THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE NO. 081 OF 2017
(Arising from Labour Dispute No. KCCA/RUB/LC/114/2018)

1. KIZZA GERALD::CLAIMANTS
2. BWOKINO PATRICK

VERSUS

CAMUSAT UGANDA LIMITED::RESPONDENT

BEFORE;

THE HON. JUSTICE ANTHONY WABWIRE MUSANA,

PANELISTS:

Mr. JIMMY MUSIMBI,

Ms. ROBINAH KAGOYE &

Mr. CAN AMOS LABENGA.

RULING.

Introduction

1.0 This ruling is in respect of a preliminary objection raised by the Respondent who contends that the claim is time-barred having been entertained by the labour officer beyond the 90 day period and referred to this Court 290 days after the lapse of the time within which the Labour Officer could dispose of the matter. The Applicant countered that the provisions of Section 93(7) of the Employment Act were directory and not mandatory.

Analysis

2.0 We have perused the affidavits in support, reply and rejoinder and the submissions of the respective Counsel. We have reconstructed the record of the court of first instance and from the procedural history, we find as follows;

2.1 The claimant lodged a complaint with the Labour Officer at Kampala on the 13th day of April 2018.

2.2 On the 3rd day of May 2018, the Labour Officer notified the respondent of the complaint. A reminder was issued on 17th May 2018.

2.3 A mediation date was fixed for the 11th day of June 2018.

2.4 By a letter dated 6th June 2018, the respondent asked that the matter be rescheduled to the 18th of June 2018.

2.5 On 18th June 2018, the respondent did not appear and the matter was adjourned to 29th August 2018.

2.6 On the 29th August 2018, the parties agreed to search for proof of overtime to ascertain the claims of overtime and holiday pay.

2.7 On the 2nd October 2018, when the matter came for hearing, the respondent suggested that the records requested were not very clear and there was need to cross-check records and find what was available. The respondent agreed to provide what was available. The matter was adjourned to 12th November 2018.

2.8 On 12th November 2018, the respondent provided limited or insufficient information in the claimants' view.

2.9 On 6th February, 2019, the matter was referred to this Court.

2.10 On 21st May 2019, the Registrar of the Industrial Court sought a copy of the Lower Court record.

2.11 The record was forwarded on the 15th of August 2019.

3.0 For purposes of clarity, the Respondent's objection is that the claim is time-barred for having been entertained outside the 90 day period provided in Section 93(7) of the Employment Act and the Claimant and or Labour officer filed a reference to this Court 290 days after the 90 day timeframe without first seeking leave under Rule 6 of the Labour Disputes (Arbitration and Settlement) (Industrial Court Procedure Rules) 2012

4.0 A cursory view of the procedural history would invite a quick conclusion that the preliminary objection is sustainable. However, we think that a more detailed analysis of the circumstances of this case and of the law applicable, leads to an alternative conclusion. The Respondent relied on the decision in **LD 44 0f 2017 Majidu Shire Vs Kakira Sugar Works** where this Court held that under Section 93(7) the labour officer must dispose of the matter reported to him or her within 90 days and not after. The facts in that case were that the labour officer appears to have received the complaint within the month of April 2012. He wrote a letter to the Branch Secretary of the Workers Union on 5/04/2012 and subsequently on 21/01/2013, 18/03/2013 and 24/09/2013. The correspondence was for a period of over 1(one) year. The claimant in that case filed a reference on 9/03/2017 which was over 3 years since the labour officer had handled the case.

5.0 In our view, this court may have interspersed the meaning of Section 93(7) of the Employment Act to the effect that a labour office was mandated to conclude a dispute

before him or her within 90 days from the time when the matter is first reported to the labour officer. For emphasis, it is important to reproduce the section which reads;

> *"Where within ninety days of the submission of a complaint under this Act to a labour officer, he or she has not issued a decision on the complaint or dismissed it, the complainant **may** pursue the claim before the Industrial court" (**underlining supplied**.)*

We think that in deciding the Majidu case, this court did not give section 93(7) of the Employment Act, the meaning that was intended by the legislature. In the objection now before us, the respondent submits that a complaint should not be entertained beyond the 90 day period. On their part, the claimants Counsel submit that the use of the word **may** did not curtail the powers of the labour officer. We agree with the claimant's proposition because the meaning of section 93(7) is plain, in our view. In adopting this viewpoint, we would be guided by the rules of statutory interpretation which are applicable in a hierarchical manner. At the top of the hierarchy, is the literal rule, followed by the golden rule, the mischief rule and the *ejusdem generis* rule[1]. The literal rule of statutory interpretation requires that;

> "*Words of a statute must be interpreted according to their literal meaning and sentences according to their grammatical meaning. If the words of the statute are clear and unambiguous and complete on the face of it, they are conclusive evidence of the legislative intention*"[2]

In the case of **Uganda Revenue Authority vs Siraje Hassan Kajura & Others, SCCA No. 9 of 2015** cited in NSSF Vs URA9*(ibid*), the Supreme Court of Uganda held that;

> *"Where words or emphasis are clear and unambiguous, they must be construed in its natural and ordinary sense. Where the language of the Constitution/Statute sought to be interpreted is imprecise or ambiguous, a liberal generous or purposeful interpretation should be given to it*."

8.0 It is our finding that the wording of Section 97(3) of the Employment Act is clear and unambiguous. The words as of themselves, give the intention of the legislature. The legislature enacted an option for a claimant to seek redress at the Industrial Court if a labour officer had not determined the case within 90 days or to await a decision of a labour officer. There is no requirement in the section that a labour officer must dispose

[1] Per Wamala. J in NSSF V.URA H.C.C.A No. 29 of 2020 at page 17.

[2] Wicks V. DPP (1947)A.C 362 cited in Miscellaneous Cause No. 241/2017 SEFOROZA NAYMUCHONCHO & ANDREW MUSOKE VS A.G

of a dispute within 90 days but should he or she not to so, then the claimant would have an option to seek a referral or refer the matter to the Industrial Court. In our view, the operative word in the said section is the word **"may".** Counsel for the claimant put it quite rightly submitting that if the legislature intended the provision to be mandatory, then they could have imported the word **"shall"** and we hasten to add, instead of **"may".** There is ample jurisprudence of the meaning of the words **"may"** vis a viz **"shall"** as used in statutes. In **Foundation for Human Rights Initiative Vs the Attorney General**[3], the Supreme Court of Uganda found *"the use of the word **'may'** in section 15 (1) of the TIA preserves the power of the Court to either grant or not to grant bail. Thus, by using the word **'may'** in section 15(1) of the TIA and not **'shall'**, the High Court retains its discretion to either grant or not grant bail even where these exceptional circumstances listed under section 15(3) of the TIA are not proved in respect of the listed offences in section 15(2) of the TIA".* The Supreme Court cited various decisions on the use of the words **"may"** and **"shall"** viz;

(i) *"The use of the word 'may' prima facie conveys that the authority which has power to do such an act has an option to do it or not to do it."*[4]

(ii) *" 'may' unlike 'shall', is not a mandatory but a permissive word although it may acquire a mandatory meaning from the context in which it is used, just as 'shall' which is a mandatory word may be deprived of the obligatory force and become permissive in the context in which it appears. "*[5] *and*

(iii) *The word 'may' where it appears in s 147 of the Summary Proceedings Act 1957 does confer a discretion upon the district judge, justice or registrar (as the case may be) as to whether or not he will issue summons upon the information which has been laid. It is also our opinion that the nature of that discretion is...a discretion which must be exercised in a judicial manner*[6]

9.0 In the case of Engineer John Eric Mugyenzi vs UEGCL[7] the Court of Appeal considered the decision of the Supreme Court of Uganda in Sitenda Sebalu vs Sam K Njuba[8] where certain provisions of the Parliamentary Elections Act 2005 were rendered directory and not mandatory because a breach would not render any act done in disobedience of the enactment void and the statute provided for enlargement or abridging of time.

10.0 In the case before us, there is no clear sanction for hearing a dispute beyond the 90 days. We are therefore inclined to depart from the decision in the Majidu Shire case. In our view, the Labour Officer would not be faulted for disposing of a matter after the 90 days although it would be useful to expedite disposal. Having so found, it is unnecessary to

[3] Supreme Court Constitutional Appeal No. 03/2009
[4] Per Cullen C.J in Australian case of Massy v. Council of the Municipality of Yass (1922) 22 SR (NSW) 499, Cullen CJ
[5] Johnson's Tyne Foundry Pty Ltd v. Shire of Maffra [1949] ALR 89 at 101
[6] Daemar v. Soper [1981] 1 NZLR 66 at 70
[7] C.A.C.A No. 167/2018
[8] Election Petition Appeal No 26/2006

consider the question whether the reference was filed without leave Under Rule 6 of the Labour Disputes (Arbitration and Settlement) (Industrial Court Procedure) Rules 2012 because as at the 6th of February 2019, the mediation having failed to be resolved, the labour officer referred the matter to the Industrial Court.

Decision of the Court

11.0 The preliminary objection is overruled with no order as to costs. We direct that the matter be expeditiously disposed of. As the parties had filed the necessary pretrial documents, the matter is to be set down for hearing.

Delivered at Kampala this 28th day of October 2022

ANTHONY WABWIRE MUSANA, Judge _____

PANELISTS

1. **Ms. ADRINE NAMARA** _____
2. **Ms. SUZAN NABIRYE** _____
3. **Mr. MICHAEL MATOVU** _____

Delivered in open Court in the presence of:

Court Clerk. Mr. Amos Karugaba.