THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
MISCELLANEOUS APPLICATION NO.040 OF 2023

(Arising from LDMA No. 081 of 2015, LDA 034 of 2019 and all arising from Labour Complaint KCCA/CENT/LC/241/2018)

KYORIBONA MARK::APPLICANT

VERSUS

UGAFODE MICROFINANCE LTD (MDI):::RESPONDENT

Before:

The Hon. Mr. Justice Anthony Wabwire Musana,

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

Representation:

Mr. Albert Kyeyune of M/s. Mukiibi & Kyeyune Advocates for the Applicant
Mr. John Paul Kyeyune of M/s. Nangwala, Rezida & Co. Advocates for the Respondents

Case Summary

Civil Procedure- applicability of CPR to proceedings before the Industrial Court.-late filing of affidavits-unchallenged affidavit paragraphs: *The court took a flexible approach, allowing the late filing of an affidavit as submitted within a reasonable time. : The court rejected an argument to strike out specific paragraphs of the affidavit, stating they contained facts, not legal arguments.*

Tax Law-taxation of terminal benefits; *The appeal centered on whether tax deductions from a compensation award were lawful. The court upheld that terminal benefits are taxable but found the respondent's tax computation incorrect. The applicant was entitled to UGX 9,532,522 due to an over-deduction. The appeal partially succeeded. Respondent ordered to pay UGX 9,532,522/=. No costs were awarded.*

RULING

[1] On the 17th of September 2021, the Applicant obtained an award[1] against the Respondent where the Industrial Court sustained a finding of constructive dismissal by the labour officer in Labour Dispute Complaint No. 034 of 2019, sustained the monetary award UGX 79,512,214/= consisting of severance allowance, basic compensation, additional compensation, compensatory leave and awarded UGX 20,000,000/= in general damages. The total award was, therefore, UGX 99,512,215/=*(**the award**)*. The Court also awarded interest at 12% from the award date until payment in full.

[2] By letter dated the 2nd of March 2022, the Applicant demanded payment listing his bank details. By letter dated 23rd March 2022, Counsel for the Respondent advised that UGX

[1] Per Ntengye H.J, J.A Bwire, J. Nyachwo and P. Katende in *Ugafode MFI Ltd(MDI) v M. Koribona*[2021] UGIC 26

68,805,328/= had been transferred to the Applicant's Bank Account after statutory deductions for PAYE and NSSF. By letter dated the 28th of March 2022, Counsel for the Applicant acknowledged receipt of UGX 68,805,328/= but contested the tax computation, contending that UGX 21,174,364/= was tax payable off a taxable sum of UGX 79,421,214/=. Therefore, the balance due was UGX 9,441,522/=. Counsel also disputed the remittance of UGX 11,913,182/= to the NSSF and demanded payment. In a breakdown in their letter dated the 6th of May 2022, Counsel for the Respondent suggested that the taxable amount was UGX 79,512,214/= against which 30% PAYE was applied, leaving UGX 48,805,328/= to which UGX 20,000,000/= of general damages were added. UGX 68,805,328/= was remitted to the Applicant. Counsel relied on *Uganda Revenue Authority v Hassan Siraje Kajura*[2].

[3] The Applicant then sought execution for the sum of UGX 30,706,886/=, and a notice to show cause why execution should not issue was served on the Respondent. In his written submissions, Counsel for the Applicant argued that sums arising from a judicial order do not fall under any tax heads provided under Section 19(1)(a)Income Tax Act Cap. 338**(ITA)**. It was also suggested that the compensation was not from the employer but a judicial order and was not provided by the employer. It was contended that judicial awards are exempt from taxation. Alternatively, the Respondent withheld the tax without authority and did not remit any money to NSSF. The Applicant sought declarations that the decision to withhold was unlawful and payment of the balance of UGX 30,715,886/=. Counsel asked for interest of UGX 11,054,472 on the amount withheld.

[4] In reply, Counsel for the Respondent contended that what was taxable was UGX 79,512,214/=, which was compensation for the termination of a contract of employment and subject to tax under Section 19(d) ITA. Counsel cited *Siraje,* once again, in support of this proposition. It was also argued on the authority of *Kateeba* that an employer would be right to deduct from an award and remit to the taxing authority.

[5] In rejoinder, the Applicant asked that the Respondent's submissions be rejected for being filed out of time. Counsel argued that the payments did not arise from the employment relationship and was compensation by an award of Court and, therefore, exempt. Counsel distinguished *Kateeba* and *Siraje,* arguing that they did not relate to the taxation of court awards. Additionally, Counsel suggested that the tax rate was wrong, being more than 30%.

[6] In her ruling of the 28th of February 2023, Her Worship Sylvia Nabbagala, the Learned Registrar of this Court, found that the award was taxable under S.19(1)(a) and (d) and (6) of the ITA and the sum of UGX 30,706,886/= was lawfully withheld. In answering whether the Applicant's award is taxable under the ITA, the Registrar considered the wording of Section 19(1) (d) ITA and found that most of the award consisted of allowances and compensation. Particular attention was paid to Section 19 (6)(c)ITA, which provides taxation of past, present, and prospective employment income. Her Worship found that the amounts were awarded to compensate the Applicant for unlawful dismissal and fell squarely within the ambit of Section 19(6)(c) ITA. The Registrar also ruled that damages in the award were not subject to any tax by the Respondent. In her view and relying on *Siraje,* the Registrar found the allowances and compensation, excepting damages, were subject to taxation. Observing that the amount of UGX 30,706,886/= was withheld as National Social Security Fund Contributions**(NSSF)** and Pay As You Earn**(PAYE)**, the Registrar found no merit in the application and dismissed it.

[7] Dissatisfied with this decision, the Applicant appealed to this Court on the following grounds:

[2] SCCA No.09 of 2015

(i) That the Learned Registrar erred in law and fact when she misapplied sections 19(1) and 19(6)of the ITA in arriving at a wrong conclusion that the award of Court in Labour Dispute Appeal No. 034 of 2019 amounted to employment income whereas not since it **had been provided by Court and not by the Respondent**

(ii) That the Learned Registrar erred in law and fact when she held that the Respondent had lawfully withheld PAYE from the award in Labour Dispute Appeal No. 034 of 2019 but failed to penalise the Respondent for offending sections 116 and 123 of the ITA when it retained the withheld sums for seven months without paying the same to the Commissioner thereby sanctioning an illegality.

(iii) That the Learned Registrar erred in law and fact when she held that UGX 79,512,214/=was employment income and chargeable to PAYE but declined to award NSSF of UGX 11,926,832/ on the said employment income, thereby occasioning a miscarriage of justice.

(iv) That the Learned Registrar erred in law and fact when she held that the Respondent had lawfully withheld UGX 30,706,886/= as PAYE on UGX 79,512,214/= thereby sanctioning a tax rate of 38% contrary to the applicable tax rates under Section 6(1) of the Third Schedule of the ITA.

(v) That the Learned Registrar erred in law and fact when she held that damages of UGX 20,000,000/= awarded in Labour Dispute Appeal No. 034 of 2019 was not taxable but failed to award the Applicant the sum of UGX 6,172,000/= which had been levied by the Respondent as tax on the said damages thereby occasioning a miscarriage of justice.

(vi) That the Learned Registrar erred in law and fact when she held that the Respondent had lawfully deducted UGX 30,706,886/= as PAYE yet when the Respondent had no submissions or anything on record in proof, thereby occasioning a miscarriage of justice.

[8] By notice of motion, the Applicant seeks to set aside the ruling and orders of the Registrar, with an order that the said application for execution be heard *de novo*. The grounds in support of the motion are contained in the Claimant's supporting affidavit sworn on 3rd April 2023 in which he was deposed to the Respondent applying wrong tax rates at 38.62% and not having remitted the sum withheld to the Uganda Revenue Authority**(the URA)**. He was also deposed that the Learned Registrar's ruling that UGX 30,706,886 was lawfully withheld was contrary to the ITA, leading to a loss of UGX 8,029,222 if the tax had been computed correctly. A further UGX 11,926,832/= said to have been deposited with NSSF was also lost because it was not deposited on his NSSF Account. He deponed that the Learned Registrar had erred by misapplying sections 19(1) and (6) ITA in arriving at a wrong conclusion that the award was employment income, erred by failing to penalise the Respondent for offending Section 116 and 123 ITA erred when she failed to award UGX 11,926,832 as NSSF contribution, erred in holding damages as taxable and failing to award the Applicant UGX 6,172,000 that had been levied by The Respondent as tax on damages and erred in holding that the Respondent had lawfully deducted UGX 30,706,886 without proof.

[9] In its affidavit in reply, Ms. Christine Imong, the Respondent's Company Secretary**(the Secretary),** opposed the application, averring that the Respondent lawfully deducted 30% of UGX 79,512,214 being the sum of UGX 30,706,886 and remitted the same to URA. She attached copies of the transfer slips. The Secretary was also deposed to the balance of UGX 48,805,328/= and general damages of UGX 20,000,000/= being paid to the Applicant. As such, the Applicant was paid a total of UGX 68,805,328/=.

[10] We invited the parties to file written submissions. As both Counsel have the surname Kyeyune, reference to Counsel during this ruling shall include their respective initials before the shared surname.

Applicant's submissions

[11] Mr. A. Kyeyune raised, first, a preliminary point arguing that the Respondent had filed its reply after fifteen days contrary to Order 8 rule 2, Order 51 rule 6 and Order 12 rule 3(2)of the Civil Procedure Rules S.I 71-1**(the CPR).** It was also contended that paragraphs 14,15,16 and 17 of the supporting affidavit were unchallenged and should be admitted.[3]

[12] On the substantive grounds, it was argued that tax is a creature of statute and that court awards were not taxable under Section 19(1)(a)ITA. We were referred to *Makula International Ltd v His Eminence Cardinal Nsubuga & Anor*[4] for the proposition that we should not sanction an illegality. On the NSSF sum of UGX 11,926,832/=, Counsel argued that where money is deducted but not remitted to the NSSF, it is personal property. We were referred to *Aijukye v Barclays Bank (U) Ltd*[5]. Regarding the tax rate, citing Section 6(1) and part 1 of the Third Schedule ITA, it was argued that the proper tax payable was UGX 22,677,664/= and therefore, UGX 8,029,222/= was unlawfully withheld. It was also suggested that UGX 6,172,000/= withheld on general damages was unlawful. Finally, Counsel for the Applicant argued that there was no evidence to support the deduction of UGX 30,706,886/= as PAYE. By the Applicant's computation, we were asked to order a refund of UGX 19,956,054/=

Respondent's submissions

[13] Mr. J.P. Kyeyune argued that the CPR did not apply to matters before this Court, and the procedure was regulated by the Labour Disputes(Arbitration and Settlement) (Industrial Court Procedure) Rules, 2012. Alternatively, on the authority of *Lam-Lagoro v Muni University*[6] it was argued that affidavits are evidence and should be filed in reasonable time.

[14] It was contended that paragraphs 14 to 17 of the supporting affidavit were legal arguments, not allegations of fact, and should be struck out. Counsel pointed to *Acaitum Omanikor Isiaigi v Alkas International (U) Limited & Anor*[7] for an executing Court's limited role in not varying a decree, which is a mandate of the Court upon review, or an appellate Court. We were also referred to *Popat v Master Managers & Traders Ltd*[8] for the duty of this Court to reevaluate the evidence on record.

[3] Counsel relied on *Kaggwa v Olal*[2018] UGHCLD 65
[4] [1982] UGSC 2
[5] [2019] UGIC 1
[6] [2017] UGHCCD 85
[7] [2014] UGHCEBD 4
[8] [2022] UGCommC 50

[15] On the substantive ground of the application, supporting the Registrar's decision on Section 19(1) and 19(6)ITA, we were referred to *Siraje*[9] where the Supreme Court held that unless exempted, the obligation to pay income tax is mandatory. Counsel also cited *National Curriculum Development Centre v Constance Mbabazi Kateeba.*[10] for the dicta that no Court award or judgement should be interpreted to evade, avoid or be contrary to taxation laws.

[16] The Respondent also argued that any award of damages by the executing Court would amount to a variation of the award in LDA No. 034 of 2019. Contending that the taxes were remitted late, we were asked to strike out the issue of failure to remit taxes on time, as this matter arose only in submissions. Counsel for the Respondent also asked this Court to strike out the complaint on NSSF remittance as the Applicant was not an employee within the meaning of Section 6 of the National Social Security Fund Act Cap. 230 at the time the appeal was determined. On the computation of tax of UGX 30,706,886/=, it was submitted that the Respondent had sought advice from KPMG. On the deduction of UGX 6,172,000/= as taxes on damages, the Respondent argued that this was frivolous and vexatious, and we were referred to *Ndungo Seti and 2 Others v Sekiziyivu and Anor*[11]. It was submitted that there was nothing on the record to prove that the Respondent had deducted tax on the damages as alleged by the Applicant.

[17] Finally, on lack of evidence to support the tax deduction for UGX 30,706,886/=, the Respondent argued that the letters attached to the affidavit in support proved that the sum had been deducted as taxes. We were asked to dismiss the matter with costs

Determination.

[18] We will deal with the preliminary points first[12].

Applicability of CPR to proceedings before the Industrial Court.

[19] In *Auto-Tune Engineering Limited v Barozi and 2 Others* [13] this Court observed that where there is a lacuna in the Court's rules of procedure, the Civil Procedure Act Cap. 282, and CPR would be applicable. Therefore, we cannot accept Mr. J.P Kyeyune's objection to the applicability of the CPR to the matter before us. That objection is overruled.

Late filing of affidavits

[20] The contending positions are that the affidavits should be filed within the time permitted under the CPR *vis a vis* affidavits filed as evidence and, therefore, within reasonable time. The former position was set out in *Stop and See (U) Ltd v Tropical Africa Bank Ltd,*[14] where Madrama J.*(as he then was)* found that in interlocutory applications, affidavits in reply should follow the timelines on pleadings and thus should be filed within 15 days of service as provided for under Order 12 rule 3CPR. When considering a similar objection to the late filing of an affidavit in reply to an application for judicial review, Mubiru J. in *Lam-Lagoro* opined for the adoption of a less rigid approach than was in *Springwood Capital Partners v Twed Consulting*

[9] SCCA No.09 of 2015
[10] LDMA 165 of 2020. Industrial Court of Uganda (25th May 2021)
[11] [2021] UGHCCD 84
[12] See Mukisa Biscuits Manufacturing Co. Ltd Vs West End Distributors Ltd. [1996] 1 E.A. 696.
[13] [2022] UGIC 7
[14] [2010] UGCommC 41

Ltd[15]concluding that time constraints applied to defences may be misplaced when applied to affidavits. His Lordship observed that

> An affidavit in reply, being evidence rather than a pleading in stricto sensu, should be filed and served on the adverse party, within a reasonable time before the date fixed for hearing, time sufficient to allow that adverse party a fair opportunity to respond.

[21] We note that *Stop and See* was decided on the 9th of December 2010. *Lam-Lagoro* followed seven years later, on the 15th of June 2017, after *Springwood* itself, which draws heavily from *Stop and See* was decided. This Court finds the dicta in *Lam-Lagoro* applicable to the present matter, which is not an interlocutory application as was *Stop and See*. Secondly, the ratio of *Lam-Lagoro* supports the view of an affidavit in reply as evidence rather than a pleading. Finally, the motion and affidavit were served on the Respondent's Counsel on the 20th of April, 2023. The affidavit in reply was filed on the 17th of May, 2023, some seven days before the hearing of the application. This was a reasonable time, and the preliminary objection is overruled for these reasons.

Admission of paragraphs 14,15,16 and 17 of the supporting affidavit as unchallenged

[22] Countering the assertion that the above-captioned paragraphs of the affidavit were unchallenged, Mr. J.P. Kyeyune suggested that there were legal arguments and that they should be struck out. A review of the impugned paragraphs is necessary:

- Paragraph 14 of Mr. Kyoribona's affidavit is an averment that the amount withheld was 38.62%, contrary to the ITA.
- Paragraph 15 is an averment that the Registrar's holding caused him loss.
- Paragraph 16 is an averment that there has been no deposit of UGX 11,926,832 on his NSSF account and
- Paragraph 17 is an averment on what the right amount of tax would have been.

[23] Under Order 19 rule 3(1) CPR, affidavits are confined to matters within the deponent's knowledge. Under Order 19 rule 3(2)CPR, affidavits shall not set forth matters of hearsay or be argumentative. In our view, paragraphs 14 to 17 of the supporting affidavit do not contain any matters of hearsay, nor are they argumentative. They are statements of fact. This limb of the objection would also be overruled.

[24] The other aspect of this preliminary point is that the Respondent did not challenge the contents of the captioned paragraphs, and therefore, they should be admitted. Counsel referred us to *Kaggwa v Olal & 6 Ors*[16]. We have reviewed this authority, and it does not touch on affidavits. It is, therefore, unhelpful to the Applicant's objection. However, in the written submissions, Mr. A. Kyeyune attached another decision, *Oyee Leonard & 2 Ors v Zubeida Abdulrahman*[17] in support of the proposition that an allegation of fact not specifically traversed will be taken to be admitted. Mr. J.P. Kyeyune counters that the impugned paragraphs were legal arguments, which we have resolved. We think a revisit to Ms. Christine Imong's affidavit in reply would be necessary.

[15] HCMA 746 of 2014.
[16] [2018] UGHCLD 65
[17] [2017] UGHCLD 27

[25] Ms. Imong did not refer to the specific allegations in paragraphs 14,15 and 17 of Mr. Kyoribona's affidavit. However, in the body of the affidavit the following responses were prominent:

- In paragraph 5, the Respondent averred that UGX 30,706,886 was deducted as tax and paid to the Uganda Revenue Authority. The Respondent attached proof of payment.
- In paragraph 6, the Respondent avers that it sought advice from KPMG, an established tax firm, prior to the deduction of PAYE.
- In paragraph 8 of the affidavit in reply, Ms. Imong avers that all payments made to the Applicant were ordered by the Court, unlike a wage payment earned from the Respondent, out of which a social security contribution has to be made.

[26] In our view, while the Respondent does not refer to the paragraphs to which these above responses are made, the content of paragraphs 5,6 and 8 of Ms. Imong's affidavit is in answer to paragraphs 14,15 and 17 of Mr. Kyoribona's affidavit. Paragraph 16 is responded to explicitly by paragraph 8. Therefore, we are not inclined to the view that the allegations of fact were not traversed, and we hereby decline to find that Paragraphs 14-17 of Mr. Kyoribona's affidavit were unanswered. The objection is overruled.

Determination on the merits

[27] The application before us is technically an appeal. The Registrar's ruling of the 28th of February 2023 was in respect of an application for execution of an award of this Court. Under Section 12(5) of the Labour Disputes(Arbitration and Settlement) Act Cap. 227(**"the LADASA"**), the functions of the Registrar of the Industrial Court are similar to those of a Registrar of the High Court. And under Order 50 rule 8 CPR, any person aggrieved by an order of a registrar may appeal by motion on notice from the order to the High Court. Therefore, the motion and supporting affidavit before this Court is an appeal against the ruling of the Registrar of this Court, rendered on the 28th of February 2023.

[28] In an appeal, the first appellate Court must subject the evidence to a fresh and exhaustive scrutiny and re-appraisal before coming to its conclusion.[18]

[29] The evidence in this appeal is relatively straightforward. It is common to both parties that the total award in LDA 034 of 2019 was UGX 99,512,215/=. It is an agreed fact that UGX 68,805,328/= was paid to the Applicant. The contention would, therefore, be whether UGX 30,706,886/= deducted from the award was lawfully withheld. Answering this question would resolve the appeal. We note, though, that the grounds of appeal were unnecessarily broad. Courts frown on the framing of copious grounds of appeal. Order 43 rule 2 CPR requires that a memorandum of appeal be set forth concisely and under a distinct head on the grounds of objection. What obtains from a perusal of the notice of motion, which under Order 51 rule 8 CPR commences an appeal, are five grounds of appeal(*grounds 1,2,3,4 and 6)* being variants of a single complaint on the withholding of UGX 30,706,886/= from the Applicant's award. This generalised approach is not helpful to judicial economy. Therefore, in exercising the provisions of Order 15 rule 5 CPR, we think it necessary to address a single complaint as to whether the learned Registrar erred in law and fact in holding that the Respondent lawfully withheld UGX 30,706,886/=.

[18] *Begumisa & 3 Ors v Eric Tiberaga* [2004] KALR 236

Grounds 1,2,3,4 and 6: TAXATION OF TERMINAL BENEFITS

[30] The position of the law regarding the above complaint is well settled. The case of *Siraje* was cited consistently by both Counsel and the Learned Registrar right from the inception of this dispute. Counsel for the Respondent brought it to his opposite number's attention in a reply to a demand letter. In our view, it is essential to understand the principles propounded in *Siraje* to resolve the dispute before us. In that case, the Respondent and 160 others were former employees of the defunct Diary Corporation and were paid a retrenchment package. The Appellant(URA) imposed PAYE on the retrenchment packages. PAYE was found to be unlawfully imposed on a plea before the High Court. On appeal to the Court of Appeal, the Justices of Appeal agreed with the Trial Judge. Before the apex Court, the Appellant authority contended that any income, past, present or prospective, derived by an employee from any employment was taxable. The Court observed employment income to be any income derived by an employee from any employment. The Apex Court found the retrenchment packages to properly fall under employment income and amount to compensation. On a review of Section 21(1) ITA, which lists exempt income, the retrenchment packages were found not to be tax-exempt.

[31] And perhaps even more importantly, concerning terminal benefits, the Supreme Court visited six cases on the point, including the Industrial Court's decision in *Omondi Martin v URA*[19] for the proposition that terminal benefits and retrenchment packages are taxable. The Court also considered legislation and jurisprudence from Tanzania, Zimbabwe and Malaysia to firm up the legal position on taxation of terminal benefits. The essence of this decision is that terminal benefits are not exempt from income tax.

[32] In the result, it is impossible to accept Mr. A. Kyeyune's criticism, except for paragraphs[33] and [34] below, of the Registrar's finding that the award in LDA 034 of 2019 amounted to employment income because, based on the dicta in *Siraje*, the award was compensation derived from employment income. The award consisted of sums set out under the EA, which sums the labour officer was empowered to grant. For emphasis, a severance allowance of UGX 48,000,000/=, which under Section 86(1) EA is derived from each year of employment served, basic compensation of UGX 8,000,000/= and additional compensation are pegged on monthly salary and accrued and compensatory leave which is earned annually under Section 53 EA are all part of the terminal benefits. The Apex Court has reaffirmed *Siraje* in a recent decision of *Nyabiryo & 1,117 Others v Uganda Revenue Authority* [20] where Musoke JSC with Tuhaise, Musota, Madrama, and Bamugemereire, JJSC concurring, held that under Section 19(1)(d)ITA, any sum of money paid to an employee because his or her contract has been terminated amounted to employment income and was therefore taxable. In effect, terminal benefits are taxable. Therefore, grounds one, two, three, four and six would fail on this limb of the appeal.

[33] As indicated in paragraph[32] above, save for computation, the withholding of tax was principally and legally correct. This last aspect of this appeal is read from grounds three, four and six, which relates to computation. In annexure "D" to the supporting affidavit, the Applicant suggests a taxable sum of UGX 79,421,214/=, arriving at a tax payable of UGX 21,174,364/=. This is the correct figure under Schedule 3 of the ITA. Under the PAYE calculator on the URA's web portal, Counsel for the Respondent computes the sums annually with the result that UGX 2,820,000 represents a monthly payment of UGX 235,000/= per

[19] LDC 003 of 2014
[20] [2024] UGSC 32 (2 September 2024)

month and applying the progressive tax bands results in a tax payable of UGX 21, 174, 364/= as tax payable. The Respondent suggested that it relied on the advice of KPMG as tax consultants to compute the tax payable, then withheld and remitted UGX 30,706,886/= as PAYE to the URA. The computation of tax under the ITA is progressive. It follows that assuming the Respondent's tax rate of 30% of UGX 79,512,214 as PAYE, the computation of 30% under the would have resulted in a liability of UGX 23,853,665/= and not UGX 30,706,886/=. The Respondent did not provide this Court with the working papers from its tax advisors, KPMG, upon which it relied to remit the sum of UGX 30,706,886/=. The tax bands on PAYE are:

- UGX 0-2,820,000 at UGX0,
- UGX 2,820,000 to UGX 4,020,000/= at UGX 120,000/=,
- UGX 4,020, to UGX 4,920,000 at UGX 900,000/= and
- UGX 4,920,000/= to UGX 74,501,214/= at UGX 20,874,364/=

The total tax liability of UGX 21,174,364/= would be established. Had the Respondent applied a progressive tax computation, it would not have withheld UGX 30,706,886/=. In our view and considering the progressive computation of PAYE, we accept Mr. Albert Kyeyune's contention that the tax rate would hold that the Respondent did not compute the appropriate tax. The Applicant is, therefore, entitled to the sum of UGX 9,532,522/= and we order the Respondent to pay this sum to the Applicant. This aspect of the appeal succeeds.

Ground 3 and 5: COMPUTATION OF TAX

[34] The other aspect of Ground Three of the Appeal relates to the NSSF payment of UGX 11,926,832/=. The Applicant contends that the Learned Registrar ought to have awarded it. Counsel for the Respondent argued that it cannot be raised on appeal as it did not come before the Registrar. *In Tanganyika Farmers Association Ltd v Unyamwezi Development Corporation*, it was held that a Court has discretion to allow a new point on appeal as long as it is satisfied that full justice can be done to the parties.[21] The *Tanganyika* case was cited in *Twakirane Vs Bamusede*[22] where the Court observed a corpus of authorities supporting the view that under limited circumstances, an appellate Court may allow new issues to be raised, notwithstanding that the party relying on them did not utilise the opportunity at the trial to do so. We do not think that the Applicant has made a case for NSSF payment, and for the reasons in paragraph [35] below, this ground of the appeal does not succeed.

[35] Ground five of the appeal relates to a complaint that UGX 6,172,000/= was levied as a tax on the award of general damages. Reviewing the evidence before the Registrar, we cannot establish a foundation for this argument. For emphasis, the Applicant applied for execution on the 7th of June 2022 for a sum of UGX 30,706,886/=. From the case notes, the matter was called before the Registrar on the 27th of September 2022; Mr. A. Kyeyune made oral arguments referring to a deduction of NSSF and PAYE. He said he conducted a search at the NSSF and found that no payment had been made. He did not produce a copy of the search report. In the written submissions filed on the 7th of October 2022, he repeated the assertion that NSSF and PAYE reduced the decretal sum. He does not say how much the NSSF reduction was. In our view, there was no material evidence before the Registrar of this Court to consider that any amount for NSSF had reduced the decretal sum. This Court has held that an employee seeking to take benefit of an NSSF claim must prove that claim. This was the essence of *Aijukye* cited by Mr. A.Kyeyune where the Industrial Court was of the firm

[21] [1960] E.A 620
[22] [2009] UGHCCD 6

conviction that for an employee to sustain a claim under Section 12 of the NSSF Act, he must prove that 5% was deducted from his salary and not remitted to the fund. In the circumstances that no evidence was laid before the Learned Registrar, which would not be properly tenable given a subsisting award of the Court, we do not find merit in this ground. In other words, the Registrar was not empowered to enter such an award. Grounds three and five of the appeal fail in this regard.

Final Orders

[36] In the final analysis, the appeal succeeds in part. The Applicant is, therefore, entitled to the sum of UGX 9,532,522/= and we order the Respondent to pay this sum. This aspect of the appeal succeeds. All the other grounds of the appeal fail. In keeping with our dicta on costs in employment disputes[23], we do not find the Respondent misconducted itself so that it may be burdened with costs. There shall be no order as to costs. It is so ordered.

Dated, signed and delivered in open court at Kampala this 19th 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.

19.09.2024

11.27 a.m.

Appearances:

1.	**For the Applicant:**	Ms. Irene Kahingu H/B for Mr. Albert Collins Kyeyune Parties absent.
	Court Clerk:	Mr. Samuel Mukiza
	Ms Kahingu:	Matter is for ruling, and we are ready to receive it.
	Court:	Ruling delivered in open Court.

12:00 noon

Anthony Wabwire Musana,
Judge, Industrial Court.

[23] Kalule v Deutsche Gesellschaft Fuer Internationale Zuzammenarbeit (GIZ) GMBH (Labour Dispute Reference 109 of 2020) [2023] UGIC 89 (6 February 2023)