



THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE CLAIM NO. 208 OF 2021
(Arising from Labour Complaint No. KCCA/NDCB/LC/560/2019)

AURAHAM AVIVI:.....CLAIMANT

VERSUS

SBI INTERNATIONAL HOLDINGS AG UGANDA:.....RESPONDENT

Before:

1. The Hon. Mr. Justice Anthony Wabwire Musana

Panelists:

1. Mr. Jimmy Musimbi,
2. Ms. Robinah Kagoye &
3. Mr. Can Amos Lapenga.

Representation:

1. Mr. Richard Caesar Obonyo of M/S KSMO Advocates for the Applicant
2. Mr. Ronald Nyagambaki of M/S Verma and Partners for the Respondent.

RULING

[1] On the 24th day of May 2023, considering two preliminary objections, this Court found it had jurisdiction to hear and entertain a claim for National Social Security benefits and grant declaratory relief. The case was set for scheduling on the 16th of August, 2023. That day, Mr. Ndyagambaki made an oral application for leave to appeal. He cited the case of **Christopher Gashirabake v Samantha Mwesigye**¹ where this Court granted leave to appeal informally. Oral applications for leave to appeal are competent. In the case of **Awongo v The Board of Governors of Koboko Secondary School**² the case of **Sango Bay Estate Ltd vs. Dresdner Bank A.G**³ was cited. In that case, the East African Court of

¹ LDMA 27 of 2022

² H.C.M.A 078 of 2017

³ [1971] EA 17

Appeal decided that applications for leave to appeal may be made informally. However, the Court had the discretion to demand that the application be made formally. Therefore, Mr. Ndyagambaki's oral application for leave to appeal is perfectly competent.

- [2] Mr. Obonyo, appearing for the Claimant, opposed the application, submitting that the application for leave did not have proper merit and the appeal did not have a likelihood of success. We directed Counsel to file written submissions.
- [3] From the submissions, the sole question for determination, which can be resolved briefly, is whether the Respondent's application discloses grounds of appeal. In rendering this ruling, we have considered the succinct submissions of Counsel, for which the Court is grateful, the law, and the authorities cited.
- [4] The threshold for a grant of leave to appeal is well settled. For brevity, in **Sango Bay Estate vs. Dresdner Bank A.G**(*ibid*), Spry V.P observed thus:

"As I understand it, leave to appeal from an order in civil proceedings will normally be granted where prima facie it appears that there are grounds of appeal which merit serious judicial consideration...."

In **Musa Sbeity & Anor v Joan Akello** ⁴, the Honourable Mr. Justice Musa Ssekaana cited the case of **Swain v Hillman [2001] 1 All ER 91** where Lord Woolf, MR noted;

"That a real prospect of success means that the prospect for success must be realistic rather than fanciful. The court considering a prospect for permission is not required to analyse whether the grounds of the proposed appeal will succeed, but merely whether there is a real prospect of success."

The threshold, therefore, is that there must be grounds of appeal with prospects of success.

⁴ H.C.M.A 249 of 2018

- [5] The Respondent submitted that it held the firm opinion that other than the Magistrates Court, the only other Court with jurisdiction to hear this matter was the High Court and not the Industrial Court. For the Applicant, it was submitted that this Court correctly addressed itself to the law and facts and came to the correct conclusion on both the preliminary issues raised on jurisdiction and limitation. We agree that this Court carefully considered the law in arriving at the position that it was clothed with jurisdiction to entertain the matter, especially given the dictum of Mubiru J. in **Ozoo Brothers Enterprises v Ayikoru Milka**⁵. His Lordship observes that a court's jurisdiction is not to be ousted easily or fleetingly. The jurisdiction of courts of law must be guarded jealously and should not be dispensed with too lightly.⁶ In reaching its conclusion, this Court considered several authorities, including the case of **Aijukye Stanley v Barclays Bank Uganda Ltd**⁷, where the Industrial Court held that an employee could sustain an action to recover his social security benefits against an employer. There are also many cases where the Industrial Court has held that it has jurisdiction to entertain disputes arising from the employment relationship.⁸ As a Court, we hold that our decision was correctly considered.
- [6] However, the dictum in **Kilama Tonny and Anor v Grace Perepetua Otim**⁹, to the effect that leave to appeal should not be refused simply because the Trial Magistrate or the Appellate Judge thinks that the decision was correct, is quite instructive. The Respondent's chief complaint is that this Court did not have jurisdiction to hear and entertain the matter. Jurisdiction to determine rights is central to the administration of justice. The Appellate Division of the East African Court of Justice¹⁰, observed that jurisdiction is a most, if not the most, fundamental issue a court faces in any trial. It is the very foundation upon which the judicial edifice is constructed, the foundation from which springs the flow of the judicial process. We think this passage to be most apt. Any further proceedings in this matter before a final determination on the question of jurisdiction are futile. That would be to determine a case without foundation. For this reason alone, it is appropriate that leave to appeal against the ruling and orders of this Court in LDC 208 of 2021 be and is hereby granted. As

⁵ H.C.Civ. Revision No. 002 of 2016

⁶ Per Mulenga JSC(as he then was) in **Habre International Co Ltd vs Kassam and Others** [1999] 1 EA 125 cited in the Ozoo case(lbid)

⁷ LDC 243 of 2014

⁸ See **Okou R. Constant Vs Stanbic Bank** LDC 171/2014, **George Katendegwa vs Samsung** LD 144/2014, **Jason Njeru vs Imperial Bank Uganda Ltd** LDR 172/2015 and **Mutono Lauben v Kampala International University** LDR 335 of 2017.

⁹ HCCA 12 of 2021

¹⁰ **Attorney General of the United Republic of Tanzania v African Network of Animal Welfare** Appeal No. 3 of 2011 EACILR 2005-2011 395



jurisdiction is very central, it is unnecessary to consider the matter of declaratory relief. In keeping with the dicta of this Court in **Joseph Kalule v GIZ¹¹**, there is to be no order as to costs.

It is so ordered this 31st day of August 2023


Anthony Wabwire Musana,
Judge, Industrial Court

The Panelists Agree:

1. Hon. Jimmy Musimbi,
2. Hon. Robina Kagoye &
3. Hon. Can Amos Lapenga.


Ruling delivered in open Court on 31st day of August 2023 at 9:46 a.m in the presence of:

1. For the Claimant,
2. For the Respondent,

Mr. Richard Ceasor Obonyo

Mr. Ronald Ndyagambaki

Court Clerk:

Mr. Samuel Mukiza.


Anthony Wabwire Musana,
Judge, Industrial Court

¹¹ LDR 109 of 2020