



THE REPUBLIC OF UGANDA  
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA  
MISCELLANEOUS CAUSE NO. 001 of 2022

FINANCE AND ALLIED WORKERS UNION :::::::::::::::::::::::::::::::::::APPLICANT

VERSUS

HOUSING FINANCE BANK LTD:::RESPONDENT

**Before:**

The Hon. Justice Anthony Wabwire Musana

**Panelists:**

1. Hon. Jimmy Musimbi,
2. Hon. Susan Nabirye &
3. Hon. Michael Matovu.

**RULING**

**Introduction**

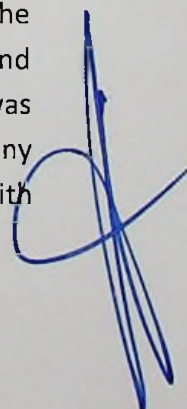
- [1] The Applicant is a Labour Union registered under the Labour Unions Act, 2006 (*from now LUA*) under Register No. LU-43. Between 25<sup>th</sup> August 2020 and 18<sup>th</sup> December 2020, the Applicant sought to enter a recognition agreement with the Respondent. By letter dated 23<sup>rd</sup> October 2020, the Respondent advised that it had a running recognition agreement with the National Union of Clerical Commercial Professional and Technical Employees and could not sign a recognition agreement with another union. The Applicant's view was that it was not bound by the National Tripartite Charter as an independent union and insisted on the recognition agreement. By letter dated 27<sup>th</sup> September 2021, the Applicant wrote to the Registrar of Labour Unions forwarding its complaint. This was followed by a letter dated 13<sup>th</sup> December 2021. On 22<sup>nd</sup> April 2022, the Applicant wrote a letter to the Registrar of this Court, suggesting that it had referred the matter to this Court by letter dated 3<sup>rd</sup> January 2022 under Section 24(6) LUA.

- [2] On the 6<sup>th</sup> of May 2022, the Applicant filed this cause seeking orders for the Respondent to recognise the Applicant and sign a recognition agreement, commence collective bargaining, a permanent injunction restraining the Respondent from enforcing part 3 section 36 and part 4 section 48 of the National Tripartite Charter on Labour Relations, an order for payment of lost income under the checkoff system, general and aggravated damages, interests and costs of the application.
- [3] The application was brought under Articles 40(3) and 50(1) & (2) of the 1995 Constitution, Section 40(2) of the Labour Disputes and Settlement Act 2006(*from now LADASA*), Sections 3, 4, 5 and 24 of the Labour Unions Act 2006(*from now LUA*) and the Judicature (Fundamental and other Human Rights and Freedoms (Enforcement Procedure) Rules 2019 S.I 31 of 2019 (*from now the Rules*).

**Applicant's affidavit.**

- [4] In the supporting affidavit, Mr. Richard Jimmy Dhobuazi, the Applicant's General Secretary, deposed that the Applicant wrote several letters to the Respondent seeking recognition for the purpose of industrial relations, collective bargaining and representation of her member rights. Still, the Respondent declined and started pursuing and terminating the Applicant's members on grounds of redundancy. A complaint was made to the Registrar of Labour Unions, who did not act. The Applicant then filed this cause before this Court.

**Respondent's reply**

- [5] The Respondent opposed the application by the affidavit of Mr. Kizito Mubiru Ssemanobe, the Respondent's Manager of Human Resources. He maintained that the application was incompetent, disclosed no cause of action, and should be summarily dismissed. He deposed to this Court not having original jurisdiction, or jurisdiction to entertain matters under the Judicature (Fundamental and other Human Rights and Freedoms) Enforcement Procedure) Rules 2019. He also deposed that the Respondent had a running recognition agreement with the National Union of Clerical Commercial Professional and Technical Employees and could not sign a recognition agreement with another union. The Respondent was unaware of any complaint made to the Registrar of Labour Unions or of any reference therefrom to this Court. We were asked to dismiss the application with costs.
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## Issues

- [6] When the matter came up for hearing, the parties were invited to address the Court through written submissions. The Applicant had proposed five issues. In our view, issues 1 and 2 relate to jurisdiction and issues 3 and 4 relate to recognition. Given the provisions of Order 15 Rule 1(5) of the Civil Procedure Rules S.1 71-1(*from now CPR*) and from the pleadings and submissions of the parties, the issues for determination are:
- i. *Whether this Court has jurisdiction to entertain this application?*
  - ii. *Whether the Respondent's refusal to recognize and sign the recognition agreement on account of the National Tripartite Charter on Labour Relations was justified?*
  - iii. *Whether the Applicant is entitled to the relief sought?*

## Analysis, Resolution and Decision of the Court

### *Issue 1: Whether this Court has jurisdiction to entertain this application?*

#### **Applicant's submissions.**

- [7] The Applicant submitted that it was expedient to deal with the question of jurisdiction because it had the effect of determining the matter. We agree with this proposition for the reasons we have set out in paragraph [12] below. But first, it was submitted for the Applicant that this matter was referred to this Court under Section 24(6) of the Labour Unions Act 2006. Citing sections 8(1)(a) and (b) LADASA, it was argued that the function of this Court is to arbitrate on labour disputes referred to it under LADASA and to adjudicate upon questions of law and fact arising from references to it by any other law. It was suggested that this Court has unlimited original jurisdiction as regards the remedies it can grant. The Applicant cited the case of **Engineer John Eric Mugyenzi v Uganda Electricity Generation Co. Ltd**<sup>1</sup> in support of this proposition. Alternatively, it was proposed that this Court could regulate its own procedure under Section 40(2) of the LADASA.
- [8] It was also submitted for the Applicant that the Judicature (Fundamental and other Human Rights and Freedoms) Enforcement Procedure) Rules 2019 applied to all

<sup>1</sup> Eng. Mugyenzi Vs Uganda Electricity Generation Co Ltd (Civil Appeal No. 167 of 2018) [2019] UGCA 47 (18 April 2019)

Courts of Judicature. It was argued that the Industrial Court is a Court of Judicature to which the above rules applied. The Applicant cited the case of **Asaph Ruhinda Ntengye & Justice Linda Lillian Tumusiime Mugisha v Attorney General**,<sup>2</sup> in support of this proposition.

#### **Respondent's submissions**

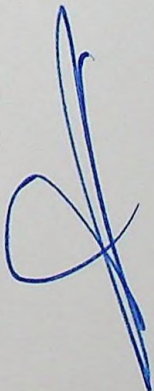
- [9] Citing Section 8(1) LADASA, it was submitted that this Court did not have jurisdiction over this matter because it was not referred to this Court. Counsel cited Section 24(6) LUA for the proposition that a Labour Union aggrieved by an employer's refusal to recognise it must first complain to the Registrar of Labour Unions. Upon receipt, the Registrar is required to call the employer to show cause in writing within 21 days. Counsel submitted that a matter could only be referred to this Court where a Registrar has made an order or declined to make an order under Sections 24(5) and 24(6) LUA. It was submitted that this procedure was not followed. Regarding the **Mugyenzi** case, Counsel for the Respondent countered that this Court has unlimited discretion to award remedies to parties who have properly come before the Court.
- [10] It was also submitted that Section 5 LADASA did not apply to this dispute because it provides for disputes commenced before a Labour Officer and that the LADASA and LUA each provided distinct procedures through which the jurisdiction of this Court can be properly invoked. Counsel cited the case of **African Field Epidemiology Network v Peter Wasswa Kityaba**<sup>3</sup> for the proposition that jurisdiction is a creature of statute and that this Court arbitrates labour disputes referred to it under LADASA and adjudicates questions of law and fact arising from references to it under any other law. It was contended that the Applicant had not fulfilled the dispute's referral requirements under LUA.
- [11] Finally, the Respondent submitted that this Court did not have original jurisdiction to entertain human rights matters under the Judicature (Fundamental and other Human Rights and Freedoms (Enforcement Procedure) Rules 2019. The jurisdiction to determine the constitutionality of the National Tripartite Charter on Labour Relations would be vested in the Constitutional Court. Counsel cited the case of **Ismail Serugo v Kampala City Council and Another**<sup>4</sup> in support of this proposition.

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<sup>2</sup> Asaph Ntengye J. and Linda L. Mugisha J. vs A.G Constitutional Petition No. 33 of 2016

<sup>3</sup> C.A.C.A No.0124 of 2017

<sup>4</sup> Constitutional Appeal No. 2 of 1998





## Determination

- [12] It is trite that a Court must determine whether it has jurisdiction because to purport to act with jurisdiction is an act in vain. Jurisdiction refers to the power of the Court to hear and entertain an action or proceedings<sup>5</sup>. The question of jurisdiction was explicit in the manner in which both parties approached the issue. Indeed, a Court of law downs its tools concerning the matter before it the moment it holds the opinion that it is without jurisdiction.<sup>6</sup> In keeping with these dicta, this Court cannot take any further steps until it establishes whether it has jurisdiction and in **Ochieng Peter vs Parliamentary Commission and Another**<sup>7</sup> this Court observed that without jurisdiction, its hands are tied.
- [13] The Constitutional Court and Court of Appeal of Uganda have already enormously assisted in clarifying the Industrial Court's jurisdiction. The jurisdiction of this Court is an already resolved question, but for clarity, it was settled in **Justice Asaph Ruhinda Ntengye & Justice Linda Lillian Tumusiime Mugisha v Attorney General**.<sup>8</sup> In that case, the Constitutional Court observed that the Industrial Court is one of the Courts of Judicature as per Article 129 of the Constitution, having been established by Parliament in the exercise of Article 129(1)(d) of the Constitution. The Constitutional Court found that the Industrial Court is a subordinate Court with concurrent jurisdiction with the High Court of Uganda, and it has an appellate hierarchy equal to that of the High Court but is not a superior Court. This means that while the Industrial Court does not have unlimited original jurisdiction in labour disputes, it has appellate and referral jurisdiction. The Appeals come to the Industrial Court from matters arbitrated by the Labour Officers or by way of referral from the matters mediated upon by the Labour Officers or referred to this Court by any other law.
- [14] From the above decision, the constitutional foundation of the Industrial Court is grounded in Article 129(1)(d) of the Constitution, which confers on Parliament the power to establish such subordinate Courts as Parliament may by law establish. In the exercise of its constitutional power, Parliament established the Industrial Court under Section 7 LADASA. Under Article 129(3), Parliament may make provisions for the jurisdiction and procedure of the Courts. Thus, under section 8, LADASA, the Industrial Court is granted referral jurisdiction for matters referred to it. Further, under **Section 94 EA**, Parliament confers on the Industrial Court Appellate

<sup>5</sup> Ibid

<sup>6</sup> Owners of Motor Vessel Lillian "s" v Caltex Oil Kenya Limited [1989] KLR 1

<sup>7</sup> LDR 120 of 2020

<sup>8</sup> See Asaph Ntengye J. and Linda L. Mugisha J. vs A.G Constitutional Petition No. 33 of 2016

jurisdiction over decisions of a Labour Officer. Thus, this Court exercises referral and appellate jurisdiction from these statutory provisions.

- [15] The distinction between the High Court and the Industrial Court is important as it is one of the principal arguments of the Applicant, to which we shall return. The distinction is that the High Court is established under Article 139 of the Constitution, while an Act of Parliament establishes the Industrial Court under Section 7 LADASA. Under Article 139(1) of the Constitution, the High Court enjoys, subject to the Constitution, unlimited original jurisdiction in all matters and such appellate and other jurisdiction as may be conferred on it by the Constitution and any other law. The Industrial Court enjoys referral and appellate jurisdiction as shown under Section 8(1) LADASA and **Section 94EA** and by different laws, including Section 24 (6) LUA. This distinction is that the High Court has unlimited original jurisdiction while the Industrial Court enjoys referral and appellate jurisdiction. To this end, the Applicant's argument on unlimited jurisdiction of the Industrial Court is not well grounded in law.
- [16] One aspect of the recent expansion of the Industrial Court's power merits some comment. Parliament, in the exercise of its legislative function, enacted the Labour Disputes (Arbitration and Settlement) (Amendment) Act 2021(*from now LADASA (As Amended)*) and amended Section 8 LADASA by inserting Section (2a) immediately after Section 2 LADASA. Section (2a) of the LADASA (*As Amended*) now enhances the powers of the Industrial Court, equating them to the powers of the High Court, in the performance of the Industrial Court's functions. The Industrial Court may now summon witnesses, administer oaths and affirmations, order the discovery, inspection, or production of documents, require the attendance of any person before it and order costs and other reliefs, including reinstatement as the Court may deem fit. We have previously opined that the object of the amendment was intended to improve the efficacy or effectiveness of the Industrial Court. Thus, while imbued with the character and powers of the High Court, the Industrial Court still exercises appellate and referral jurisdiction.
- [17] The second significant case on the jurisdiction of the Industrial Court is the case of **Engineer John Eric Mugyenzi v Uganda Electricity Generation Co. Ltd**<sup>9</sup> where the Court of Appeal directed 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

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<sup>9</sup> Civil Appeal No. 167 of 2018



Industrial Court, Kakuru JA (*as he then was*) held that such matters include issues of fact and law arising from the references to the Court by any other law and admonished that litigants should not be confused about to where to file their claims.

- [18] The sum effect of the above decisions is that the Industrial Court has both referral and appellate jurisdiction. Matters may be referred to this Court by parties to a labour dispute before a Labour Officer or may come to this Court by way of appeal from a decision of a Labour Officer or by way of reference from the Labour Officer, a party to a claim, the High Court, or any other agency of the Executive arm of government. Such a reference would fall under any other law. Indeed, a series of cases have been referred to the Industrial Court by the High Court.
- [19] Returning to the matter before us, the Applicant makes four key arguments in support of its contentions that this Court is clothed with jurisdiction to consider its application. We propose to consider each of the arguments separately.

#### **Jurisdiction under Section 24(LUA)**

- [20] The first argument relates to jurisdiction in considering a grievance under Section 24LUA. It is not in dispute that, on the whole, the Industrial Court has jurisdiction under LUA to consider a complaint regarding recognition. The Applicant contends that it referred the matter under Section 24(6) LUA. The Respondent argued that there is no order which it has refused to comply with for this Court to entertain the application. The provision reads as follows:

*“ (6) Where an employer or registered organisation fails to comply with an order made under subsection (5) or where the Registrar declines to make the order the aggrieved party may refer the matter to the Industrial Court”*

This provision is in PART IV of LUA, which sets out the rights and responsibilities of a registered organisation. Under Section 24(1)(d) and (2) LUA, every employer is bound to recognise any registered Labour Union to which employees have subscribed. Under subsection(3), where an employer refuses to deal with a registered organisation, the organisation shall complain to the Registrar, who shall immediately call upon the employer to show cause in writing within 21 days of why the employer is not complying with the Act. Where the Registrar is not satisfied with the cause shown, he or she shall, within 21 days, make an order requiring an

employer to recognise the registered organisation. It is the Respondent's case that no such cause was required to be shown or, indeed, an order granted.

[21] To the supporting affidavit, the Applicant attached letters addressed to the Registrar of Labour Unions, Ministry of Gender Labour and Social Development, Simbamanyo House, P.O. Box 7136, Kampala, Uganda. The first was the letter dated the 27<sup>th</sup> of September 2021. It bore a stamp of the **In Registry** of the Ministry of Gender, Labour and Social Development. This letter concerns a complaint about the Respondent's refusal to sign a recognition agreement. A second letter dated 13<sup>th</sup> December 2021 was served at the same address on the 15<sup>th</sup> of December 2021. The second letter referred to the letter of 27<sup>th</sup> September 2021. This letter suggested that the letter of 27<sup>th</sup> September 2021 was a complaint about three banks refusing to sign the recognition agreement. The second letter named Centenary Rural Development Bank Ltd, Bank of Baroda (U) Ltd and the Respondent as the recalcitrant banks. It suggested lost income on the part of the Applicant. After that, by letter dated the 22<sup>nd</sup> of April 2022 addressed to the Registrar of this Court, the Applicant suggested that it had referred the matter to this Court on 3<sup>rd</sup> January 2022. This cause was filed by motion supported by an affidavit on the 6<sup>th</sup> of May 2022.

[22] The Applicant maintained that it had filed a complaint with the Registrar of Labour Unions. The Respondent urged the Court to disbelieve this narrative. The Registrar of Labour Unions is domiciled in the Ministry of Gender, Labour, and Social Development. It is clear to this Court that the Applicant's complaints were registered with the Ministry of Gender, Labour, and Social Development, where the office of the Registrar of Labour Unions is situated. What is not clear is whether the Registrar of Labour Unions acted on these complaints.

[23] There is an elaborate procedure for grievances relating to recognition. Counsel for the Respondent delved over these procedures in detail, and we summarised them in paragraph [19] above. We have also expounded, in some considerable detail, the jurisdiction of this Court. This Court exercises referral and appellate jurisdiction. The provisions giving rise to any action filed before this Court in the circumstances of the case before us are set out under Section 23(6)LUA, which reads as follows:

*"Where the employer or registered organisation fails to comply with an order made under subsection (5), or where the Registrar declines to make the order the aggrieved party may refer the matter to the Industrial Court"*



[24] In our view, the right to refer a matter to this Court under this section accrues when the Registrar of Labour Unions has made an order, the employer has declined to comply or when the Registrar declines to make an order. Absent of these circumstances, there is nothing to refer. Counsel for the Respondent contends that this matter has not been correctly referred to this Court. Our attention was drawn to the provisions of Sections 24(3),(5), and (6) of LUA. On the material before us, there is nothing to show that the Registrar made any order in respect of the letters dated the 27<sup>th</sup> of September 2021 and 13<sup>th</sup> of December 2021 by which letters the Applicant complained of the refusal of the Respondent Bank together with Centenary Rural Development Bank Ltd and Bank of Baroda (U) Ltd to sign recognition agreements. The letter of the 27<sup>th</sup> of September was received in the **IN REGISTRY** of the Ministry. By it, the Applicant asked that the Registrar Labour Unions assist with an amicable resolution as under Section 24(1) (d),(2) and (9)LUA. While it is plausible that these letters were filed in the Registry of the Ministry of Gender, in paragraphs 8 and 9 of the affidavit of support, Mr Dhobuazi avers that the Registrar of Labour Unions remained silent, prompting the filing of this cause. In paragraphs 8, 9, and 10 of the affidavit in reply, Mr. Ssemanobe avers that the Respondent has never received any notification of a complaint from the Registrar. In rejoinder, Mr. Dhobuazi averred that the Respondent was copied on the complaints. From the material before us, there is no evidence before this Court to show that the Registrar of Labour Unions considered this matter and declined to make any order. There is also no evidence that the Registrar remained silent and did not act. The Registrar of Labour Unions has a statutory duty under Section 24(3) LUA to first attend to a registered Organisation's complaint and call upon an employer to show cause within 21 days. Where the Registrar is not satisfied with the cause shown by the employer, he or she may make an order requiring an employer to recognise a registered organisation under Section 24(5) LUA. Where an employer fails to comply with an order under subsection (5) or the Registrar fails to make an order under Section 24(6), the aggrieved party may refer the matter to this Court. That is the procedure that should have been followed and should be followed in matters such as these.

[25] A referral means an act or an instance of sending or directing to another for information, service, consideration or decision.<sup>10</sup> Therefore, under Section 24(6) LUA, the Applicant would be entitled to refer the matter where the Registrar has declined to make any order or the employer has refused to comply. In the instant case, the only material available shows that a complaint was lodged at the **IN REGISTRY** at the Ministry of Gender, a reminder letter followed, and nothing more

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<sup>10</sup> Black's Law Dictionary 11edn by Bryan Garner at page 1533

appears to have been done or happened. The Applicant did not demonstrate any attempt to meet the Registrar or have this matter attended to. This would lend credence to the Respondent's assertion that there was no order that it had been made aware of or that the Registrar had summoned it or declined to make any order. It would also support the Applicant's view that the Registrar of Labour Unions declined to attend to the matter. In **Uganda Building and Construction, Civil Engineering, Cement and Allied Workers Union v China Communications, Construction Company Ltd**<sup>11</sup> the Industrial Court considered a refusal to recognise the Applicant in that case being placed before the Labour Officer as a basis for a reference to the Court. Their Lordships<sup>12</sup> found that the irregularity of not having filed the matter before the Registrar of Labour Unions was not fatal. In the circumstances of the case before us, a complaint was lodged with the Registrar of Labour Unions and was not attended to. We would find that this Court has jurisdiction to hear any matter referred to it under Section 24(6) LUA. And we will return to the import of jurisdiction later in this ruling.

#### **Jurisdiction under Section 8(1)(a) and (b) LADASA**

[26] The second point that the Applicant raises is that it would be entitled to anchor the application on the Section 8(1)(a)(b) LADASA. These provisions made under the LADASA provide for the functions of the Industrial Court. In our discussion of the constituent and establishment provisions of the Industrial Court in paragraphs [14] to [17] above, we conclude that this Court enjoys referral and appellate jurisdiction. Sections 8(1)(a) and (b) LADASA establish the Industrial Court and provide for its functions and do not stand by themselves in originating an action before this Court. Section 8(1) requires the Court to arbitrate on labour disputes referred to it under the LADASA. The provision for reference is contained in Section 5 LADASA, which provides for circumstances under which the Labour Officer may refer a matter to this Court. Counsel for the Respondent argued that it would not be possible for the present application to be a reference under Section 5 LADASA. From our review of the motion, the supporting affidavit and the annexures thereto, the present application does not arise from a labour dispute placed before a Labour Officer. It was a matter concerning the recognition of a Labour Union, which has a specific procedure under Section 24LUA and was not brought under the wide berth of "*any other law*", as the Applicant suggests. We do not think the Applicant makes an arguable case for jurisdiction. However, as in the **Uganda Building and Construction, Civil Engineering, Cement and Allied Workers Union**

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<sup>11</sup> LDR 010/2015

<sup>12</sup> Asaph Ruhinda Ntengey C.J and Linda Lillian Tumusiime Mugisha J empaneled.



(*ibid*) case, the Industrial Court has not found such a misplacement fatal. We agree with this approach and would not find the miscategorisation fatal.

### Parallel functions of the Industrial Court and High Court

- [27] The Applicant argues that the Industrial Court functions as a parallel and not subordinate Court to the High Court and is presided over by judicial officers of the High Court's calibre. The establishment provisions and case law do not offer much credit to this argument, as observed in paragraphs [16] to [18] above. This Court does not enjoy unlimited original jurisdiction but referral and appellate jurisdiction.
- [28] The Applicant, on the authority of **Mugyenzi** (*supra*), suggested that this Court has unlimited original jurisdiction to grant remedies such as damages. The proposition is somewhat correct, though it is not worded in the manner proposed by the Applicant or as suggested by the Respondent. In the **Mugyenzi** (*op cit*) decision, Kakura J.A (*as he then was*) stated, on jurisdiction, as follows:

*“ We also find it disturbing for litigants to be subjected to uncertainty as to which forum to file an action in.....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 Labour Disputes(Arbitration and Settlement) Act to handle all disputes such as that referred to it by the Labour Officer in this appeal. The claim of the appellant which included a claim for general, special, and punitive damages comes under any other law and could be adjudicated upon by the Industrial Court.”*

- [29] The element of uncertainty referred to by Kakuru J. A stems from a process of litigation that is disjointed. It is suggestive of avoidance of conflicting decisions and costly, lengthy and disjointed litigation by an employee seeking various remedies in different Courts. This is to avoid also the possibility of conflict of jurisprudence. In **Aporo George Goldie v Mercy Corps Uganda**<sup>13</sup> we observed that conflicting decisions create considerable possibilities of uncertainty and affect consistency and uniformity. Beyond centralising litigation, what is discernible from the **Mugyenzi** (*op cit*) case is that a matter must first have been properly referred to this Court before the Court can exercise the jurisdiction to adjudicate on the matter. The Court of Appeal did not suggest that this Court has unlimited original

<sup>13</sup> LDR 014 of 2021 We also cited *Asaba Aisha v Kizza Stephen HCMA 060 of 2023*

jurisdiction. This Court has jurisdiction to grant remedies after the matter has been properly referred to it. In other words, to correctly invoke this Court's jurisdiction, the Applicant ought to have been properly before this Court. That is the import of the exercise of jurisdiction. For this reason, we do not accept the Applicant's argument that this Court enjoys unlimited original jurisdiction.

### **Jurisdiction to consider Human Rights Violations**

[30] As an extension to the argument that this Court is parallel to the High Court and a Court of Judicature, the Applicant argued that this Court has jurisdiction to entertain matters under the Judicature(Fundamental and other Human Rights and Freedoms)(Enforcement Procedure) Rules 2019. Again, we must agree with Counsel for the Respondent that the Applicant's argument is misconceived. This Court only enjoys appellate and referral jurisdiction, not original jurisdiction under Judicature (Fundamental and other Human Rights and Freedoms)(Enforcement Procedure) Rules 2019. That notwithstanding, in **Ben Raheim Aimen v Granada Hotels Ltd**<sup>14</sup> we cited **Kyamanywa Simon v Uganda**<sup>15</sup> where it was observed that every Court in Uganda is vested with jurisdiction to construe, apply and enforce provisions of the Constitution in relation to the dispute before it. We held that under Article 40 of the Constitution, parliament is mandated to pass laws to ensure workers' economic rights are respected. Therefore, this Court had a duty to construe matters properly before it in accordance with the Constitution. We, thus, do not accept the proposition to apply the Judicature (Fundamental and other Human Rights and Freedoms)(Enforcement Procedure) Rules 2019 in the matter now before us but retain the view that we must construe, apply and enforce the provisions of the Constitution in all matters before us.

[31] In sum, this Court has jurisdiction to hear the matter under Section 24(7) LUA. We also observe that we have a bounden duty to construe any matters before us in accordance with the Constitution. We, therefore, hold that we have jurisdiction to hear the matter now before us, and issue one is answered in the affirmative.

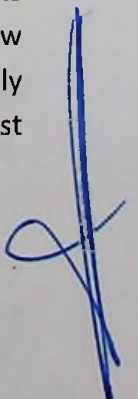
**Issue II:** *Whether the Respondent's refusal to recognize and sign the recognition agreement on account of the National Tripartite Charter on Labour Relations was justified?*

<sup>14</sup> L.D.A 002 of 2023

<sup>15</sup> S.C. Crim Appeal No. 16 of 199 Per Kanyeihamba JSC(as he then was) dissenting.



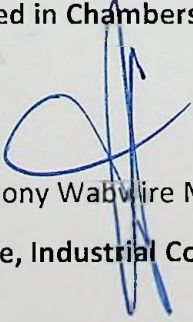
- [32] On this issue, it was submitted by the Applicant that the Respondent declined to execute a recognition agreement with it on account of a running recognition agreement with the National Union of Clerical, Commercial, Professional and Technical Employees Union (*from now NUCCPTE*). It was also submitted that the Respondent had suggested that the National Tripartite Charter on Labour Relations (*from now the Tripartite Charter*), which promotes the principle of one Union one enterprise, did not permit it to recognise the Applicant. The Applicant argued that the terms of the Tripartite Charter do not bind it. Our attention was drawn to Article 2 of the Freedom of Association and Protection of the Right to Organize Convention No. 87 of 1948 and Article 1 of the Right to Organize and Collective Bargaining Convention 1949. Our attention was also drawn to Articles 29 and 40 of the Constitution on the freedoms of association to form and join trade unions. The Applicant also suggested that the Tripartite Charter is illegal and that this Court should compel the Respondent to sign a recognition agreement.
- [33] Counsel for the Respondent contended that the Tripartite Charter promotes an orderly and harmonious environment for Labour Unions to coexist and that the Government of Uganda has endorsed it. It was suggested that because the Tripartite Charter is a valid and binding document, the Respondent was justified in declining to sign the draft recognition agreement.
- [34] In our view, and for the reasons spelt out in paragraphs [35] and [36] below, the material before us is insufficient to determine the issue. Counsel for the Respondent proposed that determination on the validity of the Tripartite Charter required input from the parties to the Charter. Given the provisions of Section 24(7) LUA, which urges this Court to decide after hearing the parties, it is our view that matters relating to any dealings between the Applicant as a registered organisation, the Respondent as an employer and indeed the tripartite parties to the Charter, would not be sufficiently dealt with in the present application. Put differently, these matters require evidence which may not be appropriately brought in an application such as the present one. This view is anchored in the constitutional right to a fair hearing, which is central to all disputes. Without belabouring the point, the provision of Section 24 (7) LUA directs this Court to hear the parties. For this reason, as paragraphs 35 and 36 below explain, we direct that the matters relating to this application be placed formally before this Court for a determination. We think this approach would be in the best interests of justice, as we have spelt out in our answer to issue III below.



*Issue III: Whether the Applicant is entitled to the relief sought?*

- [35] On the question of jurisdiction, we are satisfied that this Court has jurisdiction to hear a matter referred to us under Section 24(7) LUA. However, we have pointed out that we are not satisfied that the present application would do justice for the parties. Section 24(7) LUA provides that this Court may, after hearing the parties aggrieved by the failure, make an order for the registered organisation to deal with the employer in good faith and determine the period and terms and conditions of the recognition.
- [36] Given our determination in paragraph 34 above, it is our view that as the Industrial Court sits as a Court of Equity and one of the maxims of equity is “*ubi jus ibi remedium*”, equity will not suffer a wrong without a remedy, the parties right to be heard must be exercised. We hold so because a party that has come to Court must find a remedy. This is the essence of substantive justice. It is not the Court’s policy or a dictate of Lady Justice to close the door to parties seeking relief for a procedural misstep. The constitutional edict posits substantive justice without undue regard to technicalities. Taking into account the Applicant’s plea to have this matter heard on its merits<sup>16</sup> and indeed Counsel for the Respondent’s admonition as to a condemnation of parties unheard and grounded on Articles 26(2)e, 28 and 29(1)(e) of the Constitution, it is our direction that the orderly disposal of this dispute will progress by way of the Applicant filing a formal reference before this Court by the Labour Disputes( Arbitration and Settlement) (Industrial Court Procedure) Rules, 2012. We find fortification in the **Uganda Building and Construction, Civil Engineering, Cement and Allied Workers Union** (*supra*) decision, where a procedural misstep in filing a reference did not merit a dismissal of the claim.
- [37] Given the above direction, there shall be no order as to costs.

Signed in Chambers at Kampala this 12<sup>th</sup> day of April 2024.

  
Anthony Wabwire Musana,  
Judge, Industrial Court

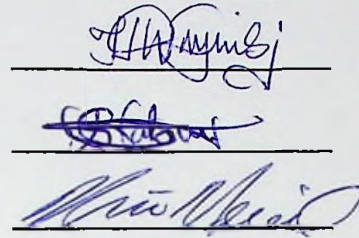
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<sup>16</sup> In para 9 of the affidavit in support, the Applicant’s Secretary General was deposed to filing this cause on advice because there was not a formal procedure of originating the reference under LUA.



**The Panelists Agree:**

1. Hon. Jimmy Musimbi,
2. Hon. Susan Nabirye &
3. Hon. Michael Matovu.



The image shows three handwritten signatures in blue ink, each written on a horizontal line. The first signature is 'Jimmy Musimbi', the second is 'Susan Nabirye', and the third is 'Michael Matovu'.

**12.04.2024**

**10:22 a.m.**

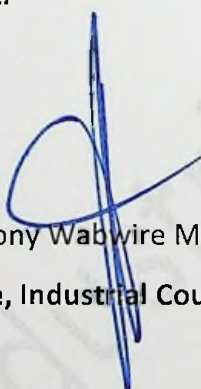
**Appearances**

1. **For the Applicants:** None
2. **For the Respondent:** Mr. Allan Waniala.

**Court Clerk:** **Ms. Matilda Nakibinge**

**Mr. Waniala:** We are ready to receive the ruling.

**Court:** Ruling delivered in open Court.



Anthony Wabwire Musana,  
**Judge, Industrial Court.**