**THE REPUBLIC OF UGANDA**

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

**LABOUR DISPUTE No. 04 OF 2015**

**ARISING FROM HCT CA. 62/2013.**

**OKURUT JOSEPH &OTHERS…………………………………….. CLAIMANT**

**VERSUS**

**NEW BUBAJJWE P.S ……………………………... RESPONDENT**

**BEFORE**

1. **THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE**
2. **THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA**

**PANELISTS**

1. **MS. HARRIET MUGAMBWA NGANZI**

2. **MR. MATOVU MICHEAL**

3. **MR. EBYAU FIDEL**

Background:

 The claimants brought this matter against the Respondent jointly and severally for unlawful termination of services, payment of salary arrears amounting to Ugx. 3,565,000, payment of salary in lieu of notice of Ugx. 960,000/- general and exemplary damages, costs of the suit and interest thereon.

Before the matter commenced for hearing the respondents raised a preliminary objection to the effect that the suit was time barred and was wrongly before this Court.

**THE OBJECTION:**

The Respondents contended that the claimants had filed this matter in this Court out of the prescribed time. According to them the claimants filed the matter vide Civil Suit No. 15/2005, in the Magistrates Court of Nabweru, where the claims were dismissed. They appealed to the High Court Civil Division vide CA No. 62 of 2013 which reinstated the case with an order for them to ***“…file the same in the right forum subject to period of limitation….”***

They insisted that employment is contract and that being the case the matter ought to have been brought within 6 years in accordance with section 3(1) (a) of the Limitation Act Cap 80. According to Counsel the claimant in their memorandum filed in this court on the 18/2/2015, stated under para 5 (g) that … ***the claimants contend that on the 21st of 2005 there was yet another incident where new staff list was displayed on the board with the claimants names missing no explanation for the same development was furnished to ….”.*** According to him the actual month in which this occurred was not disclosed in the claimant’s memo of claim. He asserted that time began to run in April 2005 and 6 years expired in April 2011 and yet the matter was lodged in this court on the 18/2/2015 after 6 years from April 2005. He further argued that the claims having been dismissed by the high court, the matter should have been filed at the Labour office and not directly in this court. He prayed for the dismissal of the claim.

In reply counsel for the claimant contended that the matter was first instituted in the High Court at Nakawa vide CS No.15/2006 then transferred to Chief Magistrates court of Nabweru vide CS No. 175/2009 on the 25/06/2009 where it was dismissed for non-prosecution on the 13/09/2011. A notice of change of Advocates was issued on 4/10/2011 and an application for reinstatement was made and denied by the Chief Magistrate in July 2013. The decision was appealed in the High Court Civil Division vide CA No. 62 of 2013. The Appellate Court found in favour of the claimants and the matter was reinstated for hearing. The matter was forwarded to the Industrial Court on the 25/11/2014 following the Courts Operationalization as reference Civil Suit 175 of 2009 and was registered as Labour Dispute Claim No. 325/2015. He insisted that it was never a fresh suit but the one and same suit filed within time in 2006, reinstated in 2014 and referred to this court therefore the preliminary objection is not applicable. He cited **IRENE REBECCA NASSUNA VS EQUITY BANK (U) LIMITED LDC MISC. APPLICATION No. 036 OF 2015,** in which this Court decided that the fact of setting aside the dismissal automatically reinstates the original suit.

With regard to the objection that the matter was wrongly before the court because it had not been filed at the labour office first, Counsel argued that the claimants cause of action arose before the enactment of the Employment Act 2006, and hence the original claim was filed and rightly so, in Nakawa High Court Circuit vide CS. No. 15 of 2005. He cited **FORMER EMPLOYEES OF G4S SECURITY Ltd VS G4S SECURITY SERVICES Ltd, S.C CIVIL APPEAL No. 18 OF 2010,** “ *the high court retains unlimited original jurisdiction to hear employment matters as a court of first instance despite the provisions of sections 93(1) and 94 of the employment Act 2006…”* . Counsel further contended that the introduction of a new remedy by the enactment of a new law did not expunge an existing remedy and besides the operative words in section 93(1) and (2) of the employment Act 2006 limit the jurisdiction of the Labour officer to rights and obligations provided for under the Act. He cited **OZUU BROTHERS ENTERPRISES V AYIKORU MILKA CIVIL REVISION No. 0002 OF 2016** in which Justice Stephen Mubiru held that “…*parliament did not confer jurisdiction upon District Labour Officer over all types of employment disputes but rather only those where the claims were founded exclusively on rights and obligations created under the Act. The jurisdiction of the District Labour Officers is restricted to matters based on the Act and does not include matters of employment disputes under the general common law”*

According to counsel the claimants claims was not premised on the rights and obligations under Employment Act 2006 but on the general common law because they arose before its enactment. He was of the view that like in OZUU (supra) the claimants had no recourse under the employment Act and therefore this objection should be dismissed.

In rejoinder, Counsel for the respondents insisted that the matter was filed out of time contrary to Section 3(1) (a) of the Limitation Act Cap 80, the cause of action having arisen in 2005 and the claim LDC No. 004 /2015 having been filed in this Court on the 18/02/2015. Citing **MAKULA INTERNATIONAL VS EMMINENCE CARDINAL NSUBUGA, CA No. 4 of 1981,** he insisted that once an illegality is established court could not sanction it.

He argued further that the doctrine of **stare decisis** which is the cardinal rule of jurisprudence, Courts of law are bound to adhere to previous decisions unless over ruled. Counsel insisted that in Civil Appeal no. 62 of 2013 her Lordship Elizabeth Musoke as she then was held that “*… the parties are at liberty to file their suit in the right forum subject to period of limitation.”* According to him the claim was filed in the Industrial Court on the 18/08/2015 and sections 93 of the Employment Act were taken into consideration before filing the matter in this Court. He insisted that the matter should have been filed with the labour officer first and referred to the Industrial court by the labour officer if after the expiration of 90 days no action had been taken by the officer.

He asserted that by filing a statement of claim the Claimant had instituted a new suit, yet according to paragraph 4(g) of the claim the cause of action arose in 2005. He insisted that the memorandum gave notice of the case to the respondents so that they could prepare to answer the issue whether it was time barred. He cited **ESSO PETROLEUM CO. LTD VS SOUTHER PORT COPORATION (1956) AC 238,** and insisted that Counsels assertion that the claimants claim was in time was wrong because it had not been raised in their pleadings, yet it is trite law that parties are bound by their pleadings and cannot be allowed to raise fresh pleadings. He also argued that the reinstatement notwithstanding the High Court was distinct from the Industrial Court both in jurisdiction and constitution and therefore the jurisdiction of the Industrial court could not be construed with modifications to the claimants claim. He prayed the claims is dismissed and the Advocate that signed it pays costs personally.

**DETERMINATION**

After carefully considering both submissions, the record and the law we found as follows:

It is settled that this matter was filed in the High Court of Nakawa Vide CS. No. 15/2005 and then transferred to the Chief Magistrates Court of Nabweru and where it was registered as CS No. 175/2009, and dismissed on the 13/09/2011. The claimants appealed against the dismissal vide Civil Appeal No. 62 of 2013 which reinstated CS 175/2009 on 31/10/2014, with directions that the Claimants file in the right forum subject to limitation period.

It is the respondent’s case that this matter being based on contract was out of time because Labour Dispute No. 4 filed in this court was a new claim. The question for resolution as we saw it was whether a reinstatement of a suit amounted to a new suit.

According to Black’s Law dictionary 4th edition, reinstate is defined as ***“To reinstall; to reestablish; to place again in a former state, condition or office; to restore or position from which the object or person had been removed.”*** To reinstate a case was defined as; “***To place a case again in the same position as before dismissal.”***  Based on this definition, the reinstatement of the instant case therefore put it back in the same position it was in before it was dismissed in 2011. In principle the case as at 30/10/2014, stands as it did when it was filed in 2005 and referred to the Chief Magistrates Court of Nabweru. The implications of her Lordships decision when she reinstated this matter therefore brings it within the ambit of the Employment Act 2006, having decided it in 2014. Therefore time in this case would begin to run from the 30/10/2014.

Counsel for the Respondents also contended that the Labour Dispute No. 4 having been filed in the Industrial Court by memorandum of claim was a new case and should therefore have been filed in the Labour office first. The record shows that this case was initially filed in the High Court at Nakawa in 2005, prior to the commencement of the Employment Act, 2006. It was then referred to the Chief Magistrates Court in Nabweru in 2009 and registered as CS No. 175/2009. Although the Employment Act had come in force by the time it was referred to the Chief Magistrates Court of Nabweru in 2009, the Chief Magistrate did not vacate the case but pronounced herself and dismissed it for want of prosecution Her Lordship reinstated it but directed that it is filed in the right forum. The right forum according to the Employment Act 2006 as provided under Section 93, is the Labour officer and not the Industrial Court.

The functions of the Industrial court are provided for under Section 8 of the Labour Disputes (Arbitration and Settlement) Act 2006, as follows:

***“8. Functions of the Industrial Court***

***1) The industrial Court shall-***

***a) arbitrate on labour disputes referred to it under this Act and***

***b) adjudicate upon questions of law and fact arising from references to the Industrial Court by any other law***

***2) The Industrial court shall dispose of the labour disputes referred to it without undue delay.”***

The Judge in her decision did not refer the case the Industrial Court but rather directed that **“*… the parties are at liberty to file their suit in the right forum subject to period of limitation.”***

Section 93(1) provides that;

***“…1. 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.(our emphasis)***

***2) A Labour Officer shall have jurisdiction to hear, and to settle by conciliation or mediation a complaint…*”**

In the premises this claim is incompetent before this Court. It is therefore struck out. No order as to costs is made.

It is so ordered.

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

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

**PANELISTS**

1. **MS. HARRIET MUGAMBWA NGANZI ..………………….**

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**DATE……………………….**