

THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
MISC. APPL. NO.122 OF 2021
(ARISING FROM LDA NO. 043 OF 2019)

MAKERERE UNIVERSITY.....APPLICANT
VERSUS
FRANK KITUMBA.....RESPONDENT

BEFORE

1. The Hon. Head Judge, Asaph Ruhinda Ntengye

Panelists

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

RULING

Brief facts

This is an application for review of the decision of this court in LDA No. 043/2019 brought under **Section 17 of the LADASA, Section 98 of CPA and O52 Rule 1 & 3 of the CPR.**

The application is supported by an affidavit of Yusuf Kiranda, and an affidavit in reply was filed by the respondent.

The applicant was represented by Mr. Gonzaga Mbalangu while the respondent was represented by Mr. Katumba Wobusobozi.

The agreed issue before this court is **whether the labour officer's order in respect to deductions of rental arrears and outstanding utility bills in labour complaint No. KCCA/KWP/LC/098/2019 Eng. Frank Kitumba Vs Makerere University is still binding on the parties.**

Submissions:

The applicant submitted that the labour officer having ordered that rental and utility charges consumed by the respondent be verified and deducted from the

entitlements of the respondent, and the respondent having not cross-appealed or in any way argued against the said order, the order remained intact since the decision on appeal did not reverse or in any way interfere with it.

The respondent submitted that the applicant having failed to pay his terminal benefits and salary arrears, he exercised his right to remain in the house due to failure of payment of the said wages, and non-payment of the wages having been an illegality the applicant cannot benefit from it.

The respondent further argued that the orders of this court on appeal were final orders replacing all orders of the labour officer and that the applicant could only interfere with them on appeal since this court was *functus officio*.

Decision of court

We have carefully perused the application together with the affidavit in support as well as the affidavit in reply. We have carefully perused the submissions of both counsel together with the authorities cited therein.

The decision of this court in **Labour Dispute Appeal No. 043/2019** the subject of this application, was in respect to certain grounds of appeal which constituted the complaints against the decision of the labour officer. One of the orders of the labour officer (which did not form part of the appeal) was as follows:

“All rental charges and utility bills consumed by the complainant should be verified from service providers by the respondent and the sum deducted from the complainant’s entitlements.”

It is not disputed that this order of the labour officer was neither set aside by this court nor in any way interfered with in the process of hearing the appeal. This court did not appraise itself on the order because it was not raised in the appeal either in submissions or in a cross appeal. This means that the order remained intact and as both counsel submitted, an order of court, unless overturned by a higher court, remains so and has to be respected.

We agree with the submission of counsel for the applicant that in the absence of a cross-appeal to show that the respondent was discontented with the order of utility and rental charges, the applicant was right to implement it. The subject of this review is not a review of the labour officer’s Award as counsel for the

respondent argued, but is about interpretation of this Court's Award in as far as its execution is concerned with regard to the orders of the labour officer. The respondent having failed to raise the same during the appeal hearing, we find it improper and illegitimate for him to raise the same after the fact.

Accordingly, the application is allowed with an order that the applicant shall deduct rentals and verified utility bills from the service providers by the respondent from the entitlements of the respondent.

No order as to costs is made.

Delivered & Signed:

1. The Hon. Head Judge, Asaph Ruhinda Ntengye

Panelists

1. Mr. Jimmy Musimbi

2. Ms. Robinah Kagoye

3. Mr. Can Amos Lapenga

Dated: 28/02/2022