



THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT MBARARA
LABOUR DISPUTE MISCELLANEOUS APPLICATION NO. 04 OF 2024
(Arising from Labour Dispute No. 005 of 2023 and Labour Claim No. 01 of 2023)

1. MUHUMUZA VINCENT FRED:APPLICANTS
2. MUBANGIZI SAVINO

VERSUS

1. ATUHARIRE DEOGRATIUS.....: RESPONDENTS
2. NDYAHEBWA KYOMUKAMA EZRA
3. ABENAITWE ROBERT AND
4. TWINAMASIKO DICKLUS

Before: The Hon. Mr. Justice Anthony Wabwire Musana,

The Panelists: Hon. Adrine Namara, Hon. Suzan Nabirye & Hon. Michael Matovu.

Representation:

1. Mr. Ronald Kwikiriza of M/S Kaganzi & Co Advocates for the Applicant
2. Ms. Rita Kalembe, state Attorney from the Attorney General's Chambers, Mbarara Branch, for the 2nd, 3rd, and 4th Respondents.

Case summary: Contempt of Court-Principle elements of contempt of court. The Applicants sought to hold the Respondents in contempt of court for allegedly failing to comply with a court order issued on 19th December 2023, which directed the Applicants' immediate return to work. The Applicants claimed they were not given actual work despite resuming employment and sought damages, sanctions, and imprisonment of the Respondents. The Respondents countered that the Applicants had returned to work, received full salaries, attended training, and signed attendance registers, but the lack of work was due to budget constraints that temporarily halted road maintenance projects. The court found that the Respondents had complied with the court order by facilitating the Applicants' return to work and paying them, concluding that there was no contempt. The court dismissed the application, finding no violation of the court's order, and did not impose costs on the Applicants.

RULING

Introduction

[1] By motion under Articles 23(1),28(12) and 128(2) and (3) of the 1995 Constitution, Sections 33(now 37) of the Judicature Act Cap. 16(from now JA)and Section 98 of the Civil

Procedure Act Cap.71(*from now CPA*) and Orders 41 Rule (2)(3) and 52 Rules 1,2 and 3 of the Civil Procedure Rules S.I 71-3 (*from now CPR*) the Applicants sought a declaration that the Respondents are in contempt of an order of this Court issued on 19th December 2023, an order that the Respondents pay UGX 200,000,000/= as damages, that the Respondent pays UGX 50,000,000/= as sanction for their contemptuous conduct, an order that the Respondents pay UGX 100,000,000 as exemplary and punitive damages, the Respondents be committed to civil prison, interest thereon and costs of the application.

Background material facts

- [2] The background facts and grounds of the application can be gathered from the Applicant's supporting affidavits. The Applicants, employed as machine operators by the Buhweju District Local Government, instituted a claim¹ for unlawful dismissal because they had been sent on forced leave. When they attempted to resume work, they found that their employer had hired other people. At the hearing on the 19th of December 2023, it was agreed that the Applicants resume work immediately. A partial consent order was entered on the record.

This Application

- [3] It is averred that on the 22nd day of December 2023, the Applicants engaged the 3rd Respondent on resumption of work, and he requested a sealed copy of the Court order. On the 4th of January 2024, the 3rd Respondent advised the Applicants to return to work no later than the 8th of January 2024. A copy of this letter was served on the 4th Respondent. In disregard of the Court orders, the Respondents have refused to give the Applicant's work or job positions thereby intentionally refusing to honour the Court orders.
- [4] The application was opposed. In their affidavits in reply, the 2nd, 3rd and 4th Respondents aver that the application is baseless, misconceived, premature, incompetent, defective, erroneous, has been brought against the wrong parties and does not disclose a cause of action. It is also averred that the Applicants have resumed work, are signing attendance registers, and are being paid their full salaries, receipt of which they acknowledge and attended a training course between 25th March 2024 and 4th April 2024. As such, the Respondents have not refused to honour the order of the Court.
- [5] In rejoinder, the Applicants did not deny returning to work and being sent on a training workshop. They also confirmed receipt of work tools, deployment, and half-day work. They acknowledged receipt of their salaries and signed attendance registers but were doing no

¹ Labour Dispute Reference No. 005 of 2023 is pending delivery of the final award.

actual work. They also said district roads, including Kashenyi-Rwomushojwa-Bihanga road and other roads, were being worked on by different persons, not district employees. The Applicants filed four supplementary affidavits of Aggrey Tumwekwatse, John Nkore, Tarsis Bagarukana, and Silvano Kanumi, indicating that road works were continuing and the allegations of no work were false. We invited the parties to file their written arguments.

The Applicants' submissions

- [6] Counsel for the Applicants cited *Muriisa Nicholas v Attorney General & 3 Ors*² and Black's Law Dictionary 7th Edn for a definition of contempt of Court being a disregard or disobedience of orders of a judicial body or disruption of proceedings or impairing of respect due to such a body. It was submitted that the Applicants were only deployed four months after the court order and that the 1st Respondent had stopped them from working. The Applicants sought various damages, orders of committal to prison and costs of the application.

The Respondents' submissions

- [7] Citing *Richard Odoi Adome v Uganda Electricity Generation Company Limited*³ Counsel for the Respondents submitted that the Respondents had facilitated the Applicant's return to work but that no funds for road works were available during the 3rd Quarter of the Financial Year 2023/2024. It was submitted that the work of machine operators is not routine desk work, and the operators are only called upon during road construction. We were asked to find that the 2nd to 4th Respondents are not in contempt of Court.

Determination

- [8] According to Black's Law Dictionary 11th Edition, contempt of court means conduct that defies the authority or dignity of a Court.⁴ To establish contempt of Court, three elements must be proven: (i) there is a lawful court order, (ii) the potential contemnor must have been aware of the court order, or it was served on them, and (iii) the potential contemnor must have failed to comply with the order without just cause. The authorities of decided cases demonstrate judicial unanimity on what amounts to contempt of Court (see *Adome, Megha Industries Ltd v Conform Uganda Ltd*⁵, *Onen David & 2 Ors v Otto Ocan & 2 Ors*⁶ and *Rashid Nyende & 44 Ors v Shoprite Checkers(U Ltd)*⁷). The threshold is thus the three elements cited above. We are minded that contempt proceedings are, by their nature, an issue

² HCMA No.035 of 2012 and other cases.

³ HCMA No. 1088 of 2022

⁴ Black's Law Dictionary, 9th Edn Page 360

⁵ H.C.M.C No. 21 of 2014

⁶ HCMA No. 131 of 2019

⁷ LDMA No. 31 of 2023

between the court and the potential contemnor, the party who has not complied with a court order.⁸ We will therefore test the present application against the threshold set out above.

Existence of a lawful order

- [9] There is consensus on the existence of the consent order entered by this Court on the 19th of December, 2023. By clause two of the order, the Applicants were to return to work with immediate effect. This was an unambiguous order arising from a negotiation between the parties entered onto the record and endorsed by the Industrial Court. This test has been met, and there is no need for any further comment.

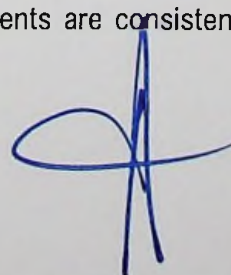
The Potential Contemnor must have been aware of the Court Order.

- [10] By paragraph 5 of the 2nd Respondent's affidavit in reply, he was in Court on the date the order was made and avers that he is aware of the existence of the order. Paragraph 4 of the Applicants' affidavits in support are to this effect. The correspondence by the 3rd and 4th Respondents demonstrate knowledge of the order. Therefore, it is a matter common to all concerned and merits no determination.

Did the Potential Contemnors fail to comply with the Order without just cause?

- [11] There is no doubt that the Applicants returned to work. By letter dated 4th January 2024, the 1st Applicant was directed to return to work by the 8th of January 2024. An attendance register for that date until the 2nd of May 2024 shows that the Applicant reported for work, signing in at 8:30 am on each recorded day. The register was attached to the 4th Respondent's affidavit in reply. The 3rd Respondent attached the Applicants' pay slips for January to April 2024. The Respondents also attached evidence of the Applicant's attendance at a training workshop in Mbarara from 25th March 2024 to 5th April 2024. The Applicants sought a refund of UGX 625,000/=, each being monies expended on the workshop. According to the requisitions slips, these monies were approved. The Applicants also prepared reports on this training workshop, attached as annexure "B" to the 4th Respondent's affidavit in reply. These uncontested facts demonstrate that the Applicants have been re-engaged with their employer, who is paying their salaries, has deployed them and sent them for a training course. These active engagements are consistent with the

⁸ See Florence Dawaru vs Angumale Albino & Anor H.C.M.A No. 0096 of 2016



employment relationship, including Section 41 of the Employment Act Cap. 226, which requires an employer to pay wages.

[12] The Applicant's chief complaint appears to be that they are not doing any actual work. The Respondents put this to the nature of work being that a machine operator is only deployed where there is ongoing work, and due to lack of funds, the Buhweju District Local Government has put on hold road maintenance on account of zero release for public roads maintenance in the third quarter of the 2023/2024 budget. The Respondents attached a letter from Dr. Eng. Andrew Naimanye, the Executive Director of the Uganda Road Fund, dated the 15th of January 2024. The Applicants submitted four supplementary affidavits indicating that road works had not stopped. According to Mr. Tarsis Bagarukana, the Local Council III Chairperson of Karungu Sub-County, the Applicants did not work from January 2024 until May 2024, when they were given tools of work and now work half-day. Mr. Silvano Kanumi, Mr. Nkore and Mr. Tumwekwatse, all political leaders in Buhweju District, mirrored Mr. Bagarukana's supplementary affidavit in their affidavits. What is common is that after May 2024, the Applicants have tools of trade and are working half-day. In our view, the Applicants do not make a very believable proposition that they have been given no work. Dr Eng Naimanye's letter is quite clear. It asks the District Local Governments to prioritise emergencies, complete pending planned works according to work plans and not make new contractual commitments until advised otherwise.

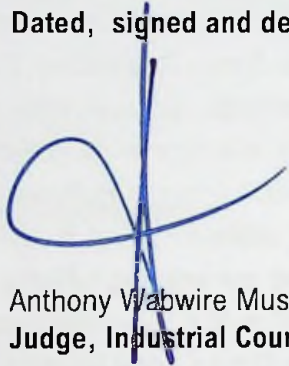
[13] It follows, therefore, that while it may appear to the supplementary deponents that works were ongoing in parts of the district, these were, in fact, pre-planned works. What is much more plausible is that after the District Local Government had sent the Applicants for training in March and April 2024, it deployed them in May 2024, albeit working half-day. Under Section 39EA, the Employer has a duty to provide work. By the Applicant's admission of working half-day, we are satisfied that the Buhweju District Local Government has provided work to the Applicants. We therefore agree with Counsel for the 2nd, 3rd and 4th Respondents, that they have taken all reasonable efforts to comply with the Court order of the 19th of December 2023 and cannot be taken to be in contempt of the said order. We do not find that the 2nd to 4th Respondents, to paraphrase the words of Mubiru J. in *Onen*, have unlawfully and intentionally violated the dignity, repute and authority of the Industrial Court or interfered in the administration of justice in a matter before us.⁹ Based on the evidence before us, we are not satisfied that it has been established that the 1st Applicant has disrupted the implementation of this Court's order.

⁹ Per Mubiru J in *Onen David & 2 Ors v Otto Ocan*.



- [14] As a result, the Applicants are not entitled to any of the remedies sought. The application stands dismissed but with no order as to costs as imposing a burden of costs on the Applicants would go against the grain and principle in *Kalule v Deutsche Gesellschaft Fuer Internationale Zusammenarbeit (GIZ) GMBH*. It would be unjustified to impose the burden of costs on the employee seeking to assert their rights.

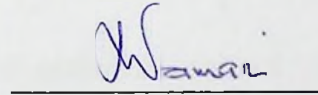
Dated, signed and delivered in open Court at Kampala this 30th day of September 2024



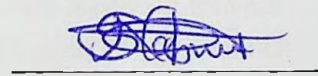
Anthony Wabwire Musana,
Judge, Industrial Court

The Panelists Agree:

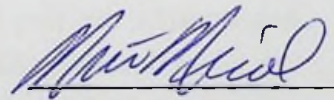
1. Hon. Adrine Namara,



2. Hon. Susan Nabirye &



3. Hon. Michael Matovu.



30th September 2024

10:34 am

Appearances

1. For the Applicants:

Mr. Charles Bainomugisha holding brief for **Mr. Ronald Kwikiriza** for the Applicants.

2. None for the Respondents

Court Clerk:

Mr. Samuel Mukiza.

Mr. Bainomugisha

The Parties are absent. Matter for ruling and we are ready to receive it.

Court:

Ruling delivered in open Court.



10:45 am

Anthony Wabwire Musana,
Judge, Industrial Court

Industrial Court of Uganda