

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)

CIVIL APPEAL NO. 005 OF 2021

(ARISING FROM COMPENSATION CLAIM NO.95 OF 2021)

PERNIX CONSTRUCTION LLC ::::::::::::::::::::::::::::::: APPELLANT

VERSUS

1. AMBALALI MAZAD

2. MANDE KENNETH

3. KAMOGA VICENT

4. OSUMESON OKOBO SIMON

5. BYARUHANGA EDWARD ::::::::::::::::::::::::::::::: RESPONDENTS

BEFORE: HON. JUSTICE SSEKAANA MUSA

JUDGMENT

(This an appeal from the decision of Osasuro John Pauls' Magistrate Grade 1 of the Chief Magistrate's Court of Makindye at Makindye, who had confirmed the decisions of the labour officer at Kampala Capital City Authority.)

The applicant is a former employer of the respondents having terminated their services for reasons ranging from expiry of their contracts and absenteeism on the part of the 4th Respondent, meanwhile the respondents had got involved in an accident while in the course of employment and sustained injuries.

Aggrieved by the decision of the Applicant, the Respondents sought recourse from the Labour officer at Kampala Capital City Authority, who awarded them different awards as seen on record respectively. After the Respondents failing to realize their awards as granted by the Labour

officer, they sought to enforce them before the Chief Magistrates Court who confirmed the awards of the Labour officer, which aggrieved the Applicant hence the present appeal.

The Grounds of this appeal are;

- 1. The learned trial Magistrate erred in law in finding that the labour Officer's actions lawful and justified while failing to follow procedure as set out in the Worker's Compensation Act,2000*
- 2. The learned trial magistrate erred in law and fact in finding that the Appellant did not subject themselves to the Labour Officer before the award. The appellant was not granted a fair hearing of this matter before the labour officer as guaranteed by Article 28 of the Constitution of the Republic of Uganda.*
- 3. The learned Trial Magistrate erred in law and in fact in finding that the 1st, 2nd, 3rd and 4th Respondents failed to show sufficient causation that the ailment suffered fall within the purview of the Workers' Compensation Act.*

The Applicants are represented by *Musede Paul* of M/s Tropical Law Advocates and the respondents are represented by *Tumuhairwe Harriet* of M/s Kayemba Advocates.

Determination

Having re-evaluated all the evidence on the record of proceedings and read the submissions of both counsel and considered the same.

An appeal is a creature of a statute and the right of appeal cannot be implied or inferred.

Baku Rafael and anor v Attorney General, SCCA NO. 1 of 2005 It is trite law that jurisdiction is created by a statute. Court quoted the case of *Attorney General vs Shah* where it was stated thus;

“It has long been established that appellate jurisdiction springs only from statute. There is no such thing as inherent appellate jurisdiction”.

Appeals from magistrate court lie in High court

The right of appeal from decisions, order or decrees rendered by magistrate’s court is provided in 220 (1)(a) of the MCA.

A person aggrieved with a judgment, decree or order by a Chief Magistrate or Magistrate grade 1 exercising original jurisdiction has an automatic right of appeal to the high court.

Francis Bwengye v Haki Bonera HCT-00-CV-CA-0033-2009 it was held that Under Section 220 (1) (a) of the Magistrates Courts Act, Cap.16, an appeal lies from the decrees or any part of the decrees and from the orders of a Magistrate Grade I to the High Court.

This court therefore entertains this matter on appeal and it is a first appeal.

The duty of this court is to re-evaluate the evidence on record and come up with its own conclusion see *Pandya vs R (1957) EA 336, Father Nanensio Begumisa and Ors vs Eric Tibebaga SCCA no. 17/20.*

This court will deal with grounds 1 and 2 concurrently;

Analysis

The applicants counsel submitted that the labour officer did not have mandate to resolve the matter of the nature in the contention which was entirely a matter under the work man’s Compensation Act 2000. He further submitted about the role of the Labour officer under section 11 the Employment Act, which is to facilitate and approve any agreements between the employer and employee.

On the other hand, counsel for the Respondents submitted that the respondents followed due process by filing the necessary forms to the employer, then to the labour officer who awarded them compensation

because they were terminated without being compensated for the injuries sustained while still at work.

Section 14 (1) of the workers Compensation Act, states that;

If any employer on whom notice of the accident has been served under section 9 does not, within twenty-one days after the receipt of the notice, agree in writing with the worker as to the amount of compensation to be paid, the worker may, in the prescribed form and manner, make an application for enforcing a claim to compensation to the court having jurisdiction in the district in which the accident giving rise to the claim occurred

Under subsection 2, the law states that;

All claims for compensation under this Act, unless determined by agreement, and any matter, except disputes as to the assessment of disability under section 13, arising out of proceedings under this Act shall be determined by the court, whatever may be the amount involved.

Section 13 (1) referred to under section 14 (2) state that;

If the final assessment of disability made by a medical practitioner after a medical examination, made in accordance with section 11, is disputed by the employer or the worker, the employer or the worker may apply to the labour officer to request that the dispute be referred to the medical arbitration board.

The Workers Compensation Act defines a court as;

*A magistrate's court established under the Magistrates Courts Act, presided over by a chief magistrate or a magistrate grade I, having jurisdiction in the area where the accident to the worker has occurred; as was held In the case of **Sentamu Joseph vs Jibu Corporate Uganda Ltd Civil Suit No. 521 of 2021.***

The appellant was notified about the respondents' claim for compensation by the labour officer. The respondent confirmed the complaint by intimating that they were indeed aware of the accident or disease and they

had been facilitating the medical care of complainants in accordance with section 11.

The appellant's counsel advised that the complainants should fill out L.D Form 31 in order to ascertain the alleged incapacities. The respondents' went to the same hospital where they had been undergoing medical care and there medical doctors assessed their temporary and permanent incapacity. The Labour officer returned the claim form for compensation to the appellant and upon failure of the appellant to respond to the assessed claim the same was referred to magistrates' court.

The labour officer acted within the set out procedures under the worker's compensation Act and whatever was done was verified and affirmed by the Magistrate. When the award was not settled within 21 days in accordance with section 14 of the Workers Compensation Act, it was referred to court for enforcement.

The appellant does not seem to dispute the assessment of the level of incapacity since it was done at the hospital at which they were treating the respondents. But they appear to only complain about what the labour officer did, which in my view was proper and in accordance with the law. The appellant's silence in the whole process left the labour officer or the respondents with only one recourse to court to confirm the compensation award.

An employer is under a duty to ensure the health and safety of employees while they are at work. Since the employees suffered work related injury then they can claim for compensation. In this case, on the face of the record and from all documents available to the court, the employer had full knowledge of all the circumstances of the respondents' ailments but merely refused to effect the compensation.

The respondents' claim was ascertained and computed according to the Workers' Compensation Act. Since the appellant did not oppose the same

at the Labour officer, the trial magistrate could have no better evidence to act upon for as far as he was concerned the claim in those figures was a statutory award and conclusive.

This appeal fails and is dismissed with costs.

I so Order

Ssekaana Musa

Judge

31st January 2023