

THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE NO. 335 OF 2017
(Arising from Labour Dispute No. KCCA/MAK/LC/158/2017)

MUTONO LABAN::CLAIMANT

VERSUS

KAMPALA INTERNATIONAL UNIVERSITY::RESPONDENT

BEFORE:

1. THE HON. JUSTICE ANTHONY WABWIRE MUSANA

PANELISTS:

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

RULING

1.0 Introduction

On 12th October 2022, when this matter came up for scheduling, Ms. Antonia Natukunda, appearing for the respondent, raised a preliminary objection to the jurisdiction of this Court to entertain, hear and determine the claimant's claim in defamation. The respondent also contended that the pleadings do not disclose a cause of action for defamation.

2.0. Submissions

- 2.1. The parties were directed to file written submissions on the point. Ms. Natukunda contended that the jurisdiction of this court is exclusively limited to disputes arising from an employment relationship that are provided for under the Employment Act. In her view, defamation was not one such claim.
- 2.2. The Claimant had not filed any submissions as at the 28th of November 2022. The Court has therefore not benefited from the Claimant's insights.

- 2.3. To aid in the resolution of the question, Ms. Natukunda addressed the issue whether this honourable court has jurisdiction to determine a claim for defamation. Citing the case of **Ozoo Brothers Enterprises Vs Ayikoru Milka**,¹ Counsel contended that this Court's jurisdiction is premised on rights and obligations under the Employment Act. Counsel also relied on the case of **Okurut Joseph and others Vs New Bubajjwe Primary School**.²

3.0. Analysis

- 3.1. We agree with the statement of the law on jurisdiction in the *Ozoo* case. It is without doubt, a primary requirement of the system of justice that a Court adjudicating a dispute must be clothed with jurisdiction. There can be no alternative preposition. In the passage extracted from a Kenyan case³ Nyarangi JA, opined that a court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction. This is the law.
- 3.2. Our variance with the respondent's view is derived from a deeper reading of the *Ozoo* case. The case, as we understand it, concerned the High Court entertaining a revision of a Magistrates Court that had entertained and determined a claim for general and special damages for unfair termination of an employment contract. His Lordship, the Honourable Mr. Justice Stephen Mubiru determined that the provisions of **Section 93(1) and (2) of the Employment Act** restricted the jurisdiction of Labour Officers to matters based on the Act or infringements of the Act or obligations under the Act. In his Lordship's view, the Labour Officers do not have jurisdiction under the general precepts of common law and the Employment Act was not intended to oust the jurisdiction of Magistrates Courts. His Lordship concluded thus: ***"I accordingly find that, the Magistrate Grade One court in the instant case was clothed with competent jurisdiction to try the suit as it did."***
- 3.3. In our very humble view, the case concerned a magistrate's jurisdiction and not the jurisdiction of the Industrial Court.
- 3.4. The objection before us contests the jurisdiction of this Court to entertain and determine a claim for defamation. We think that the relevant provision

¹ H.C.C.R No. 64 of 2011

² LDR 04 of 2015.

³ Owners of Motor Vessel Lillian "s" v Caltex Oil Kenya Limited[1989]KLR 1

of the law for consideration of jurisdiction is to be found under **Section 93(6) of the Employment Act**. It provides:

“A claim in tort arising out of the employment relationship; claim shall be brought before a court and the labour officer shall not have the jurisdiction to handle such a claim.”

- 3.5. This provision, in our view, clearly restricts the jurisdiction of the labour officer from entertaining claims in tort arising out of the employment relationship. It does not explicitly oust the jurisdiction of the Industrial Court in determining a claim in defamation. This court has determined defamation as one such tort that may arise from an employment relationship. In the case of the case of **Okou R. Constant Vs Stanbic Bank LDC 171/2014** this Court held that;

“Although this court is a specialized court established to expedite labour justice ..., where a matter before the court is fundamentally a labour dispute but with aspects of claims related to or originating from a labour dispute capable of being resolved at once with the dispute, this court for avoidance of multiplicity of suits is showered with jurisdiction to dispose of the whole matter.”

- 3.6. It is our considered and very humble view that the wording of **Section 93(6) of the Employment Act** is clear and unambiguous. The words as of themselves, give the intention of the legislature. The legislature enacted a restriction on the jurisdiction of the labour officer but left it open for this Court to entertain matters ancillary to the employment relationship or arising therefrom including tortious matters. The jurisdiction of this Court is therefore not ousted.
- 3.7. Borrowing from Mubiru J in the Ozuu case, a court’s jurisdiction is not to be ousted easily or fleetingly. The jurisdiction of courts of law must be guarded jealously and should not be dispensed with too lightly.⁴ The Courts have a duty to dispense justice and for the Industrial Court, the duty is to dispense labour justice for all, in a timely manner. Indeed, in two decisions⁵, this court has asserted its jurisdiction. In putting a very fine point on the jurisdiction of this Court, the Court of Appeal of Uganda observed⁶ that a claim for general, special and punitive damages, which comes under any other law, could be

⁴ Per Mulenga JSC in *Habre International Co Ltd vs Kassam and Others* [1999] 1 EA 125 cited with approval in the Ozuu case(opcit)

⁵ *George Katendegwa vs Samsung LD 144/2014* and *Jason Njeru vs Imperial Bank Uganda Ltd LDR 172/2015*

⁶ *Engineer John Eric Mugenyi vs Uganda Electricity Generation Co. Ltd C.A No. 167 of 2018*.

adjudicated upon by the Industrial Court. We agree with these prepositions and are bound by them.

- 3.8. It is our conclusion, therefore, that preliminary objection on lack of jurisdiction to entertain, hear and determine a claim for defamation arising out of the employment relationship and other tortious liability, is without merit. It is accordingly overruled.
- 3.9. The second ambit of the objection relates to a lack of particulars of the alleged defamation. The respondent contends that the words complained of are not reproduced verbatim. As such, the court is devoid of material to consider the question. Ms. Natukunda's argument is understandable because in every action or litigation for defamation, the courts must look at the words complained of to determine whether they are defamatory. The essence of defamation is publication.⁷ It is established that for a court to find a statement complained of as being defamatory, the actual words must be set forth verbatim in the plaint and the persons to whom publication was made have to be mentioned in the plaint. A plaint in a defamation suit that does not allege persons to whom publication was made nor that the words uttered were false and were published maliciously, which are essential matters in a plaint, does not disclose any cause of action and is bad in law.⁸ While paragraph 3(b) of the memorandum of claim makes a claim for damages for defamation, the actual words uttered and to whom they were uttered, do not appear in the rest of the memorandum of claim. Simply put, there are no particulars of the alleged defamation. As such and in keeping with the requirements of Order 7 Rule 11 of the Civil Procedure Rules S.I 71 -1, the said memorandum would be bad in law and rejected.
- 3.10. However, the claimant's action arises out of an employment contract and seeks several remedies beyond the now impugned claim for damages for defamation. Rejecting and striking out the entire memorandum of claim as bad in law would not serve the interests of justice. It would deprive the claimant of meaningful access to justice. In our view, the claim is not anchored on defamation. It is an employment dispute. The claim for defamation is ancillary to the root cause of action. The memorandum of

⁷ Per Ssekaana J. in Yusuf Sembatya Kimbowa Vs The Editor Observer & 2 Others H.C.C.S No 482 of 2018

⁸ See Rutare S. Leonidas v. Rudakubana Augustine and Kagame Eric William [1978] H.C.B.243 and Karaka Sira v. Tiromwe Adonia [1977] H.C.B. 26 as cited in H.C.C.S No. 0065/2011 Angwee Kalanga vs Odongo Milton and Openy Vincent.

claim seeks inter alia, a declaration that the dismissal was illegal or unlawful, claims for salary arrears, accrued annual leave, unremitted Social Security benefits, payment in lieu of notice, general, punitive and aggravated damages. Clearly, the action is much broader than the Respondent would have us believe. We are of the persuasion to reject the prayer to strike out the claim with costs.

4.0. Decision of the Court

- 4.1. The preliminary objections as to jurisdiction of this Court to hear and determine a claim for defamation and striking out the memorandum for failure to disclose a cause of action are overruled with no order as to costs. The respondent shall abide by the direction of the Court to file a fresh Trial Bundle by 10th January 2023. The main claim shall be heard on the 19th January 2023 as previously fixed.

Delivered at Kampala this 19th day of December 2022

SIGNED BY:

1. Anthony Wabwire Musana, Judge

PANELISTS

1. Mr. Jimmy Musimbi

2. Ms. Robinah Kagoye

3. Mr. Can Amos Lapenga

Delivered in open Court in the presence of:

Court Clerk. Mr. Samuel Mukiza.