

THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT JINJA
LABOUR DISPUTE REFERENCE NO. 329 OF 2017
[ARISING FROM LABOUR COMPLAINT NO. 42/2017 - TORORO]

BETWEEN
WAISWA PATRICK
JULIUS.....CLAIMANT
VERSUS

- 1. RIFT VALLEY RAILWAYS (UGANDA) LTD.**
- 2. UGANDA RAILWAYS CORPORATION**
- 3. ATTORNEY**
GENERAL.....RESPONDENT

BEFORE

1. Hon. Chief Judge Ruhinda Asaph Ntengye
2. Hon. Lady Justice Linda Tumusiime Mugisha

PANELISTS

1. Mr. Bwire John Abraham
2. Mr. Mavunwa Edson Han
3. Ms. Julian Nyachwo

AWARD

Brief facts

The claimant initially filed a claim against only the 1st respondent but later on through an amended memorandum, the other two respondents were included in the claim. The claimant was originally employed by the second respondent before a concession was entered into by government of Uganda in 2006 and the services of the claimant were terminated by the 2nd respondent as the 1st respondent under the concession took charge of the assets of the 2nd respondent as a going concern.

On termination the claimant, his employment was transferred to the 1st respondent who engaged him as a train inspector at Ugx. 751,676 per month and he rose through the ranks to that of Foreman at a salary of 1,742,457 whereupon the 2nd respondent and 3rd respondent once again took over the going concern from the 1st respondent. He had been suspected to have stolen property of the 1st respondent, suspended and summarily dismissed while at the same time he was being prosecuted in a criminal court.

It is not clear whether the claimant lodged a complaint before the labour officer immediately after summary dismissal but in his evidence, he stated that after acquittal by the chief magistrate, he made a further complaint to the labour officer.

Only the 2nd respondent filed a reply to the memorandum of claim in which it was stated that the claimant had no cause of action against it since the claimant ceased to be employee of the 2nd respondent on 31/7/2006 and the 1st respondent's operation of the 2nd respondent's railway business and assets under a concession agreement did not impose any legal obligation on the 2nd respondent in relation to 1st respondent's employees.

According to the 2nd respondent, by the time it resumed operation of its railway business on 25/1/2018 upon termination of the concession agreement, the claimant had already ceased employment with the 1st respondent and on resumption of the business the second respondent did not inherit any liabilities or obligations of the 1st respondent.

When the matter came up for hearing the claimant withdrew the claim against the 1st and 3rd respondents and maintained the same against the 2nd respondent.

Issues

Agreed issues were:

- 1) Whether the claimant was wrongfully terminated.**
- 2) Whether the claimant has a cause of action against the 2nd respondent.**
- 3) Whether the claimant is entitled to the remedies sought.**

Although both counsel preferred to argue the issues in the way they are numbered, we shall discuss the 2nd issue first.

A cause of action is a set of facts sufficient to justify a person suing or enforcing a legal right against another person. The case of **Auto Garage Vs Motor Kov (1971) EA 514** is authority for the legal proposition that in order for a party to sustain a cause of action such party must show court that he had a legal right and that such a legal right was not only violated but violated by the defendant (see also the decision of this court in **Cipla quality Chemicals Industries Ltd. Vs Namakoye Lucy Misc. Appn. 84/2017** which emphasized that these elements be disclosed in the memorandum of claim.

For this court to establish that the plaintiff/claimant has a cause of action against the defendant/respondent, the court only has to look at the pleadings which should ordinarily show a set of facts that reveal the elements as disclosed in the above Auto Garage case.

Counsel for the claimant argued strongly that his client had a cause of action against the respondent by virtue of the fact that having been terminated by a party other than the respondent, the respondent thereafter regained the business in which the claimant was employed and took over management of the business.

Counsel for the respondent on the other hand argued strongly that the respondent having not terminated the claimant and having not re-employed him after resumption of the business in which the claimant had been employed and terminated by a third party and having not taken over assets and liabilities of the said third party, no cause of action arose against it.

On perusal of the amended memorandum of claim, paragraph 5 shows that the claimant was employed by the 1st respondent who suspended him for alleged theft and subsequently terminated him.

Having withdrawn the claim from the 1st respondent, the set of facts as enumerated in the memorandum of claim could not connect to the second respondent as employer and terminator of the claimant's employment merely because the second respondent regained control and management of the business of railways. No pleadings were disclosed to the effect that the 2nd respondent took over assets and liabilities of the 1st respondent. It was not established by the pleadings that the claimant had a legal right he enjoyed which was violated by the 2nd respondent. Consequently, we agree with the 2nd respondent that no cause of action was disclosed against it by the pleadings. In accordance with **Order 7 rule 11(a) of the Civil Procedure Rules** the

Memorandum of claim is hereby rejected for the above reasons. Ordinarily having rejected the memorandum of claim, court would not go into other issues arising from the same claim but for the sake of finally completing this matter, we shall go into the issue **whether the claimant was wrongfully terminated.**

As already pointed out in the discussion above, the second respondent was not an employer of the claimant and did not participate in the process of dismissal. The claimant withdrew the case against his own employer who suspended, subjected him to disciplinary hearing and subsequently dismissed him.

We agree with the submission of counsel for the respondent that the claimant having not pleaded in the memorandum of claim that the 2nd respondent took over assets and liabilities of the 1st respondent, he was precluded from adducing evidence to that effect as was held in the case of **DFCU BANK VS DONNA KAMULI Civil Appeal 121/2016 (Court of Appeal) and the Supreme Court case of Sietco Vs Noble Builders (U) Ltd. SCCA 31/1995.** In the latter case which was relied upon by the Hon. Justice Henry Peter Adonyo in **Stephen Mwesezi Vs Akright Projects Ltd, HCCS 250/2009,** Wambuzi CJ (as he then was) was quoted by Justice H. P. Adonyo as having held

“Pleadings will govern the scope of the case and deliberate (deliniate) areas upon which evidence ought to be adduced. A departure from the pleadings during the giving of evidence would normally lead to the party departing being precluded from leading such evidence beyond pleadings. See: BYRD V. Naun (1877) 7 CHD287. Guided by the above, I am of the view that the introduction of matters which were never pleaded at this very late stage of the trial is one that is done to sabotage the process of trial where parties would exercise their rights sufficiently to rebut or deny and I would not allow it.”

The claimant under paragraph 24 of his statement testified that the respondent took over liabilities of the 1st respondent which in our view is not acceptable given the authority in the above case. Nonetheless under paragraph 11 of the respondent’s witness, such take over of liability by the respondent is denied.

The evidence on the record from both claimant and respondent is that the claimant was terminated by the 2nd respondent when Government signed a concession Agreement with the 1st respondent and that he was on termination paid all his dues including pension. He was thereafter employed by the 1st respondent who terminated him. On re-taking over the railway business by the 2nd respondent, the claimant had already been terminated and he was not among the employees re-considered to be re-employed by the 2nd respondent.

Given this state of affairs, we agree with the submission of counsel for the respondent that in absence of evidence that the 2nd respondent took over liabilities of the 1st respondent in respect to employee's affairs, the question whether the claimant was wrongfully terminated could only be addressed to the 1st respondent.

Accordingly, the claim against the 2nd respondent fails and is hereby dismissed. No order as to costs is made. This being the case no reliefs or remedies are available to the claimant.

Delivered & Signed by:

1. Hon. Chief Judge Ruhinda Asaph Ntengye
2. Hon. Lady Justice Linda Tumusiime Mugisha

PANELISTS

1. Mr. Bwire John Abraham
2. Mr. Mavunwa Edson Han
3. Ms. Julian Nyachwo

Date: 5/FEB/2021