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THE REPUBLIC OF UGANDA

IN THE INDUSTRIAL COURT OF UGANDA AT JINJA

LABOUR DISPUTE REFERENCE NO. 009/2022

ARISING FROM HCCS No.90/2018,JINJA

KWAGALA BRENDA

..... CLAIMANT

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VERSUS

YOUTH ALIVE UGANDA LTD

..... RESPONDENT

BEFORE:

THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA

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PANELISTS

1. MS. JULIAN NYACHWO

2. MR. BWIRE JOHN ABRAHAM

3. MR. KATENDE PATRICK

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RULING ON PRELIMINARY OBJECTION

When this matter was mentioned at the pre-session hearing on 20/11/2023, Mr. Natumanya Bright for the Respondent raised a point of law to the effect that this

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Dispute was not properly before this Court because it was still ongoing in the High Court of Jinja vide Civil Suit No. 90 of 2018. Counsel contended that there was no memorandum of claim or notice of claim or a reference from the High Court, yet they the Respondent was served with a trial bundle and witness statements contrary to the procedure of this Court. He contended further that on 13/11/2023, the Respondent was served with hearing notices issued by this Court on 6/11/2023 and on 14/11/2023, with a memorandum of claim filed in court on the same day. He wondered how Court could have issued a hearing notice without a memorandum of claim being filed and without a reference, moreover the matter had never been before any Labour Officer and the Claimant kept changing the parties sued. It was his further his submission that, whereas the memorandum of Claim which was filed on 14/11/2023, stated the Respondent as “Youth Alive Ltd(by Guarantee)”and the hearing notice indicated the Respondent as “Youth Alive Uganda Ltd” while the suit under Civil Suit No. 90/2018, stated the defendant as “Youth Alive Uganda Ltd.”

In reply Counsel for the Respondent stated that the Respondent rendered its reply to the memorandum of Claim on 27/11/2023 following a request by the claimant that the matter be referred to this court. According to him, Court gave directions for the Claimant to file a memorandum of claim and serve it on the Respondent together with all her pre-trial documents. The Claimant complied with these directives, but the Respondent continuously raised the same objection that, there was no reference to this court. Counsel for the Claimant submitted that, the Labour Dispute was filed in the High Court on 29/08/2018 and fixed for hearing before her Lordship Bukirwa Faridah on several occasions and finally on 22/02/2021, but it was not heard. The Claimant through her lawyers wrote to the Learned Registrar Jinja Court seeking that it is referred to the Industrial Court and the matter was referred to the Industrial Court and registered as LDC No 009 of 2023. Therefore, the Dispute was properly referred

to this Court from the High Court Jinja circuit. It was further his submission that, since the matter arose out of an employment relationship and it was before a Court of Judicature with unlimited Jurisdiction, the Labour officer had no jurisdiction to handle it. Citing **African Field Epidemiology Network vs Peter Wasswa Kityaba CA No124/2017**, in which it was held that, the Industrial Court can hear any question of law or fact in relation to a Labour Dispute which is referred to it by any other law and section 8 of the Labour Disputes(Arbitration and Settlement) Act, 2006, Counsel insisted that the Dispute of wrongful termination filed before the High Court was a tort which the Labour Officer had no jurisdiction to handle, therefore the Preliminary Objection had no merits and it should be dismissed.

With regard to the Claimant suing a wrong party, Counsel argued that the memorandum of claim describes who the Respondent is and the Respondent does not deny that it appointed the Claimant. Therefore, the omission of the word “guarantee” does not render the Memorandum of Claim defective. He relied on **David Lubaale vs Every Child Ministries MA No. 81/2012**, in which Justice Christopher Madrama as he then was, held that, the erroneous description of the plaintiff by omission of the word “incorporated” is a misnomer which can be corrected, therefore the Claimant’s omission of “guarantee” in the instant case does not render the memorandum of claim an illegality nor has it misled the Respondent in any way.

In rejoinder Mr. Natumanya insisted that the claim was not a tort and there is nothing on the record to indicate that it was referred to this Court by whatever means. He contended that when the parties appeared before the High Court the Respondents raised the issue that the Labour Dispute should have been filed before the Industrial Court which the Claimant contested. He reiterated that there was nothing on the record to indicate that the Dispute was referred to this Court in accordance with the LADASA and the rules thereunder and



particularly under rule 5 which requires that the parties must be given notice of
80 the reference and section 93(1) of the Employment Act. He refuted the assertion
by Counsel for the Claimant that such a Dispute could be filed in any court and
insisted that, Court should consider that this preliminary objection has no merit
and that it should strike out the pleadings in accordance with Order 7 rule 30
and dismiss the suit in accordance with Order 6 rule 29.

85 **RULING**

Our duty is to determine whether this matter, LDC No. 009/2023 is properly
before this Court, therefore the resolution of the issue whether the correct
Respondent was sued or not is dependent on the resolution of the Preliminary
Objection.

90 Section 8 of the **Labour Disputes(Arbitration and Settlement)Act 2006**
provides that:

“(1)The Industrial Court shall-

(a) arbitrate on labour disputes referred to it under this Act; and

*(b) adjudicate upon questions of law and fact arising from references
95 to the Industrial Court by any other law.*

*(2)The Industrial Court shall dispose of the labour disputes referred to it
without undue delay.”*

The Black’s law dictionary 11th Edition at page 1533 defines “reference” and
“referral” as follows:

100 *“Refernce1. The act of sending or directing to another for information,
service, consideration, or decision ; esp, the act of sending a case to a
master or referee for information or decision...”*

*Referral: The act or an instance of sending or directing to another for
information, service, consideration, or decision...”*

105 Regulation 3 of the **Labour Disputes(Arbitration and Settlement)(Industrial Court Procedure)Rules 2012**, provides for the procedure to be followed by the Labour officer when requested to make a reference to the Industrial Court and Regulation 5 of the same rules for the procedure to be followed by the parties after a reference has been made. And it provides as follows:

110 *“(1) The Registrar shall, within seven days after registering a reference, give notice to the parties that a dispute has been referred to the court and require each party to file a memorandum and in the case of the Claimant, the memorandum shall be filed within seven days after receipt of the notice.*

115 *(2) The memorandum referred to in subrule (1) shall set out, in the case of the Claimant, the nature and particulars of each item of the claim involved in the dispute and the claimant shall serve a copy of the memorandum on the respondent.*

120 *(3) The memorandum referred to under subrule (2) shall be accompanied by an affidavit of service.*

(4) The respondent shall, within seven days after receipt of the memorandum, file a reply as he or she may wish to give to the items of the claim raised in the claimant's memorandum and shall serve the memorandum on the claimant.

125 *(5) The memorandum under subrule (4) shall be accompanied by an affidavit of service.*

(6) Each party to the dispute shall submit six copies of the party's memorandum to the court and six copies of such documents as in the opinion of the Registrar may be necessary.



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130 (7) *Where the dispute is between and employer and a labour union the claimant shall attach a recognition and collective bargaining agreement between the employer and the labour union to the memorandum.*”

Section 93 of the Employment Act on the other hand, provides for the Jurisdiction of the Labour Officer over claims and remedies as follows:

135 (1) *Except where the contrary is expressly provided for by this or any other Act, the only remedy available to a person who claims an infringement of any of the rights granted under this Act shall be by way of a complaint to a labour officer.*

140 (2) *A labour officer shall have jurisdiction to hear and to settle by conciliation or mediation a complaint -*

(a) by any person alleging an infringement of any provision of this Act, or

(b) by either party to a contract of service alleging that the other party is in breach of the obligations owed under this Act.

145 (3) *Where there is an infringement of this Act the labour officer shall have the power to order a party to comply with the provisions of this Act and in accordance with its provisions, make the aggrieved party whole.*

150 (4) *Where there is a breach of the obligations owed under a contract of service, the labour officer shall have the power to order a party to request the obligations owed and in accordance with the terms of the contract, to make the aggrieved party whole.*

(5) *Where the labour officer has found an infringement of the Act and a breach of an obligation owed under a contract of service, the remedy he or she shall order shall result in double recovery for the aggrieved party.*

155 (6) *A claim in tort arising out of the employment relationship; claim shall be brought before a court and the labour officer shall not have jurisdiction to handle such a claim.*

160 (7) *Where within 90 days of the submission of a complaint under this Act to a labour officer, he or she has not issued a decision on the complaint or dismissed it, the complainant may pursue the claim before the Industrial Court.*

(8) *A labour officer shall state the reasons for any decision taken on a complaint.*

165 Clearly the Industrial Court is one of the Courts of Judicature under Article 126 of the Constitution of Uganda (as Amended), but it is a Court of **reference** albeit with concurrent jurisdiction with that of the High Court and it has jurisdiction to resolve any Labour Dispute referred to it by a Labour officer and any other law as prescribed under section 8 (1) (a) of the LADASA. (see **Constitutional Petition No. 33 of 2016, Justice Asaph Ruhinda Ntengye and**
170 **Another v Attorney General**), Section 22 of the LADASA provides that an appeal from the decision of the Industrial Court shall lie to the Court of Appeal only on a point of law.

175 What is material is that a Labour Dispute can only be brought before the Industrial Court as provided under Section 8 of the LADASA, which we shall restate as follows:

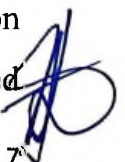
“... (1)The Industrial Court shall-

(a) arbitrate on labour disputes referred to it under this Act; and

(b) adjudicate upon questions of law and fact arising from references to the Industrial Court by any other law...”,

180 And procedure under regulation 3 and regulation 5 of the **Labour Disputes (Arbitration and Settlement)(Industrial Court Procedure) Rules 2012.**

The import of Section 8 of the LADASA is that a reference must be registered, following which the Registrar must issue notice to the parties of the registration of the reference, requiring them to file their respective memoranda as prescribed



185 under Regulation 5 of the **Labour Disputes(Arbitration and Settlement)(Industrial Court Procedure)Rules 2012(ibid)**. Sub-section (1) (b) of Section 8 refers to references by any other law; however this sub-section is silent on how such references can be made by any other law. Save that the Court of Appeal in **African Field Epidemiology Network vs Peter Wasswa Kityaba CA No124/2017**, **African Field Epidemiology Network vs Peter Wasswa Kityaba CA No124/2017**, stated that; “...the High Court has power to refer a dispute involving an employer /employee relationship to the Industrial Court under section 27 of the Judicature Act cap 13 laws of Uganda where the parties consent for trial of any questions of fact or law as stipulated by section 8
190 of the LADASA. Order 47 of the Civil Procedure Rules allows the court in any
195 suit where all the parties interested who are not under disability agree to have the matter in difference between them referred to arbitration ...”.

It is therefore the position that the Industrial Court’s jurisdiction is limited to only resolve Labour Disputes referred to it by a labour officer, in accordance
200 with Regulation 3 of the **Labour Disputes(Arbitration and Settlement)(Industrial Court Procedure)Rules 2012(supra)** or by any other law, including references by the High Court under section 27 of the Judicature Act.

Since the commencement of the Court in August 2014, references of labour
205 disputes have been made to the Court by labour officers from all over the Country in accordance with Regulation 3 of the **Labour Disputes(Arbitration and Settlement)(Industrial Court Procedure)Rules 2012 (supra)** and by the High Court in particular, under cover letter of the Registrar of the High Court, and in some instances with a note from the presiding High Court Judge, in
210 accordance with section 27 of the Judicature Act Cap 13 Laws of Uganda.

We had an opportunity to peruse the High Court record in the instant case and established that the /Plaintiff/Claimant filed her plaint before the High Court

Jinja Circuit on 29/08/2018. The Defendant/Respondent was served with summons dated 30/09/2018 to file her defence on 7/09/2018. It seems that the
215 Defendant did not comply with Courts directive to file a defence because on 14/12/2020, the Claimant/plaintiff made an application for a default Judgment which was granted by the Deputy Registrar on 16/03/2020. This notwithstanding however, the case was fixed for hearing on 1/12/2020. On 1/12/2020, Court not being satisfied with the Default judgement entered by the
220 Learned Registrar, set it aside and ordered for fresh summons to be served upon the Respondent by the court process server. Fresh summonses were served upon the Respondent 14/12/2020 and the Defendant's filed their written statement of Defence on 08/01/2021. Summons for directions scheduled for 11/02/2021, were served on to the Defendant on 9/02/2021 following which a number of
225 correspondences in which Counsel for the Claimant sought for the matter to be fixed for hearing were made. A hearing notice was eventually issued by the Registrar on 2/06/2021 for a hearing scheduled for 17/06/2021, but there is nothing on the record to indicate that the hearing took place as scheduled. Subsequently, on 22/11/2021, Counsel for the Claimant/plaintiff wrote to the
230 Deputy Registrar High Court Jinja, seeking for the Dispute to be referred to the Industrial Court Jinja Circuit for quick disposal. We, however, found no reply to this request on the record, nor did we find anything to indicate that the matter was formally referred to this Court by the Registrar as requested. Even if Labour Disputes at the Jinja Circuit are filed through the Courts Sub-registry in
235 Jinja, only matters that have been referred to the Court in accordance with the correct procedure, that is, Regulation 3 and 5 and under any other law, section 8(1) (b) of the LADASA as already discussed above, can be registered.

As rightly submitted by Mr. Ongwen for the Claimant, in **African Epidemiology Vs Dr. Kityaba(supra)**, the Court of Appeal was emphatic on



240 the fact that, the Industrial Court has Jurisdiction to handle any Labour Dispute
referred to it under section 8 of the LADASA.

It is therefore peculiar as submitted by Counsel for the Respondent, that this
Labour Dispute was filed in this court without any reference and without the
requisite notices being issued to the parties as provided under Rule 5 of the
245 **Labour Disputes (Arbitration and Settlement)(Industrial Court Procedure
)Rules 2012**, by the Learned Registrar requiring the parties to file their
respective memoranda, as prescribed under Regulation 5 (ibid). It is not
sufficient that, Counsel for the Claimant wrote to the Learned Registrar
requesting for the Dispute to be referred to the Industrial Court, what is material
250 is that the Learned Registrar should have formally referred the Dispute by cover
letter or a formal note. As already discussed we found no evidence of any
reference on the record.

As to whether the Labour officer had jurisdiction to handle the instant Dispute,
Section 13 of the Employment Act, read together with section 93 of the same
255 Act, save for 93(6) is still good law, which empowers the labour officer to do
the following:

*“ ... A labour officer to whom a complaint has been made under this Act shall
have the power to;*

260 *(a) Investigate the complaint and any defense put forward to such a
complaint and to settle or attempt to settle any complaint made
by way of conciliation, arbitration, adjudication or such
procedure as he or she thinks appropriate and acceptable to the
parties to the complaint with the involvement of any Labour
Union present at the place of work of the complainant; and*

- 265 (b) *Require the attendance of any person as a witness or require
the production of any document relating to the complaint after
reasonable notice has been given.*
- (c) *Hold hearings in order to establish whether a complaint is or is
not well founded in accordance with this Act or any other law
270 applicable and the labour officer shall, while conducting the
hearing employ the most suitable means he or she considers
best able to clarify the issues between the parties.*
- (d) *Presume the complaint settled if the complainant fails to appear
within a specified period; or*
- 275 (e) *Adjourn the hearing to another date.*
- (1) *The labour Officer shall, while exercising the powers under
paragraph(a) state the reasons for his or her decision on a
complaint.”*

However, where a Labour Dispute is placed before the High Court, which has
280 original and inherent jurisdiction to handle any matter, and the Court decides to
refer it to the Industrial Court which is the specialized Court to handle labour
disputes in Uganda, it is not a requirement for the same Dispute to be placed
before a Labour Officer before it is referred to the Industrial Court. This is
because the High Court has powers to refer such Disputes directly to the
285 Industrial Court in accordance with section 27 of the Judicature Act cap 13
Laws of Uganda. We reiterate that, the Industrial Court has concurrent
jurisdiction with the High Court, to determine any Labour Dispute referred to it
under section 8 of the LADASA, therefore it has Jurisdiction to handle
references made directly from the High Court in accordance with section 27 of
290 the Judicature Act(supra).

In the circumstances, in the absence of any reference from the High Court, in
the instant case, it is our finding that, this matter is not properly before this

Court. Having found that the matter is not properly before this court we shall not discuss the issue regarding the legality of the defendant as a party.

295 The case is dismissed with costs to the respondent.

Delivered and signed by:

THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA

PANELISTS

1. MS. JULIAN NYACHWO

300 **2. MR. BWIRE JOHN ABRAHAM**

3. MR. KATENDE PATRICK

DATE: 18/12/2023

