



**THE REPUBLIC OF UGANDA**  
**IN THE INDUSTRIAL COURT OF UGANDA AT MBARARA**  
**LABOUR DISPUTE CLAIM NO. 005 OF 2023**  
*(Arising from Labour Claim No. 01 of 2023)*

1. MUHUMUZA VINCENT FRED  
 2. MUBANGIZI SAVINO .....CLAIMANTS

**VERSUS**

1. BUHWEJU DISTRICT LOCAL GOVERNMENT  
 2. ATUHAIRE DEOGRATIOUS .....RESPONDENT

**Before:**

The Hon. Mr. Justice Anthony Wabwire Musana

**The Panelists:**

1. Hon. Adrine Namara,
2. Hon. Robinah Kagoye &
3. Hon. Michael Matovu.

**Representation:**

1. *Mr. Smith Rutembebera of Messrs. Kaganzi & Co. Advocates for the Claimant.*
2. *Ms. Rita Kalembe, State Attorney for the 1<sup>st</sup> Respondent.*
3. *Mr. Victor Atwine, holding brief for Mr. Paul Tsubira of Messrs. Paul Tsubira & Co. Advocates for the 2<sup>nd</sup> Respondent.*

**RULING**

**Introduction**

- [1] When this matter was called for hearing on the 15<sup>th</sup> of December 2023, Mr. Atwine raised a preliminary objection that the Claimants did not have a cause of action against the 2<sup>nd</sup> Respondent, the Chairperson of the 1<sup>st</sup> Respondent. He contended that the 2<sup>nd</sup> Respondent is not the Claimant's employer. It was submitted that the claims in the memorandum of claim were of defamation. It was his view that this Court ought not to waste time determining a case where there is no violation of any right. He asked this Court to dismiss the case against the 2<sup>nd</sup> Respondent.
- [2] In his written submissions, Mr. Ronald Kwikiriza submitted that the Claimants' claim against the 2<sup>nd</sup> Respondent was that he was a necessary party who, as their supervisor, had harassed them, created a hostile work environment, and caused their termination by forcing the Chief Administrative Officer to send the Claimants on forced leave. Counsel cited Section 13(1) of the Local Government Act. Cap. 243(*from now LGA*) for

the functions of a District Chairperson, suggesting that he had a duty to uphold the laws of Uganda. That any order of this Court would be binding on the 2<sup>nd</sup> Respondent. It was suggested that the Government of Uganda could be held vicariously liable for the actions of the 2<sup>nd</sup> Respondent. It was asked that the objection be overruled.

- [3] The background facts, as can be gathered from the memorandum of claim, are that on the 9<sup>th</sup> of March 2021, the 1<sup>st</sup> Respondent appointed the Claimants as Machine Operators. The 2<sup>nd</sup> Respondent labeled them thieves and, on the 7<sup>th</sup> day of July 2023, ordered the 1st Respondent's Chief Administrative Officer to send the Claimants on accumulated annual leave. The Claimants lodged a complaint with the Buhweju District Labour Officer, and when they returned to work after some 54 days, they found that the 1st Respondent had hired other workers.

#### Determination of the Court

- [4] In **Amos Turinayo v Board of Governors of Sseseme Girls Secondary School**<sup>1</sup> we observed the three elements of a cause of action set out in the case of **Auto Garage v Motokov**<sup>2</sup> where a plaintiff would be required to show that he enjoyed a right, that the right had been violated and that the defendant is liable. We also cited **Al Hajj Nasser N. Ssebagala v Attorney General**<sup>3</sup> where the Constitutional Court of Uganda held that:

*"a cause of action means every fact, which if traversed, would be necessary for the plaintiff to prove in order to support his right to a judgment of Court. It must include some act done by the defendant and, is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove the facts but every fact necessary for the plaintiff to prove to enable him obtain a decree and, everything that if not proved would give the defendant a right to an immediate judgment must be part of the cause of action. It has no relation to the defence, which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff. The cause of action must be antecedent to the institution of the suit"*

We concluded that a cause of action encompasses a legal wrong the person claims to have suffered, and the relief Court is asked to grant.<sup>4</sup>

- [5] The first significant point is that Mr. Kwikiriza referred this Court to the LGA. The office of the 2<sup>nd</sup> Respondent is established under Section 12(1) LGA, and that office is as the district's political head elected by universal adult suffrage. From this establishment

<sup>1</sup> LDR 02 of 2021

<sup>2</sup> [1971] EA 314

<sup>3</sup> Constitutional Petition No. 1 of 1999

<sup>4</sup> Per M. Ssekaana J. and SN Ssekana in "Civil Procedure and Practice in Uganda" at page 111

provision, it is clear that the District Chairperson is not an employee of the district's local government but an elected political head of a district.

- [6] The functions of the District Chairperson are contained in Section 13(2) LGA. These include presiding at meetings of the executive committee of the district, monitoring the general administration of the district, the implementation of council decisions, monitoring and coordinating the activities of the municipal and town councils and other lower local governments and administrative units in the district, overseeing the performance of persons employed by the Government to provide services in the district and to monitor the provision of Government services or the implementation of projects in the district, coordinating and monitoring government functions as between the district and the Government and performing other functions that may be necessary for the better functioning of the district council, or which may be incidental to the functions of the Chairperson or imposed on the Chairperson by any law.
- [7] The duty to oversee the performance of persons employed by the Government to provide services in the district is of particular significance. Would this engender supervision, accountability, and liability in the manner the Claimant seeks? We think the answer to this question is a resounding no. The exercise of the power to appoint, control, discipline, supervise, and remove district public servants is vested in the District Service Commissions under Article 200 of the Constitution of the Republic of Uganda. It is not vested in the District Chairperson. Further, under Article 257 of the Constitution, public offices are defined. In the case of **Male Mabirizi H. Kiwanuka v Uganda(DPP) and Attorney General**<sup>5</sup> the Honourable Mr. Justice Lawrence Gidudu opined that public office,

*“excludes political leaders from being referred to as holders of public offices. This matter was sufficiently discussed by the Constitutional Court in Constitutional Petition 8 of 2006 between Darlington Sakwa and another Vs Attorney General. The Court held that political leaders not being holders of public offices are not bound by public service regulations which required that they resign their offices before standing for election as members of Parliament.”*

- [8] What is inferred from the above excerpt is that the District Chairpersons would not be classified as public officers and are therefore not bound by the public service regulations related to public officers' conduct, including their role in the workplace. This would render Mr. Kwikiriza's argument incompatible with the notion of vicarious liability, which posits that for a party to be vicariously liable for the acts of another, there should exist a relationship between the party and the person who did the negligent act and the act ought to have been done in the course of the employment, and not when the person who did it was acting on a frolic of his own.<sup>6</sup> Simply put, it is a master's liability for his or her servant's negligent act in the course of employment. According to Sections 12 and 13 LGA, an employment relationship does not exist

<sup>5</sup> H.C.M.C No. 3 of 2023(ACD)

<sup>6</sup> See *Akware v Gaaga Enterprises Ltd* H.C.C.S No 271 of 2011

between the Government of Uganda and the 2<sup>nd</sup> Respondent or between the 1<sup>st</sup> Respondent and the 2<sup>nd</sup> Respondent. In the absence of an employment relationship, it would be imperceptible that the 1<sup>st</sup> Respondent could be held vicariously liable for the actions of the 2<sup>nd</sup> Respondent should they be proven to have been unfair labour practices. There is no legal nexus for the assertion of liability. For this reason, we would be inclined to disagree with Mr. Kwikiriza. That is not to say that the Claimants may not pursue legal redress for the 2<sup>nd</sup> Respondent's actions but not in the present case.



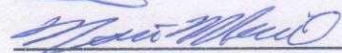
- [9] We would think the objection has merit and would sustain the same. The claim against the 2<sup>nd</sup> Respondent stands and is hereby dismissed with no order as to costs, as the dicta in employment disputes is that the losing party must have been culpable of some misconduct to warrant an award of costs against them.

Signed in Chambers at Mbarara this 19<sup>th</sup> day of December 2023

Anthony Wabwire Musana,  
Judge, Industrial Court

**The Panelists Agree**

1. Hon. Adrine Namara,
2. Hon. Robina Kagoye &
3. Hon. Michael Matovu.

  
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**19<sup>th</sup> December 2023**  
**10.04 a.m.**

**Appearances**

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| 1. For the Claimant:                   | <b>Mr. Ronald Kwikiriza</b>              |
| 2. For the Respondent:                 | <b>Mr. Victor Atwine</b>                 |
| 3. For the 1 <sup>st</sup> Respondent: | <b>Ms. Rita Kalembe – State Attorney</b> |
| <b>Court Clerk:</b>                    | <b>Mr. Samuel Mukiza.</b>                |

**Mr. Kwikiriza:** Matter for ruling, and we are ready to receive it.

**Mr. Atwine :** That is the position.

**Court:** Ruling delivered in open Court.

Anthony Wabwire Musana,  
Judge, Industrial Court.