



**THE REPUBLIC OF UGANDA  
IN THE INDUSTRIAL COURT OF UGANDA AT LIRA  
LABOUR DISPUTE REFERENCE NO. 09 OF 2022  
(Arising from Labour Dispute No. LCC/LDC/06 of 2022)**

**1. OKULLU PAUL:.....CLAIMANTS  
2. KANA JOHN BOSCO**

**VERSUS**

**OCEPA ANDREW:.....RESPONDENT**

**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] On 22<sup>nd</sup> February 2023, when this matter came up for scheduling, Mr. Joseph Okwi appearing together with Mr. Denis Awol and Mr. Hamis Obua, for the respondent, notified us of their intention to raise a preliminary objection to the jurisdiction of this Court to entertain, hear and determine the Claimant's claim. We directed Counsel to address us by way of written submissions and the Court is grateful for the succinct arguments.

**Submissions of the Respondent**

[2] Counsel for the Respondent contended that the matter before us, arose from a contract for service and not a contract of services. It was submitted that this Court has no jurisdiction to hear and determine the matter.

- [3] Counsel also contended, on the authority of **Ozoo Brothers Enterprises Ltd v Ayikoru Milka**<sup>1</sup> that the filing of a written statement of defence was a submission to procedural jurisdiction and not substantive jurisdiction.
- [4] On the strength of the definitions of an employee under **Section 2 of the Employment Act 2006** (from now *EA*) and **Section 2 of the Labour Disputes (Arbitration and Settlement) Act 2006** (from now *LADASA*), it was submitted that the 2<sup>nd</sup> Claimant was not an employee of the Respondent and that contract between them was not a contract of service but that the 2<sup>nd</sup> Claimant was an independent contractor. The Claimants were construction workers contracted at a sum of 25% of the costs of materials. The claim is for a balance of the contract sum for construction work for which the Claimants engaged their own skill without the direction of the Respondent. The Respondent relied on the case of **Ready Mixed Concrete v Minister of Pensions**<sup>2</sup> for the tests to determine whether this was a contract of service or contract for service. Applying the control test, the Respondent invited us to find that the contact between the Respondent and 2<sup>nd</sup> Claimant was a contract for service and as such this Court did not have jurisdiction. It was asked that the claim be dismissed with costs.

#### Submissions of the Claimant

- [5] Ms. Bridge Kusemererwa, appearing for the Claimant, joined issue with Respondent on the procedure for raising a preliminary point on jurisdiction. Counsel for the Claimant relying on the Ozoo Brothers case (*op cit*) submitted that by filing a written statement of defence<sup>3</sup> they had submitted to the jurisdiction of this Court.
- [6] Relying on the case of **Godfrey Kyamukama v Makerere University Business School**<sup>4</sup> for an exposition of the control test, it was submitted that the Respondent had absolute control of the 2<sup>nd</sup> Claimant, provided the tools, equipment and supplies and agreed to pay wages equivalent to 25% of the cost of construction materials. The Respondent supervised all the work, paid a portion of the wages and a balance was outstanding. Counsel invited us to guard the Court's jurisdiction jealously.

<sup>1</sup> H.C. Civil Revision No. 0002 of 2016

<sup>2</sup> (1967)QBD 433

<sup>3</sup> Under Rule 5(4) of the LADASA Rules, a Respondent files a memorandum in reply to a memorandum of claim and, not a written statement of defence.

<sup>4</sup> LDR No. 147 of 2019

### Analysis and decision of the Court

- [7] There was a broad unanimity of agreement on the restatement of the law on jurisdiction in the *Ozoo Brothers* case (op cit). Both Counsel cited this case and the principle accurately. We wish to simply emphasize the point that the primary requirement of the system of justice is that a Court adjudicating a dispute must be clothed with jurisdiction. In a passage extracted from a Kenyan case<sup>5</sup> Nyarangi JA, opined that a court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction. The Appellate Division of the East African Court of Justice<sup>6</sup>, borrowing from the dictum of Nyarangi J. (ibid) observed that jurisdiction is a most, if not the most, fundamental issue that a court faces in any trial. It is the very foundation upon which the judicial edifice is constructed; the foundation from which springs the flow of the judicial process. Without jurisdiction, a court cannot take even the proverbial first Chinese step in its judicial journey to hear and dispose of a case.
- [8] The fundamental question for determination therefore is whether this Court has jurisdiction to hear the present matter. The narrower question leading to resolving the fundamental question, is whether the contract between the Respondent and Claimants is a contract for service or a contract of service. But there was the preliminary point raised by the Claimants to the effect that by filing a memorandum in reply, the Respondent had submitted to the jurisdiction of this Court.
- [9] Counsel for the Claimants highlighted an extraction from pages 3-4 of the ruling in the *Ozoo Brothers case* in support of her proposition. The import of the extract was that under Order 9 rule 3 CPR, a defendant who wished to raise an objection to jurisdiction was required to file notice of intention to defend and follow that up with an application for a declaration that the Court had no jurisdiction in the matter. Counsel submitted that under Order 9 rule 6 CPR, the Respondent would be treated as having submitted to the jurisdiction of this Court. We think that it would have been important to consider a fuller text of His Lordship Justice S. Mubiru's ruling on the point. We take this view because at page 4 of the ruling, the Learned Judge qualifies the provision of Order 9 rule 6 CPR by reading it together with Order 9 rule 2 CPR. In his Lordship's words, the conclusion is inevitable that filing a defence is a submission to the procedural rather than substantive jurisdiction of the Court. A party who files a defence is not precluded from raising the issue of jurisdiction in the defence or as a preliminary point of law. We are of a similar

<sup>5</sup> Owners of Motor Vessel Lillian "s" v Caltex Oil Kenya Limited [1989] KLR 1

<sup>6</sup> Attorney General of the United Republic of Tanzania v African Network of Anima Welfare Appeal No. 3 of 2011 EACJLR 2005-2011 395 at 399

persuasion that the Respondent was not precluded for raising the preliminary objection in the pleadings, as it did in paragraph 2 of the memorandum in reply, or before us at the scheduling conference. We will now return to the matter of substantive jurisdiction.

- [10] In paragraph 3 of the memorandum of claim, the Claimants filed a claim for wage arrears. At paragraph 3(a), the Claimants classified themselves as construction workers who had “an agreed wage equivalent to 25% of the cost of construction materials”. They plead that they diligently carried out their work and were entitled to UGX 6,335,000/= of which UGX 1,800,000/= was outstanding. The Claimants filed two affidavits in support of their claim. By an affidavit sworn at Lira on the 11<sup>th</sup> day of April 2022, the 1<sup>st</sup> Claimant deposed to having been engaged as a construction worker at an agreed wage rate of UGX 3,167,500/= of which UGX 900,000/= was outstanding. By an affidavit sworn on the same day, the 2<sup>nd</sup> Claimant also deposed to having been engaged as a construction worker at an agreed wage rate equivalent to 25% of the cost of construction material. That he diligently performed his work and was entitled to UGX 3,167,500/= of which UGX 900,000/= was outstanding.
- [11] In his memorandum in reply, the Respondent denied having employed the Claimants at an agreed wage equivalent to 25% of the cost of construction materials. In his affidavit in support of the memorandum in reply, the Respondent denied knowledge of the 1<sup>st</sup> Claimant and averred that he subcontracted the 2<sup>nd</sup> Claimant to roof a building and agreed to pay the 2<sup>nd</sup> Claimant 25% of the material cost quoted which would be the sum of UGX 6,335,000/=. It was the Respondent's case that the 2<sup>nd</sup> Claimant brought the 1<sup>st</sup> Claimant to the site. The Respondent further averred that the contract was split into two phases; Phase 1 consisted of welding of Z-shaped shed purlins on the building and Phase 2 required the fastening of iron sheets onto the purlins. He averred that upon completion of Phase 1, he paid the 2<sup>nd</sup> Claimant UGX 4,535,000/=. The Second Claimant abandoned the site and the Respondent contracted one Sam Okello to complete Phase 2 for which he paid the said Sam Okello UGX 1,800,000/=. He reiterated his denial of any contract of employment of the Claimants.
- [12] In support of their respective positions, Counsel cited the case of **Ready Mixed Concrete (Supra)** for an exposition of a contract of service versus a contract for services. In that case, which was cited with approval, in the case of **Godfrey Kamukama v Makerere Business School**<sup>7</sup> where Mackenna J held that;

*“there were three conditions for a contract of service: first that the employee undertakes to provide his or her own work or skill*

<sup>7</sup> LDR 147/2019

*to the employer in return for a wage or other payment, secondly the employee agrees to be subject to the employer's control to a sufficient degree" to make that other master" and thirdly that the other provisions of the contract are consistent with it being a contract of service in the end"*

What is discerned from the above passage is that a contract of service involves work for wages and control by the employer. We agree with the submissions of the Respondent that control is very key in the employment relationship. It is essentially master-servant in the sense that the master decides what needs to be done, the manner in which the task is to be performed, the means to be employed, the time and place in which it is to be executed.

- [13] In the Kamukama case (supra), the Industrial Court, citing the case of **Charles Lubowa and Scovia Ayikoru v Victoria Seeds Ltd**<sup>8</sup> where it held that the distinction between an employee and an independent contractor is primarily governed by the control test. That an independent contractor was a person who works under a contract but is not in the same state of dependence on the employer as an employee is. Whereas the independent contractor controls the means and the manner in which work is performed, the employee on the other hand, is subjected to the organization's procedures, is expected to perform part of the regular business of an employer and he or she must follow specific instructions on how to perform work. An independent contractor usually has a fixed task and is paid on completion of the said task and is free to delegate work to other workers of his choice without the knowledge and consent of the employer.
- [14] The facts in the instant case are quite telling:
- (i) First, the 1<sup>st</sup> and 2<sup>nd</sup> Claimant describe themselves as construction workers. They admit that the work to be performed was in respect of a roof. We think this would be a fixed task.
  - (ii) Secondly, they are both seeking the same remuneration being 25% of the cost of materials. They admit to having been paid UGX 4,535,000/= and are seeking a balance. We think this would be a fixed payment for a fixed task.
  - (iii) Thirdly, the Respondent suggests that he does not know the 1<sup>st</sup> Claimant who was brought upon the site by the 2<sup>nd</sup> Claimant. In this regard, the Respondent had no control over who the 2<sup>nd</sup> Claimant chose to work with. In terms, the 2<sup>nd</sup> Claimant would be at liberty to delegate the work without the consent or knowledge of the Respondent.

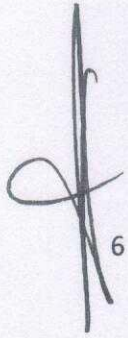
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<sup>8</sup> LDR 185/2016

- (iv) Fourthly, the Respondent admits to having paid the 2<sup>nd</sup> Claimant for completion of phase 1 of the work. This would be a fixed task which was paid for upon completion.
- (v) Finally and perhaps more significantly, the record before the Labour Officer contained facts reflecting the 2<sup>nd</sup> Claimant having sub-contracted the 1<sup>st</sup> Claimant and varying figures in relation to the agreed labour cost, what was paid and what was outstanding.

From these observations, our inescapable conclusion would be that the Claimants were not employees of the Respondent. The 2<sup>nd</sup> Claimant exercised independence in recruiting the 1<sup>st</sup> Claimant. He did not claim to have done so with the full knowledge and consent of the Respondent. The Respondent denies knowledge of the 1<sup>st</sup> Claimant and the 1<sup>st</sup> Claimant did not offer any explanation for the Respondent's disclaimer. We are unable to accept the Claimants' assertion that they are seeking payment of unpaid wages. In attempting to foster an employment relationship, we think that the Claimants were trying to square a circle. We accept the Respondent's contention that this was a contract for service and not of service. We hold that the 2<sup>nd</sup> Claimant was an independent contractor and the 1<sup>st</sup> Claimant a delegate of the 2<sup>nd</sup> Claimant.

- [15] In regard to jurisdiction, we are of the persuasion that a Court of law derives its jurisdiction from its establishment statute or constituent law. In the case of the Industrial Court, it was established under **Section 7 of the car Labour Disputes (Arbitration and Settlement) Act, 2006** (*from now LADASA*). Under **Section 8 of LADASA**, the Industrial Court shall arbitrate on labour disputes referred to it and adjudicate upon questions of law and fact arising from references to the Industrial Court by any other law. In the case of **Kyaka Fred & Others V Attorney General Labour Dispute Reference No. 128 of 2016** this Court held that it is a specialized Court dealing with matters to do with Employees and Employers regarding the Employment relationship between them. Its jurisdiction extends only to labour dispute directly connected with Employment and arising from the Employment relationship as provided for under the Employment Act. This decision is illustrative of the provisions of **Section 2 of the LADASA**, which defines a labour dispute as any dispute between an employer and an employee. Having found, as we have, that the Claimants did not enjoy an employment relationship with the Respondent, we would hold that there is no labour dispute to hear and determine.



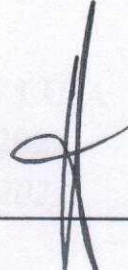
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[16] It is our conclusion, therefore, that the preliminary objection to the jurisdiction of this Court to hear and determine a matter of a contract for service is meritorious. It is, accordingly and in all circumstances, upheld. Labour Dispute Reference No. 09 of 2022 is dismissed with no order as to costs.

Delivered at Kampala this 24<sup>th</sup> day of March 2023.

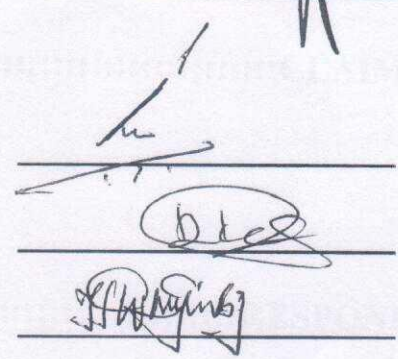
**SIGNED BY:**

**THE HON. JUSTICE ANTHONY WABWIRE MUSANA,** \_\_\_\_\_



**THE PANELISTS AGREE:**

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



Delivered in open Court via Zoom in accordance with the Judicature (Visual-Audio) Rules 2016 – on Zoom meeting ID No. 92674364210 Passcode 759001

Topic: Ruling:

- (i) Mr. Denis Awon for the Respondent
- (ii) Ms. Bridge Kusemererwa for the claimants

Court Clerk: Ms. Matilda Nakibinge.