THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA,
MISCELLANEOUS APPLICATION NO. 189 OF 2023
(Arising from Labour Claim No. 26 of 2015 and High Court Civil Suit No. 79 Of 2015)

1. UGANDA COMMUNICATIONS EMPLOYEES' UNION (UCEU):::: APPLICANTS/CLAIMANTS
2. SARAH NAMUGERWA
3. SAMUEL BAZIMBYE AND 193 OTHERS

VERSUS

1. UGANDA TELECOM LIMITED (UTL)::RESPONDENT
2. NATIONAL SOCIAL SECURITY FUND (NSSF)

Before:

1. The Hon. Mr. Justice Anthony Wabwire Musana

The Panelists:

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

Representation:

1. Prof. John Jean Barya of M/s. Barya, Byamugisha & Co. Advocates for the Applicants.
2. Mr. Allan Waniala of M/s. S&L Chambers for the 1st Respondent.
3. Ms. Genevive Akello of M/s. Ligomarc Advocates for the 2nd Respondent.

RULING

Introduction

[1] On the 31st of March 2015, this Court[1] recorded a consent temporary injunction *(the injunction)* restraining the 2nd Respondent, its agents, servants or managers from effecting any refund of the contributions made by the 1st Respondent, as employer, and the Applicants as employees to the 2nd Respondent from 1998 to the date of the consent pending the determination of Labour Claim No. 26 of 2015. By order dated 10th July 2019, the consent injunction was varied by which the Applicants accessed 5% of their contribution held by the 2nd Respondent. The Applicants now seek that the injunction be vacated because the 2nd Respondent does not object to the application and the 1st Respondent has made certain admissions. We were also asked that the 1st Respondent

---
[1] *Empaneled Ntengye CJIC, LJ T.Mugisha JIC, Ebyau, Wanyama and Gidongo(Panelists)*

retain an audited amount of UGX 16,311,992,461/= until further agreement of the parties or a final determination by this Court and that the 1st Respondent meets the Applicants' costs incurred so far.

Background facts

[2] The Applicants were employees of Uganda Posts and Telecommunications Corporation who, by operation of statute, were transferred to the 1st Respondent, which was incorporated under the Companies Act Cap. 110 pursuant to Section 82(1) of the Uganda Communications Act Cap. 106. By the main claim[2], the Applicants seek the Social Security Fund contributions made to the 2nd Respondent by the 1st Respondent or its predecessor. The 1st Respondent argues that some of the Applicants were not eligible employees to make contributions or were in excepted employment, and therefore, the contributions were made in error or wrongfully. Given the view we take at the end of this ruling, we have set these background facts in this manner.

Supporting affidavits

[3] By their supporting affidavits, Robert Ayebare Esq and Richard Adongu (*one of the Applicants*) averred that a consent temporary injunction was entered on the 31st of March 2015 in Labour Claim No. 26 of 2015 by which the 2nd Respondent was restrained from effecting any contributory refunds made by the 1st Respondent and the Applicants between 1998 to 31st March 2015 pending determination of the main claim. They averred that by order of this Court dated 10th July 2019, in Labour Dispute Miscellaneous Application No. 84 of 2019, the Applicants were permitted access to their 5% contribution. They also averred that Mugambe J. had, in High Court Miscellaneous Application No. 68 of 2015, directed that the Applicants and all other employees of the 1st Respondent were in excepted employment and, therefore, the 2nd Respondent should return contributions made on their behalf to it. That decision was set aside by the Court of Appeal in Civil Appeal No. 285 of 2016. Mr. Ayebare and Mr. Adongu were deponed that the 1st Respondent's 10% contribution be paid to the Applicants and other eligible claimants since the 2nd Respondent did not object.

Respondents' reply.

[4] The 1st Respondent opposed the application. In the affidavit in reply sworn by Ruth Sebatindira, Administrator of the 1st Respondent, it was deponed that the orders sought in Labour Claim No. 26 of 2015 were for statutory contributions not remitted by the 1st Respondent to be remitted to the 2nd Respondent and a permanent injunction stopping the 2nd Respondent from refunding contributions made by the 1st Respondent as the Applicants employer. The 1st Respondent had, in defence of the main claim, contended that some Applicants were ineligible for being in excepted employment and that some contributions were made in error. Ms. Sebatindira deponed that what is sought in this application is the subject of the main dispute, and a grant of this application would summarily dispose of the claim; the claim for costs is premature, and the application is an abuse of the Court process.

[2] Labour Claim No. 26 of 2016

[5] The 2nd Respondent did not oppose the application. In her affidavit in reply, Ms. Rachel Nsenge, the 2nd Respondent's Legal Manager Litigation, averred to the 2nd Respondent's willingness to enable the Applicants to access their entitlements in accordance with the NSSF Act. Cap. 222. She also averred to the decision of the Court of Appeal in Civil Appeal No. 285 of 2015, setting aside the judicial review proceedings before the High Court and reiterated the 2nd Respondent's no objection to vacating the temporary injunction.

Proceedings

[6] When the matter was called before this Court on the 29th of January 2024, we gave the parties filing directions. The Applicants filed their written submissions on the 6th of March 2024 when they had been directed to file the same on the 19th of February 2024. The 2nd Respondent filed its affidavit in reply and submissions on 23rd February 2024 within the timeline directed by the Court. The Applicants rejoined on 11th March 2024. The 1st Respondent filed its affidavit in reply on the 6th of March 2024 and its submissions this 18th of March 2024. On the 22nd day of March 2024, the date appointed for delivering the ruling, matters relating to late filing of submissions were raised. We extended time and validated documents filed outside the statutory timeline. But we need to re-emphasise that the filing directions are statute-driven. Under Section 14(1) of the Labour Disputes (Arbitration and Settlement) (Amendment) Act 2021, the Industrial Court's decisions are reached first by consensus. This means that filing submissions after the coram date does not permit a discussion by the panel and, therefore, requires the Court to set another date for both the coram and ruling. Further, parties filing submissions beyond the deadlines need to acknowledge late filing or make reference or use of Rule 6 of the Labour Disputes(Arbitration and Settlement)(Industrial Court Procedure) Rules, 2012, which provide for the extension of time. A less-than-punctual approach to filing duration throws off the balance all concerned. The essence of the strictures that filing rules and directions prescribe is to permit litigants to present their respective cases, provide rebuttals, and address all the issues raised. These are the handmaidens of justice. It is a practice that is not to be encouraged and constrains scarce judicial time. It is hoped that from this observation, litigants and their Counsel would be guided as to the workings of the Industrial Court. Not observing filing directives amounts to disobeying Court orders and directives and could invite sanctions including a disregard of submissions.

[7] That notwithstanding, we have considered each party's submissions in arriving at this ruling. Counsel for the Applicants proposed four issues in the written submissions, while Counsel for the 1st Respondent proposed five issues for determination. The issues proposed by Counsel for the Applicants were;

(i) Whether the temporary injunction restraining the 2nd Respondent, National Social Security Fund, its agents, servants or Managers from effecting any refund of the contributions made by the 1st Respondent as employer and the applicants as employees to the 2nd Respondent from 1998 to the date of the injunction be vacated, and in its place, an order be made to allow all qualifying applicants/their beneficiaries and other qualifying employees or former employees of the 1st Respondent to access the 10%(employer's contribution)(with interest) now held by the 2nd Respondent in line with the provisions of the NSSF Act;

(ii) Whether the audited amount of UGX 16,311,992,461/=, which was not remitted by the 1st Respondent(representing 15% of the contributions, including (*employer's and employee contributions*), should be retained by the 1st Respondent (*now in Administration*) until further agreement of the parties or until this and other pending issues are determined by this Honourable Court.

(iii) Whether the issue of interest payable under(ii) above be negotiated further with input from the Government of Uganda

(iv) Whether the respondents should jointly and severally pay legal fees and costs so far incurred by the claimants/applicants.

[8] For their part, Counsel for the 1st Respondent proposed the following five issues:

(i) Whether the Applicant's injunction, which seeks to set aside a temporary injunction, renders the Labour Claim No. 26 of 2015 nugatory?

(ii) Whether the consent entered into by all parties on 31st March 2015 should be vacated?

(iii) Whether an order to grant the Applicants access to the 10% employer's contribution made by the 1st Respondent to the 2nd Respondent would render the main suit nugatory.

(iv) Whether the Applicants are entitled to legal fees so far incurred by the Claimants/Applicants? And

(v) Whether the 1st Respondent admitted/conceded to the release of 10% employer's contribution made by the 1st Respondent to the 2nd Respondent.

[9] Under Order 15 of the Civil Procedure Rules S.I 71-1, the framing of issues is a duty of the Court. In a trial, issues are agreed upon and framed at a scheduling conference.[3] However, there was no such conference in the application before us. Under Order 15 Rule 5 CPR, the Court can amend and strike out issues. Ultimately, as Mubiru J. puts it in Okello **Johnson v Lalam Angella**[4] issues submitted by one party should not be mechanically adopted by the Court as it is primarily the Court's duty to frame the issues in a case. In other words, the Court will have the final say in framing the issues for determination before it.

[10] In their written submissions, Counsel for the Applicants submitted on the issues as they had proposed them. Counsel for the 2nd Respondent did not oppose the application save for asking not to be condemned in costs. Counsel for the 1st Respondent sought to argue

[3] See Order 15 rule 1(5) CPR.
[4] H.C. Civ Appeal No. 019 of 2019

issues 1, 3, and 4 jointly and issues 2 and 5 individually. We think the 1st Respondent's approach is agreeable in grouping the issues but not for the reasons that they suggested.

[11] In our view, issues 1, as raised by the Applicants and issues 1,2 and 3, as raised by the 1st Respondent, relate to vacating the consent temporary injunction or rendering the main claim nugatory. In contrast, issues 2 and 3, raised by the Applicants and issue 5, raised by the 1st Respondent, can be resolved together as they relate to access to an audited amount now retained by the 1st Respondent. In the circumstances and under Order 15 Rule 5 CPR, all the issues raised by all the parties can be reframed for determination as follows;

(i) ***Whether the consent temporary injunction in LDMA 25 of 2015 should be vacated?***

(ii) ***Whether the 1st Respondent has admitted to the release of 10% of employer contribution made by the 1st Respondent to the 2nd Respondent and, if so, whether it should be retained by the 1st Respondent?***

(iii) ***Whether the Respondents should jointly and severally pay legal fees and costs so far incurred by the Applicants?***

Analysis and resolution of issues

Issue No 1. Whether the consent temporary injunction in LDMA 25 of 2015 should be vacated?

[12] After perusing the affidavits in support of and against the present application, the annexures thereto, and the record, a summary of the history of this matter is necessary.

[13] The dispute arises from High Court Civil Suit No. 79 of 2015 in which the Plaintiffs who are the *(present Applicants*). This suit was found to fall within the jurisdiction of the Industrial Court and was transferred to this Court on the 17th of March 2015. In the main claim, the Applicants, former employees of the 1st Respondent, sought declaratory remedies to protect their Social Security Fund contributions held by the 2nd Respondent, interest thereon, damages and costs. The 1st Respondent opposed the main claim, contending inter-alia that the 2nd and 3rd Applicants were ineligible members of it being in excepted employment and any contributions made by it to the 2nd Respondent were made in error or under a mistake of law. In due course, the Applicants filed Labour Dispute Miscellaneous Application No. 25 of 2015, which application resulted in a consent temporary injunction on the 31st of March 2015. By this consent injunction, the Industrial Court entered three orders;

" (i) That a temporary injunction be issued restraining the 2nd Respondent, National Social Security Fund, its agents, servants or managers, from effecting any refund of the contributions made by the 1st Respondent as employer and the Applicants as employees to the 2nd Respondent from

1998 to-date pending the determination of the Labour Claim No. 26 of 2015.

(ii) That the 2nd Respondent stays any payments to the Applicants until the disposal of Labour Claim No. 26 of 2015

(iii) Miscellaneous Application No. 24 of 2015 referred to above is hereby withdrawn and

(iv) Costs shall be in the cause"

[14] It is this injunction that the Applicants now seek to vacate.

[15] It was submitted for the Applicants that since the 2nd Respondent, who is holding the 10% employer contribution, does not object to the application and the 1st Respondent had not filed any affidavit in reply, the application should be taken as uncontested, and the Court should vacate the said temporary injunction. On the 6th of March 2024, when Counsel for the Applicants filed these written submissions, the 1st Respondent also filed its affidavit in reply. The Applicants filed an affidavit in rejoinder to the 2nd Respondent's affidavit in reply on 11th March 2024, the exact date the 1st Respondent filed its written submissions. This Court's observations on late filing are in paragraph [16] above.

[16] Be that as it may, the 1st Respondent submitted that the purpose of a temporary injunction is to preserve the status quo and prevent the main claim from being rendered nugatory.[5] It was submitted that granting the orders would reverse the status quo and dispose of the main claim without the 1st Respondent defending itself. We were referred to various passages of the plaint and written statement of defence and authorities of decided cases[6] for the proposition that applications seeking release of monies deposited in Court before the conclusion of the main suit were premature. It was argued that the 10% employer's contribution is subject to the suit, and granting the orders in this application would render the main suit nugatory.

[17] It was also submitted that there were no legal grounds for vacating the consent order of injunction. Citing **Betuco Uganda Ltd & Anor v Barclays Bank Uganda Ltd & 3 Ors** [7] for the proposition that a consent judgment is to be upheld unless it is vitiated by reason that would enable the Court to set aside an agreement such as fraud, mistake, misapprehension, or contravention of Court policy. It was argued that no such grounds were listed in this application. It was argued that the partial variation of the consent order did not affect the 10% employer contribution and that a determination to prove entitlement and eligibility was still pending before this Court. We were asked to dismiss the application.

---

[5] Counsel cited Noor Mohammed Janmohamed v Kassmaali Virji(1953) 20 E.A.C.A 80

[6] Counsel cited Dr. Muhammed Buwule Kasasa v The Administrator of the Estate of Sir Edward Mutes II & 6 Ors H.C.M.A No. 271 of 2023 and Space Marketing Uganda Ltd v Equifax Uganda Ltd & 4 Ors H.C.M.A 969 of 202

[7] S.C.C.A No. 01 of 2017 where the Court relied on Hirani v Kassam[1952] EACA 131 and a passage from Seaton on Judgments and Orders

[18] In rejoinder, Counsel for the Applicants submitted that H.C.M.C No. 68 of 2015 was instituted in contempt of Court and wrongfully and the Court of Appeal set aside the decision of Mugambe J. It was suggested that the 1st Respondent's submissions were half-hearted and late, and given the admission in the Daily Monitor of 28th November 2022, the legal issues raised did not arise. Counsel also referred to Ms. Sebatindira's grounds for an application for an extension of time for administration before Ssekaana J. in which His Lordship granted Ms. Sebantindira and the Government of Uganda time to conclusively deal with the pending rights and issues of the terminated employee benefits and payment of NSSF Contributions. Professor Barya pressed the point that both legs of the main claim had been admitted and that since the 5% employee contributions had been accessed, the 10% employer's contribution should be accessed.

Determination

[19] It is common cause that the consent temporary injunction order was entered into on the 31st of March 2015 by all parties who are the same parties before us now. For the avoidance of doubt, the consent was entered into in the presence of Professor John Jean Barya, Counsel for the Applicants, Rashid Kibuuka, Counsel for the 1st Respondent and Ms. Patience Kabiije and Ms. Rachel Nsenge, Counsel for the 2nd Respondent. Professor Barya now appears for the Applicants, and Ms. Nsenge has deponed an affidavit in reply for and on behalf of the 2nd Respondent. Therefore, it is undisputed that a consensual agreement was reached in the terms contained in the order of this Court sealed on the 31st day of March 2015 in LDMA No. 25 of 2015. The short question is whether this order can be vacated.

[20] The position of the law regarding vacating a consent order is, as correctly submitted by Counsel for the 1st Respondent, well settled. There is both a wealth and weight of decided cases on the point, and a short revisit to some decisions illustrates judicial consensus on principle considerations for such variation;

(i) In **Ladak Abdulla Mohamed Hussein v Griffiths Insingoma Kakiiza & 2 Others**[8] Odoki J.S.C(*as he then was)* considering the powers to set aside consent orders, cited Order 9 Rule 9 CPR holding that it is not restricted to setting aside ex parte judgments but covers consent judgments entered by the registrar. It was His Lordship's view that the rule gives the Court unfettered discretion to set aside or vary such judgments upon such terms as may be just.

(ii) In **Attorney General and Another v James Mark Kamoga and Another** [9] Mulenga J.S.C *(as he then was)* and who acted[10] for the Respondents in **Ladak** (*supra*) corrected what he felt was an accidental slip in **Ladak** where the Court had referred to Order 9 r 9 CPR instead of the wording contained in Order 50 r 2 CPR where the Registrar may enter judgments in contested and uncontested cases. His

[8] S.C.C.A No 8 of 1995
[9] S.C.C.A No. 8 of 2004[2008] UGSC 4
[10] The Late Honourable Justice Joseph Nyamihana Mulenga(J.S.C) attended Inns of Court at Middle Temple and was called to the bar in 1966. He practiced law and was appointed to the Supreme Court of Uganda in 1997. He appeared for Mr. Griffiths Isingoma and others in the Ladak case.

Lordship was emphatic that consent judgments are treated as fresh agreements and may only be interfered with on limited grounds such as illegality, fraud or mistake and Ismail **Sunderaji Hirani v Noorali Esmail Kassam**[11], where the Court of Appeal of East Africa approved the principle and adopted the passage from Seton on Judgments and Orders, 7th Ed., Vol. 1 p. 124[12] (*Counsel for the 1st Respondent cited this too).* The Court concluded that it is a well-settled principle, therefore, that a consent decree must be upheld unless it is vitiated by a reason that would enable a Court to set aside an agreement, such as fraud, mistake, misapprehension, or contravention of Court policy.

(iii) The principle runs in **Mohamed Allibhai v W.E. Bukenya and Another**[13], **Kananura Andrew Kansiime v Richard Henry Kajuka**[14] **Robert Miggade v Musoke Tadeo and 4 Others**[15] **Geoffrey Opio v Felix Obote and 2 Others**[16] and a plethora of decisions by the Courts of Judicature.

[21] Therefore, the threshold for vacating or setting aside a consent judgment or decree is where it is vitiated if it was entered into without sufficient material facts, or misapprehension or in ignorance of material facts or that there was illegality, fraud, mistake, contravention of Court policy or any reason which would enable the Court to set aside an agreement.

[22] In the motion and supporting affidavits, the Applicants do not make a case for vacating the consent temporary injunction on any grounds articulated in paragraphs [20] and [21] above. Secondly, the Applicants do not anchor this application on any grounds enunciated in the authorities of decided cases. Their case is that the 2nd Respondent, who is holding the 10% contribution, does not object to vacating the order and entering and replacing the order with one, permitting all qualifying beneficiaries access to the 10% employer contribution with interest. The 1st Respondent has admitted the application. We shall return to the admission in our consideration of that issue. But for emphasis, the grounds suggested by the Applicants are not traditional grounds for the consent order to be set aside or vacated. The Applicants have not pleaded fraud, mistake, misapprehension, or any other grounds upon which this Court should vacate or set aside any agreement and, therefore, consent order of 31st March 2015. For this reason, considering the law on the point, we would decline to grant the motion to vacate, and it would fail.

[23] If we were to consider the motion to vacate as a variation of the consent order entered on 31st March 2015, while the 2nd Respondent does not object, the 1st Respondent is opposed to vacating the order and replacing the restraining order with an order for

---

[11] CA 11 of 1952 [1952] 19 EACA

[12] The passage reads *"Prima facie, any order made in the presence and with consent of counsel is binding on all parties to the proceedings or action, and cannot be varied or discharged unless obtained by fraud or collusion, or by an agreement contrary to the policy of the Court ... or if the consent was given without sufficient material facts, or in misapprehension or in ignorance of material facts, or in general for a reason which would enable a Court to set aside an agreement."*

[13] S.C.C.A No.56 of 1996

[14] H.C.M.A No. 763 of 2013

[15] H.C.M.A No 109 of 2017

[16] H.C.M. A No. 0081 and 0082 of 2018

payment. The 1st Respondent argues that the question of eligibility and entitlement is still pending before this Court. It is argued that the contributions were made in error.

[24] Counsel for the 1st Respondent drew our attention to the purpose of a temporary injunction. It was submitted that the purpose is to preserve the status quo and prevent a claim from being rendered nugatory. This proposition was anchored on the **Noor Mohammed Janmohammed***(supra)* case. The nature of the injunction is to regulate the position of the parties pending trial whilst avoiding a decision on the issues which could only be resolved at trial.[17] In the matter before us, the Applicants seek several things; the first is to vacate the order of injunction and replace it with an order of access to the 10% contribution. The Applicants seek to retain an audited sum with the 1st Respondent and the interest and costs incurred. The 1st Respondent objects and suggests that this changes the status quo and that the question of eligibility and entitlement to the 10% contribution remains unresolved.

[25] There is jurisprudence on grounds upon which a temporary injunction can be vacated. In **Seroma Limited v Erimu Company Ltd**[18], Mugenyi J.(*as she then was*) cited the law applicable in such applications as the present one to be under Order 41 rule 4 CPR, which provides that any order for an injunction may be discharged, or varied, or set aside by the Court on application made to the Court by any party dissatisfied with the order. The principle considerations for such discharge, variation or setting aside were laid out by Lady Justice Victoria Nakintu Nkwanga Katamba in **Joyce Byehondozo v A.G and Another**[19] Her Lordship holds:

> *"The Supreme Court in the case of* ***Robert Kavuma v Hotel International SCCA No. 08 of 1990*** *cited in* ***UNBS v Ren Publishers Limited and Anor M.A No. 635 of 2019*** *held that an application to set aside, vary or discharge an interlocutory injunction may be granted upon evidence of sufficient cause."*

[26] Her Lordship, citing **Black's Law Dictionary**[20], defined sufficient cause as analogous to good cause or just cause, which simply means legally sufficient reason. Sufficient cause is often a burden placed on a litigant by Court rules or orders to show why a request should be granted or action or inaction excused. The Court found a ground seeking to vary an injunction on the ground that the Respondent was not respecting the same and was in contempt not to have been sufficient cause on the evidence before the Court. In **Rashid Nyende and Others v Shoprite Checkers Ltd**[21] this Court traced just cause, which is analogous to sufficient cause, to its Latin origin "justa causa" or "causa justa," meaning lawful ground.[22]

[27] The narrow question before this Court would be whether the Applicants demonstrated sufficient cause to vacate the consent temporary injunction. The answer to this question is no. From the evidence before us, the Applicants have yet to advance any lawful ground

---

[17] "Commercial Litigation: Pre-emptive Remedies" by Iain Goldrein and K.H.P Wilkinson at page 1
[18] H.C.M.A No. 214 of 2015
[19] H.C.M.A No. 83 of 2020
[20] 8th Edn at page 231
[21] LDMA 31 of 2023
[22] Black's Law Dictionary 11th Edn by Bryan Garner at page 1033

for vacating the consent order and replacing it with another order. We shall return to the idea of a replacement order before taking leave of this matter. We also cannot agree with Counsel for the Applicants that the application to vacate is tenable because, as correctly submitted by Counsel for the 1st Respondent, the motion seeks to change the status quo. Whatever has been preserved by virtue of the consent temporary injunction would be uprooted by replacing the order for access. The possibility that replacing the order would determine the dispute between the parties and dispose of the whole suit is high. This is a new order, and we are not inclined to grant the motion on that ground.

[28] Further, under Order 25 rule 6 CPR, where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, the Court may, on application of a party, order the agreement, compromise, or satisfaction to be recorded, and pass a decree in accordance with the agreement, compromise or satisfaction in so far as it relates to the suit. In the matter before us, there is no meeting of the minds amongst all the parties to the matter. We acknowledge the agreement between the Applicants and the 2nd Respondent, but this Court would not find that a common position has been reached between the Applicant and the 1st Respondent. In **Miggade** *(supra)*, Namundi J. found that a consent judgment entered into without an affected party's input derogated that party's right to a fair hearing. In the matter before us, considering that the 1st Respondent is opposed to the application to vacate the consent order, we would not accept the Applicants' contention that the application is uncontested. On this leg, the motion to vacate would fail.

[29] Therefore, our answer to issue one is in the negative. We are not satisfied that the Applicants have good or any grounds in support of the motion to vacate the consent order of 31st March 2015.

Issue No. 2: Whether the 1st Respondent has admitted to the release of 10% of employers' contribution made by the 1st Respondent to the 2nd Respondent, and if so, whether it should be retained by the 1st Respondent?

[30] The Applicant's contention on the admission both in its submissions in the main and in rejoinder, is that the 1st Respondent's Administrator, Ruth Sebatindira S.C in a Press Release in the Daily Monitor Newspaper of the 28th of November 2022, admitted that a sum of UGX 16,311,992,461/= is due in unremitted contributions to the 2nd Respondent and is to be settled in the GOU FY 2022/2023. On this basis, the 1st Respondent's Administrator obtained an extension of the administration period to deal conclusively with the pending issues or rights of terminated workers and payment of NSSF contributions.

[31] On its part, the 1st Respondent submits that the press release has the effect of a general application to other creditors of the 1st Respondent and is not specifically referring to the Applicants.

Determination

[32] The law on admissions is very well settled. Section 16 of the Evidence Act Cap.6 provides that an admission is an oral or documentary statement that suggests an inference as to

any fact in issue or relevant fact and which is made by any person. Sections 17 to 19 of the Evidence Act define circumstances under which admission may be made. According to the Uganda Civil Justice Bench Book[23] an admission is an acknowledgement that particular facts are true.

[33] The law on admissions states that they dispense with the need for proof of a fact and mean that a party has conceded to the truth of an alleged fact.[24] The admission must be unambiguous, clear, unequivocal, sufficient, plain and obvious.[25]

[34] In the case before us, the admission is said to be contained in the Daily Monitor Newspaper of the 28th of November 2022. The extract of the said admission is from a Press Release signed by the 1st Respondent's Administrator, Ruth Sebantindira, under the general heading of "IN THE MATTER OF THE SALE AND PURCHASE OF ASSETS OF UGANDA TELECOM LTD-IN ADMINISTRATION". Under the title "3.0 Settlement of Claims and Court Directions" is as follows:

> *" Therefore in accordance with the provisions of the Act, the Deed and the Direction of the High Court of Uganda, proceeds from the Sale of the Assets will be applied as follows:*
> .....
> *d) UGX 16,311,992,461 towards settlement of unremitted contributions to the National Social Security Fund. This claim will be settled by the end of GOU FY 2022/2023....."*

[35] In paragraph 4.0 of the press release, after reporting on the status of administration, the 1st Respondent's Administrator noted;

> *"In view of the above, all Creditors are notified that NOT ALL CREDITORS' CLAIMS WILL BE PAID as the proceeds from the Sale of UTL Assets are far less than the value of verified Creditors' claims. Each creditor will be availed a full report of the Administration and be formally notified of the status of his or her claim."*

[36] These extracts raise three questions: the first is whether the press release would be admissible, the second is whether the admissions are unambiguous and clear and, thirdly, from a reading of Order 13 r6 CPR, whether the Court should enter judgment on admission.

[37] On the first question, in **Spear Motors Ltd vs Attorney General & Two Others**[26] the Honourable Lady Justice Irene Mulyagonja Kakooza was considered an objection to newspaper articles on the authority of **Attorney General v. David Tineyfuza**[27] where Wambuzi C.J (*as he then was*) found newspapers to be inadmissible as hearsay under Section 62 of the Evidence Act requiring production of the original. Her Lordship, relying

[23] Published by the Law Development Centre
[24] See Matovu Luke & ORS vs. Attorney General, HC Misc. Appl. No. 143 of 2003.
[25] See Consolidated Bank of Kenya Ltd v Mombasa Development Ltd and Another
[26] H.C.C.S 692 of 2007
[27] Constitutional Appeal No.1 of 1997

on the dicta Oder J.S.C where hearsay evidence may be admissible under the *res gestae* principle, found the publication of the articles in the press formed part of the happenings when a tender awarded to the plaintiff was cancelled because they are *res gestae*. Based on the facts in the matter before us, the 1st Respondent has not denied the issuance of the press release. Counsel for the 1st Respondent suggested that the Press Release was of general application to other creditors of the 1st Respondent. In our view, the Press Release would, therefore, be admissible in Court. In any event, Section 18 of the Labour Disputes (Arbitration and Settlement) Act, 2006, does not enforce the application of strict rules of evidence in civil proceedings to resolve employment disputes.

[38] On the second question, whether the above admission was clear and unambiguous, the 1st Respondent's statement in the release is that a sum of UGX 16,311,992,461/= is due in unremitted contributions to the 2nd Respondent. This is a plain statement. It names a sum due and suggests it is due to the 2nd Respondent in unremitted contributions. Counsel Akello submitted that this had the effect of a general application to other creditors. This begs the question of whether the 2nd Respondent, the National Social Security Fund, could, in the context of paragraph 3.0(d) of the Press Release, be considered other creditors? We think the answer to that is not at all. The reference was to the 2nd Respondent concerning unremitted contributions. The preamble to the apportionment by the 1st Respondent is that its recital included a verification process that has confirmed the 1st Respondent's indebtedness as against its assets and particularly UGX 16,311,992,461 to be unremitted benefits due to the 2nd Respondent. In paragraph 3 of the Press Release, the Administrator indicates that she sought the Court's guidance in High Court Miscellaneous Application No. 784 of 2020 and was directed to rank the creditors by the Insolvency Act, 2011. Section 12(6)(b) of the Insolvency Act provides a ranking in priority of contributions to the National Social Security Fund, placing them in 6th place in preferential debt after tax. We think that the press release, against the background of the administration of the 1st Respondent, clearly envisaged the unremitted contributions to the National Social Security Fund, which is now the subject matter of these proceedings before the Industrial Court. We cannot accept the proposition that paragraph 3.0(d) of the Press Release was of general application. It was not. The Press Release is about facts surrounding unremitted contributions of UGX 16,311,992,461/= by the 1st Respondent to the 2nd Respondent. The Press Release is not about anything else. It is not that this Court has set out to establish what meanings could be ascribed to or inferred from the press release. But that the only possible answer as to whether there was an admission in press releases of facts of the matters before this Court in respect of the unremitted NSSF Contributions, in the words of a bystander, would be *"of course there was"*.[28] We, therefore, find that there was an admission of facts relating to the unremitted contributions of UGX 16,311,992,461/= by the 1st Respondent to the 2nd Respondent.

[39] The final question for this Court on the admission is whether we should enter judgment on an admission? This Court has applied the rules of Civil Procedure wherever there is a lacuna in our own rules of procedure. This application is itself brought under O52 CPR. Order 13 Rule 6 CPR reads as follows:

[28] See M.Ssekaana and S.N Ssekaana Civil procedure and Practice in Uganda at page 72.

> *"Any party may at any stage of a suit, where an admission of facts has been made, either on the pleadings or otherwise, apply to the Court for such judgment or order as upon the admission he or she may be entitled to, without waiting for the determination of any other question between the parties: and the Court may upon the application make such order, or give such judgment, as the Court may think just"*

The rule confers on the Court, discretion to enter a judgment on admission. In **Agricultural Finance Corporation vs. Kenya National Insurance Corporation**[29] the Court of Appeal of Kenya observed that judgments on admission is not a right but a discretion and should not be entered if objections raised that go to the foot of that matter. Final judgments ought not to be passed on admissions unless they are clear, unambiguous and unconditional.

[40] This Court notes that the administration of the 1st Respondent is Court-supervised under Section 173 of the Insolvency Act, 2011. Under this section, the Court gives an administrator direction. The direction, as cited clearly by Counsel for the Applicants, is that the High Court extended the administration of the 1st Respondent for 12 months to give them time to conclusively deal with pending issues/rights of terminated employee benefits, payment of NSSF contributions and payment of priority creditors. The Applicants annexed the order of the High Court in M.A 356 of 2023. By this Order dated the 24th of July 2023, the Administrator was required to report to the High Court at the end of the first two quarters, which would mean the end of December 2023. The Daily Monitor Press Release is dated the 11th of November 2023 and is towards the end of the 2nd quarter of the financial year 2023-2024. The press release is in accordance with the reporting requirements. But does the press release, therefore, conclusively deal with the matter of the 1st Respondent's contributions to the Applicant's benefits to the NSSF?

[41] The main claim before us and Professor Barya correctly puts it, has two limbs: the 10% remitted contributions held by the 2nd Respondent, which the Applicant now wants to be released and is not subject to the Press Release by the 1st Respondent and the 15% unremitted contribution, the subject matter of the Press Release. The admission relates to the unremitted contribution, for which neither the 1st Respondent nor the Government of Uganda has taken full responsibility. Ms. Akello argues that there are some ineligible Claimants, some payments were in error, and some employment was. In effect, Counsel raises questions of entitlement to the remitted and unremitted contributions. In this regard, we do not think this is an admission that brings the matter to rest because the questions still abound. The admission is construed as the unremitted contributions to the 2nd Respondent, the sole National Social Security Fund in Uganda. It is also subject to clause 4.0 of the press release and the final determination of rights of terminated employees and contributions as spelt out in the order of Ssekaana J. As we have noted, there are two limbs to these benefits. In **Nasra Ali Warsame v Osege Rajab**[30] where Kawesa J. cited **O Hare and Hill: Civil Litigation 10th Edition**[31] it was the position that the

[29] Civil Appeal No. 271 of 1996 cited in Bwambale & 1016 ors v Attorney General (Civil Suit No. 660 of 2002) [2012] UGHC 89 (9 May 2012)
[30] H.C.C.S No. 003 of 2013
[31] At page 311

admission must be sufficiently clear that the issue in question can be closed. Similarly, in **United Insurance Company Ltd v Waruinge & Others**[32] it is observed that a judgment on admission cannot be granted where points of law have been raised and where one has to resort to interpretation of documents to reach a decision. Given these dicta, which we find persuasive, we cannot accept Professor Barya's argument that because of one admission, we should not consider the questions of excepted employment, entitlement and eligibility. Conversely, a resolution of these questions should put the matter to rest at once. For this reason, we do not think the admission will resolve the matter and close it. We are, therefore, unable to enter judgment on admission.

[42] However, we are of the mind that there is a practicable approach to resolving this dispute, and we shall return to this point before taking leave of this ruling.

Issue No. 3: Whether the Respondents should jointly and severally pay legal fees and costs so far incurred by the Applicants?

[43] Counsel for the Applicant argued that since the 1st Respondent did not file an affidavit in reply and the 2nd Respondent did not oppose the application, the 1st Respondent should pay the costs of the application and costs incurred so far. Counsel argued that the Respondents had caused the Applicants to file this motion and the main cause in the High Court and now before the Industrial Court because Section 34(4) of the NSSF Act protects the Applicant's savings from application to legal fees or costs.

[44] The 2nd Respondent argues that because it is desirous of enabling the Applicants access their benefits and because it has not objected to the event of vacating the injunction, condemning it in costs would be inequitable.

[45] The 1st Respondent argues that under Section 27 CPA, costs follow the event and that this application is an abuse of process for which the Applicants are not entitled to costs.

Determination

[46] Under Section 27(1) CPA, it is provided that the costs of and incidental to all suits shall be at the discretion of the Court or judge, and the Court or judge to decide by whom and out of what property costs are to be paid and to give the necessary direction for these purposes. Further, under Section 27(2) CPA, costs follow the event unless, for good cause, the judge shall decide otherwise.

[47] Under Section 8(2a) of the Labour Disputes (Arbitration and Settlement) (Amendment) Act, 2021, the Industrial Court is imbued with the power of the High Court in the exercise of its functions and can grant costs as it deems fit.

[48] First, the event in the present circumstances is that the application has not succeeded. Therefore, the event would be that the application is dismissed, for which the

[32] [2003] KLR 629 cited in M. Ssekaana and SN Ssekaana Page 320

Respondents would be entitled to costs. However, as this Court has ruled variously, the award of costs in employment disputes is the exception because of the nature of the employment relationship where it is sought to balance the scales between an employee whose financial circumstances would have been affected by job loss and an employer whose financial standing is more positive. Therefore, employment and labour relations Courts[33], will be reluctant to impose an order of costs against a losing party except where the losing party is culpable for some misconduct or has filed a frivolous matter before the Court. We have not found the Applicants culpable to impose an order of costs against them.

[49] Secondly and perhaps more importantly, the Applicant seeks costs incurred so far. This proposition is not very well grounded in law. What would this event be? In **Nathan Wolukawu Wanda and 3 Others v Attorney General**[34] Kawesa J. cited Richard Kuloba in his book **Judicial Hints on Civil Procedure**[35] where costs are described as a means by which a successful litigant is recouped for expenses to which he has been put in fighting an action and these costs in most case follow the event. Most importantly, his Lordship adds, *"the event means the result of all proceedings incidental to the litigation. The event is the result of the entire litigation."*

[50] Therefore, costs in the matter before us would mean the costs, if they were to be awarded, are at the successful conclusion of Labour Claim No. 26 of 2015. The matter before us has yet to be decided to determine which is the successful party and, thus, subject to the exception in employment disputes, deserves an award of costs. The costs now sought are interim or interlocutory costs. The circumstances under which a defendant may be asked to meet intermediary costs include, according to the Learned Authors M. Ssekaana J. and SN Ssekaana in **Civil Procedure and Practice in Uganda,**[36] costs in the cause where the costs of an interlocutory application are borne by the successful party at the end of the litigation. Where the Court grants either the Plaintiff or Defendant costs in the cause, the costs will follow the event of the successful party in the interlocutory matter even if the other party is successful overall. The authors also describe costs in any event as where the successful party will be entitled to costs regardless of the final outcome of the action. The Learned authors also describe costs thrown away, reserved and no order as to costs.

[51] The circumstances of the matter before us are that the Applicants seek costs incurred thus far. From our reading of the law on cost, costs incurred thus far do not have a firm or well-grounded legal foundation. It may well be that the Applicant's benefits cannot be applied to costs, but LDMA 25 of 2015, which the Applicants seek to vacate, did itself provide for costs in the cause. These would only await the final outcome of the main claim. Therefore, we do not think there is sufficient legal ground to award costs incurred thus far and would decline to grant the order of costs.

---

[33] See LDR 109 of 2020 Joseph Kalule v GIZ where this Court considered the practice in the United Republic of Tanzania, Australia and the United Kingdom.

[34] H.C.M.A No. 207 of 2012

[35] 2nd Edn Page 94-95 Richard Kuloba.J served in the Kenyan Judiciary and is a Professor of Law and Practicing Barrister.

[36] At page 407

Conclusion

[52] After objectively considering the facts before us, the submissions, and the applicable law, we do not consider that the Applicants have satisfied any grounds for vacating the consent temporary injunction in LDMA 26 of 2016. We are not inclined to enter judgment on admission as the 1st Respondent raises objections to the admission that merit a determination by this Court. We also do not find any order for costs incurred thus far should be made in this application. The application fails and is dismissed with no order as to costs.

[53] Before taking leave of this matter, we indicated in paragraph 42 above that we would return to a practical approach to resolving this dispute. We note that from the pleadings and this application itself, the Applicants make the point that the only outstanding matter or matters in this dispute revolve around eligibility and entitlement to the 10% contribution held by the 2nd Respondent. The 1st Respondent argues that some remittances were made in error because the Applicants were in excepted employment. There are other incidental claims relating to interest on the audited amount. The Applicants also suggest that this can be further negotiated. This proposition assumes that the 1st Respondent or the Government of Uganda accepts liability, which it has not. In our view, the management of this claim requires that the questions be heard and finally determined instead of leaving the matter at large. A subsisting consent injunction order holds the 10% remitted funds pending the finalization of the dispute. That preserves the status quo as injunctive relief should. In our view, determining the rights to the unremitted should be adjudicated upon. While partial settlements are helpful in the manner that a 5% contribution was released, ultimately, deciding all questions in this matter is a final disposition of all issues in controversy. It settles the rights of the parties.

[54] Unenviably, this matter, initially filed in the High Court in 2015, has resided in the Courts for nearly ten years. It has not yet been heard and determined on its merits. Its procedural history has twists and turns without addressing the issues. The injunction now sought to be vacated was issued eight years, eleven months and twenty-eight days ago. It is but two days shy of its ninth anniversary. It is inimical to the cause, course and interests of justice and the Applicants' claims that they should stand undetermined nine years from the institution of the claim. From these proceedings and the arguments of Counsel, the unanswered questions relate to eligibility, entitlement, and error. These can and should be determined. There is a claim before this Court that can be determined finally. Indeed, in **The Managing Director NSSF and 197 Ors v Uganda Telecom Ltd**[37] and **Uganda Telecom Limited v The Managing Director NSSF and 3 Ors**[38] Cheborion Barishaki J. A considered the consolidated appeals where the NSSF (the 2nd Respondent herein) contended that there as it does here that the Applicants were excepted employees. His Lordship found that the matters relating to the Applicants herein were before the Industrial Court, which has jurisdiction over the matter. To settle the dispute in His Lordship's words, a Court would need an interpretation of the applicable provisions of the NSSF Act. That is the direction this matter should take. We must test the thesis of excepted employment, error and eligibility, against the Applicants claims of entitlement.

[37] C.A.C.A No. 285 of 2016
[38] C.A.C.A No. 076 of 2016

[55] In that regard and considering that Section 8(2) of LADASA imposes on this Court a statutory imperative to expedite the disposal of labour disputes, we now direct that the file in Labour Claim No. 26 of 2015 be called immediately after this ruling to fix the same for a fast-tracked hearing and expedited final determination of the dispute.

It is so ordered.

Signed in Chambers at Kampala this 28th day of March 2024

Anthony Wabwire Musana,
Judge, Industrial Court

THE PANELISTS AGREE:

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

28th March 2024
10.47 a.m.

Appearances

1.	For the Applicants:	Prof. John Jean Barya 30 Applicants in Court.
2.	For the 1st Respondent:	Ms. Genevive Akello
3.	For the 2nd Respondent:	Ms. Connie Nuwera

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

Ms. Genevive Akello: Matter is for ruling, and we are ready to receive it.

Court: Ruling delivered in open Court.

Anthony Wabwire Musana,
Judge, Industrial Court