

THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE NO. 127/2020
(Arising from KCCA/MAK/LC/036/2020)

DR. NSUBUGA KEVIN WILSON BEN.....**CLAIMANT**

VERSUS

CHINA INTERNATIONAL WATER & ELECTRIC CORPORATION.....**RESPONDENT**

BEFORE:

1. THE HON. JUSTICE ANTHONY WABWIRE MUSANA,

PANELISTS:

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

RULING

Introduction

1.0 When this matter came up for hearing on the 8th day of December 2022, Mr. Newton Oturuke, appearing for the Claimant, and Mr. Timothy Isiko, appearing for the Respondent, indicated that they each had preliminary points of law which they wished to raise. The Court invited Counsel to file written submissions on each of their respective points of law.

Submissions of Counsel for the Claimant.

2.0 It was submitted for the Claimant that the notice of dismissal dated 28th February 2020 and marked as "DID1" in the Respondent's Trial Bundle was fabricated. Counsel submitted that the notice is dated February 2020, but the Claimant worked up to and was paid a salary until April 2020. This document was never produced before the labour office, which would amount to an illegality. He cited the case of **Makula International vs. Cardinal Nsubuga**.¹ He suggested that under Order 6 Rules 28, 29 and 30 of the Civil Procedure Rules S.I 71-1 ("**CPR**"), this was a point of law and this court was entitled to determine the matter on such terms

¹ [1982]UGSC 2

as it deems fit. He asked the court to strike out the pleadings and enter judgment for the Claimant.

Submissions of the Respondent

- 3.0 The Respondent countered that the Claimant had not raised a pure point of law within the meaning of Order 6 Rule 8 CPR. It was the Respondent's contention that the illegality of the fabricated notice of dismissal is a question of fact. Counsel cited the case of **Mukisa Biscuits Manufacturing Co. Ltd vs West End Distributors Ltd**² in support of the view that the objection was without merit.
- 3.1 The Respondent also raised a preliminary point that the memorandum of claim did not disclose a cause of action because the contract that the Claimant relied upon was not attached to the memorandum. This offended Order 7 r 14(1) of the CPR, which is couched in mandatory terms. He relied on the case of **Obore George vs. The Inspectorate of Government and Anor**³ in support of these propositions.

Claimant's rejoinder

- 4.0 In a brief rejoinder, the Claimant contended that the Respondent's objection was misconceived as the contract was attached to the claim memorandum and marked "A". The same was enclosed in the joint trial bundle as "PE3". Counsel prayed that the objection be overruled.

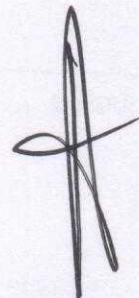
Analysis and Decision of the Court

- 5.0 As a starting point, from our reading of the respective submissions, the parties raise the following issues:
- (i) The Claimant suggests that the notice of dismissal is fabricated and the memorandum in reply should be struck out.
 - (ii) The Respondent holds that the memorandum of claim does not disclose a cause of action as the document upon which the suit is formed was not attached to the claim.
- 5.1 A preliminary objection has been well-defined. In **Mukisa Biscuits Manufacturing Co Ltd vs. West End Distributors Ltd**⁴ it was defined as follows:

² (1969) EA 696

³ H.C.M.A No. 5 of 2013

⁴ (1969) EA 696



"So far as I am aware, a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of the pleadings, and which if argued as a preliminary point may dispose of the suit."

It follows therefore, that the objection must be on a pure point of law and not any facts that have to be ascertained.⁵

- 5.2. In the Claimant's preliminary objection raised herein, the claimant submits on an illegality, that the notice of dismissal is dated February 2020 but that the Claimant worked until final termination in April 2020. He was paid his salary for April 2020. The Respondent's explanation is that the Claimant requested the Respondent to maintain a summary dismissal but issued him with a termination letter dated 6th April 2020. At this stage of the proceedings, we have some considerable difficulty in accepting either of the parties' versions of events without taking and examining the evidence. The questions to be interrogated include the reason, if any, for a dismissal notice predating the Claimant's exit from employment by one month. To our mind, this is a question of fact which would entail a trial to establish the truthfulness of each version of events. In this purview therefore, the preliminary objection does not raise a pure point of law, capable of disposing of the suit without an intrinsic examination of the evidence and all circumstances. It is accordingly overruled.
- 6.0. The Respondent's objection relates to a failure to attach the employment contract upon which the claim was based. Counsel properly articulated the provisions of Order 7 Rule 14 of the CPR. The Claimant submitted that the document was attached to the memorandum of claim and marked "A" and enclosed in the joint trial bundle as "PE3". We have perused the memorandum of claim filed in Court on 19th August 2020. At paragraph 4 thereof, it is pleaded

"b) That the aforesaid appointment was contractual, on an annual renewal basis, and it was indeed continuously renewed for a period of three consecutive years. (Copies of the employment contracts are respectively attached hereto as annexures "A", "B" and "C")

c) That the claimant's last contract was renewed on the 1st September 2019, and was due to expire on 30th September 2020(See Annexure "A")"

⁵ Per Sir Charles Newbold in *Mukisa Biscuits*(Ibid). See also *Yaya Obur and Ors* C.A 81 of 2018

- 6.1 Annexure "A" to the memorandum of claim is an appointment letter dated 1st October 2019, valid until the 30th day of September 2020. The said appointment letter is item (iii) in the Claimants list of documents in the joint scheduling memorandum. We do not accept the Respondent's contention that the contract upon which the claim is founded was not attached. We agree with the Claimant that the Respondent's preliminary objection would be misconceived and is accordingly overruled.
- 7.0 It is our decision that both preliminary objections are misconceived and are accordingly overruled with no order as to costs. We also note that the practice of raising preliminary objections as a matter of course is not to be encouraged. The Court's time and resources would be better devoted to considering the merits of the case as opposed to engaging in the resolution of preliminary points whose merits are not very well grounded.

Orders:

- 8.0 Labour Dispute Reference No. 127 of 2020 is set down for hearing on the 26th day of June 2023 at 9:30 a: m

Dated, signed, and delivered at Kampala this 23rd day of January 2022

SIGNED BY:

1. ANTHONY WABWIRE MUSANA, Judge

PANELISTS:

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

Delivered in open Court in the presence of:

1. Mr. Newton Oturuke
2. Claimant in Court

Court Clerk. Mr. Christopher Lwebuga.