



THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
MISCELLANEOUS APPLICATION NO. 126 OF 2023
LABOUR DISPUTE REFERENCE NO. 28/2023
(Arising from Labour Dispute Reference No. 28 of 2023)

1431

THE NORMANDY COMPANY:.....APPLICANT

VERSUS

EDISON BARBIC TUMUSHABE:.....RESPONDENT

Before:

The Hon. Mr. Justice Anthony Wabwire Musana

Panelists:

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

Representation:

1. Mr. Kenneth Tumusiime of M/s. Greystone Advocates for the Respondent
2. Mr. Edmund Kyeyune of M/s. Kyeyune, Kasekende Legal Consultants and Advocates for the Applicant.

RULING

- [1] This ruling is with respect to an application for leave to strike out the Respondent's Memorandum of Claim, severing the claim for Workers' Compensation and provisions of costs. It was brought under Section 98 of the Civil Procedure Act Cap. 71 (from now CPA), Section 33 of the Judicature Act Cap. 13 (from now JA), Rule 6 of the Labour Disputes (Arbitration and Settlement) (Industrial Court Procedure) Rule, 2012 (from now LADASA Rules) and Order 52 Rules 1 and 3 of the Civil Procedure Rules S.I 71-1 (from now CPR).
- [2] The background facts, as can be gathered from the supporting affidavit of Joseph H. Mwambala, are that the Applicant employed the Respondent. He was deployed in Mogadishu, Somalia, on attachment to a Host Employer, M/s. African Skies Ltd. He was terminated on the 18th day of February 2022. He filed a complaint with the labour office. Mediation failed, and the matter was referred to this Court on the 10th of February 2023. In the said reference, the Labour Officer asked this Court to determine a question of unfair termination. It was also averred that the Memorandum of Claim filed on 9th July 2023 was out of time because the notice of claim was issued on the 13th of February 2023. Regarding a worker's compensation claim, it was averred that the same was not tenable, and this Court does not have jurisdiction to try it. We invited

Counsel to file written submissions. The Court is grateful for the brief submissions and authorities of law cited.

The Issues

- [3] In their submissions, the Applicant's Counsel framed two issues: (i) *whether the Respondent's claim for unfair termination should be struck out for having been filed out of time and (ii) Whether the Respondent's claim for compensation under the Worker's Compensation Act should be severed from his Claim for unfair termination and struck out?*

Issue One

Whether the Respondent's claim for unfair termination should be struck out for having been filed out of time?

- [4] Following this Court's determination and order to extend time and validate the Memorandum of Claim in Labour Dispute Miscellaneous Application No. 71 of 2023 delivered immediately before this ruling, it is unnecessary to resolve this issue. The Memorandum of Claim in Labour Dispute Reference No. 023 of 2023 has been validated by order of this Court.

Issue Two

Whether Respondents claim for compensation under the Workers Compensation Act should be severed from his Claim for unfair termination and struck out?

- [5] The Applicant contended that this Court did not have jurisdiction to entertain a claim for Workers Compensation. Citing Sections 1 and 14(1) of the Workers Compensation Act Cap. 225, it was submitted that the Magistrates Court has original jurisdiction to determine a claim for workers' compensation. The Applicant also argued that such a claim is akin to a tort, the nature of which requires a higher burden of proof and the reliance on strict rules of evidence, which the Industrial Court is not bound to apply and is of a nature to be brought before a Court of law.
- [6] In reply, the Respondent submitted that the Magistrates Court does not have jurisdiction to entertain claims for injuries outside Uganda. It was argued that the Respondent would have no justice if the claim were thrown out.

Decision of the Court

- [7] It is trite that the jurisdiction of the Court can only be granted by law, and if the Court conducts proceedings without jurisdiction, they are a nullity.¹ In the case of **Baku Raphael Obudra and Another v Attorney General**,² it was held that jurisdiction is a creature of statute. Jurisdiction cannot be assumed even with the consent of parties. Proceedings made by a Court lacking competent jurisdiction are illegal and amount to a nullity.³ Jurisdiction is of such a cardinal and central tenet that a Court downs its tools once it finds it does not have jurisdiction.

¹ Desai Vs Warsaw, 1967, E.A 351.

² S.C.C.A No. 1 of 2005

³ The term jurisdiction is defined in Owners of Motor Vessel Lillian "s" v Caltex Oil Kenya Limited [1989] KLR 1,

[8] What then happens in an accident at work or where an employee sustains injuries while at work? To address this question, visiting provisions of the Workers Compensation Act Cap. 255(*from now WCA*) in some brief detail is necessary:

- Under Section 9 of the WCA, a worker must notify the employer as soon as practicable or within a month of the accident or three months from the date of symptoms of occupational disease.
- Under Section 14 WCA, if an employer upon whom notice has been served does not within 21 days agree in writing to compensate the worker, the worker may claim compensation before the Court having jurisdiction in the district in which the accident giving rise to the claim occurred.
- And under Section 1(1)(a) WCA, 'Court' means a magistrate's Court established under the Magistrates Courts Act, presided over by a Chief Magistrate or a Magistrate grade 1, having jurisdiction in the area where the accident to the worker occurred.

[9] From a plain reading of the provisions of the WCA visited above, unless and until the law is repealed, jurisdiction to consider Worker's Compensation is vested in the Magistrates Court presided over by a Chief Magistrate or Magistrate Grade 1 in the area where the accident to the worker occurred. The Industrial Court is not a magistrate's Court. It is not established under the Magistrate's Court Act but Section 7 of the Labour Disputes (Arbitration and Settlement) Act 2006. The Industrial Court does not enjoy original jurisdiction but referral and appellate jurisdiction to hear matters filed initially before Labour Officers. It follows, therefore, that this Court cannot entertain the Respondent's claim for Workers' Compensation. The Court must now down, as it hereby does, its tools.

[10] In the case of **Dr. James Bunoti Wokwera v AAR Healthcare & Another**,⁴ this Court considered paragraphs of a claim introducing cause of action under the WCA. It concluded that the jurisdiction to hear such claims was vested in the Magistrates Court. Therefore, as far as the claim in LDR No. 23 of 2023 relates to Workers' Compensation, the same is to be immediately severed from the Memorandum of Claim, leaving the claim for unfair termination, which this Court will dispose of.

[11] The Respondent made an impassioned plea for justice, citing his claim's peculiarity in that the injuries were sustained out of jurisdiction. It must be emphasized that this Court would not be the correct forum for adjudication of the dispute, as pointed out in paragraph 9 & 10 above, as the Industrial Court, unlike the High Court of Uganda, does not enjoy unlimited original jurisdiction.⁵ Indeed, in the case of **Sentamu Joseph v Jibu Corporate Ltd**,⁶ while considering the import of Section 14 (2) WCA, the Honourable Mr. Justice Boniface Wamala found that when a claim falls squarely within the ambit of the Act, Section 24(2) WCA would be invoked but that a party can bring an action that contains a joinder of causes of action and a plaintiff may unite in the

⁴ LDMA 140 of 2022

⁵ See Eng John Eric Mugenyi v Uganda Electricity Generation Co. Ltd C.A.C.A No. 167 of 2018

⁶ H.C.C.S 51 of 2021

same suit several causes of action against the same defendant. In that case, the Plaintiff had two causes of action: one based on the Workers Compensation Act and the other based on negligence.

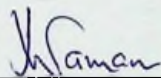

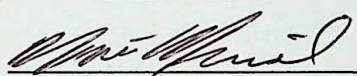
- [12] In the final analysis, this application is allowed in part. The Respondent would be directed to sever all portions of his memorandum of the Worker Compensation claim and restrict the claim to unfair termination. The amended memorandum shall be filed in Court within seven days from the date hereof and served on the Applicant, who shall file a reply within seven days of service thereof. A rejoinder shall be placed on the record within five days, after which the matter shall be fixed for mention. There shall be no order as to costs.

Signed in Chambers at Kampala this 10th day of November, 2023.


Anthony Wabwire Musana,
Judge, Industrial Court

The Panelists Agree:

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

10th November 2023

11.00 a.m.

Appearances

1. **For the Applicant:** Mr. Kenneth Tumusiime
2. **For the Respondent:** Mr. Frank Lubega
3. Mr. Joseph Mwambala, Applicant's Company Secretary in Court.
4. Parties in Court.

Court Clerk: Mr. Samuel Mukiza.

Mr. Tumusiime: Matter for ruling and we are ready to receive it.

Court: Ruling delivered in open Court.


Anthony Wabwire Musana,
Judge, Industrial Court