



THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE MISCELLANEOUS APPLICATION NO. 186 OF 2021
(Arising from Labour Dispute No. 007 of 2015 & KCCA/CB/194/2014)

WASHINGTON INIMA :.....:APPLICANT

VERSUS

OILCOM [U] LTD:.....:RESPONDENT

BEFORE:

THE HON. JUSTICE ANTHONY WABWIRE MUSANA

PANELISTS:

1. Mr. JIMMY MUSIMBI,
2. Ms. ROBINAH KAGOYE &
3. Mr. CAN AMOS LAPENGA.

RULING

- [1] This ruling is in respect of an application for review and setting aside the Award and Orders of the Industrial Court in Labour Dispute Appeal No. 07/2015 and for provisions of costs. It was brought under **Section 17 of the Labour Disputes(Arbitration and Settlement) Act 2006** and Order 52 rules 1, 2 and 3 of the Civil Procedure Rules S.I 71-1(CPR).
- [2] The Applicant filed affidavits in support and rejoinder whose gist was that the award giving rise to the application departs in principle from previous cases on similar facts, that the appeal giving rise to the award was not sanctioned by the company and is therefore a nullity and there is an error apparent on the face of the record. We invited the parties to address the Court by way of written submissions. The Respondent opposed the application in its written submissions. We did not find any affidavit in reply on Court record.

Submissions of the Applicant

- [3] As a preliminary point, the Applicant pointed out that the respondent had not filed an affidavit in reply as at the 23rd day of November 2022. Relying on the case of **DFCU Bank Ltd v Geoffrey Muwanga**¹ Counsel suggested that the application was unchallenged.
- [4] Counsel contended that the Labour Dispute Appeal was not sanctioned by the Respondent and was therefore, a nullity. He cited **Rubaga Building Company Ltd v Gopal Devsi Vekaria & Anor**² in support of this proposition.
- [5] In respect of an error on the face of the record, it was submitted for the Applicant that this Honourable Court failed to evaluate the evidence and as such this was an error apparent on the face of the record. Counsel cited the cases of **Mubiru Martin vs Uganda Red Cross Society LDA No. 28 of 2018**, **Edison Kanyabwera Vs Pastori Tumwebaze S.C.C.A No. 6 of 2004** and **Mugisha Rogers V Equity Bank (U) Ltd M.A 70 of 2019** in support of his submissions.
- [6] Pursuant to **Section 94(3) of the Employment Act, 2006**, Counsel asked this Court to grant the prayers as per the above terms.

Submissions of the Respondent

- [7] Relying on the cases of **MK Creditors v Owora Patrick H.C.M.A 143 of 2015** and **Hyamogo & Nyamogo Advocates v. Kago[2001]E.A 173**, it was submitted for the Respondent that there was no error apparent on the face of the record. The application was a disguised appeal. It was asked that the Court dismiss the application.

Resolution of preliminary point

- [8] In the absence of an affidavit in reply and as correctly pointed out by Counsel for the Applicant, the application would stand unopposed.³ And that would be the end of the matter. However, the Applicant would still be required to prove his case. For completeness therefore, we shall consider the merits of the application.

¹ H.C.M.A 240 of 2018

² H.C.C.S No. 0534 of 2014

³ Per Tuhaise J.A(As she then was) in Emmanuel Kato vs Muyanja Mbabali C.A Civ Application No. 345 of 2018

Issues for determination

- [9] In our view, the narrow question for determination in this application is whether there are sufficient grounds for the review and setting aside the award in LDA No. 007/2015.

Analysis and Decision of the Court

- [10] **Section 17 of the LADASA** provides that where any question arises as to the interpretation of any award of the Industrial Court within twenty-one days from the effective date of the award or, where new and relevant facts concerning the dispute materialize, a party to the award may apply to the Industrial Court to review its decision on a question of interpretation or in light of the new facts. The provisions of Section 82 of the Civil Procedure Act Cap. 71 and Order 46 of the Civil Procedure Rules S.I 71-1 also set clear guidance on the grounds for review. The provisions are as follows;

Section 82 of the Civil Procedure Act provides that;

“Any person considering himself or herself aggrieved by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order on the decree or order as it thinks fit.”

Order 46 of the Civil Procedure Rules provides;

“1. Application for review of judgment:-

(1) Any person considering himself or herself aggrieved;

(a) By a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or

(b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter of evidence which, after the exercise of due diligence, was not within his or her knowledge or could not be produced by him or her at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree

passed or order made against him or her, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party, except where the ground of the appeal is common to the applicant and the appellant, or when, being respondent, he or she can present to the appellate Court the case on which he or she applies for the review."

[11] In the case before us, a decree was entered on the 9th day of December 2021. The present applicant was the respondent in Labour Dispute Appeal No. 007 of 2015. He considers himself aggrieved by the decision of the Industrial Court. We are satisfied that there exists a decree from which the application for review, stems.

[12] There is some reliable guidance from decisions of the High Court on the consideration before grant of an order of review. Precedent posits that before the Court sets aside an award, order or decree, it must be satisfied that;

- i) There has been a discovery of new and important matter of evidence which after the exercise of due diligence was not within the Applicant's knowledge or could not be produced by him/her at the time the decree was passed or the order made,
- ii) There is some mistake or error apparent on the face of the record, or;
- iii) For any other sufficient cause⁴. Musota .J(as then was) observed "*Regarding sufficient reason, this means a reason sufficient on grounds analogous to those in the rule*"⁵

[13] The Applicant's case is that the Respondent Company did not sanction the Labour Dispute Appeal by passing a resolution and providing it in Court. We think that on the basis of modern precedent, this proposition is not well-grounded. In the case of **Moneylenders Association of Uganda Limited & MK Financiers Limited v. Uganda Registration Services Bureau**⁶ the Honourable Mr. Justice Richard Wejuli Wabwire, after examining a plethora of decisions on the point concluded that it is settled

⁴ See H.C.M.A NO.98/2005 FX MUBUKE VS UEB HIGH COURT MISC. APPLICATION NO. 98 OF 2005 and HCMA NO. 40/2007

JOYCE L. KUSULAKWEGUYA VS. HAIDER SOMANI & ANOTHER

⁵ See H.C.M.A NO. 497 of 2014 KALOKOLA KALOLI VS NDUGA ROBERT at page 5

⁶ H.C.M.A No. 001 of 2019

law that a board resolution is not a prerequisite to commencing legal action in this jurisdiction. We agree with this statement of the law. We find that the Respondent Company did not require any resolution to sanction LDA No.007 of 2015.

- [14] It was submitted for the Applicant that the Court did not evaluate the evidence. It is this that the Applicant equates to an error apparent on the face of the record. In defining an error apparent on the face of the record, the Supreme Court of Uganda ⁷ stated thus;

"...in order that an error may be a ground for review, it must be one apparent on the face of the record, that is, an evident error which does not require any extraneous matter to show its incorrectness. It must be an error so manifest and clear that no court would permit such an error to remain on the record. The error may be one of fact, but it is not limited to matters of fact, and includes error of law"

- [15] The purpose of a review concerns itself with self-evident errors or omissions on the part of the Court and which are apparent on the face of the record. A party brings an application for review on account of new evidence, some error or sufficient cause. The Applicant proposed an error in that the Court failed to evaluate the evidence. Counsel did not point this Court to the self-evident error on the face of the record. In any event, the failure to evaluate the evidence would have formed a ground of appeal as opposed to a ground for review. We have perused the award in LDA 007 of 2015. This Court proceeded to dispose of the appeal in the following manner;

"Although the respondent (now applicant) in his submissions point out the power of this court under Section 94(3) to confirm, modify or overturn any decisions, he did not make any attempt to justify the court's interference with the labour officer's award in form of modification or complete overturn as specified in Section 94(3) of the Employment Act. In the absence of submissions from the appellant the respondent was under a duty to address the court on why the court should modify the Award of the labour officer to more than what was. There is no justification shown in the submission of the respondent to award him general damages of 100,000,000/=,

⁷ See the case of EDISON KANYABWERA VS PASTORI TUMWEBAZE [2005]2, EA at P.86



aggravated damages of 100,000,000/= severance of 5,000,000/= additional compensation of 750,000/= punitive damages of 50,000,000/= and gratuity of 3,000,000/= before dismissing the appeal.

The decision of this court does not augment the Applicant's case. We find that there is no new and important matter of evidence, mistake or error on the face of the record to warrant a review of the award in LDA 007 of 2015. We are not satisfied that the Applicant has met the threshold for a grant of the order for review.

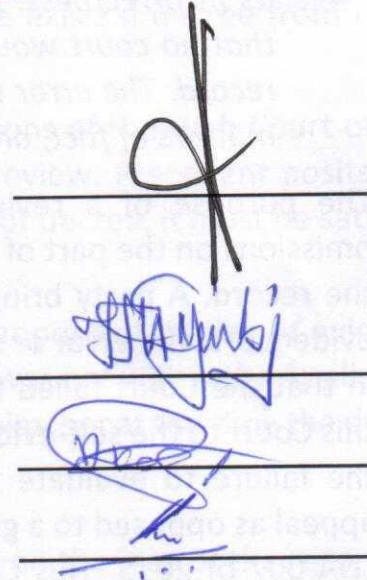
[16] In the result, this application fails and is dismissed. The Respondent did not file any affidavit in reply to effectively defend the application. Therefore, there shall be no order as to costs.

Dated at Kampala this 6th day of February 2023

ANTHONY WABWIRE MUSANA, Judge

THE PANELISTS AGREE:

1. Mr. JIMMY MUSIMBI,
2. Ms. ROBINAH KAGOYE &
3. Mr. CAN AMOS LAPENGA.



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Ruling delivered in open Court in the presence of:

1. Mr. Emmanuel Lwanga holding brief for Mr. Julius Kinyera for the Applicant.
2. The Respondent and its Counsel are absent.

Court Clerk: Mr. Samuel Mukiza.