



THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE MISC. APPLN. No. 112 of 2023

(Arising from LDR No. 92/2021, 172/2022, 246/2021, 312/2022, 123/2023)

CITI BANK UGANDA LTD APPLICANT

v

BRENDA AMONY YIIKI & OTHERS.....RESPONDENTS

Before:

The Hon. Ag. Head Judge, Linda Lillian Tumusiime Mugisha

Panelists:

1. Hon. Bwire Abraham,
2. Hon. Julian Nyachwo &
3. Hon. Mwamula Juma.

Representation:

1. Mr. James Zeere of M/s. S & L Advocates for the Applicant.
2. Ms. Ruth Auma of M/s. Kashilingi Rugaba & Associates for the 3rd Respondent.
3. Mr. Nuwasasira Horace of M/s. Signum Advocates for the 2nd, 4th and 5th Respondent.

RULING

Introduction

- [1] This application is brought by Chamber summons under Section 40 of the Labour Disputes (Arbitration and Settlement) Act 2006, Order 11 Rues 1(2) and 2 of the Civil Procedure Rules (CPR) S.I 71-1, for orders that:

1. Labour Dispute References No. 92 of 2021 (Brenda Amony Yiiki), No. 172 of 2021(Genevive Kabarungi Matovu), No. 123 of 2023(Paul Namanya) currently pending before this court be consolidated.
2. Costs of the Application be provided for.

- [2] The grounds upon which this application is based are set out in the affidavit of Sarah Arapta Nyamusobo summarized as follows;
- a. Each of the Respondents has suits pending before this honorable Court against the Claimant.
 - b. All the suits involve similar questions of fact and law.
 - c. The Cause of action in all the suits arose from the same transaction of facts.
 - d. It is necessary to prevent an unnecessary multiplicity of suits and abuse of the court process for the suits to be consolidated and to be heard simultaneously.
 - e. That in the interest of justice the application should be granted.

Applicant's case

- [3] In Labour Dispute Reference No. 92/2021(Brenda Amony Yiiki), the 1st Respondent makes several claims for compensation based on an allegation of unlawful termination after the Applicant dismissed her on notice, on grounds of breaching its policies when she abused the health club benefit by soliciting and receiving cash from Machame Health Club out of fees paid for her use at the club.
- [4] In Labour Dispute Reference No. 172/2021(Genevive Kabarungi), the 2nd Respondent makes several claims for compensation based on the allegation that she was unlawfully and unfairly dismissed when the Applicant dismissed her on notice on grounds of breaching its policies when she abused the health club benefit by soliciting and receiving cash from Machame Health Club out of fees paid for her use at the club.
- [5] In Labour Dispute Reference No. 246 /2021(Abenakyo Jovia Viola), the 3rd Respondent makes several claims for compensation based on an allegation that she was unlawfully and unfairly dismissed when the Applicant dismissed her with notice on grounds of breaching its policies when she abused the health club benefit by soliciting and receiving cash from Machame Health Club out of fees paid for her use at the club.

- [6] In Labour Dispute Reference No. 312/2021, (Mark Mukiibi), the 4th Respondent makes several compensation claims based on an allegation that he was unlawfully and unfairly dismissed when the Applicant dismissed him with no notice on grounds of breaching its policies when he abused the health club benefit by soliciting and receiving cash from Machame Health Club out of fees paid for her use at the club.
- [7] In Labour Dispute Reference No. 123/2021(Paul Namanya), the 5th Respondent makes several claims the compensation based on the allegation that he was unlawfully and unfairly dismissed when the Applicant dismissed him with notice on grounds of breaching its policies when she abused the health club benefit by soliciting and receiving cash from Machame Health Club out of fees paid for her use at the club.
- [8] Prior to their dismissal each of the Respondents was subjected to investigations which the same person conducted, Ms. Kelly McInnis, and they were all interviewed by the same Kelly McInnis who produced investigation reports regarding the allegations against each of them. Each of them appeared before the disciplinary committee separately and made their respective responses to the accusations against them individually. They all appeared before the same disciplinary Committee comprised of Mr. Robert JJagwe, Ms. Ann Nabukeera Katongole, Mr. Simon Peter Kvuma, Mr. Allan Akoko, Ms. Monica Muia, Ms. Stanley Katwaza, and Mr. Ignatius Chicha.
- [9] They were all dismissed on the same date and for the same reason, to wit; acting in contravention of the Applicant's code of conduct, fraud risk management policy, and their terms of employment, when they, for the financial gain they abused the health club benefit by soliciting and receiving cash from Machame Health Club out of fees paid by the Bank for; their use at the club.
- [10] That on 3/10/2023, the Hon. Justice Anthony Musana Wabwire recused himself from the conduct of the case of Labour Dispute Reference No.213 of 2021: Samson Ayebare vs Citibank Uganda Limited which arose from the same transaction of facts as all the suits and in so doing His Lordship held that he could not hear the matter since it arose from the same facts as Labour Dispute Reference No. 246/2021(Jovia Abenakyo) in which he represented the Claimant. His Lordship's ruling applied to all the suits sought to be consolidated by this application, therefore His Lordship is not available to take the conduct of any of

these suits and apart from his Lordship there is only one Judge. This court is constrained for time and judicial resources being the only Industrial Court entertaining Labour Disputes all over the Country. Therefore, in the interest of maximizing the time and judicial resources available to the Court, justice would be best served by the consolidation of the suits and hearing them simultaneously.

The Respondent's case

[11] The five Respondents filed individual affidavits in opposition to this Application and stated as follows;

The 1st Respondent opposed the application on grounds that, the Claimants had different hearings, they sought different remedies and the individual circumstances of each Claimant were different, therefore the claims cannot be consolidated.

2nd Respondent Genevive Kabarungi Matovu opposed the Application on grounds that the Claimants held different Positions and employment contracts, with varying salaries therefore they had different claims and claims of varying monetary values. She also contends that all the disciplinary hearings were conducted independently of each other, and they were conducted on different days and at different times with each investigation resulting in a different investigation report, and each of the suits has unique evidence therefore, the cases should be considered independent of each other.

[12] The 3rd 4th and 5th Respondents, Abenakyo Jovia Viola, Mark Mukiibi, and Paul Namaya also opposed the application on grounds that each of them held a different Position and employment contract, with varying salaries therefore they had different claims, with claims of varying monetary values. He also contends that after the s Claimant was summoned the disciplinary hearings were conducted independently of each other and the investigations were conducted on different days and at different times each investigation resulting in a different investigation report, therefore the cases should be considered independent of each other. She further contended that all the suits the applicant seeks to consolidate are not a result of collective appearance before the disciplinary committee, therefore having appeared individually each had unique evidence brought against them. Therefore this application for consolidation should not succeed.

We read and considered all the submissions for and against this application and found as follows:

Decision of Court

1. *Whether the Applicant has reasonable grounds to consolidate, Labour References No. 92 of 2021, No. 172 of 2021, No. 246 of 2021, and No. 123 of 2023?*

[13] Order 11 rule 1 of the Civil Procedure Rules provides that:

“where two or more suits are pending in the same court in which similar questions of law or fact are involved, the court may, either upon an application of one of the parties or of its own motion, at its discretion and upon such terms as may seem fit-

a) Order consolidation of the suits, and

b) direct that further proceedings in any of the suits be stayed until further order.”

[14] It is a settled position of law that consolidation may only be ordered in the interest of expediency and convenience and where the court is persuaded that it is in the interests of justice and it will not cause any prejudice to a *litigant* (*Visare Uganda Ltd v Muweme & Co. Advocates and Solicitors Misc Appln. No. 826 and 827 of 2023*). As rightly submitted by Counsel for the Applicant consolidation is also intended to avoid a multiplicity of litigation and conflicting judgments and to avoid abuse of court process and most importantly to expedite justice. (*see Mohan Musisi Kiwanuka v Aisha Chand (CA No. 14 of 2002 [2003])*).

[15] However, before consolidation, consideration must be given to the facts and points of law involved in each case. Authorities abound on the purpose of consolidation and provide that, where there are common questions of law or fact, common parties issues, witnesses, transactions or occurrences and or claims and reliefs which would render it desirable that the whole matters should be disposed of at the same time, consolidation should be ordered to avoid a multiplicity of suits. It is important that in the interests of expediency and convenience, where no prejudice will be suffered. In *Visare* (supra) Mubiru J stated that: *“...in weighing the efficiencies and fairness of an order, court must consider a variety of factors including a) the extent of the difference or commonality of the facts or issues in the proceedings; b) the status of the progress of the several proceedings; c) the convenience or inconvenience, in terms of time, money due process and administration of bringing the proceedings together. An order for consolidation will generally be appropriate at an early stage in the litigation process.*

- [16] After carefully analyzing the affidavits in support and in opposition and all Counsel submissions we established that although the Respondents held different positions at the Applicant for which they received different emoluments, they were all charged with the same breach of the Applicants health club benefits policy, by soliciting and /or receiving cash from Machame Health Club out the fees paid by the Applicant for their use at the club. They were all investigated albeit separately and were separately subjected to disciplinary proceedings on the said allegations. They were all found culpable and were dismissed on the same day, for the same breach. Their separate claims against the Respondent are all for unlawful and unfair termination for breach of the Applicant's fraud risk management policy. They all refute the authenticity of the investigative reports that the Applicant relied on to terminate them together with the fraud risk management policy which they all denied any knowledge of, while the 5th Respondent claims he was condemned unheard.
- [17] In our considered opinion the Cause of action in all the suits arose from the same transaction of facts and all their claims have a similar question of law to be resolved by this court, therefore consolidation will enable an expeditious resolution of the claims.
- [18] We further take cognizance of the separate and distinct claims by each of the Respondents which in our considered view will not be affected by the consolidation of the claims because the consolidation does not necessarily mean that the decision in one case will be applied to all the actions as is done in test cases, where the result in one of the actions will automatically apply to all the others. We have taken cognizance that the suits in the instant application though arising from the same facts with the same point of law to be resolved, are separate and distinct and therefore they will be treated as such. We are persuaded by the Nigerian Court of Appeal in (*Kutse v Balefur (1994) (Pt.337) 196 on page 209*, which was to the effect that even when consolidated, actions may remain separate and distinct, and even if they are tried and determined simultaneously, in the same proceeding, the court will ensure that each action remains a separate and distinct action with its judgment given separately at the end of the common trial. This will ensure that the distinct remedies sought are given due consideration and the distinct facts are not ignored. Therefore in the instant case, even though consolidated, each Claimant remains with the burden of proving his or her case.

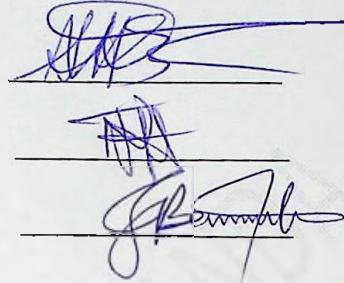
- [19] It is the correct position that, the Industrial Court has only 2 Judges serving the entire country and Hon. Justice Anthony Musana Wabwire having recused himself from the conduct of LDR No. 213 of 2021, Samson Ayebare v Citibank which arose from the same transaction of facts as LDR No. 256 of 2021 (Jovia Abenakyo), in which he was Counsel for the Claimant before he was appointed as a Judge, which also arose from the same facts as all the suits in the instant application, he will not be available to conduct any of these suits in the instant application and apart from him, there is only 1 Judge.
- [20] In (*Tolit Charles Okiro v Otto Cipriano Civil Revision No. 002 of 2019*), which was cited with approval by (*Gaswaga J in Justus Kyabahwa v China Henan International Cooperation Group Company Limited Cs No. 721 of 2020 (commercial Division)*), that:
- “Public interest emphasizes efficiency and economy in the conduct of litigation in that court’s resources should be used in such a manner that any given case is allotted its fair share of resources, the most important of which in civil litigation is time. Each case whose trial is unduly prolonged deprives other worthy litigants of timely access to the courts. Courts must ensure that each suit is dealt with expeditiously and fairly, allotting to it an appropriate share of the court’s resources, while taking into account the need to allot resources to other cases...”*
- [21] In light of these resource constraints, we believe that to facilitate an expeditious and inexpensive determination of the labour disputes between the Respondents and the Applicant and to avoid a multiplicity of claims, the consolidation of the Respondent’s claims to be tried simultaneously in the same proceeding will enable this court proportionately to allocate its scarce Judicial resources to ensure that this trial of these cases is conducted expeditiously, while maintaining their distinct and separate nature by issuing distinct and separate Judgements for each, at the end of the common trial.
- [22] In conclusion, we find merit in the application, LDR No.92 of 2021, is hereby consolidated with LDR No.172 of 2021, LDR No.246 of 2021, LDR No 312 of 2022, and LDR. No123 of 2023 all pending before this court. Costs shall abide in the main.

Signed in Chambers at Kampala this 12th day of April 2024.

Hon. Justice Linda Lillian Tumusiime Mugisha,
Ag. Head Judge

The Panelists Agree:

1. Hon. Bwire Abraham,
2. Hon. Julian Nyachwo &
3. Hon. Mwamula Juma.



12th April 2024
9:30 am

Appearances

1. For the Applicant: Mr. James Zeere
 2. For the Respondents: Ms. Ruth Auma and Mr. Mulindwa Muwonge
Desire
Parties absent
- Court Clerk: Mr. Christopher Lwebuga.

Delivered and signed by:

Hon. Justice Linda Lillian Tumusiime Mugisha,
Ag. Head Judge, Industrial Court