**THE REPUBLIC OF UGANDA**

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

**LABOUR DISPUTE REFERENCE NO. 081/2017**

**(Arising from LABOUR DISPUTE No. 482 of 2017)**

**BETWEEN**

**DRAGA MICHEAL........................... CLAIMANT**

**AND**

**JESA FARM DIARY......................................RESPONDENT**

**BEFORE**

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

**Panelists**

1. Mr. Bwire John Abraham
2. Mr. Mavunwa Edson Han
3. Ms. Julian Nyachwo

**RULING**

This ruling arises from a preliminary legal point to the effect that the pleadings do not show a cause of action against the respondent. Mr. Musimenta Ferdinand appeared for the respondent while Mr. Aisu Nicholas appeared for the claimant.

Counsel for the respondent argued that the memorandum of claim disclosed no cause of action against the respondent as it disclosed no existence of a right, or that such a right had been violated and violated by the respondent.

He relied on **Rule 5(1) and (2) of the** **Labour Disputes (Arbitration & settlement) Industrial Court Procedure Rules 212**, **Section 6(1) of the Civil Procedure Rules,** the case of **General David Tinyefuza, constitutional Appeal 1/1997 and the case of Auto Garage Vs Motokov (Nos) 1971 EA 51.** He alsorelied on **Nagawa Agnes Patrov Vs Segawa Samuel & 8 others HCCS 27/2012.**

He prayed the court to strike the claim out under **06 rule 30 of the Civil** **Procedure Rules** for not disclosing a cause of action.

In reply counsel for the claimant argued that the Civil Procedure rules were cited out of context since according to him this court has its own rules. In his view the case of **Auto Garage Vs Motokov** was not applicable since it referred to “**a plaint**” and not a **“Memorandum”** which this court is concerned with.

Relying on the definition of a memorandum in the Black’s Law Dictionary, Counsel argued that a memorandum could take any form. According to him it was the substance of the memorandum and not the form that was important since **Article 126(2)** **of the constitution** enjoins this court to apply substantive justice without undue regard to technicalities.

We have carefully perused the submissions of both counsel. We have also carefully perused the memorandum of claim.

We agree with counsel for the respondent that the memorandum of claim presents a range of issues or questions without disclosing a cause of action or material facts.

It is trite law that the question whether or not a plaint (or claim) discloses a cause of action can only be determined by merely looking at the pleadings contained in the plaint or the claim.

In the case of **Nagawa Agnes & Anor Vs Segawa Samuel &** **8 Others (supra**). It was held inter alia that **“where a plaint does not allege all the necessary facts needed to constitute a cause of action, it shall be rejected under order 7 rule 11(a) of the Civil Procedure Rules for not disclosing a cause of action…..”**

We do not accept the contention of counsel for the claimant that because the case of **Auto Garage (supra)** or even that of Nagawa Vs Segawa above mentioned referred to a “**a plaint”** as opposed to “**a memorandum**” it was irrelevant to the facts before this court. Neither do we accept the contention of counsel that a memorandum of claim before this court could take any form as deemed by the claimant.

**Rule 5(2) of the Labour Disputes (Arbitration & Settlement)(Industrial Court Procedure rules )2012**, provides:

**“The memorandum referred to in sub-rule (1) shall set out, in the case of the claimant, the nature and particulars of each item of the claim involved in the dispute and the claimant shall serve a copy of the memorandum on the respondent”.**

This provision is meant to allow the respondent understand the nature of the claim as a whole and the particulars of each of the allegations in the claim so that a proper response to the same can be given.

On perusal of both the memorandum of claim and the affidavit in support of the claim, we take the position that it is the affidavit that particularized the claim instead of the memorandum of claim. And this cannot be acceptable, especially when both documents were drafted by legal counsel. Nothing in the rules of this court or the law relating to filing of matters in this court required a claimant to file an affidavit in support of the claim. **Rule 5(5) of the rules of** **this court** provide for the memorandum to be accompanied by an **affidavit of service.**

Consequently the affidavit in support of the memorandum of claim is irrelevant and serves no purpose. What is contained in the affidavit should have been contained in the memorandum of claim.

We do not accept the contention of counsel for the claimant that the **Civil Procedure Act** or **CPR** does not apply to this court. Time and again this court has pointed out that this court is not precluded from applying  **the said Act and Rules. (**See **Bank of Uganda Vs Aijukye Stanley M.A. 96/2017**; and **Julius Rugumayo Vs AG.M. A 43/2015).**

In conclusionthe memorandum of claim having offended **Rule 5(2) of the rules** **of this court**, and in light of the decision of **Nagawa Agnes Vs Segawa & others** (supra), we find that the said memorandum did not disclose a cause of action and it is struck out. No order as to costs is made.

**Signed:**

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

**Panelists**

1. Mr. Bwire John Abraham .......................................................
2. Mr. Mavunwa Edson Han .......................................................
3. Ms. JulianNyachwo .......................................................

Date:16/11/2018