



THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE APPEAL NO. 195 OF 2019

(Arising From Miscellaneous Application No.049 Of 2018 and Labour Dispute No. 151 Of 2014)

WASSWA JOSEPH:.....APPLICANT/APPELLANT

VERSUS

C & A TOURS AND TRAVEL OPERATORS LIMITED :.....RESPONDENT

Before:

The Hon. Mr. Justice Anthony Wabwire Musana,

The Panelists: Hon. Jimmy Musimbi Hon. Emmanuel Bigirimana & Hon. Michael Matovu.

Representation:

1. Mr. Jonan Rwambuka and Mr. Tito Ngwije of M/s. Rwambuka & Co Advocates for the Appellant/Applicant
2. Mr. Godfrey Jjuko, Respondent's agent in Court

Case Summary

Civil Procedure-Res judicata-misnomer- The case involved two similarly named parties, "C & A Tours and Travel Operators Ltd" and "C & A Tours and Travel Operations Ltd." The Applicant/Appellant initiated a labour complaint in 2014, leading to an award in favour of the applicant from the Industrial Court and a labour officer. During execution, it was revealed that the named respondent had a slightly different name ("Operators" vs "Operations"). The Applicant revisited the labour complaint and got an ex parte decree. On application for execution of the fresh decree, the court held that the matter was res judicata. The confusion between the names was deemed a misnomer, which was a correctable error. On appeal, the court dismissed the appeal, finding that the issue had been previously decided and the correctable misnomer did not warrant setting aside the Registrar's decision. The court rejected a request for a stay of proceedings in a related application. To avoid a multiplicity of proceedings, the Court invoked Article 126(2)(e) of the Constitution and Section 33 of the Judicature Act in correcting the misnomer.

RULING

Introduction

- [1] This ruling concerns an appeal against an order of the Learned Registrar of this Court, Her Worship Sylvia Nabaggala, made on the 13th day of June 2019, in Miscellaneous Application No. 049 of 2018 by which the Registrar the matter *res judicata*. The Applicant, alternatively the Appellant, for the reasons in paragraph [14] below, seeks a review and setting aside the order. The Applicant also seeks an order for execution to ensue.

Background facts

- [2] In June 2007, the Respondent employed the Applicant/Appellant as a Chauffeur. He was given a written contract and work identification in 2010. In July of 2017, he filed a complaint(KCCA/CENT/LC/151/OF 2014) against C & A Tours and Travel Operations Ltd

with the Kampala District Labour Office. He sought payment of salary arrears for May 2014 to January 2015, as well as untaken leave and unremitted social security contributions. The file was placed before Ms. Nabwire Rebecca, the labour officer, who was unable to resolve it.

- [3] On 31st July 2015, M/S Joel Cox Advocates, acting for the Applicant, filed Labour Dispute Reference No. 175 of 2015 seeking payment of salary arrears for May 2014 to January 2015, untaken leave, unremitted social security contributions and general damages. The Industrial Court¹ ordered C & A Tours and Travel Operations Ltd, the named Respondent, to pay UGX 8,253,500/= as salary and UGX 7,000,000/= as general damages. When the Applicant sought to execute this decree in LDMA No. 50 of 2017, the Respondent argued that this reference had been filed against the wrong party vide C & A Operations Ltd, not C & A Torus and Travel Operators Ltd. A certificate of incorporation was presented, and the Registrar of the Court discharged the Respondent.
- [4] The Applicant revisited KCCA/CENT/LC/151/OF 2014, intituling the file Wasswa Joseph v C & A Tours and Travel Operators Ltd. On the 25th day of January 2018, Mr. Mukiza Emmanuel Rubasha decided in favour of the Applicant for UGX 12,746,800/= plus interest at 20% until payment in full. A decree dated 13th of March 2018 was issued.
- [5] On the 14th day of March 2018, M/S Rwambuka & Company Advocates, now acting for the Applicant, filed an application for execution of an award in Labour Dispute C.B 151/2014 for UGX 12,746,260/= by way of attachment and sale of the Respondent's property. A notice to show cause was issued and served on the Respondent. On the 13th of May 2018, when the matter came up before the Registrar, Mr. Godfrey Jjuuko, the Respondent's agent, sought time to file a response. In his response, Mr. Jjuuko objected to the execution because:
- (i) There was improper service.
 - (ii) Miscellaneous Application No. 049 of 2018 replicated Miscellaneous Application No. 050 of 2017, where both applications sought to execute the decree in Labour Compliant No. CB 151 of 2014 but for two different sums vide UGX 12,746,300/= and UGX 15,253,000/= Counsel contended that LDMA No. 050 of 2017 was stayed and set aside on 6th April 2017.
 - (iii) That the Applicant was a third-party contributor in LDR No. 165 of 2015, arising from LD 317 of 215, arising from H.C.C.S No. 940 of 2017.
- [6] In his reply, Counsel for the Applicant argued that LDR 175/2015 was against C & A Tours and Travel Operations Ltd, and this mistake was made during the referral to this Court. Therefore, it could not be executed against a non-existent party. Counsel contended that the Respondent appeared in LDR 151 of 2014 but abandoned proceedings before they went exparte.

Ruling of Registrar

- [7] On the 13th day of June 2019, the Learned Registrar of this Court found that the matter was previously handled in LDR 175/2015, where the Industrial Court entered an award

¹ Per Ntengye Chief Judge, Mugisha L.J, Tukamwesiga, Habyalemye and Ebyau, Members

for UGX 15,253,000/=, and execution was granted in Misc Application No. 50 of 2017. The Registrar found that the attempt by the Applicant to correct the mistake/error that was apparent on the record in LDR 175/2015 was both erroneous and an abuse of process. In the Registrar's view, the complaint could only have been referred to the labour office for trial by the order of the Court, which was never sought in this matter. For this reason, the Registrar held that the matter became *res judicata* the moment the Court pronounced itself on the labour officer's award on 8th February 2017. The proper procedure would have been for the Applicant to seek a review of the Court award to correct the errors in the Respondent's name. The Registrar found that the first labour officer referred to the current Respondent when making the previous reference to the Industrial Court. Counsel made the subsequent mistake in their subsequent pleadings in Labour Dispute Reference No. 175 of 2015. She found LDMA 049 of 2019 to be misconceived, illegal, and an outright abuse of the court process by the Applicant, and she dismissed it with costs.

The application and pleadings

[8] Dissatisfied with that decision, the Applicant filed the present motion. The grounds in support of the motion are contained in the Applicant's affidavit in support and are as follows:

- (i) That the Ag. Learned Registrar erred in law when she held that Miscellaneous Application No. 049 of 2018 is *res judicata*.
- (ii) The Learned Registrar erred in law when she held that the misspelling in the name of the Respondent could be easily resolved through review, yet misspelling the name made the proceedings refer to another person other than the Respondent.
- (iii) The Learned Registrar erred in law and fact when she held that error in the name of the Respondent was caused by Counsel for the Applicant, whereas not.

Applicant's supporting affidavit.

[9] In his supporting affidavit sworn on 9th of August 2019, the Applicant was deposed to his filing of a complaint against C & A Tours and Travel Operators Ltd on 18th September 2014. The Respondent did not attend, prompting the complaint to be forwarded to the Commissioner of Labour, Industrial Relations, and Productivity (**the CLIRP**). As the Respondent did not attend mediation, the matter was referred to the Industrial Court. When the Industrial Court notified the complainant to file his notice of claim, it named the Respondent as C & A Tours and Travel Operations Ltd instead of C & A Tours and Travel Operators Ltd. This was said to be the genesis of the problem and not the mistake of Counsel but the Court.

[10] The Applicant was also deposed to his Counsel, filing the memorandum of claim bearing the same error, and the matter proceeding, and judgment was entered for which a decree was entered for UGX 15,253,000/=. After that, he filed LDMA 50 of 2017 for execution, which was granted. The Respondent then objected on the ground that judgment and execution were ensuing against the wrong party, C & A Tours and Travel Operators Ltd, yet the judgment was against C & A Tours and Travel Operations. The Applicant had no option but to return to the labour officer and have the matter heard against the correct

party, which was now heard *ex parte* and an award given against the Respondent. When he filed LDMA 49 in 2017, the Registrar dismissed the same.

- [11] He was also deposed to the misspelling of a name not being a material irregularity or error on the face of the record and that the matter was inappropriate for review, hence this appeal.

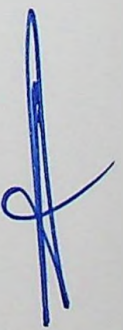
Affidavit in reply

- [12] In his affidavit in reply, Mr. Godfrey Jjuuko, Managing Director and Settlor of the Respondent, was deposed to having lodged a motion before this Court on 19th June 2023, in which he opposed the application citing M.A 195 of 2019 having been brought against C & A Tours and Travel Orperators Ltd which was a misnomer for C & A Tours and Travel Operators Ltd. He adverted to the treatment of misnomers and cited *AC Yafeng Construction Ltd v The Registered Trustees of the Living Word Assembly Church and Another*². He was deposed to non-service regarding the *ex parte* judgment, that the affidavit was argumentative, and that the CLIRP had conflated all referred complaints against the Respondent now under LDR 165 of 2017 pending resolution before this Court. And that he was opposed to the present application.

- [13] The Respondent also filed legal arguments contending;

- (i) That the Respondent had not made out a *prima facie* case with a probability of success for having failed to invoke the slip rule to correct or amend the mistake or error apparent on the record in LDR No.175 of 2015 and or filing an appeal against the Registrar's ruling staying and setting aside the decree in Labour Complaint No. 151 of 2014. Mr. Jjuuko referred us to *Uganda Development Bank Ltd v Oilseeds(U) Ltd* and other cases in support of the contention that Court orders can be corrected to give effect to the manifest intention of the Court.
- (ii) The Respondent argued that a slip order can only be made to cover an accidental slip or omission. We were referred to *Kwizera Eddie v Attorney General* and *Valasadhas Karsandhas Raniga v Mansukar Jivraj & Ors* for the proposition that the slip rule should not be used to correct errors of substance or attempt to add or detract from the original order made. It was the Respondent's position that the slip rule ought not to be used to smuggle an appeal.
- (iii) Regarding *res judicata*, Mr. Jjuuko explained that the trial between the same parties shall not be allowed once a competent court has tried a matter. He cited Section 7 CPA, Halsbury's Laws of England, 4th Edn Reissue and several other cases.
- (iv) Finally, Mr. Jjuuko contended that the Respondent, C & A Tours and Travel Operators Ltd, was not a party to Labour Complaint 151 of 2014, the Applicant was jointly liable as a contributor to LDR No. 165 of 2015, and the application is misconceived, void of merit and has no likelihood of success.

² [2021] UGCommC 49



- [14] The record did not contain any of the Applicant's written submissions or rejoinder when this ruling was rendered.

Determination.

- [15] Under Order 50 rule 8 CPR, any person aggrieved by an order of a Registrar may appeal by motion on notice from the order to the High Court. In an appeal, the first appellate Court must subject the evidence to a fresh and exhaustive scrutiny and re-appraisal before coming to its conclusion.³

Grounds one and two

Res judicata and misnomer

- [16] The crux of this appeal is whether the matter was *res judicata*. To address this matter effectively, revisiting and setting out the procedural history as far as the record stretches is necessary.

- [17] We will start first with the original action:

- (i) On 18th September 2014, the Appellant filed a complaint No. 151 of 2014 at the Kampala Labour Office. Mr. Michael Baruch, Labour Officer, invited the Respondent, C & A Tours and Travel Operators Ltd, to a mediation. Reminders were sent on 26th September 2014 and 15th October 2014. By letter dated 21st October 2014, Mr. Baruch forwarded the file to CLIRP.
- (ii) On 4th November 2014, Ms. Nabwire Rebecca, for CLIRP, issued a notice to show cause why the Respondent, C & A Tours and Travel Operators Ltd, should not be prosecuted. The matter was unresolved and referred to the Industrial Court.
- (iii) On the 31st of July 2015, the Applicant filed Labour Reference No. 175 of 2015 in the Industrial Court against C & A Tours and Travel Operations Ltd as the named Respondent. On the 8th of February 2017, the Industrial Court entered an award in favour of the Applicant in the sum of UGX 15,253,000/=.
- (iv) On the 20th of March 2017, the Applicant applied to execute the award in LDR 175 of 2015. On the 6th of April 2017, the Registrar of the Court received a certificate of incorporation to C & A Tours and Travel Operators Ltd, which Mr. Jjuuko argued was not C & A Tours and Travel Operations Ltd against whom the judgment had issued. He was discharged, and execution issued against C & A Tours and Travel Operations Ltd.
- (v) By letter dated 24th April 2017, M/S Rwambuka & CO Advocates acting for the Applicant reignited the initial complaint. By letter dated 23rd May 2017, Mr. Emmanuel Mukiza Rubasha, Labour Officer, invited the Applicant and Respondent to an arbitration. On the 4th of July 2017, the Applicant filed an amended memorandum of claim, naming C & A Tours and Travel Operators Limited as the

³ *Begumisa & 3 Ors v Eric Tiberaga* [2004] KALR 236 cited in *Oyee*

Respondent. He also filed a witness statement, and the matter was called before the labour officer on 26th June 2017 and 21st July 2017. It proceeded *ex parte*, and on the 25th of January 2018, Mr. Mukiza Emmanuel Rubasha entered an award in favour of the Claimant, granting a decretal award UGX 12,746,800/= plus interest at 20% until payment in full.

- (vi) On the 14th of March 2018, an execution file, Labour Dispute Miscellaneous Application(LDMA) No. 049 of 2018, was opened by which the Applicant sought to execute Mr. Mukiza's decree for UGX 12,746,300/= with interest of UGX 2,549,260/=. The Registrar sought the lower record by letter dated 14th March 2018, and it was provided. A notice to show cause why execution should not issue was issued on the 18th of April 2019.
- (vii) On the 13th of May 2019, the Respondent protested LDMA 049 of 2018, arguing that it was a replication of LDMA 50 of 2017, which was an application for execution of the award of the Industrial Court in Labour Dispute Reference No. 175 of 2015 *Wasswa Joseph v C & A Tours and Travel Operations Ltd* which under the intitulation was said to be arising out of Labour Dispute No. 152 of 2014. There is no record of Labour Dispute No. 152 of 2014. The memorandum of the claim referred to Labour Dispute No. 151 of 2014 before Nabwire Rebecca. The original file of Labour Compliant C.B 151 of 2014 contains the award and decree of Mr. Mukiza Emmanuel Rubasha on the 13th of March 2018, by which the Labour Officer granted the Applicant UGX 12,746,300/=. This was what was sought to be executed under MA 49 of 2018
- (viii) The other file is M.A. 50 of 2017. In this file, the Applicant sought to execute an award and decree of the Industrial Court in LDR 175 of 2015, which was said to have arisen from Labour Dispute No. 151 of 2014 before Nabwire Rebecca. When that matter came before the Registrar of this Court, Mr. Jjuuko had presented a certificate of incorporation of C & A Tours and Travel Operators Ltd, which he argued was not C & A Tours and Travel Operations Ltd against whom the judgment had been issued. He was discharged, and execution was issued against C & A Tours and Travel Operations Ltd.

[18] The procedural history sets out the evidence in this appeal. The summary of the evidence is that as it now stands, there is an award and decree of the Industrial Court in LDR 175 of 2015 in favour of the Applicant for UGX 15,253,000/= where the Respondent is named C & A Tours and Travel Operations Ltd and for which execution proceedings ensued in M.A 50 of 2017. The other contending file is an award and decree of a labour officer in Labour Complaint No. CB 151 of 2014, dated 25th of January 2018, against C & A Tours and Travel Operators Ltd. When the Applicant sought to execute the latter award of the labour officer, the Registrar of this Court ruled that the matter was *res judicata* and that the attempt to correct a mistake or error apparent on the face of the record in LDR 175 of 2015 was both erroneous and an abuse of process. The Learned Registrar was of the view that the Applicant ought to review the court order to correct the mistake. It is this view and decision that the Applicant seeks to set aside.

[19] The Applicant filed Labour Complaint 151 of 2014. Mr. Michael Baruch notified C & A Tours and Travel Operators Ltd to first settle. When this did not progress, he forwarded

the file to CLIRP. The file ended up in the Industrial Court and was numbered LDR 175 of 2015, naming C & A Tours and Travel Operations Ltd as the Respondent. The Industrial Court gave him an award, and when the Applicant hit a snag in execution in LDMA No. 50 of 2017, he reignited the labour complaint, resulting in an award by the Labour Officer which he sought to execute in LDMA No. 49 of 2018, which the Registrar has found to be *res judicata* and an abuse of Court process.

- [20] What is *res judicata*? Under Section 7 of the Civil Procedure Act Cap. 282. (the CPA), it is provided that no court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try the subsequent suit or the suit in which the issue has been subsequently raised, and has been heard and finally decided by that court. The issues in LDMA 50 of 2017 and LDMA 049 of 2018 were execution proceedings arising from a claim for unpaid salary. Wasswa Joseph and C & A Tours and Travel Operators Ltd were the parties in each matter. The parties to M.A. 50 of 2017, where Wasswa Joseph and C & A Tours and Travel Operations Ltd. Mr. Rwambuka takes the view that the latter was a non-existent party. The Respondent's Settlor took the view that this was a misnomer. The Registrar of the Court also took the view, and quite rightly as we hold below, that this was a correctable mistake or error apparent on the record amenable to review.
- [21] LDMA NO. 50 of 2017 was an application for execution of the decree of the Industrial Court in Labour Dispute Reference No. 175 of 2015 between Wasswa Joseph and C& A Tours and Travel Operations Ltd, which arose from Labour Dispute No. 151 of 2014 before Nabwire Rebecca Labour Officer, between the same parties. It was for a sum of UGX 15,253,000/=. What followed was that when faced with difficulty in execution, the Applicant went back to the labour officer and purported to commence a fresh action under the same reference, Labour Dispute No. 151 of 2014 Wasswa Joseph v C & A Tours and Travel Operators Ltd, before Mukiza Emmanuel Rubasha who on the 25th of January 2018 entered a new award declaring the Claimant an employee of the Respondent and awarding UGX 12,746,800/= in salary and leave arrears. The Applicant then filed LDMA 49 of 2018 to execute this new award, which the Registrar declared *res judicata*. It would follow that there are several proceedings with different outcomes as follows:
- (i) Labour Complaint No. CB 151 of 2014 between Wasswa Joseph v C & A Tours and Travel Operations Limited before Nabwire Rebecca Labour Officer, which was referred to the Industrial Court.
 - (ii) Labour Dispute Reference No. 175 of 2015 between Wasswa Joseph v C & A Tours and Travel Operations Limited, where the Industrial Court awarded the Claimant UGX 15,253,000/=
 - (iii) Labour Dispute Miscellaneous Application No. 50 of 2017 Wasswa Joseph v C & A Tours and Travel Operators Limited, where the Registrar of this Court ordered the execution to ensue against the C & A Tours and Travel Operations Limited.

- (iv) Labour Complaint No. CB 151 of 2014 between Wasswa Joseph v C & A Tours and Travel Operators Limited before Mukiza Emmanuel Rubasha, Labour Officer, where the Applicant was awarded UGX 12,746,800/= in salary and leave arrears and:
- (v) Labour Dispute Miscellaneous Application No. 49 of 2018 Wasswa Joseph v C & A Tours and Travel Operators Limited, where the Registrar of this Court found the matters therein to be *res judicata* having been decided in LDR 175 of 2015 from which this appeal has been preferred.
- [22] In our view, the legal difficulty confronting this Court lies in the word Operators versus Operations, in the name of the Respondent. We are persuaded that this is a classic case of a misnomer. According to the Merriam-Webster Dictionary, misnomer is defined as the misnaming of a person in a legal instrument, the use of a wrong or inappropriate name or a wrong name or inappropriate designation⁴. In the case of *Bwambale Joakim & Anor v Agric Evolve Uganda Ltd*⁵, this Court dealt with a misnomer where the letter 'c' in Agric Evolve Ltd had been added to the word "Agri" in the name Agri Evolve Ltd attracting an objection of the claim being brought against a non-existent person. Citing the dicta of Mubiru J. in *AC Yafeng Construction Ltd v The Registered Trustees of the Living Word Assembly Church and Another*⁶ where his Lordship observes that a misnomer occurs when the identity of the person is certain, but he or she is given an incorrect name, that the name is incorrectly written, or an entirely wrong name is written. His Lordship suggested that the test is whether or not a reasonable person reading the name, in all circumstances of the case, and looking at it as a whole, may say to himself or herself, "*Of course, it must mean so and so, but they have got his or her name wrong*". In that case, "AC Yafeng Construction Limited" was deemed corrected to "AC Yafeng Construction Company Limited." The addition to the name was the word company to correct the name. We also cited *Bang Cheng Investment Co. Ltd v Roko Construction Co. Ltd*⁷ where Kahigi Assimwe L.J deemed corrected "Roko Construction Co. Ltd" to "Roko Construction Company Limited" as the defendant.
- [23] Each of the above cases concerned minor spelling errors and omission, and in each of these cases, the Courts deemed corrected the names by including the word "Company," which was the corrected corporate name of the parties but had been omitted by spelling mistake or error. In our view, the reference to C&A Tours and Travel Operators Ltd and C&A Tours and Travel Operations Ltd would be a classic misnomer for which a correction would be amenable. In the result, we would not fault the Registrar for taking the view that the mistake could be corrected because, as precedent shows, a misnomer is correctable. This was our view in the *Bwambale* case, where the letter "c" had been mistakenly added to the word "Agri." Mr. Jjuuko, in both his affidavit and written submissions, conceded that the matters of misspelling were a misnomer. The Respondent's settlor cited a breadth of authorities on the treatment of misnomers. These authorities consisted of *Yafeng*, which we cited above and would be consistent with the approach taken by Kahigi Assimwe J. in *Bang Cheng*. A misnomer is correctable, and because we agree with the Registrar's findings that the misspellings were a misnomer, it would be impossible to fault her finding

⁴ <https://www.merriam-webster.com/dictionary/misnomer> last accessed 14.06.2024 9:18am

⁵ LDR 005 of 2022

⁶ [2021] UGCommC 49

⁷ [2024] UGCommC 10

that the issue tried and adjudicated upon by the Industrial Court in LDR 175 of 2015 was by the time of reigniting the labour dispute before Mr. Mukiza, Labour Officer, *res judicata*.

[24] In our view, by revisiting the original cause of Labour Dispute No. 151 of 2014, which was between Wasswa Joseph and C& A Tours and Travel Operations Ltd and which had been referred to the Industrial Court in Labour Dispute Reference No. 175 of 2015 for which a decree issued, the Applicant was attempting to square a circle. Labour Dispute No. 151 of 2014 was Wasswa Joseph and C& A Tours and Travel Operations Ltd before Nabwire Rebecca. The Respondent was rechristened C& A Tours and Travel Operators Ltd before Mr. Emmanuel Mukiza Rubasha, got an *ex parte* award and then applied for execution in LDMA NO. 49 of 2018. This was because an application for execution of the decree of the Industrial Court in LDR 175 of 2015 had faced difficulties in LDMA 50 of 2017. The fresh action in Labour Dispute No. 151 of 2014 Wasswa Joseph v C & A Tours and Travel Operators Ltd, before Mr. Mukiza Emmanuel Rubasha, could not be sustained under the same title. It was, as we have found following the ruling in LDMA 49 of 2018, *res judicata*. It could not be tried afresh. The prescription under Section 7 CPA is a mandatory bar. The statutory mandate is that no court can try a *res judicata* matter. The Learned Registrar took the view the mistake in LDR 175 of 2015 was a correctable misnomer, and the authorities we have cited herein support that view. We agree with the Learned Registrar that seeking the name correction was open to the Applicant and not the course of returning to the labour officer. Therefore, we do not fault the Registrar's decision but will return to this in our final orders.

[25] For the reasons above, grounds 1 and 2 of the appeal would fail.

Ground three: Mistake of Counsel

[26] The final ground of appeal faulted the Learned Registrar for holding that Counsel caused the fault in the name of the Respondent for the Applicant. We cannot agree with the Applicant on this point on the evidence on record. In his affidavit in support at paragraphs 2, 3 and 4, the Applicant concedes that he filed his initial claim against C & A Tours and Travel Operators Ltd. The summonses contained in the lower record all reflect the name C & A Tours and Travel Operators Ltd. Only in the memorandum of claim in LDR 175 of 2015, dated the 30th of July 2014, filed by M/S Joel Cox Advocates for the Claimant, does the name C & A Tours and Travel Operations Ltd appear. The memorandum of claim and affidavit verifying the claim were drawn and filed by M/S Joel Cox Advocates as Counsel for the Applicant. Under Order 3 Rule 1 CPR, an Advocate may apply to the court on a party's behalf. In the present circumstances, the Advocates presented the case papers carrying the name C & A Tours and Travel Operations Ltd on behalf of the Applicant. Therefore, based on the evidence on the record, it is impossible to fault the Registrar for finding that the misnomer or mistake occurred at the hands of Counsel of the Applicant. The evidence clearly shows the misnaming occurring under the hand of M/S Joel Cox Advocates whilst retained for the Applicant. Ground three of the appeal, too, fails.

[27] Mr. Jjuuko sought orders of stay of proceedings in Miscellaneous Application No. 061 of 2023 be vacated; the Court be pleased to expunge from its records the impugned Labour Dispute Appeal No. 195 of 2019, the Applicant be added as a Third-Party Claimant in Labour Dispute Reference No. 165 of 2015 Kamuhanda Robert and Others v C & A Tours and Travel Operators(Hertz) ostensibly to avoid a multiplicity of suits. In our view,

applications of this nature by way of submissions are not tenable as Mr. Jjuuko would have to move to Court formally to lay a foundation for considering his prayers.

- [28] In the final analysis, this appeal fails and stands dismissed.
- [29] We indicated in paragraph [24] above that we would return to the effect of the *res judicata* finding on the totality of these proceedings. In our view, having found that there was a misnomer and the matters in respect of LDMA 49 of 2018 were *res judicata*, this Court retains jurisdiction to deem as corrected the name C & A Tours and Travel Operators Ltd from C & A Tours and Travel Operations Ltd. This is derived first from Section 98 of the CPA, which imbues the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of process of the Court. What transpired in the matters before us is that the Applicant, having established a misspelling of the Respondent's name at the execution stage in LDMA 50 of 2017, returned to the labour officer and commenced *ex parte* proceedings before another labour officer. He obtained an *ex parte* judgment against the proper party, and upon seeking to execute the new decree, the Registrar found that the matters were *res judicata*. They could not be retried. Therefore, the misnomer ought to have been corrected. Sections 98 and 99 of the CPA permit the court to make such orders as may be necessary for the ends of justice. Indeed, Section 37 of the Judicature Act Cap. 16(**the JA**) empowers the High Court, in the exercise of the jurisdiction vested in it by the Constitution, to grant absolutely or on such terms as just all such remedies a party is entitled to so that in all matters of controversy between the parties may be completely and finally determined and all multiplicities of proceedings concerning those matters be avoided. We think the present case falls squarely under Section 37 of the Judicature Act Cap. 16. We also think it is essential to demonstrate the applicability of Section 37 JA to the Industrial Court.
- [30] In *Muwanguzi v Uganda Printing and Publishing Corporation*⁸ we cited the decision of the Constitutional Court in *Asaph Ruhinda Ntengye & Anor v Attorney General*⁹ where the Constitutional Court made very profound pronouncements of the stature of the Industrial Court. The Court held the Industrial Court of Uganda to be one of the Courts of Judicature as per Article 129 of the Constitution, having been established by Parliament in the exercise of Article 129(1)(d). The Court found that the Industrial Court is a subordinate Court with concurrent jurisdiction with the High Court of Uganda and has an appellate hierarchy equal to the High Court, while it is not a superior Court. This means that the Industrial Court is at the level of the High Court. Indeed, the legislature amended Section 8(3) of the Labour Disputes(Arbitration and Settlement) Act Cap. 227. imbued the Industrial Court with the powers of the High Court in performing its functions and imposition of reliefs it may deem fit.
- [31] Given these provisions, we would be inclined to apply to the present case an approach that brings the dispute between the parties to finality. That is the import of Section 37 JA. Further, Article 126(2)(e) of the Constitution behoves the Court in the adjudication of justice to apply substantive justice without undue regard to technicalities. In the present case, the technicalities relate to a correctable misnomer that, if corrected, would bring the matters herein to a conclusion. It is our view that the error in referring to C & A Tours

⁸ [2023] UGIC 63

⁹ [2017] UGCC 3

that the issue tried and adjudicated upon by the Industrial Court in LDR 175 of 2015 was by the time of reigniting the labour dispute before Mr. Mukiza, Labour Officer, *res judicata*.

[24] In our view, by revisiting the original cause of Labour Dispute No. 151 of 2014, which was between Wasswa Joseph and C& A Tours and Travel Operations Ltd and which had been referred to the Industrial Court in Labour Dispute Reference No. 175 of 2015 for which a decree issued, the Applicant was attempting to square a circle. Labour Dispute No. 151 of 2014 was Wasswa Joseph and C& A Tours and Travel Operations Ltd before Nabwire Rebecca. The Respondent was rechristened C& A Tours and Travel Operators Ltd before Mr. Emmanuel Mukiza Rubasha, got an *ex parte* award and then applied for execution in LDMA NO. 49 of 2018. This was because an application for execution of the decree of the Industrial Court in LDR 175 of 2015 had faced difficulties in LDMA 50 of 2017. The fresh action in Labour Dispute No. 151 of 2014 Wasswa Joseph v C & A Tours and Travel Operators Ltd, before Mr. Mukiza Emmanuel Rubasha, could not be sustained under the same title. It was, as we have found following the ruling in LDMA 49 of 2018, *res judicata*. It could not be tried afresh. The prescription under Section 7 CPA is a mandatory bar. The statutory mandate is that no court can try a *res judicata* matter. The Learned Registrar took the view the mistake in LDR 175 of 2015 was a correctable misnomer, and the authorities we have cited herein support that view. We agree with the Learned Registrar that seeking the name correction was open to the Applicant and not the course of returning to the labour officer. Therefore, we do not fault the Registrar's decision but will return to this in our final orders.

[25] For the reasons above, grounds 1 and 2 of the appeal would fail.

Ground three: Mistake of Counsel

[26] The final ground of appeal faulted the Learned Registrar for holding that Counsel caused the fault in the name of the Respondent for the Applicant. We cannot agree with the Applicant on this point on the evidence on record. In his affidavit in support at paragraphs 2, 3 and 4, the Applicant concedes that he filed his initial claim against C & A Tours and Travel Operators Ltd. The summonses contained in the lower record all reflect the name C & A Tours and Travel Operators Ltd. Only in the memorandum of claim in LDR 175 of 2015, dated the 30th of July 2014, filed by M/S Joel Cox Advocates for the Claimant, does the name C & A Tours and Travel Operations Ltd appear. The memorandum of claim and affidavit verifying the claim were drawn and filed by M/S Joel Cox Advocates as Counsel for the Applicant. Under Order 3 Rule 1 CPR, an Advocate may apply to the court on a party's behalf. In the present circumstances, the Advocates presented the case papers carrying the name C & A Tours and Travel Operations Ltd on behalf of the Applicant. Therefore, based on the evidence on the record, it is impossible to fault the Registrar for finding that the misnomer or mistake occurred at the hands of Counsel of the Applicant. The evidence clearly shows the misnaming occurring under the hand of M/S Joel Cox Advocates whilst retained for the Applicant. Ground three of the appeal, too, fails.

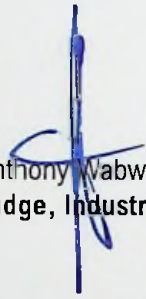
[27] Mr. Jjuuko sought orders of stay of proceedings in Miscellaneous Application No. 061 of 2023 be vacated; the Court be pleased to expunge from its records the impugned Labour Dispute Appeal No. 195 of 2019, the Applicant be added as a Third-Party Claimant in Labour Dispute Reference No. 165 of 2015 Kamuhanda Robert and Others v C & A Tours and Travel Operators(Hertz) ostensibly to avoid a multiplicity of suits. In our view,

and Travel Operations Ltd in LDR 175 of 2015 is curable, as we deem the same corrected to read C & A Tours and Travel Operators Ltd. The Respondent's settlor conceded to this point several times in his affidavit in reply, citing authorities and making legal arguments supporting a correctable misnomer, as did the Learned Registrar of this Court. It is the decision of this Court that the correction of that misnomer will end the multiplicity of proceedings between the Applicant and Respondent. We are fortified in taking this approach by the Supreme Court's decision in *Mulindwa v Kisubika*¹⁰ in declining to accept an invocation of Article 126(2)(e) of the Constitution; the apex Court observed the need to bring litigation to its finality. We draw from this view to hold that the curable misnomer will conclude this matter in the present case.

[32] For the avoidance of doubt, we order as follows:

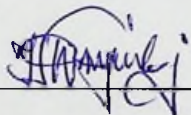
- (i) The appeal fails on all grounds.
- (ii) The Respondent named C & A Tours and Travel Operations Ltd in LDR 175 of 2015 is hereby deemed corrected to read C & A Tours and Travel Operators Ltd.
- (iii) Neither party will be burdened by the other's costs.

Dated, signed, and delivered in open Court at Kampala this 24th day of September 2024

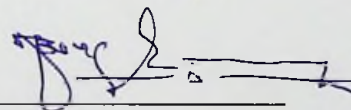

Anthony Wabwire Musana,
Judge, Industrial Court

The Panelists Agree:

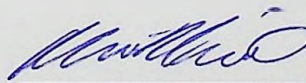
1. Hon. Jimmy Musimbi,



2. Hon. Emmanuel Bigirmana &



3. Hon. Michael Matovu.



¹⁰ [2018] UGSC 38

24.09.2024

9:37 am

Appearances:

For the Applicant: Mr. Jonan Rwambuka for the Applicant
Parties absent.

Court Clerk: Mr. Samuel Mukiza

Mr. Rwambuka: Matter for ruling, and I am ready to receive it.

Court: Ruling delivered in open Court.


10:07 am
Anthony Wabwire Musana,
Judge, Industrial Court.