**THE REPUBLIC OF UGANDA**

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

**LABOUR DISPUTE REFERENCE No. 157 OF 2020**

**ARISING FROM KCCA/C.B/942/2006**

 **KAMBA MICHEAL ………………………….. CLAIMANT**

 **VERSUS**

**UGANDA NATIONAL TEACHERS**

**UNION ………..………. RESPONDENT**

**BEFORE:**

1. **THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA**

**PANELISTS**

**1.MR. EBYAU FIDEL**

**2.MS. HARRIET MUGAMBWA NGANZI**

**3. MR. FX MUBUUKE**

**RULING ON PRELIMINARY OBJECTION**

**BRIEF FACTS**

The Claimant was employed by the Respondent as an Assistant Accountant on a fixed term contract from 1/01/2005 to 2/07/2007 when he was terminated from employment. He filed this claim against the Respondent for unlawful termination. The Respondent however lodged a complaint that the matter was barred by the limitation Act.

It was the submission of Counsel for the Respondent that, having been terminated in 2007, the Claimant only filed his memorandum of claim in this Court on 24/02/2021, 14 years after he was terminated. Counsel contended that a claim filed 14 years after the Cause of action arose was barred by Statute. He cited section 3 (1) of the limitation Act, which provides for limitation of actions of contract and tort in certain actions. He also cited Order 7 rule 11 of the Civil Procedure Rules which provides for the rejection of plaints barred by any law and this courts holding in **Osilo Jackson vs Industrial Services LDR 2010/2015,** that *“Time limits set by the statute of limitation are not mere technicalities but are substantive law and must be strictly complied with and therefore any matter filed outside these limits must be struck out irrespective of any merits in the case.”*

He contended that the Claimant in his memorandum of claim had not pleaded any exceptions which may have hindered him from filing his case in time as is required under Order 7 Rule 6 of the CPR.

In reply counsel for the Claimant, stated that, section 93(1) (2), (7) and (8) of the Employment Act and Sections 3 and 5 of the Labour Disputes (Arbitration and Settlement) Act 2006 and rules 3 of the Labour Disputes (Arbitration and Settlement) (Industrial Court Procedure) Rules 2012, are to the effect that any labour dispute should first be taken to a labour officer who has jurisdiction to resolve it and to refer to the Industrial Court upon failure to resolve it. According to him this implied that an aggrieved party could not bring a matter directly to Industrial Court before taking the matter to the Labour office.

It was his submission that the Claimant in the instant case was interdicted in 2005 and on 8/11/2006, he lodged a complaint before the labour officer challenging the interdiction. While waiting for the labour officer’s decision, he was terminated on 2/01/2007. According to Counsel, after a long period of mediation before the labour officer, he failed to resolve the matter, and referred it to this court in 2020. He insisted that the claimant filed his case within time in 2006 and it was delayed by the labour officer who only referred it to this court in 2020.

He argued that, **Osilo** (supra) was distinguishable from the instant case because in **Osilo** the Claimant only prosecutes his claim after 10 years while the Claimant in the instant case filed a complaint in 2006.

He prayed that, Court finds that the claim is not time barred and the Preliminary Objection should be dismissed.

In rejoinder, Counsel for the Respondent contended that, the claimant was leading court to believe that he had to wait for 14 years until the labour officer referred these matter yet Section 5(3) of the Labour Disputes (Arbitration and settlement) Act provides that, where a labour officer is reported to a labour officer and it is not referred to the Industrial Court within 8 weeks from the time the report is made, any of the parties to the dispute may refer the dispute to the Industrial Court…” therefore, the Claimant had the option of referring the matter to this court rather than wait for the labour officer to refer if after 14 years.

**DECISION OF COURT**

 Section 93 (1) and (7) of the Employment Act sets provide as that:

***Jurisdiction over claims; remedies***

1. ***Except where the contrary is expressly provided for by this or any other Act, the only remedy available to person who claims an infringement of any of the rights granted under this Act shall be by way of a complaint to a labour officer.***
2. ***…***
3. ***…***
4. ***…***
5. ***…***
6. ***…***
7. ***Where within 90 days of the submission of a complaint under this Act to a labour officer, he or she has not issued a decision on the complaint or dismissed it, the complainant may pursue the claim before the Industrial Court.***
8. ***…”.***

Section 93(7) is to the effect that once a labour officer receives a complaint for resolution, he or she is expected to make a decision on the complaint or dismiss it within 90 days failure of which the complainant had the option to pursue it in the Industrial court. For emphasis Section 93(7) states that;

1. ***Where within 90 days of the submission of a complaint under this Act to a labour officer, he or she has not issued a decision on the complaint or dismissed it, the complainant may pursue the claim before the Industrial Court.(****our emphasis)*

The Labour officer is therefore expected to have decided or dismissed the matter before him or her within 90 days, failure of which the Complainant should pursue it before the Industrial Court.

On the other hand, Section 5 of the Labour Disputes (Arbitration and Settlement) Act 2006, provides as follows:

***“ 5. When Labour Officer may refer dispute to Industrial Court***

1. ***If four weeks after receipt of a labour dispute-***
2. ***The dispute has not been resolved in the manner set out in section 4(a) or (c)***
3. ***A conciliator appointed under Section 4(b) considers that there is no likelihood of reaching any agreement***

***The labour Officer shall, at the request of any party to the dispute and subject to Section 6, refer the dispute to the Industrial Court.***

1. ***Notwithstanding subsection 1 the period for conciliation may be extended by a period of 2 weeks with the consent of the parties***
2. ***Where a labour dispute reported to the Labour Officer is not referred to the Industrial Court within 8 weeks from the time the report is made any of the parties or both the parties to the dispute may refer the dispute to the Industrial Court.”***

This section gives any party a right to request the Labour Officer to refer the matter to the Industrial Court if the labour officer has not decided it within 4 weeks and the option for a party to refer a matter by him or herself, if the Labour officer has not decided it within 8 weeks from the date it was reported.

Therefore, whether a party proceeds under Section 93(7) or Section 5 of the Labour Disputes (Arbitration and Settlement) Act, 2006, the Labour officer must dispose of a matter reported to him or her within 90 days and the party has the option to pursue it in the Industrial Court if it is not resolved within 90 days as provided under Section 93(7) the Employment Act 2006 or after 8 weeks, as provided under section 5 of the LADASA.

It is clear from the record that, the Claimant filed his complaint before the labour officer in 2006 and based on the correspondences on the record, the Labour Officer opted to resolve it through mediation. However, as already discussed before, mediation is not done in perpetuity, it must be done and concluded within the time lines established by law. For emphasis, the Employment Act provides that the Labour officer must handle the matter within 90 days or refer it to the matter the Industrial Court if he has not handled it within 4 weeks. In the alternative, the Complainant has the option to make a self-referral to the Industrial Court if the Labour officer has not completed it within 8 weeks.

It is therefore, unbelievable that the Claimant had to wait for 14 years until the labour officer referred the matter to the Industrial Court yet under section 93(7) and Section 5 of the LADASA, he had the option to refer the matter to the Industrial Court himself. We do not associate ourselves with the submissions of Counsel for the Claimant that, the matter was deliberated upon and mediated for 14 years because the Labour officer is expected to know that he has to handle a complaint/ labour dispute reported to him and conclude it within the time prescribed under the law(supra).

Even if, Section 6 of the Labour Disputes (Arbitration and Settlement) Act 2006, prohibits the labour officer from referring a matter  *to the Industrial Court where there are arrangements for settlements or conciliation by labour unions or employers in the Business or industry,* he or she is expected to ensure that the parties follow the procedures of settling the dispute as provided in a conciliation or arbitration agreement where applicable, but this must be done within the time prescribed under section 93(7) of the Employment Act, and section 5 of the LADASA already cited above.

There is no evidence to show that the Claimant requested the Labour officer to refer the matter to the Industrial Court any point during the proceedings before him, and within the time prescribed under section 93(7) of the Employment Act and Section 5 of the LADASA. It was the submission of Counsel for the Claimant that, the Claimant opted to wait for 14 years until the Labour Officer referred it to the Industrial Court.

In the circumstances, as stated in **Sempijja Stephen vs Kakira Sugar Ltd LDC No. 0006/2020(Jinja),** where it was held that, *“Given the periods under the limitation Act, it is our opinion that the limitation Act will apply to labour disputes from 8 weeks after filing the complaint. The labour officer or any to the parties ought to refer the dispute to the Industrial Court within 6 years after 8 weeks granted by Section 5(3) of the LADASA.* The Court’s decision is therefore to the effect that, *“Time does not run backwards to the date of termination but from the time authorised by section 5(3) of the LADASA.*

In the circumstances, the Claimant having not taken steps to request for his case to be referred or to refer it to this Court 8 weeks after he reported it to the Labour Officer, as provided under section 5(3) of the LADASA (supra), the matter is caught by time as provided under Section 3 of the Limitation Act(supra).

We therefore, find merit in the Preliminary Objection, it is allowed. This case is dismissed for being barred by time. No order as to costs is made.

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

**PANELISTS**

**1.MR. EBYAU FIDEL**

**2.MS. HARRIET MUGAMBWA NGANZI**

**3. MR. FX MUBUUKE**

**DATE: 17TH DECEMBER 2021**