**THE REPUBLIC OF UGANDA**

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

**LABOUR DISPUTE MISC.APPLN. No. 145/2018**

**ARISING FROM KCCA/NDC/L.C/092/2018**

 **MALCOM WATSON ……………… CLAIMANT**

**VERSUS**

 **L.B OFFSHORES …..……… RESPONDENT**

**BEFORE:**

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

**PANELISTS**

**1. MS. JULIAN NYACHWO**

**2.MR. MAVUNWA EDSON**

**3.MR. ABRAHAM BWIRE**

**RULING**

**Background**

The claimant filed a claim against the Respondent, for payment of salary arrears, payment in lieu of notice, severance allowance, compensation for unfair termination, general damages for unfair termination, interest and cost of the suit.

Before the matter was set for hearing, the Respondent raised a Preliminary Objection to the effect that this court does not have jurisdiction to entertain the matter and the claim does not disclose a cause of action against the Respondent.

**The Preliminary Objection**

**Whether the court has Jurisdiction to try this claim?**

It was submitted for the Respondent that it is a Principle of law that the jurisdiction of the court can only be granted by law and if proceedings are conducted by the court without jurisdiction, they are a nullity. He referred Court to **Desai Vs Warsaw, 1967,E.A 351**.

**The Respondent’s case**

It was the Respondent’s case that in 2014, the Claimant was employed as an Operations Executive by Lloyds British Testing Limited, a British Company, based in the United Kingdom. His role was to be executed in the UK. On 23/11/2014, he acknowledged the terms of the agreement to take effect on 1/12/2014. Citing Section 14 of the Contracts Act 2010 and **Green Boat Entertainment Limited versus City of Kampala C.S No.580 of 2003,** which are to the effect that a contract is an agreement enforceable at law and to be valid and legally enforceable, there must be capacity to contract, intention to contract, consensus, valuable consideration, legality of terms among other, Counsel argued that the Claimant confirmed his employment with the Lloyds British Testing Limited on the 23/11/2014 at 19:14 in accordance with the terms of the Service Agreement sent to him on 20/11/2014 and he continued working on the same terms.

He further submitted that, clause 5 of the service agreement provided that the Claimant’s place of carrying his duties was 4-6 Bel nell Can Four Oaks, Sutton Cold field West Midlands, B74 4AB and the company would require him to travel overseas in the performance of his duties. In 2016, the Claimant in performance of the service contract came to Uganda and incorporated the Respondent Company, an affiliate of Lloyds British Testing Limited. On 2/09/2016, he commenced his as a non- resident Operations Director in Uganda as well as for the Respondent’s other affiliates outside Uganda.

He further submitted that clause 23 of the service agreement, *“… is governed by and construed in accordance with English law. The parties agree to submit to the non-exclusive jurisdiction of the English Courts in relation to any claims arising from the agreement.”*

He argued that according to Chitty on contract 24th Edition Vol 1 Page 338, the principle of law is that once the terms of a contract are reduced to writing, any intrinsic evidence meant to alter or add to the express terms of the agreement is generally inadmissible. He also cited  **Future Investment (U) Limited vs Nasuru Yusuf HCCS No. 0012/2017**, in which court stated that in interpreting terms of a contract, court only looks at the agreement between the parties to give effect to their intentions, unless the extrinsic oral evidence being introduced is intended to prove that there is no agreement at all, fraud illegality, want of due execution, want of capacity to clarify an ambiguity to prove a condition of precedent.

He further argued that in the instant case Lloyds British Testing Limited, a C Company incorporated and operating in the United Kingdom engaged the Claimant also a citizen of the UK, to work in other places where the Company has affiliates.

Counsel reiterated that from 2014, the Claimant executed his duties in accordance with the service agreement and he was remunerated by Lloyds British Testing Limited. The Claimant also agreed to the application of English law in case of any claim or dispute arising from their engagement and to be subject to English jurisdiction. And in any case the Claimant does not allude to any particulars of employment between him and the Respondent as his employer and no evidence was relied upon to support the allegation that he was employed by the Respondent. Therefore, Court should be pleased to dismiss this claim with costs, for want of Jurisdiction, because the Claimant’s service agreement is with Lloyds British Testing Limited and not the Respondent.

In reply Counsel for the Claimant objected to the Preliminary Objective and asserted that the Respondent is an independent Company in Uganda, although it is an affiliate to the Lloyds British Testing Limited a UK Company. According to him the Claimant’s claims are purely in Uganda, where this court has jurisdiction to adjudicate any dispute.

According to Counsel the Claimant’s services were not performed in the UK, but in Uganda where LB offshore as per its heads is situate in Uganda. He argued that although clause 23 of the service agreement states that the agreement is governed by and in accordance with English Law and that parties agreed to submit to non-exclusive jurisdiction of the English Courts in any claim or matter arising out of their agreement, the Industrial Court is governed by principles and doctrines of English or Common law system and besides any court of jurisdiction is governed by English law, therefore the industrial Court had Jurisdiction to adjudicate this claim and especially since the Respondent is a Ugandan Company.

**RULING**

It is trite that an employment relationship is created by a contract of employment. Therefore, any person claiming employment rights must prove the existence of an employment relationship, whether oral or in writing.

The only written particulars of the claimant’s employment status on the record, is a contract of service he entered into with Lloyds British Testing Limited, a Company incorporated in the UK. The Contract provides that he was to work as Operations Director, from 20/11/2014. A perusal of the said contract indicated that the principle station of duty was the Atlas House, 4-6, Four Oaks , Sutton Coldfield West Midlands B74 4AB,UK, but he would be expected to carry his duties from any other location the Company may from time to time require him to. He was also expected to travel overseas in the performance of his duties. The evidence further showed that he was responsible for 4 of the Companies affiliates in Uganda, Egypt, Dubai and Kuwait.

We find nothing on the record to link him to the Respondent LB offshores as its employee, although the Respondent is an Affiliate of Lloyds British Testing Limited, in Uganda. As already discussed above, the primary proof of employment is a contract of service/employment. However, evidence that a person was given work and paid for doing the work could also suffice to prove an employee/employer relationship. There was no evidence of payment to the Claimant in this regard.

The record indicates that the Claimant incorporated and worked as the non- resident director of the Respondent Company but there is nothing which links him to it as its employee. We have no doubt in our minds that given the contract of service on the record, that the Claimant was an employee of Lloyds British Testing Limited and he was carrying out his duties as non-Resident director on its behalf, overseas in Uganda, in accordance with the contract of service.

Section 3(5) of the Employment Act, 2006 provides that *“except where the contrary is provided for nothing in this Act applies to employment outside Uganda…”*

We have already established that the Claimant’s employment was governed by the contract of service between him and Lloyds British Testing Limited, a British Company and the Contract specified that all disputes would be resolved under English law and English Courts.

We respectfully do not agree with Counsel for the Claimant’s assertion that the Industrial Court is governed by English Law, I believe he meant that the Court is persuaded by common law principles, which it may be persuaded to apply where there is a lacuna in Ugandan law. The Industrial Court is Governed by the Constitution of the Republic of Uganda and Legislation relating to Employment and labour relations subordinate thereto. It is respectfully not an English Court.

Therefore, in the absence of any evidence linking the Claimant to the Respondent as an employee and given that the only evidence of employment is the contract of service with Lloyds(supra) or evidence that the Respondent issued the claimant with work and paid for the work, we find that the Claimant was not an employee of the Respondent but an employee Lloyds British Testing Limited, a British Company. In the circumstances, this Court has no jurisdiction to hear this matter.

It is therefore dismissed with no orders as to costs.

Delivered and signed by:

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

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

**PANELISTS**

**1. MS. JULIAN NYACHWO ………..**

**2.MR. MAVUNWA EDSON ………..**

**3.MR. ABRAHAM BWIRE ………..**

**DATE: 4TH MAY 2020**