

THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
MISCELLANEOUS APPLICATION NO. 62 OF 2022
(ARISING FROM APPEAL NO. 14 OF 2021 AND KCCA/CEN/LC/192 OF 2017 AND
KCCA/CEN/LC/193 OF 2017)

CARE INTERNATIONAL IN UGANDA:.....:APPLICANT

VERSUS

1. HENRY MUTABABZI

2. ALFRED ARIKO:.....:RESPONDENTS

BEFORE:

THE HON. JUSTICE ANTHONY WABWIRE MUSANA

PANELISTS:

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

RULING

1.0. Introduction

This ruling is in respect of an application for leave to appeal against the decision of Ms. Irene Nabbumba, the labour officer Kampala Capital City Authority, in Labour Complaint KCCA/RUB/193/2017 dated 2nd June 2021, on questions of fact. It was brought under Rule 24 of the Labour Disputes (Arbitration and Settlement (Industrial Court Procedure) Rules 2012.

2.0. Mr. Michael Tugyetwena, a Director of Operations of the Applicant filed an affidavit in support. The gist of this affidavit is that the Labour officer made errors of fact and as such the grounds of appeal require a review of the facts in the labour officer's decision.

3.0. When the matter was called for hearing on 28th November 2022, Mr. Andrew Kahuma, appearing for the Respondents, indicated that he needed time to file affidavits in opposition. Counsel was given up to the 16th of December 2022 to file the said affidavits. When the matter came up for highlighting of submissions on the 20th of December 2022, Mr. Kahuma informed Court that he had been unable to file any documents and left the matter to Court.

- 4.0. Mr. Ernest Kalibbala, appearing for the Applicant, prayed that the application be allowed. He also filed written submissions in support of the application.
- 5.0. In the absence of an affidavit in reply and as correctly pointed out by Counsel for the Applicant, the application would stand unopposed. That would be the end of the matter but for completeness, we will consider the merits of the application.
- 6.0. **Submissions of Counsel for the Applicant.**
Counsel submitted that the Labour Officer made errors of fact in (i) her analysis of the reasons for termination and (ii) a finding of sufficient funds to justify the continued employment of the respondents. The labour officer did not understand all the facts, selectively evaluated some facts, and ignored other facts. It was the Applicant's case that by reason of the said errors, the Labour reached wrongful conclusions. Counsel relied on the case of **LDMA No. 018 of 2021 Kampala Playhouse Limited & 20 Others Vs Oligo James & 19 others** in support of the proposition that there is a thin line between the evaluation of evidence as a point of law and as a point of fact. He asked that the application be granted.
- 7.0. **Consideration of the Merits**
Under Section 94(2) of the Employment Act 2006, an appeal shall lie on a question of law, and with leave of the Industrial Court, on a question of fact forming part of the decision of the labour officer. Our reading of the provision is that the intending appellant must satisfy the Court that the question or questions of fact upon which he or she intends to anchor their appeal, must have formed part of the decision of the labour officer.
- 8.0. In the matter before us at paragraphs 8-10 of his affidavit in support, Mr. Tugyetwena deposes to the fact that the labour officer's ruling contained questions of law and fact. He attached the memorandum of appeal containing 3 grounds on questions of law and 2 grounds on questions of fact. It these 2 grounds on questions of fact for which leave is sought. The grounds relate to failure to evaluate evidence on reasons of termination and proof of funds to justify termination thereby arriving at a wrong conclusion. At paragraphs 3 on page 7 and paragraphs 3 and 4 on page 8 of her decision, the Labour Officer pointed to a finding on dwindling funds of the project as the reason for termination of the Respondents. These are findings of fact. The Applicant has suggested that the Labour Officer did not properly evaluate the evidence and thereby arrived at a wrong conclusion. This Court has ruled that the ground of

failure to evaluate evidence is essentially a matter of law.¹ We have not been moved nor do we find reason to depart from that decision. For this reason we are inclined to and hereby grant the application for leave to appeal the decision of Ms. Irene Nabbumba, the labour officer Kampala Capital City Authority, in Labour Complaint KCCA/RUB/193/2017 dated 2nd June 2021, on questions of fact.

9.0. Orders of the Court

It is therefore our order that the application succeeds. However, the Court is of the persuasion to expedite the appeal. In that regard, the Court issues the following directions:

- (1) The Memorandum of Appeal shall be filed and served within 7 days.
- (2) The Parties shall appear before the Court on 27th January 2023 for further directions.
- (3) Costs of the application shall abide by the outcome of the appeal.

It is so ordered.

Dated at Kampala this 9th day of January 2023

Delivered and Signed by:
ANTHONY WABWIRE MUSANA, Judge

PANELISTS

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

Ruling delivered in open Court in the presence of:

1. Mr. Andrew Kahuma for the Respondents.
2. Mr. Thomas Oosan holding brief for Mr Ernest Kalibbala for Applicant

Court Clerk: Mr. Samuel Mukiza.

¹ See LDA No. 040/2018 Onyango Robert vs Security Group (U), LDA No. 028/2018 Mubiru Martin vs Red Cross Society as cited in LDMA 018/2021 Kampala Playhouse Ltd & 20 ORS vs Oligo James & 19 ORS