THE REPUBLIC OF UGANDA

IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA

MISC. APPL. NO. 202 OF 2017

(ARISISNG FROM LABOUR DISPUTE APPEAL NO. 022 OF 2016)

NETIS UGANDA LIMITED ……………………………………….…………..**CLAIMANT**

VERSUS

WALAKIRA CHARLES……………………………..…………......... **RESPONDENT**

**BEFORE**

1. The Hon. Chief Judge, Asaph Ruhinda Ntengye
2. The Hon. Judge, Linda Lillian Tumusiime Mugisha

**Panelists**

1. Mr. Ebyau Fidel
2. Mr. F. X. Mubuuke
3. Ms. Harriet Mugambwa Nganzi

**RULING**

This ruling arises from an application by Notice of Motion under **section 82 Civil Procedure Act (CPA) and order 46(1) Civil Procedure Rules (CPR).** The grounds of the application are sent out in the application on the court record. The application was supported by an affidavit sworn by one Teresa M. Luzinda also on the court record.

An affidavit in reply on the record was sworn by one Walakira Charles, the respondent and the affidavit is also on the court record.

It was argued on behalf of the applicant that there was an error on the record in that the court awarded general damages in the absence of a cross appeal about the same. Counsel also strongly argued that it was an error for the court to confirm the decision of the labour officer as unfair dismissal instead of unlawful termination as a result of which court awarded damages contrary to what is provided for under **section 78 of the Employment Act.**

According to counsel for the applicant, **section 70 of the Employment Act** provides for unfair dismissal and the consequences thereto and **section 71** provides for unfair termination whose consequences are provided under **section 78.**

Counsel seemed to argue that the power of this court under **section 94,** to confirm, modify or overturn the Labour Officer's decision should not have been applied to grant general damages on the ground that the Labour Officer declined to give the same and the respondent declined as well to file a cross appeal on the same matter.

In reply counsel for the respondent raised a preliminary objection citing **section 17 of the rules of this court** that provides for 21 days within which to apply for a review of this court’s decision and only on the basis that new and relevant facts have materialised. He argued that since the application was lodged out of time and in his view the **Civil Procedure Rules** do not apply to this court, the court should dismiss the application.

Counsel contended that the application did not disclose any grounds for review since it did not show existence of the need for interpretation or that there were new and relevant facts concerning the dispute as prescribed by rule 17 of this court above citied.

Counsel also argued that the affidavit in support of the application was full of falsehoods and as such it should not be relied upon. He relied on the authority of **MugumeVs Akankwasa (2008) HCB 159 at 160**. He stressed that this court was not bound by **section 78 of the Employment Act** and that there was no legal distinction on the remedies in cases of unlawful termination and unlawful dismissal.

We have perused carefully the application before court and we have carefully perused the submissions as presented by both counsel.

Although this court is governed by rules prescribed in the **Labour Disputes** **(Arbitration & Settlement) Act No. 8/2006 ,** we do not accept the contention of counsel for the respondent that the Civil Procedure Rules(CPR) do not apply to this court. Indeed this court has on many occasions applied the Civil Procedure Rules in resolving Labour Disputes before it. Nonetheless it is our considered opinion that where a specific provision in the rules of this court is applicable to given circumstances, this court need not apply other rules including the CPR. This court is a specialised court which the legislature in its wisdom established under a specific Act of Parliament and thought of specific rules of procedure being applicable to its proceedings and went ahead to enact them. Consequently in case of conflict between the rules of this court and any other rules including the Civil Procedure Rules, the rules of this court must prevail.

Whereas under the CPR 046 r1 there is no limitation of time from the date of the judgement within which a party may lodge an application for review,

**Section 17 (1) of the Labour disputes (Arbitration & Settlement) Act.**

Provides**: Interpretation and review of awards**

**“Where any question arises as to the interpretation of any award of the Industrial court within twenty one (21) days from the effective date of the award or, where new and relevant facts concerning the dispute materialise, a party to the award may apply to the Industrial Court to review its decision on a question of interpretation or in the light of the new facts”.**

Counsel for the applicant seemed to impress upon court that a party was free to ignore the limitation period under the above quoted section of the law as long as such party was not seeking interpretation of an award or the existence of new and relevant facts. He argued that unlike the said section of the law, this application was asserting that there was an error on the record which was not provided for under the said section, hence the application of **section 82 of the CPA and order 46 of the CPR.**

This court has entertained an application of this nature before in **L.D application 073/2016 Emma Obokullo Vs Walter Arnold** although the issue of limitation did not arise as none of counsel brought it to the attention of court. It was the positon of this court in the **Obokullo case,**  as it is the position of this court even in the instant case, that **“judicial review arises once the applicant, among others, discovered new and important evidence and this evidence must not have been within his/her reach.”**

**In Batuk. K. vs Suret Municipality Air (1953 Bonn 133 which was applied by Hon. Justice Musota in KALOKOLA KAROLI VS Nduga** and subsequently in the **OBUKULLO** case by this court, it was held:

**“No error can be said to be on the face of the record if it is not manifest or self-evident or required an examination of argument to establish it.”**

In the instant case, we do not accept the submission of counsel for the applicant that the redress he seeks in review of our award in Labour Dispute appeal No. 22 is different from what is provided for under **section 17 of the Labour Dispute (Arbitration & Settlement Act).** Both **section 82 CPA, O46r1 and section 17 of the Labour Dispute (Arbitration & Settlement Act)** provide for guidance in case a party is seeking a review of a decision of court. The former provides for guidance generally in all courts of law but the latter specifically provides for guidance when a party is in this court. In **OBOKULLO** this court did not consider the issue of limitation because it was not brought to our attention and it was not even a contention. It never arose as a dispute requiring our decision. Therefore **OBOKULLO** cannot be cited as authority for this court to ignore **section 17 of the Labour Dispute (Arbitration & Settlement Act).**

Even then **under O46r1,** a party is required to prove that the error apparent on the face of the record is self-evident requiring no examination or argument.

The fact that this court considered grant of damages to the respondent as within its jurisdiction in its appellate power to confirm, modify or reverse the labour officers decision, in our view, can only be challenged by an appeal to the Court of Appeal since it calls for examination or argument. It originates from the fact that the court considers itself not bound by **section 78 of the Labour Dispute (arbitration & Settlement Act)** which limits the remedies of the Labour officer and which according to counsel does not grant power to this court to give a remedy of damages. All this, is, in our view, a subject of appeal and not of review. The same answer goes to the question whether the remedies in unlawful dismissal are different from those in unlawful termination in all cases and in all circumstances. It is a question of appeal.

Accordingly we find that the applicant did not only offend **section 17 of the Labour Dispute (arbitration & Settlement Act),** which is an Act of Parliament as opposed to ***O46r1*** which is subsidiary, but also failed to establish that there was a mistake apparent on the face of the record so as for this court to exercise its power of reviewing its ward.

The application is therefore rejected and dismissed with no orders as to costs.

**Signed:**

1. The Hon. Chief Judge, Asaph Ruhinda Ntengye ………………………………
2. The Hon. Judge, Linda Lillian Tumusiime Mugisha ………………………………

**Panelists**

1. Mr. Ebyau Fidel ………………………………
2. Mr. F. X. Mubuuke ………………………………
3. Ms. Harriet MugambwaNganzi ………………………………

Dated: ………………………….