



**THE REPUBLIC OF UGANDA**  
**IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA**  
**LABOUR DISPUTE MISCELLANEOUS APPLICATION NO.019 OF 2023**  
*(Arising from Miscellaneous Application No.18 of 2023 and Labour Dispute Claim No. 238 of 2016, and Labour Dispute Reference No. 118 of 2016)*

1. **EMMANUEL LAGU**  
2. **MWESIGWA MOSES K.....** **APPLICANTS**

**VERSUS**

**ABB LIMITED.....** **RESPONDENT**

**BEFORE:**

THE HON. MR. JUSTICE ANTHONY WABWIRE MUSANA,

**PANELISTS:**

1. HON. ADRINE NAMARA,
2. HON. SUSAN NABIRYE &
3. HON. MICHAEL MATOVU.

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**RULING**

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**Introduction**

- [1] On the 30<sup>th</sup> day of March 2023, when this matter came up for hearing, Mr. William Kasozi, appearing for the Respondent, rose on a preliminary point of law to the effect that the application for the interim order was not based on a substantive application for injunctive relief. Learned Counsel submitted that the body of the motion in Miscellaneous Application No. 018 of 2023, from which the present application is said to arise, did not cite any law. It did not also state what orders the Applicants sought. The application was, at best, for orders to stay proceedings in Labour Dispute



Reference No. 238 of 2016,<sup>1</sup> which had been heard and finally determined. Relying on the case of **Hwan Sung Ltd v Tajdin Hussein & Ors**<sup>2</sup>, Counsel asked this Court to dismiss the application.

- [2] Mr. Soogi Katende and Mr. Patrick Mugalula appeared for the Applicants. In his address to the Court, Mr. Mugalula, explaining the order in the motion of Miscellaneous Application No. 018 of 2023, suggested that the word 'Execution' had been omitted from the order sought. He referred the Court to paragraph 9 of the Respondents' affidavit in reply, which opened with the words, "*I swear this affidavit in reply in opposition to the application seeking to stay the execution of the orders of the court.*" Counsel contended that the application was lawfully before Court for orders of stay of execution. He asked Court to invoke Article 126(2)(e) of the 1995 Constitution, which enjoins the Court to deliver substantive justice without undue regard to technicalities. It was submitted that the omission mentioned above of the word 'execution' did not change the character of the application and that there was no other logical reading of the order.
- [3] In rejoinder, Mr. Kasozi submitted that M.A. 18 of 2023 was unclear. He believed that stating the law would have guided as to what the application was about. Counsel cited the case of **M/s. Fang Min & Belex Tours and Travel Ltd**<sup>3</sup> in support of the proposition that a Court cannot grant orders that are not sought. That there was no formal amendment of the pleadings under Order 6 rule 19 of the Civil Procedure Rules S.I 71-1 (*from now CPR*). It was submitted that M.A. 19 of 2023 is incompetent because there is no substantive application for a stay of execution.

#### **Brief background facts**

- [4] The background facts, as can be gathered from the case papers, are that the present Applicants filed LDR No.238 of 2016 consolidated with LDC No. 09 of 2018 against the Respondent for unlawful dismissal. The Industrial Court found in favour of the Respondent, holding the dismissal to be fair and lawful. The Applicants were ordered to refund specific bonuses. Dissatisfied with that decision, the Applicants are said to have preferred an appeal at the Court of Appeal. The Respondent has now filed Miscellaneous Application No. 016 of 2023 seeking to execute the

<sup>1</sup> These proceedings, consolidated with LDC 09/2018 were commenced by the Applicants seeking a determination of unlawful dismissal. The Industrial Court held that they were lawfully and fairly dismissed. They were asked to refund overpaid bonuses.

<sup>2</sup> S.C.C.A No 19 of 1998

<sup>3</sup> S.C.C.A No. 16 of 2013 was consolidated with S.C.C.A No. 01 of 2014 Crane Bank Ltd v Belex Tours and Travel Ltd.



decision of the Industrial Court. In a bid to stay execution, the Applicants filed the present application to which the Respondent has objected.

- [5] The short point for our determination is **whether M.A. 19 of 2023 is properly before this Court.**

**Resolution of preliminary point**

- [6] The first leg of the preliminary objection is that the motion in M.A. 18 of 2023 is unclear. The motion reads that Counsel for the Applicant would move the court for orders that;

*'a) Labour Dispute Reference No. 118 of 2016 consolidated with Labour Dispute Claim No. 9 of 2018 be stayed pending the hearing and final determination of the Applicants appeal of the said matter'*

It is submitted that this is not an order for a stay of execution. On the face of it, as Mr. Kasozi put it, this order seems to seek a stay of proceedings pending the hearing and disposal of the Applicant's appeal. Indeed, it would be correct that there is no motion to stay execution<sup>4</sup>. But, for now, the law is that a party to proceedings cannot be granted orders they have not sought. Can it be inferred from the grounds in the motion and supporting affidavit that the Applicants seek a stay of execution? In venturing an answer to this question, Mr. Mugalula suggested that the body of the application and affidavit contained the object of the application. We will return to this premise shortly.

- [7] It is essential to adhere to the rules of pleadings as a starting point. In their joint treatise on Civil Procedure and Practice in Uganda, M. Ssekaana J. and S.N Ssekaana,<sup>5</sup> the learned authors, opine that the system of pleadings requires parties to state with precision and clarity the substantive context of their respective cases. Pleadings, which comply with the formal requirements, become immediately recognizable as such and cannot be mistaken for and confused with any other documents produced in the litigation process. In the matter before us, the preliminary objection raised by Mr. Kasozi is, in our view, a direct product of non-specific pleadings. The pleadings in Miscellaneous Application No. 18 of 2023 exclude the word '*execution*,' which the Applicants suggest was omitted. The pleadings do not state the law under which the application was brought.

<sup>4</sup> In *Alcon International Ltd vs The New Vision Printing and Publishing Co Ltd and Another* the Supreme Court of Uganda held that a court hearing an application for interim relief, must be satisfied that there is a pending substantive application

<sup>5</sup> Page 158



We would agree with Counsel for the Respondent that the pleadings are confusing. And this is, quite precisely, the absurdity brought about by inelegant pleadings. Imprecise pleadings are not helpful aids in the adjudication of justice.

- [8] In his submission on the point, Mr. Mugalula was emphatic that the word 'execution' was left out. Counsel pointed the Court to discern the object of the application for a stay of execution from the motion and supporting affidavit. Mr. Mugalula suggested that we should consider form versus substance. In terms, we were asked to make inferences as to the orders sought.
- [9] Our review of the body of the motion in M.A. No. 18 of 2023 demonstrates that several grounds were listed in support of the application. Paragraphs 1-7 gave a background to the application, including the fact that the Applicants had preferred an appeal against the decision of the Labour Court. Paragraph 8 of the summary of the grounds states that the Respondent had taken out a Notice To Show Cause why execution should not issue. Paragraphs 9 to 14 speak to the appeal. In the affidavit supporting the application, the 2<sup>nd</sup> Respondent repeats the grounds in support of the application. In paragraph 6 of the affidavit, it is averred that execution of the award would render the appeal nugatory. A copy of the Notice To Show Cause was attached. The motion papers speak to an application regarding the execution of LDC No. 238 of 2016 as consolidated with LDR 09 of 2018.
- [10] This Court is established as a Court of Equity. In the case of **Tembo Steels (U) Ltd v Wamala Collins**,<sup>6</sup> this Court observed that it sits as a court of equity. One dictum of equity is that equity looks at intent rather than form. This edict is enacted in Article 126(2)(e) of the Constitution, enjoining the Court to administer substantive justice without undue regard to technicalities. The Industrial Court, in its constituent statutes, is intended for expeditious disposal of disputes and is permitted to set its own rules of procedure under **Section 40(2) of the Labour Disputes (Arbitration and Settlement, Act 2006)**(LADASA). This does not suggest a laxity in applying rules of procedure but engenders a less formalistic approach in keeping with the constitutional edict under Article 126(2)(e). What informs this approach is the need to provide access to labour justice for all.

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<sup>6</sup> LDMA NO.261 of 2019



- [11] Considering the above precepts, a review of the grounds stipulated in the motion and repeated in the affidavit in support, are those ordinarily applicable to an application for a stay of execution brought under the ordinary rules of civil procedure. The subject matter deposed to by Mr. Hezekiah Nsubuga Mubiru in reply is that of a stay of execution.<sup>7</sup> In the affidavit in reply dated 29<sup>th</sup> March 2023, the Respondent has understood and deposed to pleadings for an application for a stay of execution. From the case papers, our necessary inference is that there is a substantive application for a stay in M.A. No.18 of 2023.
- [12] The second ambit of the objection is that no law was cited supporting this application. The decisions in the authorities provided by Mr. Mugalula are direct in their conclusions. For the time being, it is the law that where an application omits to cite any law at all or cites the wrong law, but the court has jurisdiction to grant the order sought exists, the irregularity or omission can be ignored, and the correct law inserted.<sup>8</sup> This Court has jurisdiction to grant the orders of stay of execution.
- [13] For the reasons cited above, we are inclined to overlook the inelegantly drafted pleadings and find that Miscellaneous Application No 18 of 2023 is an application for stay of execution in substance rather than form. In the result, Miscellaneous Application No. 19 of 2023 is competently before this Court.
- [14] Before taking leave of this matter, we note that the decision of the Industrial Court in Labour Dispute Reference No. 238 of 2016, which arose for LDR KCCA/118 of 2016, was entered on 29<sup>th</sup> of April 2022. Under **Section 8(2) of the Labour Disputes (Arbitration and Settlement) Act 2006** (LADASA), labour disputes are to be resolved without undue delay. The present application seeks an interim order of stay, pending the hearing and disposal of a substantive application for stay of execution pending appeal. Under **Section 14(1) Labour Disputes (Arbitration and Settlement) (Amendment) Act 2020** (LADASA), a decision of the Industrial Court is arrived at first by consensus. In the matter before us, a hearing of the interim application would precede a hearing of the substantive application with necessary intervals for submissions of the parties and holding of coram.

<sup>7</sup> At paragraph 9, it is deposed that the application for stay is a reactive step.

<sup>8</sup> See *Saggu v Road master Cycles(U) Ltd* [2002] 1 EA 258 at 262 and *SGS Societe Generale De Surveillance SA v VIP engineering and Marketing Ltd*



Prudence would entail hearing and concluding the substantive application for stay expeditiously. Under **Section 40(2) of the LADASA**, we direct the hearing of M.A 018 of 2023 to be expedited. Further hearing of M.A. No. 019 of 2023 would cause undue delay.

[15] There is to be no order as to the costs of the objection.

Dated, delivered and signed at Kampala this **11<sup>th</sup> day of April, 2023**

**SIGNED BY:**

THE HON. MR. JUSTICE ANTHONY WABWIRE MUSANA,  
**JUDGE, INDUSTRIAL COURT**

**THE PANELISTS AGREE:**

1. HON. ADRINE NAMARA,

2. HON. SUSAN NABIRYE &

3. HON. MICHAEL MATOVU.

Ruling delivered in open Court in the presence of:

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|------------------------|-------------------------------|
| 1. For the Applicant;  | <b>Mr. Patrick Mugalula.</b>  |
| 2. For the Respondent; | <b>None.</b>                  |
| Court Clerk;           | <b>Ms. Matilda Nakibinge.</b> |