

THE REPUBLIC OF UGANDA
THE INDUSTRIAL COURT OF UGANDA HOLDEN AT MASAKA
LABOUR DISPUTE REFERENCE NO. 292 OF 2015
(ARISING FROM LABOUR DISPUTE NO KWP/ C.B/028 OF 2015)
BETWEEN

APOLLO TWESIGYE..... CLAIMANT
AND
AIDS SUPPORT ORGANISATION..... RESPONDENT

BEFORE

1. Hon. Chief Judge Ruhinda Asaph Ntengye
2. Hon. Lady Justice Linda TumusiimeMugisha

PANELISTS

1. Mr. Ebyau Fidel
2. Mr. Anthony Wanyama
3. Mr. Habiyalemye Dominic.

RULING

This ruling arises from a preliminary objection raised by counsel for the respondent.

The facts briefly are that:

The claimant was an employee of the respondent. On 30/10/2013, notice was given to the claimant that his contract expiring on 31/12/2013 would not be renewed. The notice was signed by the Executive Director. On 10/12/2013, some one acting as Executive Director signed a renewal of the contract on 17/12/2013. The substantive executive Director reminded the claimant that his contract was not to be renewed and that the renewal by Ag. Director was not effective.

It appears that in 2014, the claimant filed a suit in the Chief Magistrate's court which suit was dismissed on 13/02/2015 for lack of jurisdiction. On 19/03/2014, the claimant, through his lawyers, filed a complaint to KCCA labour office, Kawempe division. The letter of complaint revealed that the claimant's contract had been terminated on 17/12/2013 without notice.

On 15/07/2015, the labour officer in referring the matter to this court stated.

“1. Notice was filed with this office on 19/03/2015. This office is not in position to handle the matter because it is barred by time. This is in accordance with section 71 of the Employment Act 2006.....”.

Counsel for the respondent argued that the claimant having not filed his complaint before the labour officer within 3 months of his dismissal the claimant was time barred. He submitted that matters are brought to the court after being entertained by the labour office within the prescribed time and after parties have failed to agree on the position reached by the labour officer. He argued that the claimant having failed to bring the matter to the labour officer within the prescribed time, he lost the right to seek redress for any claim against the respondent before the labour officer and before this court.

Counsel relied on **the limitation Act section 32; the Employment Act sections 71 (2); 93(1) and 94(1)**. He cited a number of cases to the effect that suits that are filed outside the prescribed time by law ought to be struck out. Although counsel for the claimant filed his submissions very late; we had opportunity to peruse them as well. In his submission, while admitting that the matter was filed before the labour officer outside the prescribed time, counsel for the claimant argued strongly that the court ought to use its discretion in the interest of justice.

He argued that the claimant having relied on his lawyers who filed a suit before the magistrate court instead of before the labour officer, should not be punished. He submitted that without inordinate delay, the claimant filed a complaint with the labour office in Kawempe and the labour officer referred the matter to this court.

Section 71(2) provides:

“A complainant made under this section shall be made to a labour officer within three months of the date of dismissal or such later period as the employee shall show to be just and equitable in the circumstances.”

We have perused carefully submission of both counsel. It is our considered opinion that the law prescribing the time within which to file a complaint before the labour officer is explicit. It allows the employee to show cause as to why he/she filed the matter outside the stated period.

We are of the view that counsel for the claimant should have applied in the first instance to the labour officer to allow him to file the complaint after the

prescribed time. That way, the labour officer would have considered whether in the circumstances, the claimant had shown sufficient cause to allow him to be heard.

We believe it is not acceptable for counsel for the claimant to proceed in this court, as if the matter was considered by the labour officer, or as if the labour officer had failed to consider it within the meaning of section 5 of the Labour Disputes (Arbitration and settlement) Act.(LADASA) The claimant did not file the claim as an appeal against the decision of the labour officer as provided for under section 81(b) of the LADASA.

The reference to this court was as a result of the labour officer having not entertained the matter because the claimant had offended the provisions of section 71(2) of the Employment Act.

Whereas we agree with counsel for the claimant that where court finds sufficient cause as to why the claimant filed the matter outside the prescribed period the court may use its discretion to entertain the matter, such sufficient cause should have been addressed to the labour officer within section 71(2) of the Employment Act.

It is only when the labour officer has refused to allow the claimant to proceed on the ground that there was no sufficient cause shown, that the claimant would properly be referred to this court.

In the circumstances we, for the above reasons, agree with counsel for the respondent that the claim is not properly before court, having been filed beyond 3 months before the labour officer and having been referred to this court before the claimant impressed upon the labour officer the reasons as to why the claim had been filed out of time as provided for under section 71(2) Employment Act. The objection is upheld with no order as to costs.

1. Hon. RUhinda asaph Ntengye, Chief Judge.....

2.Hon. Lady Justice Linda Lillian Tumusiime Mugisha.....

PANNELLISTS

1.Mr, Ebyau Fidel

2.Mr, Anthony Wanyama.....

3.Mr. Habiyalemye Dominic.....

Dated: 18th /10/2016