



THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE NO. 23 OF 2017
(All arising from H.C.C.S 481/2016)

SEWANYANA FRED :::CLAIMANT

VERSUS

WAKISO DISTRICT COUNCIL :::RESPONDENT

Before:

The Hon. Justice Anthony Wabwire Musana

The Panelists:

1. Hon. Jimmy Musimbi,
2. Hon. Robina Kagoye &
3. Hon. Can Amos Lapenga.

Representation:

Ms. Julian Natukunda of M/s. Kamulegeya & Co. Advocates for the Claimant

Mr. James Katono of M/s. Nambale Nerima & Co. Advocates for the Respondent

RULING

Introduction

- [1] Mr. James Katono, appearing for the Claimant, objected to notice of this claim being served out of time. Counsel submitted that the claim was filed on 19th October 2017. The notice of claim was endorsed by the Court on 5th March 2021 and served on the Respondent's Advocates on 6th March 2021. In Counsel's view, the service, four years after filing offended Order 49 rule 2 and Order 5 rule 1(2) and (3) of the Civil Procedure Rules S.I 71-1(*from now CPR*).
- [2] Ms. Julian Natukunda, appearing for the Claimant, countered that the Claimant complied with Order 5 rule 1(2) CPR by effecting service on the Respondent within one day after the notice of claim had been issued by this Court. Counsel suggested that the delays in this matter were occasioned by Court processes.

Analysis and ruling of the Court

- [3] The Respondent's objection, if we understand it correctly, is that the memorandum of claim was served out of time. Both Counsel relied on orders of the CPR. It is well established that the Industrial Court applies the Civil Procedure Rules where there is a lacuna in its own rules of procedure.¹
- [4] There is a specific law regarding certain aspects of service of Court process at the Industrial Court. Rule 5 of the Labour Disputes (Arbitration and Settlement)(Industrial Court Procedure) Rules, 2012(from now "the rules") provides as follows:

"5. Memorandum of each party.

- (1) The Registrar shall, within seven days after registering a reference, give notice to the parties that a dispute has been referred to the court and require each party to file a memorandum and in the case of the claimant, the memorandum shall be filed within seven days after receipt of the notice.*
- (2) The memorandum referred to in subrule (1) shall set out, in the case of the claimant, the nature and particulars of each item of the claim involved in the dispute and the claimant shall serve a copy of the memorandum on the respondent.*
- (3) The memorandum under subrule (2) shall be accompanied by an affidavit of service.*
- (4) The respondent shall, within seven days after receipt of the memorandum, file a reply as he or she may wish to give to the items of the claim raised in the claimant's memorandum and shall serve the memorandum on the claimant.*
- (5) The memorandum under subrule (4) shall be accompanied by an affidavit of service.*
- (6) Each party to the dispute shall submit seven (7) copies of the party's memorandum to the court and seven (7) copies of such documents as in the opinion of the Registrar may be necessary.*

¹ See LDMA No. 29 of 2022 Autotune Engineering Ltd and Barozi Swaldo and 2 Others. See also LDC No. 25 of 2015 Capt C. Karabarinde & 177 Ors v Merindiana African Airlines and Anor.

(7) Where the dispute is between an employer and a labour union, the claimant shall attach the recognition and collective bargaining agreement between the employer and the labour union to the memorandum.

The timelines set under the Rules are as follows:

- i. The Registrar is required to give notice to the parties within seven (7) days after registering a reference.
- ii. The Claimant is required to file a memorandum of claim within seven (7) days after receipt of the notice of referral of a dispute and;
- iii. The Respondent is required to file a reply within seven (7) days after receipt of the memorandum of claim.

From the foregoing, there is no provision setting a timeline within which the notice of a claim should be served on the Respondent. Resort is to be had to the CPR in keeping with the dicta in the Autotune case². But before resolving the matter of time, we need to point out that it is the duty of the Registrar of the Court under Rule 5(1) of the Rules, to give notice of claim to the parties after it has been filed³.

[5] The history of this matter shows that it was filed as in the civil division of the High Court as Civil Suit No. 481 of 2016. By letter dated the 10th day of July 2017, the Acting Assistant Registrar of the High Court transferred the file to this Court. A memorandum of claim was filed on the 19th of October 2017. There is a notice of claim dated the same day issued by the Registrar of the Court. There is no proof of service of the said notice on any of the parties as would be required under Rule 5(1) of the Rules. Absent of proof of issuance of notice to the parties, we are unable to find that the delay was occasioned by the Claimant and would not fault him. According to an affidavit of service sworn by Happy Byamukama, a second notice of claim was issued on 5th of March 2021 and served on the Respondent on the 6th of March 2021. There appears to have been a lull between the issuance of the first notice of claim of 19th October 2017 and the second notice of claim 5th of March 2021. This lull or delay cannot be laid upon any other party and appears to have been on the part of the Court.

[6] Regarding the time for effecting service of the notice of claim on the Respondent, no such time is fixed by the Rules. In accordance with precedent (Akoko's case) we must resort to the CPR. Summons are to be served within 21 days of the date of issue as

² Ibid

³ See LDR No. 139 of 2019 Akoko Joseph v Uganda Manufacturers Association.

provided in Order 5r1(2) CPR. The notice of claim when equated under the CPR, would amount to a summons. The second notice of claim issued on the 5th day of March 2021 was served on the Respondent's Counsel on the 6th of March 2021 which would be well within the 21-day limit. Accordingly, we would find that the second notice of claim was filed within time and the preliminary objection would be overruled.

[7] We also note that this is an old case initially filed at the High Court in the year 2017. In keeping with the statutory imperative to deliver timely labour justice, we make the following directions:

- (i) The parties are directed to file a Joint Scheduling Memorandum, their respective trail bundles, and witness statements by the 30th June 2023.
- (ii) The case shall be called for scheduling on the 6th of July 2023 at 9.30a.a.m.

It is so ordered at Kampala this 16th day of June 2023

Anthony Wabwire Musana,
Judge, Industrial Court of Uganda

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:

For the Claimant: Ms. Julian Natukunda

Claimant present.

For the Respondent: None

Court Clerk: Samuel Mukiza