



THE REPUBLIC OF UGANDA  
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA  
LABOUR DISPUTE REFERENCE NO.85 OF 2022  
(Arising from Labour Dispute KCCA/CEN/LC/078 of 2021)

NABBAGALA MARY & 3 OTHERS:.....CLAIMANT

VERSUS

WATOTO CHILD CARE MINISTRIES:.....RESPONDENT

BEFORE:

The Hon. Mr. Justice Anthony Wabwire Musana,

PANELISTS:

1. Hon. Adrine Namara,
2. Hon. Suzan Nabirye &
3. Hon. Michael Matovu.

Representation:

1. Mr. Allan Scott Wakholi and Mr. George Batume of M/s. Statbit Advocates for the Claimants
2. Ms. Lucy Suky and Mr. Edmund Babalanda of M/s. ALP Advocates for the Respondent.

RULING

Introduction

- [1] On the 10<sup>th</sup> of November 2023, Mr. Allan Scott Wakholi, appearing for the Claimant, objected to the admissibility of the Respondents' third supplementary bundle filed on the 9<sup>th</sup> of November 2023 because it contained new evidence that was never on the Court record. Counsel argued that evidence must be shared before trial commences and that it was prejudicial because the Claimant had closed his case. He prayed that the bundle be expunged.
- [2] In her response to the objection, Ms. Lucy Suky, appearing for the Respondent, argued that the documents were not a departure from the pleadings. They consisted of an email sent by the Respondent to the Ministry of Gender, Labour and Social Development on the 16<sup>th</sup> of January 2020. Ms. Suky argued that this email was the Respondent's document and had no bearing on the evidence presented before the Court. She cited Section 18 of the Labour Disputes(Arbitration and Settlement) Act, 2006, to support the view that this Court is not bound by the strict rules of evidence in proceedings before the civil courts. Ms. Suky also contended that this document would fall under the exceptions to Section 30 of the Evidence Act.
- [3] In his rebuttal, Mr. Wakholi reiterated his objection to the admissibility of the Respondent's third supplementary bundle. He pointed out that the witness to tender the documents was not in Court, and the email's author, Flavia Nakajjugo Kizito, was not available for cross-examination. Mr. Wakholi also reminded the Court that RW1 had testified that there was no evidence that the Commissioner was notified. He concluded by stating that introducing documents at this stage was impossible.

### Decision of the Court.

- [4] There is a reasonably well-settled position on procedural flexibility in the admission and receipt of evidence at the Industrial Court, anchored primarily on Section 18 of the Labour Disputes (Arbitration and Settlement) Act, 2006, which provides that the Industrial Court is not bound by the rules of evidence applicable to civil proceedings. In *Yusuf Baliruno v Central Broadcasting Services Ltd*<sup>1</sup>, we cited *Lubega Moses & 5 others v Roofings Uganda Ltd*,<sup>2</sup> we held the view that evidence in labour matters ought to be freely given and received. Citing our decision in *Moro Charles v Greenhill Secondary School*,<sup>3</sup> we observed that the legislature intended to provide for a less formal approach to labour justice and that there appeared to be unanimity of view towards a less technically legalistic approach to evidence. We posited that the Industrial Court would be entitled to receive evidence submitted before it and determine its relevance, materiality, and weight. Consideration of the probative value of the evidence after admission ensures necessary safeguards; as such, the minimal formality is not about injustice. We suggested that the informal approach is rooted in social equity in administering labour justice, which sits on the constitutional precept of administering substantive justice without undue regard to technicalities as set out in Article 126(2)(e) of the 1995 Constitution.
- [5] This approach is reflected in Section 8(2a) of the Labour Disputes(Arbitration and Settlement of Disputes) Amendment Act 2021, granting this Court expansive powers to require any person to furnish relevant evidence. The Court *suo moto* can exercise such power. The evidence in the supplementary trial bundle contains email correspondence and a list printout. We are minded that the Court frowns on late filing for the inconvenience it causes the opposite party. Indeed, in *F.X Mubuuke v UNABCEC*<sup>4</sup> we observed the prejudice of a defendant filing witness statements after the plaintiff had closed his case. We referred to two decisions of the High Court<sup>5</sup> where the Court observed a temptation to shape evidence to answer adverse testimony, it is these prejudices that inform the rules of pre-trial disclosure. But, having pointed out that the strict rules of evidence do not bind the Industrial Court, we would not be inclined to reject the documents. This is not a witness statement, as was the case in Mubuuke. There are documents consisting of emails and lists. In our view, the Claimants will have ample opportunity to test the evidence in cross-examination and address this Court on the evidence's authenticity, credibility, and reliability in their final submissions. As observed in Baliruno(supra), there will be an opportunity to evaluate the evidence and, in keeping with *Jennifer Nsubuga v Michael Mukundane and Another*<sup>6</sup> where in the lead judgment, the Honourable Lady Justice Monica Mugenyi(JA as she then was) held that the admission of a document in evidence does not in any way affirm its legality or authenticity. In the final analysis, the Respondent's 3<sup>rd</sup> Supplementary Trial Bundle shall not be expunged from the record but admitted as identification documents and marked RID 1 and RID2.
- [6] One final matter merits some comment. Ms. Suky placed some reliance on Section 30 of the Evidence Act Cap. 6, which provides for cases in which a statement of relevant fact by a person who is dead or cannot be found is relevant. While Counsel did not elaborate on the whereabouts of the email's author, our view is that the argument remains unsubstantiated. In other words, there is no sufficient ground to invoke Section 30 of the Evidence Act.

**It is so ordered.**

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<sup>1</sup> LDR 092 of 2020

<sup>2</sup> LDR 166 of 2020

<sup>3</sup> LDR 10 of 2021

<sup>4</sup> LDR 86 of 2016

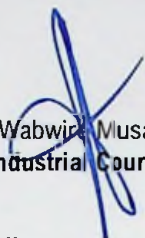
<sup>5</sup> See *Kahabwa v China Henan International Cooperation Group Co Ltd* [2022] UGCommC 94 and *Seruwagi v Yuasa Investments Ltd* [2016] UGCommC 44

<sup>6</sup> C.A.C.A No.208 of 2018 para 105 at page 34



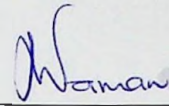

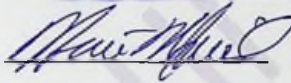


Signed and delivered at Kampala this 5<sup>th</sup> day of June 2024.

  
Anthony Wabwire Musana,  
Judge, Industrial Court

The Panelists agree;

1. Hon. Adrine Namara
2. Hon. Suzan Nabirye
3. Hon. Michael Matovu

5<sup>th</sup> May 2024

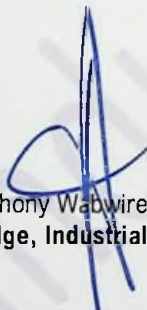
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**Appearances**

- |                        |                                |
|------------------------|--------------------------------|
| 1. For the Claimant:   | <b>Mr. Allan Scott Wakholi</b> |
| 2. For the Respondent: | None                           |
| Court Clerk:           | <b>Mr. Samuel Mukiza.</b>      |

**Mr. Wakholi:** Matter for ruling

**Court:** Ruling is delivered in open court.

  
Anthony Wabwire Musana,  
Judge, Industrial Court