution of the award could proceed. Counsel for the respondent further submitted that there was no miscarriage of justice that arose from the Court of Appeal's decision to reverse the trial judge's decision.

I have considered the submissions of counsel for the appellants and the respondent. Strictly speaking, there was no evidence as such for the Court of Appeal to evaluate, since the High Court did not hold a full hearing. A review of the Judgment of the Court of Appeal, however, clearly shows that the learned Justices of Appeal properly examined the record of appeal before they reached their decision. The Court's examination appears from pages 6 - 9 of the lead judgment of Mpagi Bahigeine, JA. (as she then was), where she reviewed, among others, the affidavit of Musasizi sworn in support of the appellants' Misc. Application No. 653 Of2007; the respondent's affidavit in reply sworn by Leon Jacobs, its Managing Director and the appellants' affidavit in

re pl re pl y sw or epl y sw or n by Sam Apiko on 4th April 2007 opposing the respondent's Misc. Application No.1 of2007 for a stay of execution. Having analyzed the evidence on record, the learned Justices of Appeal noted the following facts which had been brought to the attention of the trial Judge.

(a) The respondent had intended to appeal the labour award that the appellants were applying to execute. This intention was demonstrated by the Notice of Appeal they filed in the Industrial Court.

(b) The respondent had also filed an application for stay of execution before the Industrial Court.

(c) The appellants had also filed an Affidavit opposing the respondent's application for a stay of execution.

(d) The appeal and the application had not been heard by the Industrial Court because the Court had not yet been set up by the time the trial Judge ordered that the award could be executed by the High Court.

Having examined the record, the learned Justices of Appeal found that the trial judge only dealt with the issue of whether she had jurisdiction to

issue an order for execution of the award and faulted her decision as follows:

> *"Once protestations concerning the propriety of the subject matter of the execution were raised by counsel for the respondent, the learned Judge was thereby put on notice and it was incumbent upon her to inquire into the matter for which the execution order was being sought, as to whether the Labour Officer properly exercised his mandate under s.* **13(1).** *Failure to do so inevitably caused a miscarriage of justice.... This was a peculiar case in that there was a gap, a lacuna in the machinery of justice created by the non-existence of the Industrial Court. There was uncertainty as to the proper course to take. "*

The learned Justices of Appeal then concluded as follows:

> *"I consider the learned judge should have taken trouble to acquaint herself with the genesis of the matter before sanctioning*
> *Its finality by way of execution. That being the case, the appellants cannot be held at ransom for the non existence of the Industrial Court, over which they have no control. I consider this appeal ought to succeed so that the matter can be given an exhaustive appraisal. "*

In this case under consideration, I fully agree with the trial judge and the learned Justices of Appeal that the High Court was indeed vested with original jurisdiction to hear this matter.

However, the fact that the High Court had unlimited original jurisdiction would not suffice to warrant upholding the decision of the trial judge, because, in my opinion, the procedure adopted by the appellants to bring their claim before the High Court was wrong. By applying to the High Court to seek for execution of the Labour Officer's award, the appellants sought to take advantage of the enforcement mechanism provided for under the Employment Act, 2006 and the Labour Disputes (Arbitration & Settlement) Act 2006, as well as the one provided for by the Constitution of Uganda (1995) and the Judicature Act, (Cap. 13, Laws of Uganda), at the same time. In so doing, a scenario was created where the High Court entered Judgment for a sum of money in a matter which it had not heard and went ahead to order that execution could issue. In so doing, the High Court was neither exercising its original jurisdiction nor its appellate jurisdiction in this matter.

Apart from the supremacy of the Constitution which was discussed earlier in this Judgment, it is important to note that the Industrial Court currently only exists in name, despite the law creating it having come into force over five and a half years ago. It would, in my opinion, not be

legally proper for this court to hold that persons with employment disputes cannot resort to the ordinary courts of law for justice, where the Industrial Court is non-existent. Such a holding would leave aggrieved Ugandan employees and employers with no legal forum to seek justice and peaceful resolution of their employment disputes.

In conclusion, I disagree with the submissions of counsel for the appellants on grounds 1 and 3. I find that the learned Justices of Appeal reached the correct decision to reverse the lower Court's decision. Since I have found no merit in grounds 1 and 3 of appeal, they should fail.

Let me now turn to consider ground 4 of appeal, which was framed as follows:

> ***"That the learned Justices of the Court of Appeal erred in law when they held that the trial judge should not have entertained the application for execution before disposing of an application for stay of execution which was not before her. "***

With respect to this ground of appeal, counsel for the appellants submitted that the learned Justices of Appeal erred in law when they held that the learned trial Judge should have taken cognizance of the respondent's application for stay of execution and that she should not have ordered for execution before disposing of that application. Relying

on the case of ***Standard Chartered Bank (U) Ltd. vs. Grand Hotel (U) Ltd., Court of Appeal Civil Appeal No.* 13 *of* 1999**, counsel for the appellants argued that the court can only entertain and determine a matter which is competently and properly before it. Counsel submitted that in this particular case, the respondent's application was before the Industrial Court and there was no application for stay of execution which the respondents had filed in the High Court that the trial Judge could have lawfully entertained.

Lastly, he argued that the trial Judge could also not have entertained the respondent's application for stay of execution (i.e. Misc. Appl. No.1 of 2007) which was pending before the Industrial Court, since it was never brought before her for determination.

Counsel for the respondent, on the other hand, supported the decision of the Court of Appeal. He argued that the submission of appellants' counsel was based on an erroneous interpretation of their lordships' holding to mean that the trial Judge was expected to have disposed of the respondent's application for stay of execution which was before the Industrial Court and not before the trial Judge. He submitted that what the learned Justices had found as an error on the part of the trial Judge was her failure to take cognizance of the respondent's notice of appeal and the application for stay of execution before the Industrial Court,

despite the existence of evidence on the court record to that effect. He prayed that ground 4 of appeal should be disallowed and that the appeal be dismissed with costs.

I have considered the arguments of both counsels. I have found no merit in the submissions of counsel for the appellants on this ground, where he sought to distort the learned Justices of Appeal reasoning and decision. The learned Justices of Appeal examined the record with respect to the issue of the respondent's pending application for stay of execution and noted as follows:

> ***"It is a hit puzzling for the respondents ... to deny that the appellant never filed any application for stay of execution when Apiko Sam, one of the respondents, swore an affidavit on 4th April 2007, in reply to the applicant's application for stay of execution and in opposition thereof."***

After re-examining the record, the learned Justice of Appeal concluded thus:

> ***"The learned trial Judge should have taken cognizance of this application and should not have proceeded to issue execution before disposing of it. Once papers are filed in court, the court***

ought not to ignore them. It should order for the matter to be disposed off first. "

The phrase ***"before disposing of it"*** may give the impression that the learned Justices of Appeal expected the trial Judge to hear the matter herself. However, both the preceding and following text in the lead judgment of Mpagi-Bahigeine, JA., (as she then was), clearly brought out the meaning of the holding, which was to the effect that the trial
Judge should have taken note of this application before ordering that execution could issue and that this was especially so since the respondent was not responsible for setting up the Industrial Court.

I fully agree with the decision of the Court of Appeal that it was erroneous for the learned Judge to order execution of the award issued by the Labour Officer when she was well aware that the respondents had applied for a stay of execution of this award and that they also intended
to appeal the award but were not able to proceed because the Industrial Court had not yet been set up by the Government.

I also agree with the Court of Appeal that execution of the award against the respondents would have in effect concluded the matter in respect of the two claims which were the subject of the Labour Officer's award. It would also have resulted in the respondent paying out Shillings

122,800,00122,800,000/= to the appellants before the respondent was given an opportunity to pursue its intended appeal on its merits. As the learned Justices of Appeal noted, it would have been unfair and unjust to force the respondent to pay this labour award which it was objecting to, when it was not responsible for the failure by the Government to set up the Industrial Court. Execution of the appellants' award as ordered, would, in my opinion, have led to a substantial miscarriage of justice.

It is also important to note the fact that the appellants, who originally totaled 201 former employees, are many. If the award was to be executed as was ordered by the High Court, payments would have been made out to individual appellants who would disperse across the country. In the event that the respondent's appeal was successful, the chances of tracing some of the individual appellants to recover the money would be very minimal.

It is in light of all reasons given above that I have found no merit in ground 4 of appeal, which too should fail.

In conclusion, I have found no merit in the appellants' submissions on all the three grounds and would therefore dismiss this appeal. It should be noted however that this appeal has not dealt with the merits of the appellants' claims which they brought before the Labour Officer. The

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dismissal of their appeal, therefore, should not act as a bar to their filing a fresh suit before the High Court, if they choose to do so, which would enable the High Court to hear and determine the merits of these claims.

On the issue of costs, I would order that, in the interests of justice to both parties who have suffered due to the Government's failure to operationalise the Industrial Court, each party should bear its own costs in this court and the courts below.

Dated at Kampala this 3 rd day of July 2012.

DR. E. KISAAKYE
JUSTICE OF THE SUPREME COURT

g)

IN THE SUPREME COURT OF UGANDA
AT KAMPALA

(CORAM: ODOKI C.J; TSEKOOKO, KITUMBA, TUMWESIGYE AND KISAAKYE, JJ.SC.)

CIVIL APPEAL NO. 18 OF 2010

BETWEEN

201 FORMER EMPLOYEES OF G4S

SECURITY SERVICES UGANDA LTD::::::::::::::::::::::::::::APPELLANTS

G4S SECURITY SERVICES UGANDA LTD ::::::::::::::::::RESPONDENT

[Appeal from the judgment of the Court of Appeal at Kampala (Mpagi Bahigeine D.CJ, Byamugisha and Kavuma JJ. A) dated 29th July 2010 in Civil Appeal No. 68 of 2009J

JUDGMENT OF ODOKI, CJ

I have had the benefit of reading in draft the judgment prepared by my learned sister, Kisaakye, JSC, and I agree with her that this appeal should fail.

I concur in the order she has proposed that each party bears its own costs in this Court and the Courts below.

As the other members of the Court also agree, this appeal is dismissed with orders as proposed by the learned Justice of the Supreme Court.

Dated this 3rd day of July 2012

B J. ODOKI

CHIEF JUSTICE

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

[Coram: Odoki, Cl, Tsekooko, Kitumba, Twnwesigye & Dr. Kisaakye, JJSC]

Civil AppealNo.18of2010

201 FORMER EMPLOYEES OF G4S SECURITY SERVICES UGANDA LTD::APPELANTS
{Excluding those who withdrew their complaints}

And

G4S SECURITY SERVICES UGANDA LTD. ....**RESPONDENT**

h)

{Appeal from the decision of the Court of Appeal at Kampala (Mpagi-Bahigeine, Byamugisha& Kavuma, JJA)dated29th July; 2010 in Civil Appeal No. 68 of 2009}

JUDGMENT OF JWN TSEKOOKO, JSC.

I have read in advance the draft judgment prepared by my learned sister, Lady Justice Dr. Kisaakye, JSc., and I agree with her Conclusions that this appeal has no merit and the same should be dismissed and further that parties should bear their own costs both here and in the two courts below.

Delivered at Kampala this 3rd day of July **2012.**

JWN Tsekooko

Justice of the Supreme Cour

tIN THE SUPREME COURT OF UGANDA AT KAMPALA

(CORAM: ODOKI C]., TSEKOOKO., KITUMBA., TUMWESIGYE., KISAAKYE.,]].S.C.)

CIVIL APPEAL NO. 18 OF 2010

201 FORMER EMPLOYEES OF G4S SECURITY SERVICES UGANDA LTD (Excluding those who withdrew their complaints):::::::::::::::::: PPELLANTS

AND

G4S SECURITY SERVICES UGANDA LTD ::::::::::::::::::::::::::::::RESPONDENT

(Appeal arising from the Judgment of the Court of Appeal at Kampala; (Mpagi- Bahigeine, D.C.J, Byamugisha and Kavuma, JJ.A.) Dated 29th July, 2010 in Civil Appeal No. 68 0f2009)

JUDGMENT OF KITUMBA,

I have had the benefit of reading in draft the lead judgment of my sister Kisaakye JSC.

I entirely agree with her reasoning and the conclusion. I have nothing more useful to add.

Dated this 3rd day of July 2012

C.N.B. KITUMBA .

JUSTICE OF THE SUPREME COURT

i)

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA.

[CORAM: ODOKI, CJ., TSEKOOKO, KITUMBA, TUMWESIGYE, AND KISAAKYE JJ. S. C.]

BETWEEN

201 FORMER EMPLOYEES OF
G4S SECURITY SERVICES UGANDA LTD:::::::::::::: APPELLANTS

AND

G4S SECURITY SERVICES UGANDA LTD::::::::::::::RESPONDENT

[Appeal arising from the judgment of the Court of Appeal at Kampala (Mpagi Bahigeine, D.C.J., Byamugisha and Kavuma, JJ.A) dated 29th July, 2010 in Civil Appeal No. 68 of2010]

I have had the benefit of reading in draft the judgment of my learned sister, Hon. Lady Justice Kisaakye, JSC, and I agree with her that this appeal should be dismissed and that each party should bear its costs.

Dated at Kampala this 3rd day of July 2012

JOTHAM TUMWESIGYE
JUSTICE OF THE SUPREME COURT