



THE REPUBLIC OF UGANDA  
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA  
LABOUR DISPUTE REFERENCE NO. 202 OF 2021  
(Arising from MGLSD/LC/411/2020)

KAKOOZA JUMA AND 16 OTHERS:.....APPLICANTS

VERSUS

SHERATON KAMPALA HOTEL :..... RESPONDENT

BEFORE:

THE HON. MR. JUSTICE ANTHONY WABWIRE MUSANA

PANELISTS:

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

---

RULING

---

Introduction

- [1] On the 4<sup>th</sup> of April 2023, Mrs. Byarugaba Kusiima, appearing jointly with Ms. Sheila Nabbale for the Respondent, rose on the point of law submitting that the claim was bad in law. Counsel cited Order 1 Rule 8 Civil Procedure Rules S.I 71-1(from now CPR) which provides that one person might sue on behalf of numerous persons having the same interest in a matter. The numerous persons must give their consent. Learned Counsel submitted, on the authority of this Court's ruling in the case of **Autotune Ltd v Barozi Swaldo LDMA 029 of 2022** that the CPR was applicable to matters before this Court where the Labour Disputes Arbitration and Settlement Act 2006 (LADASA) and rules made thereunder are silent. She cited the case of **Bunyoro Kitara Reparatations Agency Ltd v Attorney General Civil Suit No. 23 of 2016** in support of the contention that the

provisions of Order 1 Rule 8CPR are mandatory<sup>1</sup>. She argued that the claim could not be sustained in its current form and asked that the claimants be directed to obtain a representative order, or the suit be dismissed.

- [2] The Claimants, represented by Mr. Richard Jimmy Dhobuazi, agent, submitted that the rules applicable to the Industrial Court were the Labour Dispute(Arbitration and Settlement) Act 2006(*from now LADASA*) and the Labour Dispute(Arbitration and Settlement)(Industrial Court Procedure) Rules, 2012(*from now LADASA Rules*). In his view, the CPR did not apply to this Court. He asked that the court disallows the objection. Mr. Dhobuazi argued that the Industrial Court is a Court of Equity.
- [3] In rejoinder, Mrs. Byarugaba reiterated her submissions adding that similar objections had been raised before this Court. She cited the case of **Capt Kabarindere & 177 Others v Meridiana African Airlines & Another Labour Claim 25 of 2015**.
- [4] We reserved our ruling which we now hand down.
- [5] The short point for determination is whether the Applicants would be required to obtain a representative order in this matter. To resolve this question, we shall address a few preliminary questions;

#### Does the CPR apply to the Industrial Court?

- [6] The Industrial Court has ruled in a number of authorities that the Civil Procedure Rules apply to proceedings before it where the LADASA Rules are silent. These decisions include the case of **Autotune Ltd v Barozi Swaldo LDMA 29 of 2022**. In the case of **Captain Charles Karabarinde & 177 others vs Merindiana African Airlines and Another Labour Claim No 25 of 2015**, the Industrial Court acknowledging that the rules of this Court may not be exhaustive or exclusive, found that the provisions of the CPR are applicable to proceedings before the Industrial Court. In the result, we are unable to accept Mr. Dhobuazi's submission that the CPR does not apply to proceedings of this Court. This Court, has for the time being, settled the applicability of the CPR to its proceedings. Mr. Dhobuazi had suggested that the Industrial Court is a court of equity. That is true but equity follows the law.

#### Is this a representative suit/claim?

- [7] A representative action is a suit filed by or against one or more persons on behalf of themselves and others having the same interest in the suit.<sup>2</sup> Under Order 1 Rule 8 (6)CPR for purposes of this rule, "a representative action" means a suit in which there are

<sup>1</sup> Counsel relied on the case of *Joseph Kasozi & Ors v Umeme Ltd H.C.C.S 188 of 2010*

<sup>2</sup> M.Ssekaana and SN Ssekaana 'Civil Procedure and Practice in Uganda' 2<sup>nd</sup> Edn at page 87.

numerous persons having the same interest in one suit and where one or more of such persons, may, with the permission of the court, sue or be sued or may defend on behalf of or for the benefit of all persons interested."

- [8] The procedural history of the matter before us, is that by a letter dated 18<sup>th</sup> August 2020, Mr. Juma Kakooza, Mr. Nkugwa Steven, Ms. Faridah Tukei and Ms. Annette Mutonyi filed a complaint against the Respondent with Ministry of Gender, Labour and Social Development (*from now MGLSD*) and attached to this letter an unsigned list of complaints numbering 31. By a further letter dated 19<sup>th</sup> October 2020, the foursome sought the intervention of the Permanent Secretary of the MGLSD. These letters were signed by these four complainants on their behalf and on behalf their other colleagues. Attempts to resolve the matter before the MGLSD amicably, were unsuccessful. By a reference dated 30<sup>th</sup> September 2021, Ms. Hilda Nakagga, Labour Officer, referred the dispute to this Court. At this point the aggrieved were Kakooza Juma & 16 others. A memorandum of claim was filed on the 9<sup>th</sup> of December 2021. By a power of attorney dated 12<sup>th</sup> of August 2021, 18 individuals appointed Mr. Richard Jimmy Dhobuazi as their lawful Attorney and Agent to represent them in respect of an intended court case of unfair termination and recovery of benefits from the Respondent. The memorandum of claim filed in this Court on the 5<sup>th</sup> of December 2021 is titled Kakooza Juma and 16(sixteen) others. This would be a total of 17(seventeen) individuals.
- [9] In paragraph 1 of the memorandum of claim, the Claimants are collectively described as "adult Ugandan Citizens of sound mind". At paragraph 2, they appoint Dhobuazi Richard Jimmy as their Agent pursuant to Section 20 of the LADASA. They attach a copy of the Powers of Attorney referred to in paragraph [8] above. In paragraph 4, they seek a declaration that their termination was wrongful, unfair and unlawful and in breach of the Respondent's policies following their termination from employment on 3<sup>rd</sup> November 2020.
- [10] From the above, it is quite clear that the Claimants have the same interest against the Respondent. They all seek a determination concerning the termination of their employment from the Respondent and attendant benefits. It follows that this is a representative claim. Secondly, as demonstrated in paragraph 8 above, it is not necessarily very clear what the actual number of claimants is. The Powers of Attorney lists 18 individuals. The memorandum refers to 17 individuals and this is a matter of significance as we shall demonstrate in the resolution of the primary issue, below.

#### Resolution of the main issue

- [11] Following the affirmative answers to the above questions, we now return to the primary issue. The object of representative orders and the rationale of the rule is that they



contribute to the convenient disposal of a dispute where an otherwise large number of persons would have to be named in the pleadings.<sup>3</sup> In the matter before us and as will be discerned from the chronology, the Claimants numbers have been varying. The Powers of Attorney attached to the memorandum of claim name Richard Jimmy Dhobuazi as lawful attorney of 18 individuals while the pleadings name Kakooza Juma as the main claimant and 16 others. This is the first level of a lack of consistency. Part of the mischief that Order 1 rule 8CPR was enacted to cure was, as His Lordship the Honourable Mr. Justice Vincent Wagona succinctly puts it, to avoid scenarios for example, where parties may find it desirable or convenient to dissociate from the suit by raising excuses of lack of knowledge of the suit and the lack of an opportunity to be heard; or parties prosecuting cases without the consent of the others and exposing them to the associated risks of litigation such as payment of costs and executions against them.<sup>4</sup>The Order provides as follows:

*" One person may sue or defend on behalf of all in same interest.*

- (1) *A person may institute a representative suit on behalf of all plaintiffs or all defendants, as the case may be, who have the same actual and existing interest in the subject matter of the intended suit, for the benefit of all.*
- (2) *An application for a representative order shall be made by an intending plaintiff or defendant who intends to represent all plaintiffs or all defendants for the benefit of all as the case may be, who have the same actual and existing interest in the subject matter of the intended suit.*
- (3) *Before the court grants an order for a representative suit, the applicant shall satisfy the court that—*
  - (a) *all the plaintiffs or defendants, as the case may be, have an actual and existing interest in the subject matter of the intended suit;*
  - (b) *all the persons represented have authorized the applicant to sue or defend in the suit, and the authorisation shall be in writing duly signed by the represented persons; and*
  - (c) *the application is brought with a proposed plaint or defense, as the case may be, showing— (i) a list of all persons so represented; and (ii) that all persons so represented have the same actual and existing interest in the suit.*
- (4) *Subject to subrule (2), the court shall, in such case, give notice of the institution of the suit to all such persons either by personal service or, where, from the number of persons or any other cause, such service is not reasonably practicable, by public advertisement, as the court may in each case direct.*

<sup>3</sup> M.Sekaana and S.N Ssekaana(op cit)

<sup>4</sup> Kiiza and Others v Uganda Wildlife Authority and Another High Court Civil Suit 39 of 2010

*(5) Any person with the same interest wishing to be made a party to a representative suit may apply to the court to be made a party to the suit."*

- [12] The order is quite clear on the procedure that must be adopted in bringing a representative suit. First, the person or persons seeking to file the representative suit must seek the permission of the Court to do so. Second, that the Court issues notice to the intended plaintiffs or claimants in the present case. In the case before us, there is no such order authorizing either Mr. Dhobuazi or Mr. Kakooza to bring this action. To this extent, LDR 202 of 2021 would not be properly before the Court.
- [13] Secondly, under Order 1 Rule 1 CPR, parties having a common interest in a suit, may be joined in the same suit. According to the learned authors M. Ssekaana J. and SN Ssekaana, a party to a suit is a person who is on record of the court and has commenced a proceeding or been served with summons or has been added by order of court. A party is also defined as one served with notice to appear although not named in the record and a person represented in a representative action although not named in the suit.<sup>5</sup> In the case before us, only Mr. Juma Kakooza is named as a party to the suit. The title of the memorandum of claim does not name the sixteen others. The Powers of Attorney appoints Richard Jimmy Dhobuazi as Agent for purposes of legal representation. This presents several challenges;
- (i) First, Section 20 of the LADASA provides for legal representation before the Industrial Court by an Agent, Labour Union, employers organization or advocate. Mr. Dhobuazi was appointed as a legal representative under this section. The section provides for legal representation and not a representative action as a party to a suit.
  - (ii) Secondly, the memorandum of claim names only Mr. Juma Kakooza, as a party. The power of attorney appoints Mr. Richard Jimmy Dhobuazi to provide legal representation. And if we were to give the powers of attorney a much wider construction or interpretation, under clause (b) Mr. Dhobuazi has the powers to institute and prosecute suits, claims and court cases. If he were to do so, he would have to be named as a party to the suit albeit as a holder of Powers of Attorney. In the present case he is stated in the memorandum of claim as the provider of legal representation.
  - (iii) If it were to be suggested that there is merely a drafting error, the 16 others are not identified as parties to the suit, we would find a challenge because the memorandum in its current form does not describe or name the 16 others as parties to the suit.

---

<sup>5</sup> M.Ssekaana and SN Ssekaana "Civil Procedure and Practice in Uganda" at page 65.



- [14] Following the difficulties identified above, we agree with a particularly apt dictum in the case of **Olweny and Ors v Oyoo and Ors High Court Civil Appeal No. 32 of 2018**<sup>6</sup> where the Honourable Mr. Justice Stephen Mubiru holds that order 1 rule 8 is mandatory and failure to obtain a representative order is an illegality and once brought to the attention of the court, it cannot be ignored. In the **Captain Karabarinde** case (supra) the Industrial Court upheld a similar objection and required the Claimants to obtain a representative order.
- [15] In line with the plethora of decisions on the point and having objectively considered the pleadings in the case before us, we find that Labour dispute Reference No. 202 of 2021 is incompetent and is dismissed with no order as to costs.

The Claimants would be directed to obtain a representative order before advancing their cause any further.

It is so ordered and dated at Kampala this 2<sup>nd</sup> day of May 2023.

HON. MR. JUSTICE ANTHONY WABWIRE MUSANA,  
JUDGE, INDUSTRIAL COURT

THE PANELISTS AGREE:

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

Ruling delivered in open Court in the presence of:

1. For the Claimants: Mr. Richard Jimmy Dhobuazi for claimants. 2<sup>nd</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, 13<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup> & 17<sup>th</sup> claimants in court.
2. For the Respondent: Ms. Sheila Nabale. Respondent in court.

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

<sup>6</sup> [2020] UGHC 169 the cases of Makula International Ltd v. His Eminence Cardinal Nsubuga and Another [1982] HCB 11). Ibrahim Buwembo, Emmanuel Sserunjogi, Zubairi Muwanika for and on behalf of 800 others v. UTODA Ltd., HCCS No. 664 OF 2003, Paul Kanyima v. Rugooro [1982] HCB 33 and Henry. B. Kamoga and others v. Bank of Uganda, HCCS No.62 of 2009).