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**THE REPUBLIC OF UGANDA**

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

**MISCELLANEOUS APPLICATION NO. 202 OF 2021**

*(Arising from KCCA/CB/194/2014)*

**WASHINGTON INIMA :::::::::::::::::::::::::::::::::::::::::::::::::APPLICANT**

 **VERSUS**

1. **MOHAMMED EL TAHIR**
2. **OILCOM(U) LTD:::::::::::::::::::::::::::::::::::::::::::::::: RESPONDENTS**

**BEFORE:**

1. THE HON. JUSTICE ANTHONY WABWIRE MUSANA

**PANELISTS:**

1. Mr. JIMMY MUSIMBI,
2. Ms. ROBINAH KAGOYE &
3. Mr. CAN AMOS LAPENGA.

 **RULING**

**Introduction**

[1] The Applicant sought this Court’s determination on a motion to hold the Respondents in contempt of Court. The application was brought under Section 93(1)-(4) of the Employment Act 2006*(from now EA)* and Order 52 Rules 1,2 and 3 of the Civil Procedure Rules*(from now CPR)* seeking sanctions in the cumulative sum of UGX 650,000,000/= or the arrest and commitment of the 1st Respondent in Civil Prison.

 **Background Facts**

[2] The Applicant was employed as the 2nd Respondent’s Station Manager until 12th May 2014, when his services were terminated. He filed a complaint at Kampala Capital City Authority Labour Office. On 16th February 2015, the presiding Labour Officer, Ms. Ruth Kulabako Namaarwa, entered a decision in the Applicant’s favour. She ordered the 2nd Respondent to pay the Applicant UGX 3,812,500 in statutory compensation and to issue a certificate of service within 21 days.

[3] The 2nd Respondent appealed against that decision. On 5th November 2021, the Industrial Court dismissed the appeal confirming the order for statutory compensation. The order for issuance of a certificate of service remained intact. The Applicant asserts that the Respondents have not given him the certificate of service and are, therefore, in contempt of Court.

[4] The Respondents oppose the application.

**Submissions of the Applicant**

[5] As a preliminary point, Mr. Julius Kinyera, appearing for the Applicant, argued that the Respondents had not filed any affidavits in reply. Citing the case of **DFCU Bank Ltd v Geofrey Muwanga,**[[1]](#footnote-1) Counsel suggested that the application was unchallenged.

[6]It was also submitted that following the order for issuance of a certificate of service, the Respondents were served with a letter requesting for the discharge certificate, and the 1st Respondent, as Manager of the 2nd Respondent, refused to comply. Relying on the case of **Barbra Nambi v Raymond Lwanga,**[[2]](#footnote-2) Counsel submitted that the Respondents were aware of the existence of the order of the Labour Officer, and had not complied with it and are therefore in contempt of the court. Having failed to get alternative employment, the Applicant sought damages in the sum of UGX 650,000,000.

**Submissions of the Respondent**

[7]Relying on Halsbury’s laws of England[[3]](#footnote-3), M/S CCAKS Advocates, submitting for the Respondents, suggested that the letter forwarding the order did not bear the 2nd Respondent’s official stamp and it was doubtful that it was properly served. Counsel contended that the Applicant had not proven failure to get alternative employment. It was submitted that the certificate of service had been ready for collection. It was also submitted that during the appeal, the Respondents abided by Court orders, depositing security for costs. It was contended that no loss had been proven to justify the fines. The Respondents asked that we dismiss the application.

**Resolution of preliminary points**

[8]It is established that contempt of court is not a matter between the parties to a suit. It is an issue between the court and the potential contemnor, the party who has not complied with a court order.[[4]](#footnote-4) It would be immaterial whether any party to contempt proceedings has filed any pleadings. As such, this preliminary point is without merit.

[9] The Applicant challenged an affidavit in reply ‘allegedly’ sworn by the 1st Respondent on the 11th day of November 2022 and filed in Court 14th of November 2022 is on record. The Applicant filed an affidavit in rejoinder on the 10th of January 2023. The Applicant suggests that the signature of the Affirmant on page 2 of the affidavit in reply is not the signature of the 1st Respondent. He suggested that by appearance, the person who attended Court in the present proceedings is not his erstwhile manager. To his affidavit in rejoinder, the Applicant attaches his letter of termination and the signature thereon is different from the one on the affidavit in reply. He also attached a consent withdrawal form for Labour Dispute Miscellaneous Application No. 054 of 2015 which bears the same signature as the termination letter. There is also an affidavit in reply to the said application signed in the name of Mohamed Eltahir in M.A 54 of 2015. This signature is visibly different from that inscribed on the affidavit in reply to the present application. The varied signatures invite an immediate question into the identity of the deponent of the affidavit in reply dated 11th November 2022. If indeed, it has been signed by a one Ramakrishnan who now purports to be Muhammed Eltahir, then this is a false affidavit. The Court would have to sever the falsity on its record. [[5]](#footnote-5) In the result, we would strike the entire affidavit in reply off the record.

**Issues for determination**

[10] The crisp question for determination in this application is whether the Respondents are in contempt of Court.

**Analysis and Decision of the Court**

[11] Before dealing with the facts in the present application, we will make necessary references to the relevant principles of the law of contempt of court. According to Black’s Law Dictionary 9th Edition, contempt of court means conduct that defies the authority or dignity of a Court.[[6]](#footnote-6) In the case of **Megha Industries Ltd v Conform Uganda Ltd,**[[7]](#footnote-7) it was held that contempt of court exists where there is a lawful court order, and the potential contemnor must have been aware of the court order and failed to comply with the order.

[12] Before a court finds a potential contemnor in contempt of court, it is to be satisfied, on a balance higher than the balance of probabilities but lower than beyond reasonable doubt,[[8]](#footnote-8) that;

(i) there is in existence a lawful order,

(ii) the potential contemnor’s knowledge of the order and;

(iii) the potential contemnor’s failure to comply, i.e., disobedience of the order.[[9]](#footnote-9)

**Existence of a lawful order**

[13] In the case before us, on the 16th day of February 2015, the Labour Officer sitting at Kampala Capital City Authority entered a decision against the 2nd Respondent, by which she awarded specific statutory compensation to the Applicant. She also ordered the 2nd Respondent to give the Applicant a certificate of service within 21 days of the order. The Respondents’ contestation is that the order of the Labour Officer was not absolute. Under Section 2 EA, a Labour Officer means the Commissioner or a District Labour Officer. Under Section 13 (1)(a)EA, a Labour Officer to whom a complaint has been made shall have the power to investigate a complaint and settle it through conciliation, arbitration, adjudication, or such procedure as they think fit. Further, under Section 93EA, the Labour Officer has jurisdiction to hear and determine complaints for infringement of rights under the EA. The sum effect of these provisions is to grant the Labour Officer jurisdiction to hear, entertain and determine matters related to the infringement of employment rights under the EA.

[14] We are fortified in this view by the decision of the High Court in the case of **Ozuu Brothers v Ayikoru & Ors,**[[10]](#footnote-10) in which the Honourable Mr. Justice Stephen Mubiru, proffers an expansive discourse on the jurisdiction of Labour Officers. His Lordship observed that the primary intention of the legislature in creating District Labour Officers was to provide a forum for the resolution of employment civil disputes in a speedy, inexpensive and effective forum. From this dictum, a Labour Officer is a court of first instance in labour disputes.

[15] Further, the Registrar of the Industrial Court executes decisions of Labour Officers. In the case of **Mutaawe Andrew v Sanlam General Insurance Ltd LDR 101 of 2016** the Industrial Court**[[11]](#footnote-11)** was very explicit on the point that the Registrar of the Industrial Court exercised powers of a Registrar of the High Court in execution of orders of the Labour Officer. Similarly, in the case **Edward Ssekayyiba v Uganda Red Cross Society M.A No. LD/M/004/014,** it was observed that the Registrar of the Industrial Court had powers ‘*mutatis mutandis’* with a Registrar of the High Court and clothed with kindred powers. The Registrar of the Industrial Court could exercise judicial powers under Orders 23 and 50CPR. This reasoning is consistent with the enactment in S12(5) of the **Labour Disputes(Arbitration and Settlement) (Amendment) Act 2020**, which provides that ‘the functions of the Registrar, Deputy Registrar, and Assistant Registrar of the Industrial Court shall be similar to those of a Registrar, Deputy Registrar, and Assistant Registrar of the High Court, respectively.’ In our considered view, the enforcement of decisions of the Labour Officer by the Registrar of the Industrial Court implicitly and explicitly renders such decisions, decisions of the court. It is trite that decisions of court are to be obeyed. In short, it is our view that it is indisputable that there was in existence a lawful order.

  **The potential contemnor’s knowledge of the order**

 [16] The 2nd Respondent appealed against this decision of the Labour Officer in Labour Dispute Appeal No. 07 of 2015. The Appeal was dismissed on the 5th of November 2021. The appeal and its subsequent dismissal are significant in that the Respondents cannot deny the existence of the order of the Labour Officer which the 2nd Respondent sought to appeal against. We note that while the original complaint was against the 2nd Respondent, in M.A 54 of 2021, the 1st Respondent deposed to an affidavit as General Manager of the 2nd Respondent and at paragraph 3 affirmed that he was aware of the decision of the Labour Officer dated the 23rd of February 2015. Under S94EA, a party dissatisfied with a decision of a Labour Officer may appeal to the Industrial Court. In this regard, the Respondent’s argument that the Labour Officer’s order was not absolute does not gain much purchase in our view. An order of Court need not be absolute for parties to obey it. The inescapable conclusion is that potential contemnors had full knowledge of the existence of the order.

 **The potential contemnor’s failure to comply**

[17] The final element of the test of contempt is the potential contemnor’s failure to comply with the order. The Applicant asserts that the Respondents have refused to give him the certificate of service. That his attempts to pick the certificate of service from the 2nd Respondent’s offices have come to naught. He suggests that the Respondents have been out rightly hostile. The Respondents counter that the Applicant is being less than truthful because they have not received any demand for the certificate of service. The letter from the Applicant’s lawyers is suspect, as it does not bear the official stamp of the Respondent. However, the affidavit in reply is itself false and unreliable. The contents are not credible. Noting as we did in dealing with the falsity, there is a sworn statement by a Manager of the 2nd Respondent acknowledging the order. In opposing the present application, the potential contemnors have not complied with the order to date. In other words, the Respondents have not delivered the certificate of service.

[18] Further, if the Respondents’ version or account of events were to be believed, it is inconsistent with the chronology of this employment dispute. First, the Labour Officer’s decision was handed down on the 16th of February, 2015. There was ample opportunity between that date, the hearing and disposal of the appeal, and the present proceedings for the Respondent to deliver the certificate of service to the Applicant at the address of his lawyers[[12]](#footnote-12), at the Labour Office, or by depositing the same with the Industrial Court. These steps would have demonstrated a willingness to comply with the order. In the replying affidavit, the 1st Respondent deposed to the certificate of service having been made ready for collection but did not attach a copy of this certificate. Throughout these proceedings, the Respondents have not indicated any factual inability to comply with the Labour Officer’s order or demonstrated any manner in which an attempt was made to comply with the order. In other words, we did not see an effort to deliver the certificate of service to the Respondent. By declining, delaying, ignoring or refusing to provide the certificate of service, the Respondents interfered with the effective administration of justice.

[19] Objectively considering the facts and all the circumstances, the Respondents have not complied with the Labour Officer’s order and are in contempt of court. That leaves the matter of remedies.

 **Remedies**

 [20]The Applicant sought UGX 500,000,000 in general damages from the 1st Respondent and UGX 150,000,000 from the 2nd Respondent. Sanctions for contempt of Court are derived from common law decisions and civil contempt is punishable by way of committal to civil prison, sequestration, fine or injunction of the contemnor.[[13]](#footnote-13) We think that the claim for damages against both Respondents, is not well founded. The appeal was dismissed in the year 2021. In the accompanying affidavit, the Applicant had no credible evidence to show that he had failed to secure alternative employment. No job advertisement, application letter, or rejection letter indicating that a prospective employer had declined to appoint him because he lacked a certificate of service. Additionally, the 2nd Respondent fully paid the statutory compensation. Therefore, while the Applicant was contending for a fine of UGX 650,000,000/=, the submission, is in our view, without a persuasive foundation.[[14]](#footnote-14) The sanctions for civil contempt appear to be quite distinct from criminal contempt. A proceeding for civil contempt, such as the present one, is regarded as a form of execution and enforcement of the order alleged to have been violated to the detriment of a private party. (*See the case* ***Florence Dawaru vs Angumale Albino & Anor****[[15]](#footnote-15))*.We think that regarding a fine, the Respondents should pay the sum of UGX 8,000,000/=. The fine is imposed on both Respondents. We are mindful that the Labour Officer’s order is against the 2nd Respondent but the 1st Respondent was at all material times the General Manager of the 2nd Respondent and well aware of the proceedings before and order of the Labour Officer. He would not escape culpability. We also direct that the certificate of service be delivered to the Registrar of the Industrial Court. These orders are to be complied with within 21 days from the date of this order.

[21]This Court hasruled that employment dispute costs are awarded against an unsuccessful offending party.[[16]](#footnote-16) Had the certificate of service been delivered to the Respondent promptly, these proceedings would have been unnecessary. For this reason, the Applicant shall have the costs of the application.

 **Decisions and Orders of the Court**

[22](i) It is declared that the Respondents are in contempt of

Court.

(ii) The Respondents are ordered to pay a fine of UGX 8,000,000/=. The fine shall be paid to the Registrar of this Court within 21 days from the date hereof.

(iii)The Respondents shall forthwith comply with the order of the Court and deposit the Applicant’s certificate of service to the Registrar of this Court in any case not later than 21 days from the date of this order.

(iv) The Applicant’s Counsel are directed to serve the Respondent’s Counsel M/s. CCAKS Advocates, Plot 4 Kimathi Avenue, 1st Floor, Suite 02, P.O. Box 12343, Kampala, with a copy of this ruling and a duly extracted order within 5 days from the date hereof and furnish with the Registrar of this Court with proof of service within 3 days of the date of service.

(v) The Applicant shall have taxed costs of this application.

**It is so ordered and dated at Kampala this …….day of April 2023**

**Anthony Wabwire Musana, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**JUDGE, INDUSTRIAL COURT**

**THE PANELISTS AGREE:**

1. **Mr. JIMMY MUSIMBI, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**
2. **Ms. ROBINAH KAGOYE & \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**
3. **Mr. CAN AMOS LAPENGA. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Ruling delivered in open Court in the presence of:

1. For the Applicant: **Mr. Emmanuel Lwanga** holding brief for Mr. Jackson Kayongo

2. The Respondents and Counsel are absent.

Court Clerk: **Mr. Samuel Mukiza.**

1. H.C.M.A 240 of 2018 [↑](#footnote-ref-1)
2. H.C.M.A 213 of 2017 [↑](#footnote-ref-2)
3. Vol 9, 4th Edn [↑](#footnote-ref-3)
4. See Florence Dawaru vs Angumale Albino & Anor H.C.M.A 0096 of 2016 [↑](#footnote-ref-4)
5. See Sam Aniagyei Obengi & Anor v MTL Real Properties Ltd & Anor (Miscellaneous Application 198 of

 2011) [2011] UGCommC 51 (05 June 2011) [↑](#footnote-ref-5)
6. Black’s Law Dictionary, 9th Edn Page 360 [↑](#footnote-ref-6)
7. H.C.M.C No 21 of 2014 [↑](#footnote-ref-7)
8. Hon Sitenda Sebalu v Secretary General of East African Community No. 8 of 2021 as cited with approval in

 H.C.M.A 324 of 2020 Andrew K. Lajul v UCDA and 2 Ors [↑](#footnote-ref-8)
9. Per Ssekaana J in the Lajul case(ibid) See also HCMA No.671 of 2019 J.E.Nsangiranabo v Col Kaka Bagyenda &

 A.G [↑](#footnote-ref-9)
10. H.C Civ.Rev No 0002 of 2016 [↑](#footnote-ref-10)
11. Per Ntengye H.J, L.LTumusiime Mugisha J and Panel in LDR No. 101 of 2016 [↑](#footnote-ref-11)
12. The record reflects that the Applicant was first represented by M/S Jingo, Sempijja & Co Advocates and now M/S

 Kayongo Jackson & Co Advocates and [↑](#footnote-ref-12)
13. See Stanbic Bank(U) ltd v Commissioner General URA M.A No. 42 of 2010[2011]UGcomm 13 as cited in

 J.E.Nsangiranabo v Col Kaka Bagyenda & A.G(Supra) [↑](#footnote-ref-13)
14. J.E.Nsangiranabo v Col Kaka Bagyenda & A.G(Op cit) [↑](#footnote-ref-14)
15. H.C.M.A 0096 of 2016 [↑](#footnote-ref-15)
16. Joseph Kalule v GIZ LDR 109/2020 [↑](#footnote-ref-16)