THE REPUBLIC OF UGANDA

IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA

LABOUR DISPUTE APPEALNO.26 OF 2017

ARISING FROM L.D. KCCA/CENT/LC/048/2017

EQUITY BANK UGANDA LIMITED…………………………….…………..**CLAIMANT**

VERSUS

MUGISHA MUSIIMENTA ROGERS……………………..……......... **RESPONDENT**

**BEFORE**

1. The Hon. Chief Judge, Asaph Ruhinda Ntengye
2. The Hon. Judge, Linda Lillian Tumusiime Mugisha

**Panelists**

1. Mr. Rwomushana Reuben Jack
2. Mr. Anthony Wanyama
3. Ms. Rose Gidongo

**RULING**

This is an appeal against the decision of the Labour officer sitting at Kampala Capital City Authority. 5 grounds of appeal were set out in the memorandum of appeal. The respondent filed a cross appeal, setting out two grounds. The respondent had originally been employed by the appellant who in the course of employment terminated the services of the respondent leading to filing a complaint alleging unfair or illegal termination before a Labour officer. The Labour officer found for the respondent and issued certain orders in favour of the respondent to which the appellant was aggrieved hence this appeal.

When the appeal came up for hearing, the respondent though his legal counsel raised a preliminary objection to the appeal that grounds 2, 3, 4 and 5 were incompetent and that therefore they should be struck out. He argued that appeals to this court are only on matters of law and only with leave of court are questions of fact brought before this court.

In reply counsel for the appellant seemed to agree with this position but prayed this court to treat the fact that the claimant had grounds that had a mixture of law and fact as a technical matter. He prayed that this technicality be ignored by court in the spirit of the provisions of Article 126(2) of the Constitution.

To this end, he prayed court to allow an amendment of the grounds by excluding the word **“fact”** so that the grounds remain based on law. In his submission although the grounds have both elements of law and fact, if the word **“fact”** was taken away, the issues would remain of **“law**” and therefore court should not go by the error of counsel who included the word **“fact”** and in his submission the amendment would not prejudice the respondent.

**Section 94(2) of the Employment Act** provides:

**“An appeal under this section shall be a question law and with leave of the Industrial court, on a question of fact forming part of the decision of the labour officer.”**

The four grounds contested by the respondent are stated as constituting matters of both law and fact.

In the case of **BAINGANDA JOHN PAUL VS UGANDA CRIMINAL APPEAL 068/2010 (court of appeal)** the court stated

**“The appellant therefore has no right of appeal in respect of issues of fact or issues of mixed law and fact. We were inclined to strike out all the grounds of appeals; however, we find that ground 1 and 2 raise the same issue of law, the poor drafting notwithstanding, we shall therefore proceed to determine them.”**

It seems to us that in the above case the court went an extra mile to scrutinize the grounds and reach a decision that ground 1 and 2, despite poor drafting constituted some elements of law and decided to proceed to determine them after striking out the rest of the grounds.

It is out strong and considered opinion (as it was when we were considering the same issues in **NETIS UGANDA LTD VS CHARLES WALAKIRA – Labour** **Dispute Appeal 22/2010**) that in the above matter the court went an extra mile because it was considering a criminal appeal which applied different standards and which affected the parties differently from civil appeals like the instant appeal. Consequently we will not be dragged into the question whether if the word “**fact**” was removed from a ground of appeal, such a ground would still constitute both issues of fact and law or whether such a ground of appeal would only constitute a legal issue so as to be within the ambits of **section 94(2) of the Employment Act.** Thus in the **NETIS & WALAKIRA case (supra**) this court held

**“Section 94(2) of the Employment Act is explicit in affirming the requirement of leave of this court if matters of fact are to be appealable. The legislature in our view did not intend that appeals on matters of fact be automatic. Therefore when an appellant feels aggrieved by the manner in which the labour officer handled the facts, such appellant is required to seek leave of this court to be able to appeal against the same.”**

The grounds of appeal were drafted by counsel and as such he appreciated that the said contested grounds constituted both factual and legal issues and this having been the case, the same was against the spirit of **Section 94(2) of the Employment Act** and we do not subscribe to the view of counsel for the appellant that the provisions of **Article 126(2)(e)** would save the said grounds of appeal. Consequently grounds No. 2, 3, 4, and 5 are hereby struck out with no order as to costs.

On the cross appeal it was not denied by counsel for the cross appellant that the issues in the two grounds of the cross appeal were substantively the same issues raised in labour dispute claim No. 187/2017 between the same parties as appear in this appeal.

Counsel for the cross appellant argued strongly that by the time the cross appeal was filed Labour dispute 187/2017 was not yet filed and therefore that parties did not offend **section 6 of the Civil Procedure Act.**

**Section 6 of the Civil Procedure Act** provides:

**“No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where the suit or proceeding is pending in the same or any other court having jurisdiction in Uganda to grant the relief claimed.”**

We have perused carefully the memorandum of claim in Labour Dispute Claim 187/2017 and we are satisfied that this dispute is about general damages, aggravated damages and costs which at the same time form the two grounds of the instant cross appeal.

Although the cross appeal may have been filed earlier than the labour dispute claim, the undisputed fact is that both of them are substantively the same and they are disputed between the same parties in the same court and also filed by the same firm of Advocates. We agree with the submission of counsel for the appellant that this is in contravention of **section 6 of the Civil Procedure Act** and it is an abuse of court process.

Accordingly given that the two grounds of appeal are substantively pending in this same court for determination, it is not necessary to allow them to stand. The cross appeal is therefore struck out.

No order as to costs is made.

**Signed by:**

1. The Hon. Chief Judge, Asaph Ruhinda Ntengye …………………………………
2. The Hon. Judge, Linda Lillian Tumusiime Mugisha …………………………………

**Panelists**

1. Mr. Rwomushana Reuben Jack …………………………………
2. Mr. Anthony Wanyama …………………………………
3. Ms. Rose Gidongo …………………………………

Dated: 5th September 2018