



THE REPUBLIC OF UGANDA  
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA  
LABOUR APPEAL NO. 19 OF 2019  
(Arising from Labour Dispute No. KCCA/RUB/230/2018)

SERWAMBA SHAKIBU.....APPELLANT

VERSUS

DENEVA CO.LTD.....RESPONDENT

**BEFORE:**

1. The Hon. Mr. Justice Anthony Wabwire Musana

**THE PANELISTS:**

1. Hon. Adrine Namara,
2. Hon. Suzan Nabirye &
3. Hon. Michael Matovu.

**REPRESENTATION:**

1. Mr. Lawrence Arinaitwe for the Appellant.
2. Mr. Samuel Sseguya of Sseguya & Co. Legal Consultants for the Respondent.

**AWARD**

**Introduction**

- [1] This is an appeal against the decision of Mr. Mukiza Emmanuel Rubasha<sup>1</sup>, Labour Officer of Kampala Capital City Authority, specifically finding that he had no jurisdiction to entertain the Appellant's complaint for a declaration that he was summarily dismissed and failing to evaluate the evidence before him. The Respondent had opposed the claim, raising a preliminary objection to the jurisdiction of the Labour Officer to hear and determine a matter of employment outside Uganda.

**The Appellant's case at the Labour Office**

---

<sup>1</sup> Mr. Rubasha presided over Labour Dispute No. KCCA/RUB/230/2018

- [2] In paragraph 2 of his notice of claim, the Appellant described the Respondent as a limited liability company with head offices at Plot 9695, 12 Pamba Road, Changamwe Mainland, Uganda Property Building, P.O. Box 41997-80100, Mombasa, Kenya and branch offices at Nalukolongo, Lubaga Division, Kampala. He attached a letter by which Daneva Co. Ltd confirming that he was their employee from 2008 until May 2018 as a truck driver. The letter was signed by a Mr. Arthur Kizito. The Appellant also attached a Cargo Manifest dated 30<sup>th</sup> April 2018 showing a destination from Kampala to Mombasa and indicating an empty load. He contended that he had been accused of transporting a maize load to Naivasha, Kenya. When he returned, he was summarily dismissed.

**The Respondent's case at the Labour Office**

- [3] The Respondent filed a memorandum in reply on 20<sup>th</sup> February 2019 and raised a preliminary objection that the Labour Officer did not have jurisdiction to hear the matter. It was contended that the Respondent is a foreign company, and the employment services were rendered to the foreign entity. The alleged incident of gross misconduct happened in Kenya. Counsel for the Respondent produced a certificate of incorporation showing the Respondent as a company incorporated in Kenya, an application letter written by the Appellant to the Kenyan Company seeking a job as a Driver, and a Police Abstract Report from Changamwe Police Station in Mombasa, Kenya describing the report of alleged unauthorized cargo carriage by the Appellant.

**The Appellant's submissions before the Labour Officer**

- [4] The Appellant submitted that the preliminary objection was a misconception of facts and not points of law. He argued that the Respondent had registered offices in Uganda and that the certificate of incorporation attached needed to be certified. That the Appellant's application letter had been submitted to the Respondent's offices in Nalukolongo. Service of process was effected at the offices in Nalukolongo and received by a Mr. Arthur Kizito, who had instructed the Respondent's lawyers. It was his prayer that the preliminary points be overruled. The Appellant invoked Article 126(2)(e) of the 1995 Constitution.

**The ruling of the Labour Officer**

- [5] The Labour Officer found that the Respondent had a station at Nalukolongo to coordinate truck routes. He found that the Respondent was registered in Kenya by the certificate of incorporation. He also noted that the Appellant had not provided any evidence of incorporation of the Respondent in Uganda. In his view, having made a job application to the Respondent in Kenya, the Appellant was aware at the onset that the Respondent was Kenyan, and he could not deviate from that position. He noted that the alleged misconduct happened in Kenya and considered the police abstract report from Changamwe Police Station in Mombasa, Kenya. His finding was that it would be difficult for the Kampala Labour Officer to investigate

a complaint in Kenya. In his view, this was a matter better handled in the labour offices in Kenya. Citing **Section 3(5) of the Employment Act 2006**, the Labour Officer found that he had no jurisdiction to entertain the complaint and dismissed it.

#### **The grounds of appeal**

- [6] Dissatisfied with the decision of the Labour Officer, the Appellant filed this appeal on the following grounds:
- (i) The Labour Officer erred in law and fact when he held that he had no jurisdiction to entertain Labour Dispute No. KCCA/RUB/230/2018 and,
  - (ii) The Labour Officer failed to evaluate the evidence before him and thus misdirected himself in arriving at a wrong decision.

#### **The submissions of Counsel for the Appellant**

- [7] Mr. Lawrence Arinaitwe, appearing for the Appellant, opted to concurrently argue both grounds of appeal. He first submitted that the Respondent was a Ugandan Company incorporated under the Laws of Uganda on 23<sup>rd</sup> July 2007 vide certificate No. 91425. All affairs relating to the Appellant's employment were conducted at the registered office in Nalukolongo. He repeated the facts of the claim. He suggested that the Labour Officer had ignored (i) the fact that the certificate of incorporation presented by the Respondent was not certified, (ii) the Appellant's address at the head of the application letter, and (iii) the fact that the police abstract report was not certified. Counsel also submitted that the Labour Officer introduced an argument relating to the Respondent's station in Nalukolongo. It was suggested that had the Labour Officer interrogated all the facts and documents presented before him; he would not have concluded that he did not have jurisdiction. In Counsel's view, the investigation did not involve traveling abroad but properly scrutinizing the documents before him.
- [8] The Appellant contended that the legal status of an employer does not determine employment in Uganda but rather the nature of employment. Citing section 15 of the Civil Procedure Act Cap. 6, the Appellant submitted that a suit should be instituted where the defendant resides or where the cause of action arises. The Appellant prayed that the ruling of the Labour Officer be set aside and that this Court hears the matter.

#### **The submissions of Counsel for the Respondent**

- [9] In reply, Mr. Samuel Sseguya, appearing for the Respondent, also submitted concurrently on both grounds of appeal and supported the decision of the Labour Officer. Counsel reiterated that the basis of the decision was that the employment contract was executed with the Respondent, a Kenyan-registered company. In Counsel's view, the Respondent was domiciled in Kenya, the incident occurred in

Kenya, and the argument that the Appellant was terminated by the Directors of the Respondent was a mix-up. The Respondent and the company having its registered office in Nalukolongo, were distinct legal entities. Counsel prayed that the appeal be dismissed with costs.

#### **The duties of a first appellate court**

- [10] In exercising its statutory mandate as a first appellate court, this Court must re-evaluate or re-appraise the evidence presented to the court of first instance in full and arrive at our conclusions.<sup>2</sup> In considering the appeal, this Court would also be concerned with the merits of the decision of the Labour Officer.

#### **Analysis of the grounds of appeal**

- [11] In our view, the primary question in this appeal is whether the Labour Officer erred when he held that he did not have jurisdiction to entertain the Labour Dispute No. KCCA/RUB/230/2018. In resolving this question, we shall subject the evidence to fresh and exhaustive scrutiny, thereby examining whether the Labour Officer evaluated the evidence.
- [12] The evidence before the Labour Officer was straightforward. The Appellant presented before the Labour Officer two documents;
- (i) a recommendation letter titled "To whom it may concern" authored by the "Managing Director of Daneva Company Ltd of Plot 9695, 12 Pamba Road, Changamwe Mainland, Uganda Property Building, P.O.Box 41997-80100, Mombasa Kenya and
  - (ii) a cargo manifest from Malaba, Kenya.

In its preliminary objection, the Respondent produced;

- (i) a copy of a certificate of incorporation showing that the Respondent was incorporated in the Republic of Kenya on 16<sup>th</sup> March 2007,
- (ii) an application letter addressed to "The Transport Officer, Daneva Co. Ltd, P.O.Box 86704-80100, Mombasa Kenya", and
- (iii) a police abstract report indicating that the alleged incident leading up to the termination of employment occurred in the Republic of Kenya.

This was the sum of evidence presented before the Labour Officer.

- [13] From the proceedings, evidence, and submissions, the Appellant referred to a Ugandan Entity named Deneva Co. Ltd. as his former employer but did not produce

<sup>2</sup> See *Father Nanensio Begumisa and three Others v. Eric Tiberaga* [2004] KALR 236 and *Kifamunte Henry V Uganda*, S.C Criminal Appeal No. 10 of 1997

any documentary support for the assertion. The Labour Officer formed his opinion based on the application letter, the certificate of incorporation, and the police abstract report. These documents show that the Respondent is registered and domiciled in Kenya. The alleged incident of misconduct giving rise to the termination allegedly occurred in Kenya. The police abstract report was prepared by the Kenya Police at Changamwe Police Station in Mombasa, Kenya. In the submissions before this Court, the Appellant explained that he was employed by Deneva Co. Ltd, a limited liability company registered under the laws of Uganda, on 23<sup>rd</sup> July 2007 vide certificate No. 91425. Notably, this certificate was not produced before the Labour Officer. It was submitted for the Appellant that the Labour Officer came to the wrong conclusion that the Respondent was incorporated in Kenya because no certified copy of the certificate of incorporation was presented to him.

[14] Revisiting the evidence before the Labour Officer points to the following:

- a) On 30<sup>th</sup> March 2009, the Appellant applied for a job as a driver with an entity called "Daneva Co. Ltd." He addressed the letter to postal address 86704-20100 in Mombasa, Kenya.
- b) On 5<sup>th</sup> June 2018, Daneva Co. Ltd issued a letter addressed *To Whom It May Concern*. The letterhead bore the address of the company as Plot 9695, 12 Pamba Road Changamwe Mainland Uganda Property Building, P.O. Box 41997-80100, Mombasa Kenya, Email [damevacompany@yahoo.com](mailto:damevacompany@yahoo.com)
- c) An East African Community Customs Cargo Manifest (C12) dated 30<sup>th</sup> April 2018 from the Kenya Revenue Authority at Malaba in Vehicle Registration Number KBL 724E destined from Kampala to Mombasa with an Empty Load.
- d) A certificate of incorporation Number 136890 of Daneva Company Ltd incorporated under the Companies Act (Cap.486) at Nairobi on the 16<sup>th</sup> day of March 2007 and;
- e) A police abstract form from Changamwe Police Station, P.O. Box 90594-80100, Mombasa, dated 2<sup>nd</sup> May 2018, indicating that the Appellant transported unauthorized cargo at the Athi River-Mombasa area.

[15] In our assessment, the evidence before this Court leads to the conclusion that the Appellant applied for and was employed by a company domiciled in Kenya. The incident that led to his termination also occurred in Kenya. From the record, the Labour Officer considered this evidence before concluding that the Respondent was incorporated in Kenya, the Appellant applied for a job in Kenya, and the incident of misconduct occurred in Kenya. On this basis, he concluded that he had no jurisdiction to hear the matter. We are unable to fault the Labour Officer for his conclusion that the Appellant was aware that the Respondent was incorporated in Kenya and not in Uganda and could not, after summary dismissal, deviate from this position. We cannot come to an alternative conclusion based on the evidence before this Court.

- [16] Regarding jurisdiction, under **Section 3(5) of the Employment Act 2006** (*from now EA*), it is provided that except where the contrary is provided, nothing in the Employment Act applies to employment outside Uganda. The principle of law is that jurisdiction is a creature of statute.<sup>3</sup> Proceedings conducted by a court without jurisdiction are a nullity.<sup>4</sup> And this Court has emphasized, in the case of **Okullu & Anor vs Ocepa**,<sup>5</sup> that the primary requirement of the justice system is that a Court adjudicating a dispute must be clothed with jurisdiction. In that case, we cited a passage extracted from a Kenyan case<sup>6</sup> where Nyarangi JA opined that a court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction. We also cited a decision by the Appellate Division of the East African Court of Justice<sup>7</sup>, borrowing from the dictum of Nyarangi J. (*ibid*) observed that jurisdiction is a most, if not the most, fundamental issue that a court faces in any trial. It is the very foundation upon which the judicial edifice is constructed, the foundation from which springs the flow of the judicial process. Without jurisdiction, a court cannot take even the proverbial first Chinese step in its judicial journey to hear and dispose of a case. From a statutory viewpoint, Section 3(5) EA is explicit. It provides that nothing in this Act applies to employment outside Uganda except where the contrary is provided. Having found, as we have in paragraph 14 above, we would reassert the view that the Employment Act, 2006, does not apply to the Appellant's employment with the Respondent.
- [17] There has also been a broader judicial perspective on the principles governing jurisdiction. In the case of **C and 11 Others v Attorney General**<sup>8</sup> the High Court of Uganda was considering the infringement of rights of employees of a Ugandan entity stationed in Iraq. The Plaintiffs had been recruited under the externalization of labour program regulated by the Employment (Recruitment of Ugandan Migrant Workers Abroad) Regulations, 2005. The Court set the following criteria for the determination of the proper forum which has **"the most real and substantial connection with the dispute"**:
- (i) The court must consider whether there is prima facie some other available forum having competent jurisdiction that is more appropriate for the trial of the dispute in question, and the defendant has the legal burden of

<sup>3</sup> In the case of *Baku Raphael Obudra & Anor v AG* (S.C.C.A No. 1 of 2005) it was held that "Courts are established directly or indirectly by the constitution and that their respective jurisdictions are accordingly derived from the constitution or other laws made under the authority of the constitution."

<sup>4</sup> *Desai vs Warsaw* [1967] E.A 351

<sup>5</sup> LDMA 09 of 2022 (Unreported)

<sup>6</sup> *Owners of Motor Vessel Lillian "s" v Caltex Oil Kenya Limited* [1989] KLR 1

<sup>7</sup> *Attorney General of the United Republic of Tanzania v African Network of Anima Welfare* Appeal No. 3 of 2011 EACJLR 2005-2011 395 at 399

<sup>8</sup> *Spiliada Maritime v Cansulex* [1987] 1 AC 460 as cited in *C & 11 Ors v Attorney General & Anor* (Civil Suit 278 of 2013) [2020] UGHCCD 55

proving facts that establish that there is another jurisdiction that has **“the most real and substantial connection with the dispute.”**

- (ii) The factors which will be taken into consideration “include not only factors affecting convenience or expense (such as the availability of witnesses) but also other factors such as the law governing the transaction and places where the parties respectively reside or carry on business.
  - (iii) The plaintiff would have the legal burden of establishing the facts which would persuade the court why the suit should be heard within the jurisdiction, including significant juridical disadvantages in the foreign forum, the potential prejudice that the plaintiff might suffer there, or other circumstances which might, as a matter of justice, clearly override the natural connection between the dispute and that forum. The main consideration is whether substantial justice can be obtained in the foreign jurisdiction. The court exercises particular sensitivity in making this determination as it is reluctant to judge the competence or independence of another country’s judiciary and;
  - (iv) The discretionary power of a court to decline jurisdiction based on the convenience of the parties and the interests of justice-has become extremely relevant when determining which country’s court should preside over a dispute or disagreement involving nationals of different countries. A court will usually dismiss a case when the court determines that the dispute would better be adjudicated in a different forum.
- [18] In the C & Others case, the High Court of Uganda<sup>9</sup> found that a recruitment agreement was executed in Uganda, and the subject matter was to be executed in Uganda. The law relating to their recruitment was Ugandan law. In the case before us, as a starting point is that the Employment Act 2006 does not apply to employment outside Uganda. In the C & Others case, the Plaintiffs were recruited under Ugandan law, the Employment (Recruitment of Ugandan Migrant Workers Abroad) Regulations, 2005. That is not the case in the matter before us. The Appellant was not recruited under the Employment Act 2006. Secondly, the present Respondent produced documents demonstrating that the dispute arose in Kenya and all the facts relating to the alleged incident leading to termination occurred in Kenya. In our view, the law applicable to the conflict is Kenyan Law; the possible witnesses to the incident and the evidence is in Kenya, and the Kenyan Labour Court has **“the most real and substantial connection with the dispute.”** The Appellant did not place before the Court any material that might demonstrate any hardship he may experience if he pursued an action in the Republic of Kenya.

---

<sup>9</sup> Per Ssekaana J.

[19] As a result, objectively considering the evidence before us, we do not fault the Labour Officer's finding that he did not have jurisdiction to hear the matter. The first ground of appeal fails, and the effect of this on the appeal is that it substantially fails. In all, we affirm the decision of the Labour Officer.

**Costs**

[20] Regarding costs of the claim, we have ruled in the case of **Joseph Kalule v GIZ**<sup>10</sup> that whereas costs follow the event, in labour disputes, the award of costs is the exception rather than the rule. The exceptions include some form of misconduct by the unsuccessful party. As the matter rests on a question of jurisdiction, there shall be no order as to costs.

**Final orders of the court**

[21] In the result, the appeal fails and is dismissed. Each party shall bear its costs.

It is ordered this 6<sup>th</sup> day of June 2023.

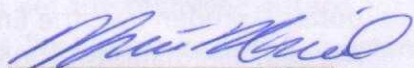
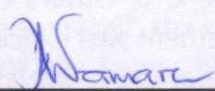
**DELIVERED & SIGNED BY:**

Anthony Wabwire Musana,  
Judge, Industrial Court



**THE PANELISTS AGREE:**

1. Hon. Adrine Namara,
2. Hon. Susan Nabirye &
3. Hon. Michael Matovu.



Delivered in open Court in the presence of:

1. For the Respondent: **Mr. Samuel Sseguya**  
Court Clerk: **Mr. Samuel Mukiza.**

<sup>10</sup> LDR No. 109/2020(Unreported)