



THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
MISCELLANEOUS APPLICATION NO. 105 of 2023
*(Arising From Labour Dispute Reference No. 116 of 2021 and
KCCA Labour Dispute No. 199 of 2020)*

SHETTY MANOJ VASU.....**APPLICANT**

VERSUS

SHETTY FOTO FAST LTD.....**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. Emmanuel Lwanga of M/s. Kayongo Jackson & Co Advocates for the Applicant
2. Mr. Madut Manfred of M/s. Stabit Advocates for the Respondent

RULING

Introduction

- [1] The Applicant sought orders by motion under Order 6 Rule 19 and 31 of the Civil Procedure Rules S.I 71-1 (from now CPR) to amend his memorandum of claim to include a claim for UGX 15,200,000 and USD 1,200, which the Respondent's Managing Director recovered from his bag sometime in the year 2007. In his affidavit in support, the applicant suggested that the respondent's Managing Director had kept this money for over five years. In the written submissions, Mr. Lwanga submitted that the Respondent's Managing Director admitted to keeping the money in his witness statement. He believed that the question to be determined was ownership of the money.

- [2] The Respondent opposed the application. In his affidavit in reply, Shetty D. Narayan, the Respondent's Managing Director, averred that the application was bad in law, brought in bad faith, an afterthought, and a fishing expedition. The application was brought sixteen years after the said monies were retained. Mr. Madut, appearing for the Respondent, submitted on the authority of **Okello Wilbert v Obel Ronald H.C.M.A 157 of 2017** that the amendment did not seek to address the real controversy between the parties, exposed the Respondent to actions of Shetty D. Nayan which had nothing to do with the Company, and was barred by limitation. The Applicant sought to amend his pleadings after reviewing the Respondent's evidence.
- [3] In rejoinder, Mr. Lwanga submitted that Shetty D. Nayan acknowledged recovery of the monies from the Applicant's bag on behalf of the Respondent and that the monies were the Applicant's savings. Counsel contended that on account of the Respondent's counterclaim, all the issues arose from the Applicant's employment with the Respondent.

Resolution

- [4] The short point for our determination is whether the Applicant has demonstrable grounds for a grant of leave to amend his memorandum of claim. Wamala J. set out in the **Okello Wilbert v Obel Ronald** case (ibid) the generally recognized principles governing the exercise of discretion to allow or disallow amendment of pleadings. They include:
- (a) Amendments are allowed by the courts so that the real question in controversy between the parties is determined and justice is administered without undue regard to technicalities.
 - (b) An amendment should not work injustice to the other side. An injury that an award of damages can compensate is not treated as an injustice.
 - (c) Multiplicity of proceedings should be avoided as far as possible, and all amendments which avoid such multiplicity should be allowed.
 - (d) An application that is made malafide should not be granted.
 - (e) No amendments should be allowed where any law expressly or impliedly prohibits it.
 - (f) The court shall not exercise its discretion to allow an amendment that has the effect of substituting one distinctive cause of action for another.
- [5] In support of the application, Mr. Lwanga submitted that the Respondent had raised an allegation of theft of the monies amounting to UGX 15,200,000 and

USD 1,200 when the Applicant was an intern with the Respondent. In opposition to the application, Mr. Madut submitted that the real controversy being unfair, termination of the Applicant's employment services can be determined without the need for amendment. In our view, the Respondent has brought the said monies into issue. In the case of **Engineer John Eric Mugenzi v Uganda Electricity Generation Co. Ltd**¹ the Court of Appeal held that the Industrial Court should use its jurisdiction to adjudicate on issues of fact or law under **Section 8(1)(b) and 8(2) of the LADASA** to handle all labour disputes referred to it including claims for general, special and punitive damages which come under any other law and can be adjudicated by the Industrial Court. We observed in **Avram Avivi v SBI International Ltd**² that the Industrial Court has jurisdiction to arbitrate and adjudicate on all labour disputes referred to it or as a matter of appeal from a decision of a Labour Officer and include issues of fact, law arising from the references to the Court by any other law. Following the dicta of Kakuru J.A (as he then was), we observe that the labour dispute ought to be resolved holistically. It would be imprudent to employ judicial time partially. Resolving any questions relating to the monies would permit a wholesome resolution of all questions in controversy.

- [6] Secondly, Mr. Madut suggested potential harm or injustice to the Respondent. We note that the Respondent's witness raised the matter of recovery of the said monies from the Applicant's bag in paragraph 20 of Mr. Narayan's witness statement. We think this question can be addressed finally by granting an amendment. Having raised the matter, any arguments of potential injustice would be subject to a trial and findings of this Court.
- [7] Thirdly, Learned Counsel for the Respondent submitted that the law of limitation excludes this action from being sixteen years after the fact. In the **Okello v Obel** case(supra), Wamala J observes that the defence of limitation would be available up to the final determination of the case. This dictum applies to the present case.
- [8] Finally, Mr. Madut suggested that the amendment is malafide. Malafide refers to an act done with bad faith or without honest intentions. It can also refer to a person who acts in bad faith. Malafide actions are often malicious and done with the intent to harm others. Mr. Madut suggested that the application was an afterthought. We note that the retention of the said monies was brought up in paragraph 20 of Mr. Shetty D. Narayan's witness statement. The proposed amendment is a result of that evidence which would be subjected to the rigours of proof. We do not think that it is prejudicial to the Respondent.

¹ C.A.C.A No 167 of 2018

² LDR 208 of 2021

- [7] We are satisfied that granting an amendment will enable the Court to determine the controversy between the parties.

Decisions and Orders of the Court

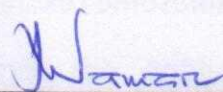
- [8] For the reasons above, the applicant is granted leave to amend his memorandum of claim. The same shall be filed in Court within seven days from the date of this order. The Respondent shall file a reply within seven days from the amended claim's service date. There shall be order as to costs, in keeping with the dicta in Joseph Kalule v GIZ³

It is so ordered this 16th day of August 2023.

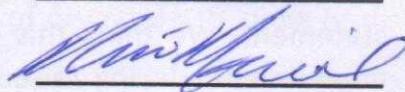
Anthony Wabwire Musana,
Judge, Industrial Court

THE PANELISTS AGREE:

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







Ruling delivered in open Court on 16th day of August 2023 at 10.20 a.m in the presence of:

1. For the Claimant, **Mr. Julius Kinyera**
2. For the Respondent, **Mr. Manfred Madut**

Court Clerk: **Mr. Samuel Mukiza.**

Anthony Wabwire Musana,
Judge, Industrial Court

³ LDR 109 of 2020