THE REPUBLIC OF UGANDA

IN THE HIGH COURT UGANDA AT KAMPALA

(CIVIL DIVISION)

MISCELLANEOUS CAUSE NO. 120 OF 2021

LEATHER INDUSTRIES OF UGANDA LIMITED::::::::::::::::::::::::::::::::::APPLICANT

VERSUS

1. **COMMISSIONER LABOUR, INDUSTRIAL RELATIONS, AND PRODUCTIVITY**
2. **NAKIVUMBI SHINA SAUDA**
3. **OOLA IRENE OROMA**
4. **OCHAN PAUL**
5. **OKIROR ROBERT**
6. **NSADHA FRANCIS**
7. **ATALA HARRIET**
8. **NAMUTIDE LYDIA**
9. **MUKEMBO MUZAFARU**

BEFORE: HON. JUSTICE SSEKAANA MUSA

RULING

The Applicant brought this application against the Respondents under *Rules 3(1)(a) and 3(2) and rule 6(2) and (2) of the Judicature (Judicial Review) Rules as amended;* seeking various prerogative writs and other remedies as stated in the Notice of Motion which are;

1. An order of certiorari to remove and quash a decision of the 1st respondent conveyed by one LO Angella Amudo on behalf of the 1st respondent on 6th April 2021 purporting to have jurisdiction to entertain complaint/memorandum of claim No MGLSD/LC/393/2020 between the 2nd, 3rd,4th,5th,6th,7th,8th,9th respondents and the applicant by way of arbitration, and or

2. A declaration that if a complaint alleges infringement of a provision of the Employment Act, then the 1st respondent's jurisdiction to hear and settle that complaint is limited to the use of either conciliation or mediation.

The grounds of the application are set out in the Notice of Motion briefly that;

a) The 2nd and 3rd respondents made complaint No MGLSD/LC/393/2020 alleging that the applicant had infringed sections 81 and 89 of the Employment Act.

b) The 1st respondent handled complaint No MGLSD/LC/393/2020 in a manner characterized by substantial procedural irregularity and illegality.

c) After mediation ended, the 2nd and 3rd respondents filed a memorandum of claim that illegally introduced wholly new causes of action which were not previously contained in complaint No MGLSD/LC/393/2020.

d) The 1st respondent's ruling given on 6th April 2021 purporting to proceed to handle complaint No MGLSD/LC/393/2020 by way of arbitration is illegal due to total want of jurisdiction.

The application is supported by the affidavit in sworn by the Francis Ikotot the Head of Finance and Manager of the applicant essentially restating and amplifying the grounds above stated. He further states that the applicant made a preliminary objection on a point of law to the effect that the 1st respondent's complaint handling procedure was improper because ;

> -The defective memorandum of claim filed by the respondents illegally and arbitrally introduced wholly new causes of action not contained in complaint No MGLSD/LC/393/2020 and;
>
> -The 1st respondent's jurisdiction in handling a complaint alleging the infringement of a provision of the Act was limited to the procedures of mediation and conciliation: therefore the proposed arbitration was ultravires.

That the 1st respondent overruled the applicant's objection and made a ruling that the question of her jurisdiction to arbitrate was merely procedural technicality.

The Respondents have not opposed the application as none of them has filed an affidavit in reply or appeared in court to oppose the application yet there is proof of service on court record.

The applicant was represented by *Counsel Brian Kwame Emurwon* and he filed submissions in support of his case.

Preliminary Considerations

Whether the application is competently before the court?

The nature of the dispute before the court is that it is a labour dispute arising from the Labour Complaint filed at the Ministry of Gender, Labour, and Social Development by the 2nd to 9th respondents. A ruling was delivered and the applicant opted to file this application for judicial review.

Rule 5 of the Judicature Judicial review (Amendment) Rules 2019 which introduces **Rule 7A (1) (b)** provides as follows;

"The court shall in handling applications for judicial review, satisfy itself of the following;

a) That the application is amenable for judicial review;
b) That the aggrieved person has exhausted the existing remedies available within the public body or under the law;"

This court has previously dismissed matters which have been brought before it before exhaustion of all available remedies prior to coming to court, for example in ***Sewanyana Jimmy vs Kampala International University HCMC No. 207 of 2016***, where the court held that;

> *"where there exists an alternative remedy through statutory law then it is desirable that such statutory remedy should be pursued first. A court's inherent jurisdiction should not be invoked where there is a specific statutory provision which would meet the necessities of the case. This is the only way institutions and their structures will be strengthened and respected."*

When alternative remedy is available, the special jurisdiction of court in judicial review should be rarely evoked. Where a right or liability is created by a statute

which gives a special remedy for enforcing the same, the remedy provided by the statute must only be availed of in the first instance. Ordinarily existence of an adequate and efficacious alternative remedy is regarded as a bar to invoking the jurisdiction of court in judicial review.

It has been made clear and plain (in absence of exception circumstances) permission to proceed with judicial review will be refused where an applicant has failed to exhaust other possible remedies.

The applicant had an available remedy of appeal to the industrial court to challenge the decision or action taken and judicial review is essentially a mechanism to be used where there is no statutory right of appeal. The power of appeal will involve determination of the rights through scrutiny of the evidence and this would be in the best interest of the parliamentary intent in enacting such legislation.

Section 94 of the Employment Act provides;

A party who is dissatisfied with the decision of a labour officer on a complaint made under this Act may appeal to the industrial court in accordance with this section.

Therefore, the applicant failed to exhaust the existing statutory remedies granted under the Employment Act. This court refrains from exercising the extraordinary jurisdiction of judicial review.

This application is dismissed with costs to the respondents.

I so Order

Ssekaana Musa
Judge
10th February 2023