

THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE NO. 325 OF 2019
(Arising from MGLSD/LC/062/2019)

MUNANURA GIBERT.....**CLAIMANT**

VERSUS

SURE CARE DOCTOR'S CLINIC &

PHARMACY.....**RESPONDENT**

BEFORE:

THE HON. JUSTICE ANTHONY WABWIRE MUSANA

PANELISTS:

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

RULING

- 1.0 When this matter came up for mention on 15th day of September 2022, the Court directed Counsel to address it on how the arbitral process in MGLSD/LC/62/2019 was conducted.
- 2.0 Mr. Saad Ssengendo, for the Claimant, submitted that the Labour Officer had not made a decision but referred the matter to the Industrial Court under **Section 5 of the Labour Disputes(Arbitration and Settlement) Act, 2006(LADASA)**. The Labour officer did not give a reason for not rendering a decision. For the Respondent, Ms. Rwandaruguli noted that the claimant was now filling in gaps from the proceedings that arose during cross-examination before the labour officer. She cited **LDR No. 223 of 2019 FRANCIS DOMINIC MERU VS NAKASERO HOSPITAL** in support of the proposition that the present claim was an abuse of court process and prejudicial to the Respondent. Counsel prayed that the application be dismissed. In rejoinder, Mr. Ssengendo reiterated the view that the claim was not prematurely before this Court.
- 3.0 The lower court record reflects that on the 10th day of January 2019, the claimant registered a complaint with the labour office in Makindye Division seeking unpaid wages. A mediation session was conducted on 5th February 2019

but no settlement was reached. The matter was forwarded to the Commissioner, Industrial Relations and Productivity. On 8th March 2019, the Commissioner invited the Respondent to the arbitral proceedings. On diverse dates thereafter, evidence was taken by way of witness statements. There is mention of cross-examination of the witness and Messrs Masanga & Co. Advocates filed detailed written submissions on behalf of the Claimant while M/S Ssewagudde, Kalema & Co Advocates filed written submissions on behalf of the Respondent. The Claimants submission in rejoinder were filed on the 21st day of October 2019. However, and curiously, on the 2nd of October 2019, the Claimant made a reference to the Industrial Court on grounds that the labour officer had failed to dispose of the dispute within 8 weeks. On 2nd December 2019, the Labour Officer at the Ministry of Gender Labour and Social Development made a reference to this Court on the grounds that a substantial question of law had arisen. These questions were on unfair termination and non-payment of wages. There were no details of these questions or a decision of the Labour Officer.

4.0 Mr. Ssendendo submitted that a labour officer is at liberty to refer a dispute to the Industrial Court if he or she forms the opinion that a substantial question has arisen. In a circuitous attempt to place the reference squarely before this Court, he suggested that the Labour Officer had wide power to refer the matter. We do not think this to be realistically arguable. The matter that we are confronted with is not the power of a labour officer but a premature referral to this Court. The facts point to a reference made after the filing of submissions in arbitral proceedings. And it is this premature reference that this Court must consider. In **LDR No.223 of 2019 FRANCIS DOMINIC MERU VS NAKASERO HOSPITAL LTD** this Court observed that where a reference is made after the claimant has called evidence and closed his or her case, it would be prejudicial to the Respondent. The Court further observed that the claimant would get advantage to call fresh evidence and close gaps that could have arisen in cross-examination. Abandoning the proceedings before the labour office only to replicate them in this court could only amount to abuse of Court process. In this regard, we accept Ms. Rwandaruguli's submission that the reference was premature.

5.0 We think that this Court's decision in the Meru case makes a clear point on prejudice where arbitral or adjudication proceedings have commenced. Perhaps, as a further observation, in the case before us, after evidence had been recorded and more particularly, written submissions have been filed. In

the **Meru** case, the complainant had closed its case. The reference appears to have been made at this point and in the present case, the reference is made after submissions and pending judgment. In effect, the parties were awaiting a decision of the labour office and not expecting a reference to this Court. Under Regulation 8(3) of the Employment Regulations, upon completion of the hearing proceedings, a labour officer shall make an order binding on both parties and state the reasons for his or her decisions on the complaint. In the present case there is no decision. It is our view that the proper course of action would have been to render a decision upon the materials presented before the Labour Officer and not simply refer the dispute to the Industrial Court. Accordingly, we find that the present reference is prematurely before the Court.

6.0 The file is therefore hereby remitted to the Labour Officer with directions to expeditiously dispose of the dispute on the materials on the lower record. There shall be no order as to costs.

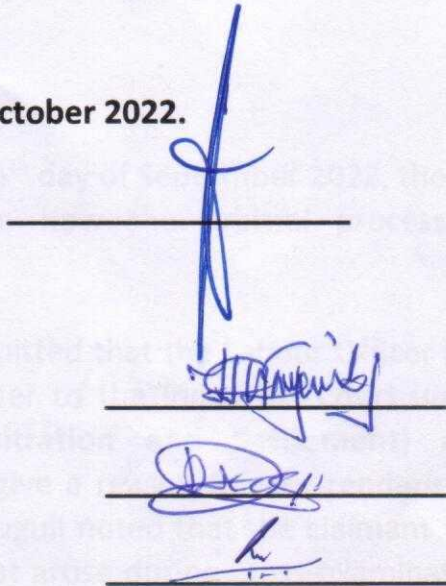
It is so ordered.

Delivered and signed at Kampala this 14th day of October 2022.

ANTHONY WABWIRE MUSANA, Judge

PANELISTS

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



Three horizontal lines with handwritten signatures in blue ink. The top signature is the largest and most prominent, followed by two smaller signatures below it.

Delivered in open Court in the presence of:

Court Clerk. Mr. Samuel Mukiza.