**THE REPUBLIC OF UGANDA**

**IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA**

**LABOUR DISPUTE CLAIM NO.240/2014**

**ARISING FROM HCT-CS- 165/2013**

**MULENGERA DENNIS DDAMBA …………………………………….. CLAIMANT**

**VERSUS**

**1. MUTESA ROYAL UNIVERSITY**

**2. KYAGULANYI RONALD ……………………………... 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. MR. WANYAMA ANTHONY**

**RULING**

**BACKGROUND**

This matter was brought for declaratory orders, special, general and punitive damages for unfair and or wrongful dismissal, interest and costs of the suit.

Before it could proceed for hearing Counsel for the Respondents raised a point of law to the effect that the claimant had not raised a cause of action against the 2nd Respondent because he has never been his employer. Counsel argued that the claimant under paragraph 2 and 3 of his witness statement stated that he was employed by the 1st Respondent therefore since the 2nd Respondent was the Claimant’s dean under the faculty of Business and Management he was an employee himself. She contended that this claim arose out of an employment contract between the claimant and the 1st respondent and the 2nd respondent was not party to the contract.

She argued that under Order 7 rule 11 of the Civil Procedure rules, the claimant had not proved anywhere in his pleadings that the 2nd Respondent had violated any of his rights or that he was personally liable for such violation. She insisted that one is bound by their pleadings, therefore the 2nd Respondent should be struck off the claim since he was the claimant’s fellow employee. she argued that as an agent of the 1st respondent the 2nd respondent could not be vicariously liable for his own actions. She further argued that vicarious liability was a tort for which this court had no jurisdiction to decide. She cited Section 93(6) of the Employment Act 2006 and **NTWATWA JACKSON VS SEYANI BROTHERS HC.C.A No.002/2014.**

She contended further that Order 1 rule 3 only applied where the subject matter against the parties joined or considered to be joined was the same. She argued that in the instant case there were 2 matters one arising out of tort and another out of employment. She cited **WAYANGI MUNYIRI VS BOTIVA ENTERPRISES LTD AND ANOR HCCC No. 4 OF 2000 LLR 7454 (HCK) which cited YAFESI WALUSIMBI VS THE ATTORNEY GENERAL OF UGANDA 1959 E.A 223.**  She concluded that the claimant could not bring a matter against the 2nd respondent because it is trite law that employees are to some extent agents of their employers and therefore the right person to sue is the employer who is the principal. She asserted that the agent can only be held liable if he/she does not disclose that he or she is acting for and on behalf of the principal or where there is a clear intent by the agent to be bound by the terms of a contract and where both the agent and the principal are unknown when the contract was entered into, then a 3rd party can sue either or both of them. In the premises she prayed that the 2nd respondent is struck out.

In reply Counsel for the Claimant asserted that the 2nd Respondent was the dean of the faculty of Business and Management at the 1st Respondent’s Kakeeka Campus and was also the Claimants supervisor. She stated that on 1st December the 2nd respondent issued the claimant with a letter continuing to engage him as teaching staff at the Kakeeka Campus. Citing **AUTO GARAGE V MOTOKOVE (1974) EA 541,** he pointed out the 3 essential elements to establish a cause of action as follows:

1. The Plaintiff enjoyed a right
2. The right was violated
3. The right was violated by the defendant.

He contended that the claimant enjoyed the right of employment in the University at the Kakeeka Campus where he worked under the supervision of the 2nd Respondent whose duty was to allocate course units. That by excluding his name from the teaching timetable of the faculty and not allocating him any courses at the Kakeeka Campus the 2nd Respondent had violated his right to being a lecturer at the campus. Counsel invoked Order 1 rule 3 of the CPR which provides that persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transaction is alleged to exist, whether jointly severally or in the alternative where if separate suits were brought against those persons any common question of law or fact would arise.

According to the claimant the 2nd respondent who was the dean, without notice or a hearing dismissed him. That his monthly payments were stopped with effect from the 31/7/2012. That the 2nd respondent, did not communicate to him about the transfer nor did he call him for any meeting. According to him the 2nd Respondent was therefore joined to the 1st respondent because he was the dean of the faculty of Business and Management of the 1st Respondent and his malicious actions caused the claimant untold suffering and financial loss. He also cited Order 1 rule 7 which entitles a plaintiff to join 2 or more defendants where he or she is not sure which one is liable. He cited **YAHAYA KARIISA VS AG & ANOR SCCA No. 7 OF 1994 HCB 29, and SEMPASA VS SENGENDO MISC. APPL. No. 577 OF 2013**, to emphasize the basis of joinder of parties. He prayed that in the interest of justice, this court, in accordance with Order 1 rule 9 of the CPR and the holding in **DEPARTED ASIANS PROPERTY CUSTODIAN BOARD VS JAFFER BROTHERS LTD [1999] 1, EA 55** determines finally, all the matters touching and concerning the subject matter in this case, to avoid a multiplicity of suits on the same matters. Counsel argued that the claimant was ***dominus litis*** and can sue whomever he thinks he will obtain relief from and he cannot be forced to sue somebody he has not chosen to sue. He cited **MAJOR ROLAND KAKOOZA MUTALE Vs AG HCMA No.665 OF 2003** and **GAKOU& BROTHERS LTD, HCMA No.04631 OF 2005.** He prayed therefore that the preliminary objection is dismissed.

We have carefully perused the pleadings of both parties and find that the claimant was employed by the 1st Respondent as a part time Lecturer and the 2nd respondent was the dean of the faculty of Business and Management in the 1st respondent and the claimant’s supervisor.

The matter before this court is for remedies for unlawful or unfair dismissal from employment. Therefore it arises out of a contract of employment or out of an employee/employer relationship between and employee and an employer. The Claimants pleadings show that he entered into an employee/ employer relationship with the 1st respondent as a part time lecturer in the faculty of Business and Management and that he sued the1st Respondent and its agents for unlawful dismissal. Order 7 rule 1 (e), provides that the plaint shall contain among others the facts constituting the cause of action and when it arose.

In the instant case the memorandum does not specify who the agents of the 1st Respondent referred to are nor does it mention the 2nd respondent as one them. It does not specify the rights that the 2nd Respondent is alleged to have violated and when he violated them. It is our considered view that the memorandum of claim does not raise any cause of action against the 2nd respondent.

Although 2nd Respondent as dean of the faculty of Business and Management in 1st Respondent is its agent, it is trite law that an agent cannot be held personally liable for the acts the Principal authorized him or her to perform as an agent. (See Section 156 of the Contracts Act 2010). The 2nd Respondent can therefore not be held personally liable for the execution of his responsibilities as dean of the 1st Respondent and the claimant did not show that he had acted ultra vires.

Counsel for the Applicants /Respondents also contended that the subject matter against the 1st and 2nd Respondents were not the same therefore Order 1 rule 3 was not applicable since the acts complained about were tors arising out of employment and the remedies sought arose out of a contract of employment. Citing the Hon Justice Musota’s(as he then was) holding in **NTWATWA** (supra) she further contended that this Court had no jurisdiction to entertain torts arising out of employment. Counsel did not attach the authority so we did not read it. however Section 93(6) of the Employment Act provides that:

***6) A claim in tort arising out of the employment relationship; claim shall be brought before a court and the labour officer shall not have the jurisdiction to handle such a claim.*** Given that the Industrial Court is a Court of Judicature it is therefore clothed with the Jurisdiction to hear claims in tort arising out of employment as provided under this Section. See (**JUSTICE ASAPH RUHINDA NTENGYE AND JUSTICE LINDA LILLIAN TUMUSIIME MUGISHA VS ATTONEY GENERAL, CONSTITUTIONAL PETITION NO. 33 OF 2016).**

That notwithstanding, even if the claimant is ***dominus litis*** we do not think that any of the orders that may arise out of the claim will affect the 2nd respondent who was acting as an agent of the 1st Respondent. We also do not believe that striking him off as a party will lead to a multiplicity of suits as argued by the claimant.

Therefore given that the Claimant’s pleadings/ memorandum of claim did not raise any cause of action against the 2nd respondent, he is struck out of the claim with no orders as to costs.

Signed and delivered by:

**1. THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE .…………….**

**2. THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA ………………**

**PANELISTS**

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**DATE…………………………..**