

THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
MISCELLANEOUS APPLICATION NO. 140 OF 2022
LABOUR DISPUTE REFERENCE NO. 141 OF 2021
(Arising from KCCA/CEN/LC/149/2020)

DR. BUNOTI JAMES WOKWERA:.....APPLICANT

VERSUS

1. AAR HEALTHCARE UGANDA LTD
2. AAR HEALTHCARE HOLDINGS LTD:.....RESPONDENT

BEFORE:

1. THE HON. JUSTICE ANTHONY WABWIRE MUSANA

PANELISTS:

- 1. Mr. JIMMY MUSIMBI,**
- 2. Ms. ROBINAH KAGOYE &**
- 3. Mr. CAN AMOS LABENGA.**

RULING

1.0. Introduction

- 1.1.** By way of background, on 2nd September 2021, Dr. James Wokera Bunoti, who is self-representing, filed a labour dispute claim against the respondents. According to the affidavit of service, the respondents were served on the 6th September 2021. The respondents filed their Memorandum of Reply on 28th September 2021. On 15th September 2021, the claimant applied for a default/interlocutory judgment. That application has not yet been determined.
- 1.2.** On the 23rd of September 2022, the applicant filed this application seeking amendment of his memorandum of claim. The respondents filed an affidavit in reply sworn by Ms. Leonor Agasha Trubish, General Manager of the 1st Respondent. By an affidavit in reply dated 24th October 2022, Dr. Bunoti raised 4 (four) preliminary objections namely:

- (i) The respondents have no ***locus standi*** till (until) the application for default/interlocutory judgment is disposed of.
- (ii) The respondents' affidavit in reply was filed and served out of time without leave of court.
- (iii) The 1st respondent had no authority to swear the affidavit in reply on behalf of the 2nd respondent and;
- (iv) Counsel for the respondent had not presented an instrument of instruction.

1.3 On 17th October 2022, we invited the parties to address court by way of written submissions on both the objections and the substantive application for amendment. We have perused and considered the said submissions in rendering our ruling. In our view, it is prudent to dispose of the objections before attending to the main application for amendment.

Analysis and resolution

2.0. Locus Standi

2.1. The applicant asserts that the respondents filed their defences outside the statutory time. As such, until the application for a default judgment is determined, the respondents have no locus standi. In the case of **Dima Dominic Poro Vs Inyani Godfrey Civil Appeal No.17 of 2016**, the Honourable Mr. Justice Stephen Mubiru while dealing with an issue on locus standi stated thus;

“The term locus standi literally means a place of standing. It means a right to appear in court, and, conversely, to say that a person has no locus standi means that he has no right to appear or be heard in a specified proceeding”.

2.2. The applicant filed the Labour Claim No. 141 of 2021 against the respondents. He named AAR Healthcare Uganda Ltd and AAR Healthcare Holdings Ltd, as respondents. His claim against the named respondents was that he was entitled to special, general, aggravated and punitive damages for various infringements of the Employment Act and tortious acts related thereto.

2.3. Under **Section 2 of the Employment Act, 2006**, an employer means any person including a company for who an employee has worked.¹ And under Order 1 rule 3 of the Civil Procedure Rules S.I 71-1(CPR) persons may be joined as defendant against whom any right to relief arises out of the same act or transaction. In the cause before us, the applicant named the respondents as his former employers against whom he sought legal relief.² Paragraph 3 of the Amended Complaint reads “*The Claimants application against the 1st and 2nd Respondents is for.....*”. The infringements, injury, omission or commission for which legal redress is sought are directed at or brought against the respondents. In our view, this gives the respondent the necessary right to appear before the court and defend themselves, in other words, the necessary *locus standi*. To this extent, the objection would stand overruled.

3.0. Late filing

3.1. The second ambit of the claimant’s objection is that the memorandum of reply was filed out of time. And this therefore deprives the respondents of the necessary locus standi. By the respondent’s own admission, the said memorandum was filed on 28th September 2021. Under Rule 5(4) of the **Labour Disputes (Arbitration and Settlement) (Industrial Court Procedure) Rules, 2012**, (LADASA Rules) a respondent is required to file a memorandum of reply within 7 days of service of a claim. The respondent is required to serve the same on the claimant and file an affidavit of service. These provisions are couched in mandatory terms. By the respondent own admission the memorandum in reply was filed on 28th September 2021. Having been served on the 6th of September 2021, the Respondent ought to have filed its responses by the 13th of September 2021. While an application for extension of time was filed under Rule 6 of the LADASA Rules, it does not set out with sufficient particularity, the grounds for extension. The said grounds only become more apparent in the respondents written submissions. Rule 6(2) of the LADASA Rules give this Court a wide berth to determine an application for extension of time in a manner that the court deems fit. This court has adopted the standards under the CPR in respect of applications for extension of time. Jurisprudence on the principle considerations for a grant of extension or enlargement of time is both expansive and very well settled. The primary test before time can be enlarged is whether the applicant was prevented by **sufficient cause** from taking a particular step within the time prescribed.³ No evidence on oath was placed before us to test the veracity of the respondents’ grounds for late

¹ A similar definition is in Section 2 of the Labour Disputes(Arbitration and Settlement) Act, 2006

² See paragraphs 2 of the memorandum of claim and the amended memorandum of claim.

³ **James Bwogi vs KCCA and KDLB. S.C.C.A No 09/2017** Cited in **MTN(U)LTD vs Anthony Katamba LDMA No.004/2021**

filing. These grounds would have been better set out in an affidavit accompanying an application for extension of time to file a memorandum of reply. From September of 2021, the respondents do not demonstrate taking any further steps to have their responses validated. It would have been prudent to be vigilant in seeking the aid of equity. We are not satisfied that there is sufficient cause for memorandum of reply being filed out of time and ought to be struck out.

4.0. Authorization to swear an affidavit

- 4.1. Modern precedent has now distinguished the decisions requiring an affidavit to bear authorization. It is now established that an affidavit in support is evidence and does not require authorization but rather knowledge of the deponent.⁴ This leg of the objection is without merit and is overruled.

5.0. Lack of Instrument of Instructions

- 5.1. The provision of Order 3 Rule 5(2) of CPR as cited by the Applicant relates to any person appointed to represent another in court such person not being a recognized agent, holder of powers of attorney, a person carrying on business on behalf of a party to a suit and an advocate. What the rule provides is that an advocate would not be required to present an instrument of instruction upon their appearance in court on behalf of a client. An advocate is an officer of court and expected to aid the court in the rendering of justice. The objection is overruled.

We will now proceed to address the main application for amendment.

6.0. Amendment of the Memorandum of Claim

- 6.1. The law on amendment of pleadings is very well settled. Order 6 Rule 19 of the CPR empowers Court to grant leave to a party to amend their pleadings at any stage of the proceedings. It provides as follows:

“The court may, at any stage of the proceedings, allow either party to alter or amend his or her pleadings in such manner and on such terms as may be just and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.”

- 6.2. The courts have enunciated the principles governing the exercise of discretion to grant the order an amendment. The principles are that:

⁴ In H.C.M.A No. 645/2020 Bankone Ltd vs Simbamanyo Estates Ltd Mubiru J posits that *what is required in affidavits is the knowledge or belief of the deponent, rather than authorisation by a party to the litigation.*

- (i) Amendments are allowed by the courts so that the real question in controversy between the parties is determined and justice is administered without undue regard to technicalities.
- (ii) The amendment should not occasion injustice to the opposite party.
- (iii) It should be granted if it is in the interests of justice and to avoid multiplicity of suits.
- (iv) The application should be made in good faith.
- (v) No amendments should be allowed where it is expressly or impliedly prohibited by any law.
- (vi) The court shall not exercise its discretion to allow an amendment which has the effect of substituting one distinctive cause of action for another.

6.3. We have reviewed the memorandum of claim and the amended memorandum of claim and find as follows:

- (i) Part of Paragraphs 3(c), and 3(e) introduce causes of action under the Workers Compensation Act Cap.255⁵ and the Occupational Safety and Health Act, 2006.⁶ This Court does not have jurisdiction to hear and determine these matters.
- (ii) Part of paragraph 3(c) only clarifies a prayer arising out of paragraph 5(m) of the original memorandum of claim.
- (iii) Paragraph 3(d) is not a new cause of action. It clarifies a prayer arising out of 5(i) of the original memorandum of claim.
- (iv) Paragraph 3(f) only clarifies a prayer arising out of paragraph 5(q) of the original memorandum of claim.

6.4. We find that the intended amendments with the exception of parts of paragraph 3(c) and 3(e) where this Court would have no jurisdiction, merely clarify the prayers of the Applicant and are matters contained in the original memorandum of claim. We would therefore permit the said amendments

⁵ Jurisdiction is vested in a Chief Magistrates Court(S.1(a), S.13(3) and S 14 and the High Court S.15, 16

⁶ Under Section 110, prosecution of offences under this Act are presided over by a Chief Magistrate

excepting matters falling under the jurisdiction of the Chief Magistrate's Court and High Court as set out above.

7.0. Decision of the Court

7.1. In the final analysis, the Court makes the following orders:

- (i) The preliminary objection as to *locus standi* of the respondents is overruled.
- (ii) The respondents' memorandum of reply was filed out of time and is struck out.
- (iii) The applicant is granted leave to amend his memorandum of claim with the exception of paragraphs 3(c) and 3(e) which are not within the jurisdiction of this court.
- (iv) The applicant shall file and serve the respondents with the amended memorandum within 7 days from the date hereof. The respondents shall file a Memorandum of Reply within 7 days from the date of service of the amended memorandum of claim.
- (v) As the application succeeds and at the same time several of the objections are overruled, costs shall abide the outcome of the main claim.
- (vi) This matter shall be called for mention on 10th January 2023

Delivered at Kampala this 2nd 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.