



THE REPUBLIC OF UGANDA  
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA,  
LABOUR CLAIM NO. 26 OF 2015  
(Arising from HCT-CS. No. 79/2015)

1. UGANDA COMMUNICATIONS EMPLOYEES' UNION (UCEU)  
2. SARAH NAMUGERWA  
3. SAMUEL BAZIMBYE AND 193 OTHERS):.....CLAIMANTS

VERSUS

1. UGANDA TELECOM LIMITED (UTL)  
2. NATIONAL SOCIAL SECURITY FUND (NSSF):.....RESPONDENTS

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. Prof. John Jean Barya of M/s. Barya, Byamugisha & Co. Advocates for the Applicants.  
2. Mrs. Olive Kyalimpa Matovu of M/s. Ligomarc Advocates for the 1<sup>st</sup> Respondent.  
3. Mr. Allan Waniala of M/s. S&L Chambers for the 2<sup>nd</sup> Respondent.

RULING AND DIRECTIONS

- [1] This matter had been set for a hearing on the 3<sup>rd</sup> day of May 2024. Before opening the Claimant's case, Professor Barya indicated he had some preliminary information. Counsel told this Court that all Claimants under the Uganda Communications Employees Contributory Pensions Scheme(UCECPS) had been paid or were being paid. He suggested that what is now being claimed before this Court relates to interest. He also said that under Section 69(3) of the Uganda Retirement Benefits Regulatory Act 2011(*from now URBRA*), a penalty of 10% per month would be levied on any benefits due to the Claimants.
- [2] In reply, Mrs. Kyalimpa Matovu suggested that under Section 164(2) of the Insolvency Act, 2011(*from now IA*), once administration commences and a deed is signed, all creditors of the company who have claims at the point in time when a deed is made, are bound by the Administration Deed. As such, they cannot commence or continue a legal process or levy distress against the company unless they have leave of Court. Counsel suggested that part of the Claimants' claims arose in 2015 and were therefore caught by the Administration process. She cited **Uganda Telecom Ltd v Ondoma Samuel**<sup>1</sup> in support of this proposition. We were asked that the issue before this Court be restricted to entitlement to the funds in the 2<sup>nd</sup> Respondent, that had been remitted before the Administration.

<sup>1</sup> H.C.M.A No. 0012 of 2018

- [3] In rejoinder, Professor Barya submitted that claims under UCECPS and NSSF had been verified. Counsel suggested that what was not verified was the unremitted contributions, which should be remitted to UCECPS. He also argued that the High Court had guided on the ranking of UCEPS and NSSF claims. In Counsel's wisdom, the only issue was the availability of funds. Secondly, on whether we should proceed, Professor Barya argued that one cannot ask a Court to stay one claim and proceed with the other. However, this point was overtaken by the agreement of Counsel, to which we will return later in these directions. On the final point of lack of leave, Counsel argued that the parties had, by their conduct, agreed to continue these proceedings. However, should the Court require a formal application, it could be made because, as a Court of Equity, this Court would look at the substance of the claim.
- [4] We noted that these arguments touched on the propriety of the proceedings before us. We appraised ourselves of Section 164 IA and invited the parties to make further representations on whether these proceedings should be stayed. On the 13<sup>th</sup> of May 2024, Ms. Genevive Akello, appearing for the 1<sup>st</sup> Respondent, argued that the contributions in the custody of the 2<sup>nd</sup> Respondent were not a debt within the meaning of Section 164 IA. Counsel argued that the remitted sums were not part of the administration process; therefore, this Court could determine the same. She also argued that this Court had jurisdiction to grant leave to continue these proceedings if necessary. Professor Barya agreed, citing Section 8(2a) of the Labour Disputes (Arbitration and Settlement) (Amendment) Act, 2021. It was proposed and agreed by Counsel that the issue for determination be restricted to eligibility to contributions in the custody of the 2<sup>nd</sup> Respondent.
- [5] Propriety of proceedings is an important matter which touches on jurisdiction to hear and decide a matter. It is trite that, absent jurisdiction, any proceedings and decisions of a court amount to a nullity. It is therefore important that this Court establishes first whether this matter does not touch on issues addressed in administration as laid out in Section 164(2)IA and, secondly, if it is necessary to have leave before these proceedings continue.

### Background facts

- [6] The Claimants, excluding the 1<sup>st</sup> Claimant (*a Trade/Labour Union*), were either employees of Uganda Posts and Telecommunications Corporation (*from now UPTC*) who, by operation of statute, were transferred to or recruited by the 1<sup>st</sup> Respondent, which was incorporated under the Companies Act Cap. 110 pursuant to Section 82(1) of the Uganda Communications Act Cap. 106 or employees of the 1<sup>st</sup> Respondent. In their claim<sup>2</sup> filed before this Court on the 29<sup>th</sup> of July 2015, they sought declarations of entitlement to retirement benefits secured in both UCECPS and the 2<sup>nd</sup> Respondent, in which standard contributions were made to the 2<sup>nd</sup> Respondent by the 1<sup>st</sup> Respondent or its predecessor. The Claimants also sought various other declarations. The 1<sup>st</sup> Respondent argues that some of the Claimants were not eligible employees to make contributions or were in excepted employment, and therefore, the contributions were made in error or wrongfully.
- [7] It is not in dispute that on the 22<sup>nd</sup> day of May 2017, Mr. Bemanya Twebaze (*then Official Receiver*) was appointed Administrator of the 1<sup>st</sup> Respondent (*any reference to Administrator shall from now on following mean the 1<sup>st</sup> Respondent's Administrator*). An Administration Deed was executed. It is also common cause that following an application<sup>3</sup> for the replacement of the Official Receiver as Administrator, the Honourable Lady Justice Lydia Mugambe appointed Ruth Sebatindira S.C, Administrator, in his stead. It is also undisputed that on the 23<sup>rd</sup> of February 2022, the Administrator executed an Asset Sale

<sup>2</sup> Labour Claim No. 26 of 2016

<sup>3</sup> Company Cause No. 30 of 2019 In the Matter of Uganda Telecom Ltd (In Administration)



and Purchase Agreement (from now APA) with Uganda Telecommunications Corporation Ltd (from now UTCL) to purchase the 1<sup>st</sup> Respondent's assets for certain consideration. It is also not in dispute that the administration period was extended.

- [8] We noted that on the 13<sup>th</sup> of May 2024, Counsel agreed to a trial of a single issue, the question of entitlement to the remitted contributions in the custody of the 2<sup>nd</sup> Respondent. Following the agreement on the issue for trial, we think it necessary to restrict our review of the effect of Section 164 IA to the remitted benefits now injunctioned in the 2<sup>nd</sup> Respondent's custody.

### Determination

- [9] It is not contested that the 1<sup>st</sup> Respondent is in administration. Because of that, the starting point must be Section 164 IA, which reads as follows;

**"164. Effect of administration.**

- (1) *An administration deed shall bind-*
- (a) *the company;*
  - (b) *the company's directors and secretary;*
  - (c) *the company's shareholders;*
  - (d) *the administrator; and*
  - (e) *all the company's creditors in relation to claims arising on or before the day specified in the deed.*

(2) *Subject to subsection (3), a person bound by a deed shall not*

- (a) *make an application for the liquidation of the company or proceed with an application; and*
- (b) *except with the leave of the court and in accordance with the terms as the court may impose-*
  - (i) *take steps to enforce any charge over any of the company's property; and*
  - (ii) *commence or continue execution proceedings or other legal process or levy distress against the company or its property.*

(2) *Subsection (2) shall not prevent a secured creditor from exercising a power of enforcement of a charge over company property, except where the deed provides for it in relation to the secured creditor who voted in favour of the resolution for the execution of the deed."*

- [10] This provision binds all creditors in relation to claims arising before the day specified in the deed. Ms. Kyalimpa referred us to the **Ondoma** case (supra) in which the Respondent, an Advocate, was instructed to represent the Applicant on the 11<sup>th</sup> of November 2015 before the Applicant went into administration. In November 2017, his bill of costs was taxed and allowed at UGX 100,000,000/=. Meanwhile, on the 22<sup>nd</sup> of May 2017, an administration deed was executed. Mubiru J held that the advocate's professional fee existed at the date of the administration deed, which occurred before the relevant date, and the deed bound him. Citing **Brash Holdings Pty Ltd v Katile Pty Ltd**<sup>4</sup> and after considering several other cases, Mubiru J. concluded that all debts payable by the company, all claims against the company, whether present or future, certain or contingent, ascertained or sounding in damages and claims which would be provable in winding up, would be caught by the administration deed. On this basis, the Advocate's costs, having been incurred at instructions before the relevant date, were bound by the deed.

<sup>4</sup> (1994) 12 ACLC 472

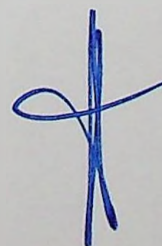
- [11] In the case before us, we are concerned with whether the present claim for entitlement to contributions now held by the 2<sup>nd</sup> Respondent is caught by the administration deed. In the Ondoma case, Mubiru J referred to **BE Australia WD PTY Ltd (subject to Deed of Company Arrangement) v Sutton**<sup>5</sup> where the Respondent had sought a determination that her work arrangements were unfair, and BE Australia went into administration before her case could be heard. The Court observed that her claim would be caught by an administration deed if the circumstances giving rise to them occurred before the administrators were appointed. Because there was no existing legal obligation, she was found not to have a provable claim and was not a creditor. In **Mohammed Kisu Aata v Uganda Telecom Ltd**<sup>6</sup> the Court was considering a preliminary objection to a suit filed in 2011 against the 1<sup>st</sup> Respondent for remedies for unlawful dismissal. The Court described a creditor as one to whom a debt is owed or a person or entity having a claim against a debtor predating the order for relief concerning the debtor. The Court took the view that Section 21A presupposed a debt that had been quantified and ascertained. In her determination, the Honourable Lady Justice Linda Lillian Tumusiime Mugisha, found, on the authority of **BE Australia case (ibid)**, Mr. Aata's claim to be barred by Section 164(2)(b)(ii)IA and stayed proceedings until the termination or expiry of the administration deed.
- [12] What emerges from these authorities is that for a claim to be caught by S164 IA, it must have:
- (i) Predated the administration deed,
  - (ii) Been brought by a creditor and
  - (iii) Been provable and quantifiable.
- [13] In the case before us, the administration deed, a copy of which was enclosed on pages 287 to 296 of the 1<sup>st</sup> Respondent's Supplementary Bundle filed in Court on 29<sup>th</sup> April 2024, shows that the deed was made on the 22<sup>nd</sup> of May 2017. The present matter was filed at the High Court of Uganda, Civil Division, on the 10<sup>th</sup> of March 2015 and transferred to the Industrial Court on the 17<sup>th</sup> of March 2015. This was two years and 68 days before the issuance of the Administration Deed. Therefore, the claims predated the administration deed of the 22<sup>nd</sup> of May 2017.
- [14] On the second and third questions of whether the claimants are creditors with a quantifiable and provable debt, the answer, in our view, is a resounding no. Why? Because the claim is for statutory contributions made by the 2<sup>nd</sup> Respondent to the 1<sup>st</sup> Respondent for the benefit of the Claimants. The 1<sup>st</sup> Respondent has only impleaded that the remittances were in error. The sum is not a debt due to the Claimants, who are not creditors of the 1<sup>st</sup> Respondent. Under Section 11 of the National Social Security Fund Act Cap. 222(*from now NSSF Act*), an employer must pay a standard contribution of 15 per cent of its employees' wages into the fund. That standard contribution consists of a 10% contribution by the employer and a 5% contribution deducted from the employees' wages.<sup>7</sup> The 5% deducted by the employer is held in trust for the fund. Once the Fund has received such standard contribution, the 1<sup>st</sup> Respondent in this matter, the contributions are credited to the accounts of the employee held at the fund. They would be payable by the 2<sup>nd</sup> Respondent to the employees in accordance with Section 19 of the NSSF Act as benefits. In our view, monies in the fund are neither in the control, custody or possession of the 1<sup>st</sup> Respondent nor due from the 1<sup>st</sup> Respondent to any of the Claimants in order to render them creditors of the 1<sup>st</sup> Respondent or the 1<sup>st</sup> Respondent indebted to the Claimants. No creditor-debtor relationship subsists. It is not a claim against the 1<sup>st</sup> Respondent. We agree with Ms.

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<sup>5</sup> [2011]NSWCA 414

<sup>6</sup> LDC No. 275 of 2014

<sup>7</sup> Section 12 of the NSSF Act.






Akello's submission that only a determination of the Claimants' ineligibility would render these contributions receivable to the 1<sup>st</sup> Respondent. As it stands, the Claimants are not creditors of the 1<sup>st</sup> Respondent, and neither is it indebted to them to be caught up by Section 164 of the IA.

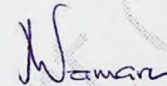
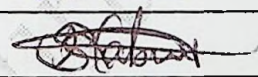

[15] Therefore, the provisions of Section 164(2) IA, which bar persons bound by the administration deed from continuing or commencing any legal proceedings or levying distress on the company without leave of the Court, do not apply to the present case. Given our conclusion in paragraph 14 above, the Claimants do not fall within the ambit of Section 164 IA. In the result, the question for determination is whether the Claimants are entitled to the contributions remitted by the 1<sup>st</sup> Respondent to the 2<sup>nd</sup> Respondent. The trial of this question shall commence within the next fourteen days.

Signed in Chambers at Kampala this 15<sup>th</sup> day of May 2024

  
Anthony Wabwire Musana,  
Judge, Industrial Court

**THE PANELISTS AGREE:**

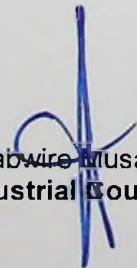
1. Hon. Adrine Namara,
2. Hon. Susan Nabirye &
3. Hon. Michael Matovu.

15<sup>th</sup> May 2024  
9:30 a.m

**Appearances**

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|--|---|
| 1. For the Applicants:                 | Prof. John Jean Barya<br>30 Applicants in Court.        |
| 2. For the 1 <sup>st</sup> Respondent: | Mr. Olive Kyalimpa Matovu                               |
| 3. For the 2 <sup>nd</sup> Respondent: | Mr. Allan Waniale<br>Legal Manager – Ms. Racheal Nsenge |
| Court Clerk:                           | <b>Mr. Samuel Mukiza.</b>                               |
| <b>Professor Barya:</b>                | Matter is for directions.                               |
| <b>Court:</b>                          | Trial directions given in open Court.                   |

  
Anthony Wabwire Musana,  
Judge, Industrial Court