

**THE REPUBLIC OF UGANDA**  
**IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA**  
**LABOUR DISPUTE REFERENCE NO. 081 OF 2019**  
*(Arising from Labour Dispute No. KCCA/RUB/LC/114/2018)*

1. KIZZA GERALD
2. BWOKINO PATRICK :::CLAIMANTS

**VERSUS**

**CAMUSAT UGANDA LIMITED :::RESPONDENT**

**BEFORE:**

THE HON. JUSTICE ANTHONY WABWIRE MUSANA,

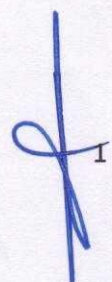
**PANELISTS:**

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

**RULING**

**Introduction**

**1.0** This ruling is in respect of a preliminary objection raised by the Respondent who contends that the claim is time-barred having been entertained by the labour officer beyond the 90 day period and referred to this Court 290 days after the lapse of the time within which the Labour Officer could dispose of the matter. The claimant countered that the provisions of **Section 93 (7) of the Employment Act** were directory and not mandatory.



## Analysis

2.0 We have perused the affidavits in support, reply and rejoinder and the submissions of the respective Counsel. We have reconstructed the record of the court of first instance and from the procedural history, we find as follows:

- (i) The claimant lodged a complaint with the Labour Officer at Kampala on the 13<sup>th</sup> day of April 2018.
- (ii) On the 3<sup>rd</sup> day of May 2018, the Labour Officer notified the respondent of the complaint. A reminder was issued on 17<sup>th</sup> May 2018.
- (iii) A mediation date was fixed for the 11<sup>th</sup> day of June 2018.
- (iv) By a letter dated 6<sup>th</sup> June 2018, the respondent asked that the matter be rescheduled to the 18<sup>th</sup> of June 2018.
- (v) On 18<sup>th</sup> June 2018, the respondent did not appear and the matter was adjourned to 29<sup>th</sup> August 2018.
- (vi) On the 29<sup>th</sup> August 2018, the parties agreed to search for proof of overtime to ascertain the claims of overtime and holiday pay.
- (vii) On the 2<sup>nd</sup> October 2018, when the matter came for hearing, the respondent suggested that the records requested were not very clear and there was need to cross-check records and find what was available. The respondent agreed to provide what was available. The matter was adjourned to 12<sup>th</sup> November 2018.
- (viii) On 12<sup>th</sup> November 2018, the respondent provided limited or insufficient information in the claimants' view.
- (ix) On 6<sup>th</sup> February, 2019, the matter was referred to this Court.

(x) On 21<sup>st</sup> May 2019, the Registrar of the Industrial Court sought a copy of the Lower Court record.

(xi) The record was forwarded on the 15<sup>th</sup> of August 2019.

3.0 For purposes of clarity, the Respondent's objection is that the claim is time-barred for having been entertained outside the 90 day period provided in **Section 93(7) of the Employment Act** and the Claimant and or Labour officer filed a reference to this Court 290 days after the 90 day timeframe without first seeking leave under Rule 6 of the **Labour Disputes (Arbitration and Settlement) (Industrial Court Procedure Rules) 2012**.

4.0 A review of the procedural history would invite a quick conclusion that the preliminary objection is sustainable. However, we think that a more detailed analysis of the circumstances of this case and of the law applicable, leads to an alternative conclusion. The Respondent relied on the decision in **LD 44 Of 2017 Majidu Shire Vs Kakira Sugar Works** where this Court held that under **Section 93(7) of the Employment Act** the labour officer must dispose of the matter reported to him or her within 90 days and not after. The facts in that case were that the labour officer appears to have received the complaint within the month of April 2012. He wrote a letter to the Branch Secretary of the Workers Union on 5/04/2012 and subsequently on 21/01/2013, 18/03/2013 and 24/09/2013. The correspondence was for a period of over 1(one) year. The claimant in that case filed a reference on 9/03/2017 which was over 3 years since the labour officer had handled the case.

5.0 In our view, in concluding the Majidu case, this Court may have interspersed the meaning of **Section 93(7) of the Employment Act** to the effect that a labour office was mandated to conclude a dispute before him or her within 90 days from the time when the matter is first reported to the labour officer. For a fuller meaning, it is important to reproduce the section which reads:



*“Where within ninety 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” (underlining supplied.)*

6.0 In the objection now before us, the respondent submits that a complaint should not be entertained beyond the 90 day period. On their part, the claimants Counsel submit that the use of the word may did not curtail the powers of the labour officer. We agree with the claimant’s proposition because the meaning of **Section 93(7) of the Employment Act** is plain, in our view. In adopting this viewpoint, we would be guided by the rules of statutory interpretation which are applicable in a hierarchical manner. At the top of the hierarchy, is the literal rule, followed by the golden rule, the mischief rule and the *ejusdem generis* rule<sup>1</sup>. The literal rule of statutory interpretation requires that:

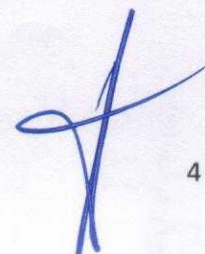
*“Words of a statute must be interpreted according to their literal meaning and sentences according to their grammatical meaning. If the words of the statute are clear and unambiguous and complete on the face of it, they are conclusive evidence of the legislative intention”<sup>2</sup>*

In the case of **Uganda Revenue Authority Vs Siraje Hassan Kajura & Others, SCCA No. 9 of 2015** cited in *NSSF Vs URA 9(ibid)*, the Supreme Court of Uganda held that:

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<sup>1</sup> Per Wamala, J in *NSSF V.URA H.C.C.A No. 29 of 2020* at page 17.

<sup>2</sup> *Wicks V. DPP (1947)A.C 362* cited in *Miscellaneous Cause No. 241/2017 SEFOROZA NAYMUCHONCHO & ANDREW MUSOKE VS A.G*



*"Where words or emphasis are clear and unambiguous, they must be construed in its natural and ordinary sense. Where the language of the Constitution/Statute sought to be interpreted is imprecise or ambiguous, a liberal generous or purposeful interpretation should be given to it."*

7.0 In our view, the wording of **Section 97(3) of the Employment Act** is clear and unambiguous. The words as of themselves, give the intention of the legislature. The legislature enacted an option for a claimant to seek redress at the Industrial Court if a labour officer had not determined the case within 90 days or to await a decision of a labour officer. There is no requirement in the section that a labour officer must dispose of a dispute within 90 days but should he or she not do so, then the claimant would have an option to pursue the matter at the Industrial Court. In terms, the operative word in the said section is **"may"**. Counsel for the claimant put it quite rightly, submitting that if the legislature intended the provision to be mandatory, then they could have imported the word **"shall"** and we hasten to add, instead of **"may"**. There is ample jurisprudence of the meaning of the words **"may"** vis a viz **"shall"** as used in statutes. In **Foundation for Human Rights Initiative Vs the Attorney General**<sup>3</sup>, the Supreme Court of Uganda found *"the use of the word 'may' in section 15 (1) of the TIA preserves the power of the Court to either grant or not to grant bail. Thus, by using the word 'may' in section 15(1) of the TIA and not 'shall', the High Court retains its discretion to either grant or not grant bail even where these exceptional circumstances listed under section 15(3) of the TIA are not proved in respect of the listed offences in section 15(2) of the TIA"*. The Supreme Court cited various decisions on the use of the words **"may"** and **"shall"** viz;

- (a) *"The use of the word 'may' prima facie conveys that the authority which has power to do such an act has an option to do it or not to do it."*<sup>4</sup>

<sup>3</sup> Supreme Court Constitutional Appeal No. 03/2009

<sup>4</sup> Per Cullen C.J in Australian case of *Massy v. Council of the Municipality of Yass* (1922) 22 SR (NSW) 499, Cullen CJ

- (b) “ ‘may’ unlike ‘shall’, is not a mandatory but a permissive word although it may acquire a mandatory meaning from the context in which it is used, just as ‘shall’ which is a mandatory word may be deprived of the obligatory force and become permissive in the context in which it appears. ”<sup>5</sup> and
- (c) The word ‘may’ where it appears in s 147 of the Summary Proceedings Act 1957 does confer a discretion upon the district judge, justice or registrar (as the case may be) as to whether or not he will issue summons upon the information which has been laid. It is also our opinion that the nature of that discretion is...a discretion which must be exercised in a judicial manner<sup>6</sup>

The sum of these decisions is that the word “may” denotes an option or an election. In our considered view, the complainant, under section 93(7) of the Employment Act, opts to either pursue the complaint at the Industrial Court or awaits conclusion before the labour officer.

- 7.0 In the case of **Engineer John Eric Mugenyi vs UEGCL**<sup>7</sup> the Court of Appeal considered the decision of the Supreme Court of Uganda in **Sitenda Sebalu Vs Sam K Njuba**<sup>8</sup> where certain provisions of the Parliamentary Elections Act 2005 were rendered directory and not mandatory because a breach would not render any act done in disobedience of the enactment void and the statute provided for enlargement or abridging of time.
- 8.0 In the case before us, there is no clear sanction for hearing a dispute beyond the 90 days. We are therefore inclined to the view, the Labour Officer would not be faulted for disposing of a matter after the 90 days as was the finding in the Majidu Shire case. Having so found, it is unnecessary to consider the question whether the reference was filed without leave **Under Rule 6 of the**

<sup>5</sup> Johnson’s Tyne Foundry Pty Ltd v. Shire of Maffra [1949] ALR 89 at 101

<sup>6</sup> Daemar v. Soper [1981] 1 NZLR 66 at 70

<sup>7</sup> C.A.C.A No. 167/2018

<sup>8</sup> Election Petition Appeal No 26/2006

**Labour Disputes (Arbitration and Settlement) (Industrial Court Procedure) Rules 2012.**

**Decision of the Court**

9.0 The preliminary objection is overruled with no order as to costs. We direct that the matter be expeditiously disposed of. As the parties had filed the necessary pretrial documents, the matter is to be set down for hearing.

Delivered at Kampala this 28<sup>th</sup> day of October 2022

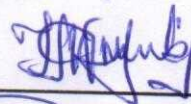
**SIGNED BY:**

1. ANTHONY WABWIRE MUSANA, Judge



**PANELISTS:**

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



Delivered in open Court in the presence of:

Court Clerk: Mr. Amos Karugaba.