



**THE REPUBLIC OF UGANDA  
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA  
MISCELLANEOUS APPLICATION NO. 26 OF 2020**

*(Arising from Labour Dispute Reference No. 054 of 2015 and Labour Dispute  
MGLSD/276/2015)*

**WAISWA POLYCARP & 12 OTHERS.....APPLICANTS**

**VERSUS**

**ATTORNEY GENERAL .....RESPONDENT**

**BEFORE:**

THE HON. JUSTICE ANTHONY WABWIRE MUSANA

**PANELISTS:**

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

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**RULING**

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**Introduction**

- [1] This ruling is in respect of an application seeking orders that the court endorses and confirms a sum of **UGX 429,364,319/=** calculated as emoluments accruing to the claimants following the Court Award in Labour Reference No. 054 of 2015. The application was brought under Section 98 of the Civil Procedure Act Cap. 71, Section 33 of the Judicature Act Cap. 16 and Section 17 of the **Labour Disputes (Arbitration and Settlement) Act 2006** as Amended. The affidavit of Tembo Louis, the 2nd Applicant supported the application. The Respondent opposed the application and filed an affidavit in reply sworn by Musaazi Fulgensio, the Head of the Department of Budget and Logistics at the Internal Security Organization.



- [2] In the course of preparing a ruling on this matter, we found that on the 2<sup>nd</sup> day of July 2021, this Court determined Miscellaneous Application No. 26 of 2020 allowing the computations presented by the Applicants. We were of the initial view that it was unnecessary to reconsider the application until it was brought to our attention that the Applicants had conceded to Miscellaneous Application No. 148 of 2022 wherein the Respondent sought to set aside the ruling of this Court dated 2<sup>nd</sup> July 2022. The same was set aside by this Court on 26<sup>th</sup> August 2022. Unfortunately, this record of proceedings was missing from the file on the 13<sup>th</sup> of January 2022. When Mr. Amos Musheija, appearing for the Applicants, brought the proceedings of the 26<sup>th</sup> of August 2022 to our attention, we proceeded to consider the application on its merits and now render our ruling.

**Submissions of the Applicant**

- [3] It was submitted for the Applicants that on 8<sup>th</sup> November 2016, this court entered an award in favour of the Applicants in Labour Dispute Reference No. 054 of 2015. The orders were to:
- (i) Calculate the benefits accruing to the Applicants(then Claimants) in accordance with the award and;
  - (ii) if it were to be found that the Applicants were paid less than the awarded amounts, the balance payable would attract interest at 21% p.a year 2012 to the date the claimants received their last payments. The Applicants submitted their computations to the Respondent. The figures are tabulated as follows:

WAISWA POLYCARP	37,437,836/=
TEMBO LOUIS	26,807,758/=
MUGABI APPOLLO	31,954,872/=
NZABAMWITA BRUNO	36,588,563/=
LUTWAMA MOSES	36,401,022/=
OKWERA JIMMY	26,724,527/=
BAMANYA WINFRED	30,693,382/=
JURUA ANDREW	27,972,836/=
MAGUYA MILTON	27,972,580/=
NAKITYO TEOPISTA	25,170,835/=
BALINDA J.K	23,785,915/=
TWINOMUGISHA DENIS	37,066,056/=
RWEKIKIGA ASSIMWE	60,933,137/=



- [4] It was submitted for the Applicants that the above figures were the difference between the figures presented by the Respondent in the memorandum of reply to the claim and those contained in the written submissions in LDR 054 of 2010. The former are contained in Annexure E2 to the affidavit of Louis Tembo (UGX 123,175,449/=) which the Applicants admit to having received but dispute as full and final settlement of their dues. The final figures are represented in Annexure E1 and E2 of the affidavit in support of the present application sworn by Mr. Tembo. It was also contended that the cumulative figure of UGX 571,843,006 has been retendered by the Respondent in Annexes C1 and C2 to the affidavit in reply sworn by Mr. Fulgensio Musaazi. Counsel contended that the only difference between these documents is that the 8<sup>th</sup> and 13<sup>th</sup> Applicants have outstanding balances of UGX 14,387,687/= and UGX 8,302,500/= respectively. It was submitted that the Respondent had not provided proof of payment in full.

#### Submissions of the Respondent

- [5] In reply, the Respondent submitted that the application had been brought under the wrong law. In the Respondent's view, **Section 17 of the Labour Disputes (Arbitration and Settlement) Act, 2006**, which provides for the interpretation or review of a Court award, was not applicable to the present case.
- [6] It was also submitted for the Respondent that Mr. Waiswa Polycarp did not have the authority to swear the affidavit on behalf of the other 12 applicants. Counsel cited the case of **Makerere University v St Mark Education Institute & Ors H.C.C.S No 378 of 1993** in support of this proposition.
- [7] The Respondent submitted that the Applicants had been paid in full and attached the computations as Annex C2 to Mr. Musaazi's affidavit in support.

#### Rejoinder

- [8] The Applicant protested the late filing of submissions by the Respondent.
- [9] In relation to the application being under the wrong law, the Applicant, citing the case of **Conform Uganda Ltd v Megha Industries (U) Ltd M.A 1084 of 2014** and **Gold Beverages(U)Ltd v Muhangura Kenneth & Anor H.C.C.S No. 163 of 2019** contended that citing of a wrong law is not fatal to an application.
- [10] On lack of authority to swear an affidavit, Counsel submitted that there was no affidavit on record sworn by Waiswa Polycarp. The affidavit in support was sworn by Tembo Louis. Counsel submitted on the authority of the case



of **Bankone Ltd vs Simbamanyo Estates Ltd H.C.M.A No. 645 of 2020** that the affidavit was properly the before Court.

- [11] Lastly, Counsel submitted that the Respondent ought to provide evidence of full payment, if it were indeed true that the Applicants have been paid in full.

**Resolution of the preliminary point**

- [12] Modern precedent is now to the effect that affidavits in interlocutory applications are a means of providing evidence. What is now required in the affidavits is the knowledge and belief of the deponent rather than authorization by a party to the litigation.<sup>1</sup> We have adopted this position and held to the same effect in the case of **Autotune Ltd vs Swaldo Barozi and Others**<sup>2</sup> that the law, as it now stands, is that precedent rendering affidavits without authority defective, has no basis in the rules of evidence and procedure. We have not been persuaded to depart from this position and the objection is accordingly overruled.

**Analysis and Decision of the Court**

- [13] From the pleadings and submissions of the parties, the Respondent invited this Court to consider the following issues:

- (i) Whether the application is properly before Court?
- (ii) Whether the Respondent fully paid the Applicants their terminal benefits?
- (iii) What remedies are available to the parties

We are of the opinion that the issues cover the subject matter of the dispute, sufficiently.

**Issue One: Whether the Application is properly before Court**

- [14] The Respondent suggested that the application had been brought under a wrong law. It was submitted that **Section 17 of the Labour Disputes (Arbitration and Settlement) (Industrial Court) Act, 2006(LADASA)** relates to the interpretation and review of awards of which the present matter is not. **Section 17 of the LADASA** provides that where any question arises as to the interpretation of any award of the Industrial Court within twenty-one days from the effective date of the award or, where new and relevant facts concerning the dispute materialize, a party to the award may apply to the

<sup>1</sup> Per Mubiru J. in *Bankone Limited v Simbamanyo Estates Ltd H.C.M.A 645 of 2020*. A copy of the decision was supplied to us by the Applicants. See also the decision in *Namutebi Matilda Vs Ssemenda Simon & Others H.C.M.A No 0430 of 2021*

<sup>2</sup> LDMA 022 of 2022.



Industrial Court to review its decision on a question of interpretation or in light of the new facts.

[15] In the matter before us, what is sought is an order that the court endorses and confirms the sums listed in paragraph [3] above. To fully appreciate the application it is necessary to revisit the award of this Court in LDR No. 54 of 2015. On the 8<sup>th</sup> day of November 2016, this Court entered an award for the claimants granting gratuity computed at 30% of salary earnings of each 3 year period served, transport and ex-gratia payments, leave allowance and 3 months' salary in lieu of notice. The Court also noted that the claimants had received certain sums which they did not dispute and held that if after calculating the benefits accruing to the claimants in accordance with the award it is found that the claimants were paid less than the awarded amounts, the balance payable shall attract interest at 21% p.a from the year 2012 until payment in full. The narrower point for consideration by this Court is captured in the resolution of issue 2 but for purposes of propriety of this application, it is our view that the Applicants seek an endorsement of the sums arising out of the award. Notably, the award did not indicate what amounts were due to each applicant. This was left to computation by the parties.

[16] Section 17 of the LADASA provides for two main functions of the court;

- (i) The first is interpretation of an award. According to Black's Law Dictionary, the expression "interpret" means to construe. This is to give meaning. In terms, the Court may be moved to resolve an ambiguity in an award of the Court.
- (ii) The second limb of the rule is for the Court to review its decision. In the case of Luitingh Lafras and Anor v Special Services Limited (Civil Miscellaneous Application No.572 of 2020) <sup>3</sup> Ssekaana .J posits that a review is reconsideration of the subject matter by the same court and by the same Judge since he/she is better suited to correct or remove any mistake or error apparent on the face of his/her own order. It is the duty of the court to correct grave and palpable errors committed by it to prevent miscarriage of justice.

[17] In the matter before us, the Applicants seek to neither resolve an ambiguity in the award, nor put meaning to the award. What the Applicants seek is to endorse and confirm the sum of **UGX 429,364,319/=** as the calculated emoluments of the Claimants in accordance with the award in LDR No. 054 of

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<sup>3</sup> [2021] UGHCCD 89 (15 June 2021)



2015. To this extent, the application would have been brought under the wrong law and the Respondent's argument would hold. However, jurisprudence has evolved to a position that an application brought under a wrong law is not fatal.<sup>4</sup> We agree with this proposition. Further, the Respondent suffers no prejudice. The Respondent clearly understood the substance of the Applicants' application and duly responded to it. In the result we would answer Issue No. 1 in the affirmative. The matter is properly before this Court.

**Issue Two: Whether the Respondent fully paid the Applicants their terminal benefits**

- [19] In the motion and affidavit in support sworn by Mr. Louis Tembo, it was averred that the sum due to the Applicants was UGX 429,364,319/=. The Applicants' explanation was that this sum is the variance between what the Applicants admitted as paid (UGX123,175,449/=) at the time of filing the reference and what was due to them as contained in the Respondent's final submissions (UGX. 571,843,006/=). The Respondent's witness statement filed in court on 8<sup>th</sup> July 2016 contained a computation of UGX 484,373,774/= representing gratuity and leave arrears. A further sum of UGX 102,007,938/= was listed as Ex- gratia, transport and three months' salary bringing the total due to UGX 586,381,712/=. The affidavit in reply sworn by Mr. Fulgensio Musaazi contained a list of the claimants and the amounts of money paid to them in **annexure C2**. The Respondent submitted that a total amount of UGX 435,375,962/= had been paid to the Claimants except for Claimant Rwekikiga Assimwe who had UGX 8,302,500/= outstanding and Claimant Jurua Alex who had UGX14,387,687/=outstanding. However, while Mr. Musaazi averred in paragraphs 11 and 12 of his affidavit in reply, that the Applicants had been paid their retirement benefits in full, no proof of payment was laid before this Court.
- [20] In the absence of verifiable proof of payment, we have some difficulty in accepting the Respondent's submission that the Applicants terminal benefits have been paid in full. There is no documentary proof of payment which should ordinarily include name or names of the payee, precise dates of payment, details of payments including bank accounts, specific amounts of paid and a narrative supporting the payment. No payment instructions, vouchers, receipts of other evidence of payment was submitted to the Court.

<sup>4</sup> Per Bashaija J in Gold Beverages (U)Ltd vs Muhangura Kenneth and Anor. H.C.M.A 674 of 2019 [2020] UGHCCD 126. See also Saggu vs. Road Master Cycles (U) Ltd [2002] I EA 258



The evidence as it stands, is not sufficient to support the proposition that the applicants have been fully paid. It is also noted that in the year 2006, the Government of Uganda rolled out an Integrated Financial Management System (IFMS). Under this system, the Expenditure Management System focuses on payments among others. Payments such as the monies paid to the Applicants in the present matter would be reflected. We therefore do not accept the Respondent's submission that the Applicants have been paid in full. Issue 2 is answered in the negative.

**Issue Three: What remedies are available to the parties**

- [21] There appears to be some near common ground that certain sums are due or were due to the Applicants from the Respondent. The Applicant's listed the sums due to them in paragraph 9 of Mr. Louis Tembo's affidavit in support. Those sums were reproduced in paragraph 3.0 above totaling UGX 429,643,319/=. The Applicants admitted receipt of UGX123,175,449/=. By this computation, the Applicants would be entitled to UGX 552,539,768/=. On his part, the Respondent submitted evidence showing a total sum of UGX 571,843,006/= as the Applicants' terminal benefits. This sum exceeds the Applicants computation by UGX 19,303,238/=. In annexure C2, the Respondent indicated a sum of UGX 22,690,187/= as outstanding and due to two claimants. This would imply that the Respondent has paid to the Applicants a sum of UGX 549,152,819/=. Therefore, by the Respondent's own computation as contained in Mr. Musaazi's affidavit, the computed amount of the Applicants' terminal benefits is UGX 571,843,006/=. Mr. Musaazi deposed the said affidavit in reply as Head of Department of Budget and Logistics at the Internal Security Organisation. He testified that the sum of UGX 571,843,006/= has been paid to the claimants. This would lead this Court to the inescapable conclusion that the Respondent admits to having computed UGX 571,843,006/= as the Applicant's terminal benefits.
- [22] In the case of **Matovu Luke & ORS vs. Attorney General**, HC Misc. Appl. No. **143 of 2003**, Musoke – Kibuuka J. (as he then was), citing **Phipson on Evidence, Chapter 24**, stated that in civil cases, statements made out of court by a party to the proceedings or by persons connected with him by any relationship are admissible in evidence against but not in favour of such party. Admissions are admissible against the crown as against ordinary parties. It is generally immaterial to whom the admission was made. An admission made to a stranger to the suit is as receivable and as relevant as one made to the opposite party. The position of the law appears to be, that private memoranda, though not communicated to the opposite side or third person



are as evidence against a party as are admissions made to himself or herself in soliloquy.<sup>5</sup>

[23] In the matter before us, the Respondent has admitted the sum of UGX 571,843,006/= as the computation of the Applicants' terminal benefits. The admission was clear and unambiguous and contained details of gratuity, leave, ex-gratia payment, 3 months' salary in lieu of notice and transport payment. While the Applicants presented a varied computation, the Respondent's computation would be much more plausible and believable. This so because as an employer, the Respondent would have each of the Applicants personal files containing their full employment details and history, the date of appointment and assumption of duty, promotions, changes in salary structure, any disciplinary records and the date of retirement or exit inter alia. Such a computation would be on the basis of records in the possession of the Respondent, as the employer. It would be a much more reliable position. On this account, we would therefore be inclined to and hereby endorse and confirm the sum of UGX 571,843,006/= as contained in Annexure C1 to Mr. Fulugensio Musaazi's affidavit in reply sworn on 4<sup>th</sup> of February 2022 and filed in Court on the 7<sup>th</sup> of March 2022, as the Applicants/Claimants computed emoluments in accordance with this Courts Award in Labour Reference No. 054 of 2015. For avoidance of doubt, the details of the confirmed and endorsed computations are as follows:

WAISWA POLYCARP	35,626,936/=
TEMBO LOUIS	32,978,068/=
NZABAMWITA BRUNO	36,586,912/=
MUGABI APPOLLO	30,573,372/=
LUTWAMA MOSES	35,737,767/=
OKWERA JIMMY	26,724,027/=
BAMANYA WINFRED	34,759,074/=
JURUA ANDREW	26,059,884/=
MAGUYA MILTON	26,724,027/=
NAKITYO TEOPISTA	33,009,786/=
BALINDA J.K	23,782,915/=
TWINOMUGISHA DENIS	35,627,056/=
RWEKIKIGA ASSIMWE	57,186,188/=

<sup>5</sup> Cited in Mwebelha Amatos vs A.G [2015] UGHCLD 49 Per Bashaija J. "It would appear clearly that where the admission of facts is clear and unambiguous, the court ceases to have the discretion whether to enter a judgment or not. It must do so"



**Remedies and orders of the Court.**

- [24] The sum of **UGX 571,843,006/=** is hereby confirmed and endorsed as the computed emoluments of the Applicants (Claimants) in Labour Reference No. 054 of 2015 as detailed in paragraph 23 above.
- [25] The Applicant sought interest at the rate of 21% p.a from 2012 until payment in full. The Respondent in annexure C2 to Mr. Musaazi's affidavit in reply, avers that interest was computed from the year 2012 to 2016. It appears to us that the Respondent suggests that payments were effected in 2012. However, we have already found that the Government of Uganda payment mechanisms are effected through the IFMS system. It follows therefore that the said system would provide accurate details of date and amounts of payment, if any, to enable a proper computation of interest due. In this regard, the Respondent would be directed to furnish the Registrar of this Court with detailed proof of payment of the sums to the Applicant in paragraph 7.9 above within 30 days from the date hereof. The Court shall make such orders as to interest, if any, upon receipt of the proof of payment.
- [26] On provision of costs, this is a matter where both parties were required to jointly compute the benefits. Each party has presented a version for confirmation and endorsement. It is not, in our view a matter where costs should be visited on either of the parties. There shall therefore, be no order as to costs.

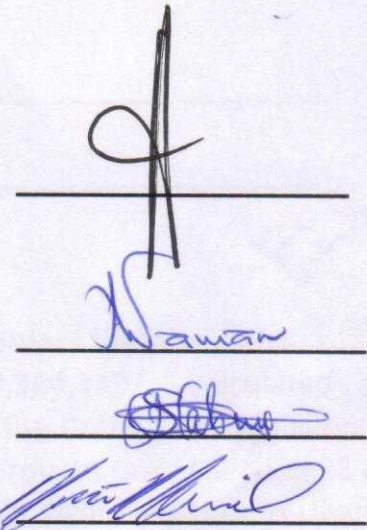
**Dated at Kampala this 6<sup>th</sup> day of February 2023**

**Delivered and signed by:**

**ANTHONY WABWIRE MUSANA, Judge**

**PANELISTS AGREE:**

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



Ruling delivered in open Court in the presence of:

Ms. Anne Vera Neumbe H/B for Mr. Amos Musheija for the Applicant.

c.c Mr. Samuel Mukiza.