



THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE NO.86 OF 2016
(Arising from MGLSD LEI 95/23/01)

F.X MUBUUKU:.....CLAIMANT

VERSUS

THE UGANDA NATIONAL ASSOCIATION OF BUILDING AND
CIVIL ENGINEERING CONTRACTORS LTD:.....RESPONDENT

Before:

The Hon. Mr. Justice Anthony Wabwire Musana,

Panelists:

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

Representations:

1. Prof. John Jean Barya of Barya, Byamugisha & Co. Advocates for the Claimant.
2. Mr. Peter Allan Musoke, Mr. Bernard Mabonga & Mr. Yusuf Betunga (Advocates) for the Respondent.

RULING

Introduction

- [1] When this matter came up for mention on the 12th of April 2023, Mr. Mabonga sought leave to file a fresh witness statement. He also objected to the Claimant's additional witness statements. We directed the filing of written arguments on the objections.

Respondent's arguments

- [2] Citing Order 18 Rule 5A (3) of the Civil Procedure Rules S.I 71-1(*from now CPR*) and the case of **Seruwagi Mohamed v Yuasa Investment Ltd**¹, it was submitted for the Respondent that the Claimant's additional witness statements and the witness statements of one Allen Kizza amounted to rejoinders or rebuttals. The Claimant could only make typographical or arithmetic corrections to the impugned witness statements, and it was unethical for Counsel to read the Respondent's written testimony before taking down an additional witness statement. It was suggested that the Respondent had been prejudiced since the Respondent did not have a right of reply or rebuttal. We were asked to strike out the additional witness statements.

Claimant's submissions in reply

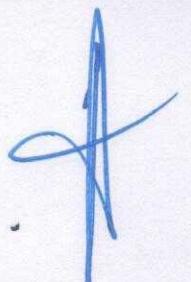
- [3] It was submitted for the Claimant that the objection was misconceived in fact and law. Professor Barya argued that under Section 18(1) of the Labour Disputes (Arbitration and Settlement) Act, 2006(*from now LADASA*), the Industrial Court is not bound by rules of evidence in any civil proceedings. As such, Order 18 Rule 5A (10) CPR and the Evidence Act Cap. 6 are irrelevant and inapplicable. It was also submitted that a witness statement does not amount to evidence on record before it is admitted. Counsel contended that the Industrial Court is a Court of equity and not technicalities, and the parties are at liberty to produce any evidence before the hearing of a case. It was proposed that the objection be dismissed with costs.

Analysis and decision of the Court

- [4] This Court must address whether the additional witness statements filed by the Claimant should be struck out.
- [5] The procedural history of this case regarding the filing of witness statements shows that the Claimant filed a witness statement on the 7th of August 2018. On the 27th day of February 2019, the Court² gave directions for the Claimant to file witness statements by 1st March 2019 and for the Respondent to file by 8th April 2019. When the matter came up on the 15th of April 2019, Mr. James Katono, Advocate, appearing for the Respondent, reported that the Respondent had not yet filed any witness statement. On the 7th of May 2019, Mr. Katono undertook to file the witness statements by 21st May 2019. No witness statement was on record when the matter came up on 21st June 2019. On the 26th of August 2019, the record reflects that the

¹ H.C.S No.334 of 2013

² Ntengye J. A. Namara, M. Matovu & S. Nabirye (Members)



Respondent had not yet filed a witness statement when the case was mentioned. Only on the 22nd of October 2019 did the Respondent file a witness statement of Aryatuzoora Francis Karuhanga. After that, on the 31st of October 2019, the Claimant filed an additional witness statement and a witness statement of Allen Kizza. This was followed by an additional witness statement of Allen Kizza filed on 9th December 2019. Counsel for the Respondent took objection to the additional witness statements filed after the 22nd of October 2019. Professor Barya took the position that **Section 18(1) LADASA** does not bind the Industrial Court in applying the strict rules of evidence applicable to civil proceedings.

[6] What, then, is the law applicable to witness statements before the Industrial Court? A perusal of the **LADASA, the Labour Disputes (Arbitration and Settlement) (Amendment) Act, 2021**, and the **Labour Disputes (Arbitration and Settlement) Industrial Court Rules, 2012** (from now *LADASA Rules*) do not make mention of any procedure relating to witness statements. Precedent of this Court has produced the result that this Court may resort to CPR where there is a lacuna in its rules of procedure. In **Autotune Engineering v Barozi Swaldo**³, this Court adopts the dicta of Ntengye. J and Tumusiime J. in **Harriet Amony v Madhvani Group Ltd**⁴ observed that although this Court operates under the guidance of the LADASA Rules, where there is a lacuna, nothing prevents it from applying the Civil Procedure Rules. It follows that while this Court may not be statutorily bound to follow the rules of evidence in civil proceedings, it is not barred from applying the same. We do not find Professor Barya's proposition that the CPR is irrelevant and inapplicable to be acceptable. The position is quite the opposite that the CPR would be relevant and applicable where there is a lacuna in the laws of procedure of the Industrial Court. In the circumstances of this case, it is this Court's persuasion that resort must be had to the law applicable to witness statements.

[7] The law applicable to witness statements is Order 18 Rule 5A CPR (as amended) and Schedule 2 Direction 4(p) of the Guidelines for Scheduling Conference. Under Order 18 Rule 5A (1) CPR (as amended), it is provided that the evidence of a witness shall consist of a witness statement, which shall be filed after the scheduling conference on the direction of the Trial Judge and served upon the opposite party. Under Direction 4(p) of Schedule 2, the witness statement is a testimony taken in chambers, filed in Court, and served on the opposite party. The witness statements are to be filed on the same day scheduled by the Court by both sides and exchanged with opposing counsel on the filing date. What emerges from this rule is the role of Counsel in recording the testimony, the concurrent filing by both parties, and the filing at the direction of the

³ Labour Dispute Miscellaneous Application No. 92 of 2022

⁴ (Civil Miscellaneous Application No. 66 of 2019) [2021] UGIC 3 (5 February 2021)

Trial Judge. It follows, therefore, that as a witness statement is evidence, the rules of evidence would apply to witness statements. The significance of this last point is demonstrable in jurisprudence on witness statements.

[8] Regarding concurrent filing, there appears to be a unanimity of view that concurrent filing preserves the credibility of the testimony and witness and avoids prejudice. The object is to preserve the credibility of the witnesses. In the **Seruwagi** case⁵, Counsel for the Plaintiff took objection to a witness statement filed out of timelines set by the Court and the direction to file the statements on the same day. The Court found that the practice of reviewing the opposite party's witness statement and filing a rebuttal was both unethical and prejudicial by giving one party an undue advantage in rebutting the evidence. In contrast, the other party did not enjoy the right of rebuttal. The Court also found that the Defendant's witness statement had been filed out of time and in default of the Court's direction. The Seruwagi case disparages unethical practices of reading a witness testimony before filing a statement, thereby inviting prejudice. The case also condemns late filing of a witness statement in default of directions of the Court. Similarly, in **Justus Kahabwa v China Henan International Cooperation Group Co Ltd**⁶ Gaswaga J. on an application to reopen the Defendant's case by filing witness statements after the Plaintiff had closed his case, held the temptation and possibility to shape the defendant's evidence to answer any adverse testimony to be quite high and to likely gravely prejudice the plaintiff's case.

[9] Regarding timely filing, the Courts have entrenched the view that Court Orders must be obeyed. In the **Kabahwa** case, the Court cited the case of **Amrit Goyal vs. Harichand Goyal and 3 Ors**⁷ where the Court of Appeal held that;

"A Court order is a Court order. It must be obeyed as ordered unless set aside or varied. It is not a mere technicality that can be ignored. If we allowed Court orders to be ignored with impunity; this would destroy the authority of judicial orders, which is the heart of all judicial systems."

This is the foundation of the justice system. As such, there is judicial concurrence that witness statements must be filed as directed by the Court.

[10] Matters of correction of witness statements are regulated under Order 18 Rule 5A (3) CPR (as amended). Such changes relate to the correction of typographical, arithmetic, or other errors that do not go to the substance of the testimony. The rationale for this

⁵ The Respondent's Counsel placed considerable reliance on this case.

⁶ H.C.C.S 721 of 2020

⁷ C.A.C.A No. 109 of 2004

limited approach to changes in witness statements is not to alter the evidence or to plug perceived holes after reviewing the opposite party's witness statements.

- [11] In the matter before us, upon receipt of the Respondent's witness statement on 31st October 2019, the Claimant filed an additional witness statement together with one of Allen Kizza. This was followed by an additional witness statement from Allen Kizza filed on 9th December 2019. On the 12th day of April 2023, when this matter came up for mention, Mr. Mabonga informed the Court of the passing of Mr. Karuhanga and the need to file a new witness statement. Leave was granted. It was submitted to this Court that the testimony in the additional witness statement was an attempt to rebut or a rejoinder to the late Mr. Karuhanga's evidence. We agree with this proposition. Any witness statements filed after the late Karuhanga's witness statement would have been filed outside the direction of this Court and without leave, and with a very high likelihood of being a rejoinder or a rebuttal. Applying the threshold and dicta in the Seruwagi case and the rules to the matter before this Court, we find that the additional witness statements filed without leave of Court and outside the timelines set by the Court to be prejudicial to the Respondent who did not have a right to a rebuttal. Witness statements, under Direction 4(p) of Schedule 2, are not pleadings to which parties have the rights to rebut.
- [12] What, then, is the fate of the impugned statements? In dealing with such a witness statement, the Court, in the Seruwagi case, declined to strike out the witness statement and preferred to exercise discretionary power to extend time and sanction the offending party in costs. The Court also permitted the Plaintiff to file a supplementary witness statement to cover any new area of controversy. Except for the sanction of costs which various decisions of this Court have canvassed⁸, we find the other orders consistent with the broader approach to receipt of evidence in labour disputes. In the case of **Yusuf Baliruno v CBS**,⁹ we cited the case of **Lubega Moses & 5 others v Roofings Uganda Ltd**¹⁰ for the view that evidence in labour matters ought to be freely given and received. We also cited **Moro Charles v Greenhill Secondary School**,¹¹ where this Court observed that the legislature intended to provide a less formal approach to labour justice. We observed that the Industrial Court would be entitled to receive evidence submitted before it and determine its relevance, materiality, and weight rooting this informal approach in social equity in administering labour justice and substantive justice without undue regard to technicalities as set out in Article 126(2)(e) of the 1995 Constitution. These dicta are consistent with the decision of Madrama J. (*as he then was*) in the Seruwagi case. His Lordship opined that

⁸ LDR 109 of Joseph Kalule v GIZ

⁹ Labour Dispute Reference 092 of 2020

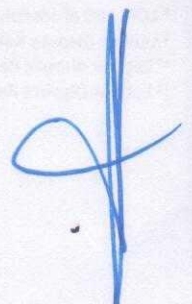
¹⁰ Labour dispute Reference No. 166 of 2020

¹¹ Labour Dispute Reference 10 of 2021

procedural rules were handmaidens of justice and was inclined to weigh the evidence after evaluation.

- [13] For these reasons above, while we would find merit in the Respondent's objection, we would decline to strike out the additional witness statements because this matter has not yet progressed to scheduling and hearing, and Counsel for the Claimant half-suggested that he would not object to the filing of any supplementary witness statement by the Respondent. We also note that despite several of Mr. Katono's undertakings and the directions of the Court, the Respondent did not file the witness statement of Aryatuzora Francis Karuhanga until the 22nd of October 2019. This witness statement was clearly out of time and in default of the directions of the Court. While Counsel for the Respondent raised an appreciable and meritorious objection, the Respondent did not come to the Court with clean hands. It was itself culpable for the transgression of the Court's directions in filing its witness statement.
- [14] We would, therefore, permit the Respondent to leave to file a rebuttal to the Claimant's additional witness statements, and the same be filed and served within 14 days from the date of this ruling. We are fortified in adopting this approach by the decision of Basaza J. in **Hadija Mutyaba v Ssemogerere Bashir & 2 Others**,¹² where Her Lordship permitted the late filing of a witness statement alleviated by calling rebuttal evidence. In that case, a scheduling conference had been held, and the defendant defaulted on filing its witness statements. There has not been a scheduling conference in the case before us, and there is space for rebuttal.
- [15] As a final point, Counsel for the Claimant submitted that the Industrial Court is a Court of equity, not technicalities. That is quite true, except that equity also follows the law. As such, it would be imprudent not to have rules regulating the filing of witness statements in evidence before this Court. The implications of such an approach would have far-reaching consequences, including evidence being filed at any time during a trial. Rules, as handmaidens of justice, are a necessary foundation of the justice system. The cause, course, and interest of justice require some modalities, a sense of balance, equality, fairness, and fair play. The function of law and procedure is to impose conformity, consistency, or uniformity, which the rules (CPR) enforce. In permitting evidence through witness statements, the Industrial Court would not be barred from following the rules governing witness statements. The provisions of Order 18 Rule (5A) CPR (as amended) serve that precise purpose and apply to all proceedings through witness statements before this Court.

¹² H.C.C.S 0798 of 2017

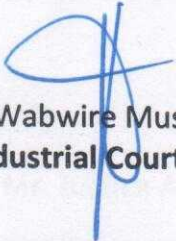


Decision and orders of the Court

- [16] Accordingly, while the preliminary objection is sustained and has merit, we decline to strike out the witness statements and permit the Respondent to file such witness statements as they may require within 14 days from the date of this order, viz the 19th of October 2023. The claim is to be set down for hearing as it has resided in the Court system since the 1st of December 2016, when it was first filed. This Court has a statutory imperative under Section 8 (2) LADASA to expedite the delivery of labour justice.

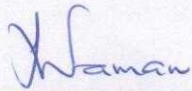


It is so ordered.

Delivered at Kampala this 5th day of October 2023.


Anthony Wabwire Musana,
Judge, Industrial Court

THE PANELISTS AGREE:

1. Hon. Adrine Namara
2. Hon. Suzan Nabirye
3. Hon. Michael Matovu

Delivered in open Court the 5th day of October 2023 at 10.17 a.m. in the presence of:

1. **For the Claimant:** Prof. John Jean Barya
Claimant in Court.
2. **For the Respondent:** Mr. Peter Allan Musoke, Mr. Bernard Mabonga
Respondent Secretary Ms. Giara in Court.

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


Anthony Wabwire Musana,
Judge, Industrial Court