

**THE REPUBLIC OF UGANDA**  
**IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA**  
**LABOUR DISPUTE REFERENCE NO. 050 OF 2019**  
**[ARISING FROM LABOUR COMPLAINT KCCA/CEN/LC/192/2018]**  
**BETWEEN**  
**FRANCIS NINYENDA.....CLAIMANT**

**VERSUS**  
**MAKERERE UNIVERSITY**  
**.....RESPONDENT**

**BEFORE**

1. Hon. Head Judge Ruhinda Asaph Ntengye

**PANELISTS**

1. Ms. Adrine Namara
2. Ms. Susan Nabirye
3. Mr. Michael Matovu

**RULING ON PRELIMINARY OBJECTION**

**REPRESENTATIONS**

The claimant was represented by Mr. Rwambuka Nuwandinda Jonan while the respondent was represented by Mr. Hudson Musoke.

**BACKGROUND**

Upon being charged before the disciplinary committee of the respondent, the Appointments Board of the respondent demoted the claimant and transferred him to another office. Thereafter the claimant filed **Miscellaneous Cause O413/2017** before the High Court for Judicial Review.

On a preliminary objection that the matter was premature, Justice Stephen Musota J. (as

he then was) found the application “**incompetent and not properly before the court for failure and refusal of the applicant to exhaust the alternative remedy of appeal to the university Tribunal which is provided for under Section 56 and 57 of the Universities and other Tertiary Institutions Act 2001.**”

### **ARGUMENTS**

Mr. Hudson Musoke for the respondent raised a preliminary objection to the effect that the Labour claim in this court was premature and an abuse of court process. He argued that the matter being a concern of disciplinary proceedings, the claimant should have filed an appeal before the staff tribunal and that this was the effect of the decision in **Misc. Cause 413/2017**.

In counsel’s view proceeding with the matter in this court would be setting aside the decision of the High Court.

In reply, Mr. Rwambuka Nuwandinda Jonan for the claimant argued that the claimant could not appeal to the tribunal because the dispute did not fall within **Section 57 of the Universities and other Tertiary Institutions Act 2001**.

### **Decision**

There is no doubt that the High court in **Misc. Cause 413/2017** pronounced itself on the position of the law regarding the rights of the claimant under **Section 57 of the Universities and other Tertiary Institutions Act 2001**. Before the judge quoted verbatim both **Section 56 and 57** of the said **Act** he stated:

**“In the instant case as rightly submitted by counsel for the respondent the law provides a remedy and for a procedure of appealing to the Staff Tribunal which is created by statute. The applicant in this case did not even attempt to go to that tribunal and in this application did not plead that the remedy available is not adequate or shown any other sound reason not to have followed that procedure.”**

Therefore in rejecting the application for review because of the failure and refusal of the claimant to exhaust the remedy of appeal, the judge considered the relevance of **Section 57 of the said Act.**

Consequently, the only submission by the claimant that the claimant did not appeal to the tribunal because the dispute did not fall within **Section 57 of the Universities and other Tertiary Institutions Act 2001** has no merits.

We agree with the respondent that the claimant should have complied with the decision in **Misc. Cause 413/2017** and filed an appeal to the Staff Tribunal of the respondent. Indeed, we find filing the claim in this court was an unjustified short cut as counsel for the respondent put it. Accordingly, the preliminary objection is upheld and **LDR 50/2019** is hereby dismissed for being premature and incompetent as it was before the High Court.

No order as to costs is made.

**Delivered & signed:**

1. Hon. Head Judge Ruhinda Asaph Ntengye .....

**PANELISTS**

1. Ms. Adrine Namara .....

2. Ms. Susan Nabirye .....

3. Mr. Michael Matovu .....

Dated: 24/09/2021