



THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE NO. 166 OF 2020
(Arising from MAK/DIV/LC NO. 40 OF 2020)

LUBEGA MOSES & 5 OTHERS:APPLICANT

VERSUS

ROOFINGS UGANDA LTD:.....RESPONDENT

BEFORE.

THE HON. MR. JUSTICE ANTHONY WABWIRE MUSANA:

PANELISTS:

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

RULING

Introduction

- [1] On the 21st of October 2022, when this matter came up for scheduling, Ms. Evonnah Kabatesi, appearing for the Claimants, suggested that she would consider the Respondent's trial bundle at a later date. We admitted the Claimants' trial bundle, and the Claimants opened their case. On the 7th of December 2022, the Claimants were served with the Respondent's trial bundle. Counsel contends that this trial bundle contains an irrelevant coronavirus policy since it was introduced after the Claimants had left employment. Counsel argues that two memoranda of understanding between the Respondent and a workers union and a human resource manual are also irrelevant. Ms. Kabatesi argued that the CCTV footage was not clear enough. Counsel contested the pagination of the trial bundle regarding the suspension and dismissal letters on pages 30-34 and 32 and 33 of the Respondent's trial bundle. Learned Counsel also prayed that the Respondent put the disciplinary hearing minutes referred to in the Respondent's index on record. Finally, Ms. Kabatesi sought to adduce a Presidential Address on Covid-19 dated 4th May 2022 and to call one Bernard Ofwono, a union leader, as a witness to the proceedings.

- [2] Ms. Julian Nakirijja, appearing for the Respondent, submitted that the trial bundle dated 5th December 2022 was not any different from the bundle filed on 21st October 2022, save for colour photos and CCTV footage. She contended that the memorandum of agreement between the Respondent and Uganda Building, Construction, Civil Engineering, Cement, and Allied Workers Union was referred to in item 13 of the Claimant's trial bundle. It was an agreed document. Counsel conceded that the Human Resource Manual was a new document and contended that no injustice would be occasioned on the Claimant if the documents were admitted.

Decisions and Orders of the Court

- [3] Under Section 18 of the Labour Disputes (Arbitration and Settlement) Act, 2006 (from now the "LADASA"), the Industrial Court is not bound by the rules of evidence in civil proceedings and may, on its own motion, require the production of evidence or attendance of any person to give evidence. This approach to adjudicating labour disputes is rooted in some degree of flexibility. In the case of *Moro Charles v Greenhill Secondary School*,¹ we observed that the legislature intended to provide for a less formal and less legalistic approach to labour justice. The rationale behind this legislation rests on a global standard of the labour or employment relationship—the need for balance. According to a report by Professor Alan C. Neal following the XXVI Meeting of European Labour Court Judges held in Madrid, Spain,² the Respondent Judges generally agreed that evidence in labour disputes would be freely given. There appears to be unanimity towards a less technically legalistic approach to evidence. The Industrial Court would be entitled to receive evidence submitted before it and determine its relevance, materiality, and weight. For this reason, we find as below:
- [4] The Union Memorandum, dated 10th July 2019, is a document common to both parties.
- [5] The relevance of the Corona Virus Policy, Recognition Agreement of 2012, and Union Memoranda dated 10th September can be tested during cross-examination and would invite no prejudice against the Claimant. The colour photographs and CCTV footage can also be subjected to cross-examination, and until presented in Court and evaluated, any other conclusions and observations on relevance and otherwise, would be premature.
- [6] Regarding the Human Resource Manual, this Court, under Section 8 of the LADASA, hears and determines labour disputes. A human resource manual governs the labour relationship. If a party were not to produce such a document, the Court may, *suo moto* seek the production thereof if the same would assist in adjudicating the dispute. The same rationale would apply to the disciplinary hearing minutes listed in item 13 of the Index to the Respondent's Trial Bundle. These documents may aid the court in a just resolution of

¹ LDR 10 of 2021

² https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/-dialogue/documents/meetingdocument/wcms_719949.pdf last accessed 22.04.2023 1:44 pm.

the dispute. It is our direction that they shall be admitted subject to necessary weighting after the evaluation of evidence as a whole

- [7] The Claimant sought admission of a Presidential Address on Covid-19 dated 4th May 2020. While Counsel did not set out the relevance of this evidence, we are persuaded that it ought to be admitted subject to the same considerations in paragraph 6 above.
- [8] Finally, the Claimant prayed that one Bernard Ofwono, leader of the Workers Union, be summoned as a witness. Under the provisions of Section 18 of the LADASA, we hereby direct that witness summons requiring Mr. Ofwono's attendance before this Court at the next hearing, issue.
- [9] In the final analysis, we make the following directions:
- (i) The documents in the Respondent's Trial Bundle filed in Court on the 5th day of December 2022 shall be admitted in evidence and marked REXH1 to REXH19.
 - (ii) The COVID-19 Presidential Address dated 4th May 2020 shall be admitted in evidence and marked CEXH13.
 - (iii) Witness summons issue for Mr. Bernard Ofwono.

Ordered at Kampala this 5th day of May 2023

Anthony Wabwire Musana,
JUDGE, INDUSTRIAL COURT

THE PANELISTS AGREE:

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

Ruling delivered in open Court in the presence of:

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|------------------------|--------------------|
| 1. For the Respondent: | Mr. Eric Bbosa |
| Claimant absent: | |
| Court Clerk: | Mr. Samuel Mukiza. |




