**THE REPUBLIC OF UGANDA**

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

**LABOUR DISPUTE APPEAL No. 038 OF 2018**

**[ARISING FROM LABOUR DISPUTE COMPLAINT No. KCCA/22/2017**

**-LABOUR OFFICER MR. KASAGGA HANNINGTON]**

**BETWEEN**

**MAKERERE UNIVERSITY……………………………………..………….…….…………..APPELLANT**

**VERSUS**

**1. NANKYEWA MARY**

**2. MAGARA BENNET**

**3. KALEMA JOSEPH**

**4. BAGUMA THOMAS WILLIAM**

**5. TURYAMUREEBA GEORGE & 92 OTHERS …………………………....…….RESPONDENT**

**BEFORE**

1. Hon. Chief Judge Ruhinda Ntengye
2. Hon. Lady Justice Linda Lillian Tumusiime Mugisha

**PANELISTS**

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

**AWARD**

This is an appeal from the decision of a Labour Officer (Mr. Kasagga Hannington) sitting at Kampala Capital City.

The facts of the case as we understand them from the lower record are as follows;

The respondents were employees of the appellant under contracts of service that revealed an M6 salary scale.

It was clear on the record that Employees under M6 salary scale were not getting exactly the same salary. There were variations in the actual salary of the various employees. Subsequently, after a series of negotiations and strikes, the Government increased salary of all employees at the appellant institution. Earlier on, only salaries of academic staff had been considered for an increment. Government released the funds in two phases, the first of which had no controversies. At the release of the second phase, the appellant thought it necessary to take into account the dichotomy between the science and non science staff and the academic qualifications of the concerned staff thereby changing from the old payment system of M6 scale to the new payment system of M6 1 and M6 2 scale.

From the way we understand the case for the appellant, some staff in the original M6 scale were in the lower segment and therefore subsequently fell in the M6 2 scale whereas those in the upper segment fell in the M6 1scale. According to the appellant therefore, it was a matter of change of nomenclature of lower segment of M6 to M6 2 and that the salary arreas were properly calculated using the M6 1 and M6 2 salary scales.

The Labour officer did not accept this contention and held that the said salary scales used to compute the arreas were unfairly, irregularly and unlawfully imposed on the claimants and ordered the respondent to recompute using the M 6 scale. This did not go well with the appellant and hence this Appeal.

The Appellant was represented originally by Mr. Muzamiru Kibeedi (now Hon. Justice Muzamiru Kibeedi, JSC) of M/s. Kibeedi & Co. Advocates, but subsequently representation of the appellant was by M/s. Atukunda Faith of the same firm.

The respondents were represented by Mr. Vincent Mugisha of Kesiime & Co. Advocates.

The Memorandum of Appeal contained 5 grounds as here under;

1. That the Presiding Labour Officer erred in law when he failed to properly apply the law on available evidence and held that the 5 claimants who had instructed Ms. Kessime & Co. Advocates to institute the complaint before the Labour Officer, Labour Dispute No.22 of 2017, were lawfully authorized by all the other 92 claimants to represent them.
2. That the presiding Labour Officer erred in Law in not holding that the 5 claimants who instructed Ms. Kesiime & Co. Advocates to institute Labour Dispute No.22 of 2017 between Nakyewa Mary & 96 Others Vs Mr. Charles Barugahare & Makerere University, namely: Nakyewa Mary, Magara Bennet, Kalema Joseph, Baguma Thomas William and Turyamureeba George, were **NOT** duly authorized to represent all the other 92 purported claimants.
3. That the Presiding Labour officer erred in law when he failed to properly evaluate the evidence before him and the applicable law and held that salary scale No. M6. 2 was unfairly and /or irregularly and /or unlawfully imposed on the Respondents herein.
4. That the Presiding Labour Officer erred in law in not holding that the use of the nomenclature **“Salary Scale M6.2”** was lawful and DID NOT alter the substance of the emoluments of the Respondents herein under “Salary Scale M6”
5. That the Presiding Labour Officer erred in law in granting the remedies as set out in the Award read on 23rd August 2018 namely:
6. That the appellants should recompute all the respondents’ due salary enhancement arrears as per Salary Scale M6 and remit all arrears to the respondents.
7. That the appellant pays all the above monies with 10% interest per annum from the date of filling the claim until payment in full.
8. That the appellant should refrain from imposing salary scale M6.2 on the respondents.
9. That the appellant should effect a total cash payment of Ugx. 2,982,674,146/= to the respondents within 7 days from the date of award.
10. That the appellant should be pay all prospective wages of the respondents pursuant to salary scale M6.2.

The appellant chose to identify issues arising from the above grounds and argue the appeal as such. Counsel for the appellant indicated the issues as:

1. Whether the Labour Officer had the mandate to entertain and grant the remedies sought by the claimants (respondents)
2. Whether the 5 respondents named above were lawfully authorized by all the 92 other respondents.
3. Whether the Labour officer did not properly evaluate the evidence and the law thereby erroneously holding that salary scale M6.2 was unfairly and/ or irregularly and/ or unlawfully imposed on the respondents.
4. Remedies available.

The respondents on the other hand preferred to argue grounds 1 & 2 together, grounds 3 & 4 together and ground 5 alone.

This being an appeal, we shall adopt the option of the respondent and decide the appeal by resolving the grounds as they appear in the appeal. On perusal of the issues identified by the appellant, it is clear to us that all the issues reflect grounds 1 and 2, ground 3 and 4 and lastly ground 5.

**Ground one and two:-**

The gist of the arguments of the appellant is contained in the way counsel for the appellant argued his issue No. 2.

Counsel argued that the 5 respondents named in the claim and the appeal had no

Legal mandate to represent the rest of the respondents since the names of the rest were not disclosed. As a consequence, counsel argued, M/s. Kesiime & Co. Advocates had no instructions to represent the 92 respondents since there was no representative order. He contended that the named respondents had the legal burden to prove the locus and legal nexus between them and the 92 others failure of which led to the automatic collapse of the case of the 92 for want of authority by the 5 named persons to represent them and the collapse of the legal mandate of counsel to represent them.

Counsel for the respondent on the other had contended that in accordance with Section 14(2) of the Employment Act rules of evidence did not apply to proceeding before this Court. He relied on the authority of **ABB LTD VS LANGU** **EMMANUEL & ANOTHER, MA NO. 30/2017**. He argued that there was no evidence to suggest that counsel had no instructions to represent the respondents. He contended that procedural technicalities could not be an impediment in this Court.

**Ground 3 and 4**

For the appellant, grounds 3 and 4 are constituted in what counsel for the appellant described as the 3rd issues – **whether the Labour Officer did not** **properly evaluate the evidence and the law.** counsel argued that the Labour Officer erred to hold that all the claimants were employed on salary scale M6 without a breakdown of the scale into M6.1 and M6.2. According to counsel, with only four of the claimant’s appointment letters tendered in Court it was wrong for the Labour Officer to conclude that all claimants were employed on the M6 scale.

It was contended for the appellant that the employment of Nakyewa Mary, the first respondent, placed her in the lower segment of the M6 scale as testified by the University Secretary, one Charles Barugahare. It was the submission of counsel that the respondent changed the nomenclature of “Upper Segment of M6 Salary scale” to M61 and the “Lower segment” to M6.2 in order to harmonize with scales of other public universities as per the directives of the Minister of Public Service. The same argument was placed by counsel in relation to Magara Bennet, Kalema Joseph and Turyamureeba George, the 2nd, 3rd and fifth respondents respectively. Counsel insisted that each of these employees was placed in the lower segment of salary scale M6. Which was subsequently renamed M62. According to counsel, it was erroneous for the Labour Officer to state that there were no documents that broke up salary scale M6 into scales of M6. 1 and M6. 2 when it was clear that from the time of appointment, salary M6 was broken into different classes depending on the salary level. In counsel’s view the categorization of salary scale M6. was not affected by the change of names neither was there a creation of a new salary scale apart from the existing one at the time of the Employment of the respondents.

As to the claim of Baguma Thomas, the 4th respondent and 92 others, it was submitted by counsel for the appellant that in the absence of their appointment letters to prove the term of their appointment, there was no basis for the Labour Officer to make any finding related to them.

Counsel for the respondent argued that the appointment letter of the respondents were clear as to the salary scale they were appointed under which was M6. Scale and subjecting them to any other scale would amount to alteration of terms of employment, especially when such alteration would amount to reducing their salaries without their cosent. According to Counsel, in a letter by the bursar dated 30th june,2017 at page109 of the record of appeal, addressed to the accounting officer/ university Secretary, it was implied that the accounting officer wasn’t aware of the scales of M6.1 and M6.2.

Consel argued that prevıously in 2007-2014 there was never a breakdown in the salary scales M6 as seen in the salary structures/packages for thr financial year 2007-2014 as well as in the minutes of the management meetings of 20th February 2017 exhibited as C14.

Counsel contended that the salary scales of M6.1 and M6.2 were created single handedly by the chairperson of council as an afterthought. According to Counsel this was after the respondents sought administrative redress in vain and that this was done by a letter dated 17/10/2017 to the University Secretary adjusting the Human Resources Manual as reflected at pages 47-48 of the record of Appeal.

Relying on the case of **Mrs. Mary Pamela Ssozi Vs Public Procurement & disposal of Public Assets Authority HCCS No. 063/2012**, counsel argued that an employer could not unilaterally amend a significant term of employment contract without the consent of an employee.

**Ground 5**

The appellant argued this ground as issue No. 1

* **Whether the Labour officer had a legal mandate to entertain the dispute.**

Relying on the authority of **Eric Mugyenyi Vs** **Uganda Electricity Generation Co**. **Ltd Civil Appeal 167/2015** (Court of Appeal) counsel strongly argued that the Labour officer had no jurisdiction to entertain the dispute because there was no allegation of infringement of the Employment Act. According to counsel the complaint before the Labour Officer was an alleged variation of salary scale M6. In breach of the Employment contracts of the claimants and the Human Resource Manual which the Labour Officer had not legal mandate to entertain.

For the Respondent, counsel reiterated his submissions in ground 3 and 4, that the respondents having been employed under M6.Scale could not be subsequently subjected to any other salary scale without their permission and that they were entitled to be paid their salary enhancement and arrears based on the salary scale M6. He argued that under salary scales M6. There were notches that included small monies added to salaries of staff until one reached the top notch, the different between the highest and lowest having been less than 50,000/= as reflected on pages 369-385 of the record of Appeal.

**Decision of Court**

We shall deal first with the issue of the mandate of the labour officer to entertain the dispute. Relying on the authority of Engineer Mugyenyi Eric Vs Uganda Electricity Generation Co. Ltd (supra) counsel for the appellant vehemently argued that the labour officer had no jurisdiction to entertain the matter since there was no allegation of infringement of the Employment Act. The respondent did not reply to this exact submission, Probably because ground No.5 of the memorandum of Appeal did not question the legal mandate of the labour officer directly but only questioned the legality of the remedies given by the labour officer.

Counsel for the appellant referred us to page 14 of the judgment of Eric Mugyenyi (supra).

At page 14 of this decision the court of appeal stated

**“the above provisions make it clear that there has to be an allegation of the infringement of the Act even if it is coupled with an allegation of breach of the terms of the contract of service. It follows that the labour officer can only entertain the matter if it concerns an infringement of the rights granted or obligations under the Employment Act and any order made in respects of compliance to term of service is corollary to the primary jurisdiction to deal with infringement of the Act”**

The above holding, contrary to the submission of counsel for the appellant, does not in our opinion, oust the jurisdiction of the labour officer to entertain a complaint related to terms of service of an Employee. The complaint before the labour officer was that the appellant altered the terms under which the respondents were employed to terms strange to the contract and terms that were to their disadvantage.

Given the holding in the Eric Mugyenyi case, relied upon by the appellant, we find that the labour officer had the legal mandate to entertain the matter and therefore we find no merit in the submission of counsel for appellant.

**Ground one & two**

In our understanding, the contention of the appellant is that without a representative order, five of the respondents could not represent the rest of the respondents and therefore counsel for them could not have the legal mandate/ instructions to represent them. The contention of the respondent is that labour justice being unique with a primary focus on social Justice and equity a representative order was a technical aspect which could not affect the substance of Justice sought before this court.

While dealing with this issue, the labour officer at page 1256 of the record appeal stated

**“I have not received any evidence to suggest that counsel for claimants have no instructions to represent all the persons they represent. I have not received any complaint from any of the 92 other claimants indicating that Kesiime & Co. has no instructions to represent them……”**

Order 1 rule 8 of the Civil Procedure Rules provides:

**“Where there are numerous persons having the same interest in one suit, one or more of such persons may, with the permission of the court, sue or be sued or may defend in such suit, on behalf of or for the benefit of all persons so interested. But the Court shall in such a case give notice of the institution of the suit to all persons either by personal service, or where from the number of persons or any other cause, such service is not reasonably practicable, by public advertisement as the Court in each case may direct.”**

The courts have in many decisions declared the necessity to identity and make it possible for the opposite party to know who exactly are the parties to the suit. Hence the necessity for the parties who seek to be part of the cause of action to give written instructions or written consent to be represented. Once the court is satisfied that the cause of action is within Order 1 rule 8 above mentioned, the court issues a representative order which mandates those authorized to represent all the others.

It is clear that in the instant case the above procedure was not followed. In the mind of the labour officer, without any complaint from any of the respondents that they were not party to the complaint or that they had not instructed counsel, he could not strike them off the cause of action. This ruling of the labour officer was after the submission of counsel for the appellant at pages 1172-11773 of the record of Appeal, that there were no authorization letters signed by the 92 respondents and because of this the real respondents (claimants) could not be identified.

On perusal of the record, we are satisfied that in total 89 employees were affected and complained about the change of the salary scale out of whom only 13 were placed by the respondent in the original scale of M6, the rest in the contested M6.2 scale.

This is found at page 495 of the record of Appeal where an officer of the respondent acknowledged verification of 13 staff to be in the upper scale and the rest on the lower scale.

The decision of **Eric Mugyenyi Vs Uganda Electricity Distribution Co. (supra)** is authority for the legal proposition that the civil procedure Act and Civil Procedure Rules do not apply to a complaint lodged with the labour officer under Section 71 of the Employment Act and therefore the rules of pleading there under are not applicable. The duty of the Labour Officer was therefore only to ascertain the existence of the complainants and not to ascertain whether all the complainants had given authority to any of them for representation or whether counsel had instructions because these aspects fall under the Civil Procedure Rules and the Advocates Act. If he had done this, he would have found as we find now that the complainants were a total of 76, as verified by the respondent at page 495 of the record of Appeal.

Accordingly it is our finding that, although there was no written authority by all the 92 respondents to be represented by the five who had given written authority to counsel for representing all the 92, the actual individual parties before the labour officer were 76 and the labour officer had a mandate to determine the dispute involving the 76 persons.

**Ground 3 and 4**

These two grounds are about the way the labour officer evaluated the evidence as to whether salary scales M6.1 and M6.2 were a segregation from the salary scale m6 and if so whether such segregation was proper.

In dealing with this aspect the labour officer evaluated the evidence before him at page 1252-1255 of the record of Appeal:

“I have carefully perused all the (1) appointment letters (2) confirmation letters and (3) the promotion letters submitted in evidence by the claimants. From the said evidence, it is clear to me that all the claimants were employed on salary scale M6.

I have also deeply perused document C 29 under the claimants’ trial bundle. The document is an extract of the Makerere University Human Resource Policy Manual 2009 and the same was not challenged:………..at all. From the said document I note that all the claimant’s jobs lie under salary scale M6; without any break down of the said scale M6.in to scales M6.1 and M6.2…………………………….. The respondents did not provide any evidence showing that at the date of employment of any of the claimants, scale M6 had within it scales M6.1 and M6.2……………

I have particularly looked at the minutes of the management meeting with MASA and NUEI (C14) held on 20/2/2017 which were authenticated by Prof. Dumba Sentamu, the Respondent’s Vice Chancellor, as he then was. Under the said minutes, it was specifically captured that at FY 2015/2016 scales M6. 1 and M6.2 were not existing.

Therefore, the fundamental question for my resolution is whether salary scales only created in 2017 could be lawfully imposed on the claimants with regards to rights accrued to them before 2017………………………….” Relying on **Mrs. Pamela Sozi Vs Public Procurement and Disposal of Public Assets authority, HCCS No. 063/2012**, the labour officer declared that scale M6.1 and M6.2 were unfairly, irregularly and unlawfully imposed on the claimants.

It was the contention of counsel for the appellant that in evaluating evidence, the labour officer never considered the evidence of the appellant on the interpretation of the appointments and salary scales.

Whereas it is true that the above evaluation of evidence by the labour officer does not include the evidence of one Barugahare Charles for the respondent, on internalizing the evidence of the said Baruhagare, it was entirely on the

interpretation of the appointment letters by attaching to them **“a general context of salary structure that placed the claimants in the lower salary scale of M6 The** **equivalent of M6.2’’** which the labour officer rejected by holding that the appointment letter did not have any segment of M6.2.

We appreciate the evidence of the appellant that **“segments within the same salary scale have always existed to cater for such matters as differences in academic qualifications, experience and performance of the staff within the same salary scale”.** This is because even in the submission of therespondent **“all salary scales used to have notches which includes small monies added every year on the salary of staff including the respondents until each staff reached to top notch, in in the case of salary M6, the difference between the highest and the lowest notch used to be less than 50,000/=.”**

On perusal of pages 369-385 of the record of Appeal we find the lowest notch sometimes far above 50,000/=, this is collaborated by the appointment letters on the record which showed a slight salary difference between the appointed officers in the same salary scale of M6 .

These slight differences in our view did not amount to segmentation of the salary scale of M6 into that of M6.1 and M6.2 contrary to the letter by the Chairperson of the University council dated 12/10/2017 at page 182 of the record of appeal. Evidence on the record suggests that the M6 scale was converted into M6.2 and M6.1 scales in the FY2015/2016 as a result of a disagreement in the application of the salary increment to all staff at the respondent university. Government had decided to increase salaries of Academic staff earlier on but later on increased that of the administrative staff as well. It is the salary arrears earned by those who were placed in the salary scale M6.2 that became contentious.

We are of the considered opinion that it is the duty of an employer to provide clear terms of employment especially the salary scale that need not be subjected to interpretation resulting in favor of either of the parties or in favor of any class of employees in the same organisation. This however dos not stop the employer to categorize staff according to qualification and specific roles played and subsequently increase their salaries accordingly.

On perusal of the Human Resource Manual of the appellant at page 232-243 of the record of Appeal, particularly page 258, 3.1 and page 325 Appendix 19.4 nothing suggests that at the time of appointment the respondents salary scale was M6.2 it follows therefore that subjecting salary scale M6 to interpretation as placing some employees thereunder into salary scale M6.1 and M6.2 at the time when the respondent was applying the salary arrears earned before such interpretation, was grossly unfair and uncalled for.

We agree with the finding of the labour officer that a policy or amendment made at a particular time cannot be applied retrospectively to affect the rights of an employee accrued before such policy comes in force. It follows that the attempt to change the nomenclature from **“upper segment”** and “**lower segment”** to M6.1 and M6.2 respectively in the financial year 2015/2016, so as to rhyme with the system applicable to other Universities, could only apply to the subsequent years after 2014/2015.

We form the opinion that the categorization of employees into M6.1 and M6.2 effected in the financial year 2015/2016 was for the purpose of payment of salaries in respect to employees categorized taking into account the various factors given by the Government at the time of the enhancement of salaries. Consequently we find the M6.1 and M6.2 scales could only be applicable at the beginning of the 2015/2016 financial year and thereafter. Arrears of staff should have therefore been calculated in accordance with the letter of the Vice Chancellor dated 22/2/2017 on page 368 of the record of appeal.

**Ground No. 5**

This ground was argued by the respondent in support of the remedies granted by the labour officer. The appellant argued it in questioning the legal capacity of the labour officer to determine the claim and thereafter grant remedies. We have already declared that the labour officer had the legal capacity to entertain the matter.

We have also declared that salary scale M6.1 and M6.2 can only be applicable to the financial year 2015/2016 and thereafter. The remedies granted by the labour officer shall therefore be reversed or amended as reflected in the finding of this court.

In this final result, the appeal partly succeeds with the following orders in substitute of the orders of the labour officer:

1. The respondent shall recompute the salary enhancement arrears of the 76 verified employees pursuant to salary scale M6 as directed by the Vice Chancellor and pay to them all unpaid balances.
2. Salary scale M6.1 and M6.2 shall only be applicable beginning with the Financial Year 2015 and 2016. In the event that salary arrears earned before the 2015/2016 FY accrue in future, calculation of such arrears shall be as in(1)above
3. The unpaid balances shall attract interest of 8% from the date of this Award until payment in full.
4. No order as to cost is made.

**Delivered & Signed by:**

1. Hon. Chief Judge Ruhinda Ntengye ……………………….
2. Hon. Lady Justice Linda Lillian Tumusiime Mugisha ……………………….

**PANELISTS**

1. Mr. Ebyau Fidel ……………………….
2. Ms. Harriet Mugambwa ……………………….
3. Mr. F.X Mubuke ……………………….

Dated: 4th June, 2020