**THE REPUBLIC OF UGANDA**

**THE INDUSTRIAL COURT OF UGANDA HOLDEN AT KAMPALA**

**MISC. APPL. NO.** 059/2017

**(*ARISING FROM LABOUR DISPUTE REFERENCENO.*** 383/2016)

**BETWEEN**

KINYARA SUGAR LIMITED**........................CLAIMANT**

**VERSUS**

OWORI ODOI JOHN**.......................................................RESPONDENT**

**BEFORE**

1. Hon. Chief Judge Ruhinda Asaph Ntengye

2. Hon. Lady Justice Linda Tumusiime Mugisha

**PANELISTS**

1. Ms. Adrine Namara
2. Mr. Micheal Matovu
3. Mr. Baguma Filbert Bates

**RULING**

This is an application by notice of motion seeking an order of this court to stay proceedings in this court in labour dispute ref. 052/2016 pending the determination of HCCS No. 003/2012. The application is supported by an affidavit and the respondent filed an affidavit in reply to which an affidavit in rejoinder was filed.

**Background**

The claimant filed a suit in defamation against one Sreekkanths and the respondent in the High court at Masindi via **HCCS 003/2012**. The suit constituted two causes of action: one based on the tort of defamation and the other based on the law of contract i.e. breach of contract of Employment. A preliminary objection on misjoinder of causes of action was raised by the applicant and the judge upheld the objection and advised that: -

“**the plaintiff withdraws this suit and files separate suits on the allegation of breach of contract of employment and the allegations of defamation………”**.

The respondent thereafter filed this claim for unlawful termination and left the claim for defamation in the Masindi High court. In his submission, counsel for the applicant argued that the resolution of the issues raised in the suit in Masindi High court was likely to also resolve prayers in the claim before this court.

The respondent argued that the applicant did not come with clean hands having raised an objection on misjoinder of causes of action. He submitted that a claim based on defamation cannot determine a claim based on breach of contract in this court.

**Section 6 of the Civil Procedure Act** provides that no court shall proceed with the trial of any suit in which the matter is also directly and substantially in issue in a previously instituted suit between the same parties.

On perusal of the notice of motion together with the supporting affidavit as well as the affidavits in reply and in rejoinder, it is our finding that the suit in the High court at Masindi is a suit claiming damages in defamation and there is no claim whatsoever related to breach of contract of employment or unlawful termination in that suit.

It is in our view, just like it was in the view of the judge at Masindi High court, that these are two distinct causes of action which may only be conveniently determined in separate civil actions. Whereas the main issue in the civil suit in Masindi is whether the words alleged to have been used were defamatory of the plaintiff (claimant),the issue in this court is whether

The termination of the claimant was lawful. The aspects that determine unlawfulness or lawfulness of termination of Employment are fundamentally different from the aspects that determine whether certain words were defamatory or not.

Therefore the determination of a defamatory suit may not wholly resolve an employment dispute because the issues involved in our view are not directly and substantially the same in both suits.

Secondly, the suit in Masindi according to the plaint is between two parties, yet the suit in this court is between the one and only Kinyara Sugar Limited.

Consequently we are in agreement with counsel for the respondent that the application for stay of proceedings in this Court be not allowed and it is hereby dismissed. Labour dispute Ref. No. 052/2016 shall be heard and determined by this court as HCCS No 003/2012 is determined by the High court at Masindi. No order as to costs is made.

**SIGNED BY:**

1. Hon. Chief Judge Ruhinda Asaph Ntengye

2. Hon. Lady Justice Linda Tumusiime Mugisha

**PANELISTS**

1. Ms. Adrine Namara
2. Mr. Micheal Matovu
3. Mr. Baguma Filbert Bates

**Dated: 15/9/2017**