



**THE ROLE OF THE INDUSTRIAL COURT IN THE
ADMINISTRATION OF JUSTICE**

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**BY
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INTRODUCTION

I was asked to make a presentation on the role of the Industrial Court in the administration of justice but I preferred to first give a brief about the Industrial Court since it is a new entity in the administration of Justice.

By way of definition, the Industrial Court is a governmental judiciary body which rules on labour or employment related matters and disputes. The Industrial Court is the machinery responsible for the dissemination of labour justice in Uganda. Unlike the other Courts of Judicature, the Industrial Court lies within the docket of the Ministry of Gender, Labour & Social Development.

The Industrial Court of Uganda is established under the S.7 of the **Labour Disputes (Arbitration and Settlement) Act, 2006, (LADASA)**. And has been declared as one of the Courts of Judicature which has concurrent jurisdiction with the High Court. ***(Refer to the Judgment in Constitutional Petition No.3/2016; Justice Asaph Ruhinda Ntengye & Justice Linda L. Tumusiime Mugisha Vs. Attorney General)***

The Functions of the Court as provided for under S.8 of the LADASA are;

- to arbitrate on labour disputes referred to it under the Act,
- to adjudicate upon questions of law and fact arising from references to the Industrial Court by any other law and
- to dispose of labour disputes referred to it without undue delay

The Court became operational in Mid 2014, after the appointment of the Judges and the 15 members of the panel. Five of the members are nominated by the Federation of Uganda Employers (FUE) to represent the Employers and five are nominated by the federations of labour unions (NOTU/COFTU) to represent workers. Five are independent members.

The Coram of the Court is composed of the two judges sitting with the independent member, a representative of the Employers and a representative of the Employees/Workers

The Panelists by virtue of their appointment are paid a statutory allowance per sitting and transport.

OPERATIONS OF THE COURT

The Industrial Court has both Referral and Appellate jurisdiction.

The Court handles both collective and individual labour disputes.

The court operates on a sessional but day to day basis.

The panelists work on rotational basis and are divided into five sets.

The decisions of the Court are reached by consensus and where the court is unable to reach a common decision, the matter is decided by the Chief Judge.

Enforcement of the Awards is done in the same way as decisions in civil matters before the High Court, by the Registrar.

The Registrar has to submit a copy of every Award of the court to the Minister.

The Court also waived payment of filing fees.

CASE CATEGORIES

There are basically 5 case categories handled by the court.

1. **CLAIMS:** All employment matters that were transferred from the High Court are categorized as Labour disputes **CLAIMS**
2. **REFERENCES:** These originate from labour Officers.
 - Under the LADASA, any dispute before a labour officer that has not been settled within 8 weeks must be referred to the Industrial Court.
 - Under the Employment Act, the labour officer must handle the complaint within 3 months and thereafter refer it to Industrial Court.
 - *(These are some of the inconsistencies in the current laws, which create procedural challenges)*
3. **APPEALS:** These are made against awards made by labour officers
4. **MISCELLANEOUS APPLICATIONS** arising from any matters either before the court or execution proceedings.
5. **MEDIATIONS**

PROCEEDINGS OF COURT

The Labour Disputes (Arbitration & Settlement) (Industrial Court) Procedure Rules, **S.I No. 8/2012** provide the procedure to be followed in proceedings before the court.

In any proceedings before the court, a party may appear by themselves, or by an agent, including a labour union or an employer's organisation, or may be represented by an advocate.

An appeal from the decision of the court lies to the Court of Appeal and is only on a point of law, or to determine whether the court had jurisdiction over the matter.

In determining labour disputes, the court is not unduly tied down to conservative legal procedures and this has fostered expeditious delivery of labour justice. For example, the Court is not bound by rules of evidence in any of its proceedings, although it is not precluded from applying them. The Industrial Court is a court of Equity.

The Court has embraced ADR and JLOS under the ADRM Implementation Project has assigned three mediators to the Court, together with the Registrar who handle mediation and this has gone a long way in disposing some cases are disposed of at this stage.

FUNDING

The Court receives quarterly funds from the Ministry. The Budget of the court is protected and is not subjected to cuts arising out of cash limits.

STATUS OF THE COURT

The current court is a successor to the Industrial Court that had been established in 1964 by the Trade Disputes (Arbitration and Settlement) Act, 1964.

Under Article 129, which establishes Courts of Judicature, Parliament is also empowered to establish other courts, which are both operational and administratively subordinate to the High Court.

The Industrial Court is established by an Act of Parliament, thus making it subordinate to the High Court

S.10 of the LADASA limits the tenure of the judges to a term of 5 years. (*These have been resolved in the Constitutional Petition, supra*).

S.12 of the LADASA provides for the appointment of the Registrar by the Public Service Commission.

This state of affairs created both procedural and operational challenges for the court especially as regards its relations with the

main stream judiciary, hierarchy within the Courts of Judicature, jurisdiction and mandate.

This placed the Industrial Court in the unenviable position of being **de facto equivalent** to the High Court yet remaining a **de jure subordinate** court by the express provisions of the Constitution.

However when you read the provisions of the LADASA, they envisage a clear intention by the Parliament to create an adjudicatory body that functions **parallel to and not subordinate to the High Court**

For instance, the judges are required to be of High Court caliber and appeals lie to the Court of Appeal.

Indeed, in recognition of this special mandate, shortly after the operationalisation of the Industrial Court, the High Court, transferred all Employment matters filed before it to the Industrial Court.

The Registrar of the Court is also a Judicial officer on assignment from the Judiciary, exercising powers equivalent to those of the High Court Registrars.

The Court sought clarity on some of the issues from various offices like the Ministry of Public Service, Judicial Service Commission, Solicitor General and the Principal Judge but the issues remained unresolved. Due to the uncertainty surrounding the legal status of the Court and the Judges, we the Judges petitioned the Constitutional Court for interpretation, which has of now given its judgment, resolving some of these issues in ***Constitutional Petition No.33 of 2016***. The said Judgment can be found on our website and facebook page. www.industrialcourt.go.ug, www.facebook.com/industrialcourtuug

The current Industrial Court, is a novel entity: designed to acknowledge and address the new and different challenges presented by a Uganda that, since mid-sixties, has fundamentally transformed. Similarly, the role of the new Industrial Court has also drastically changed.

The Court now boasts of **Enhanced Capacity, mandate, jurisdiction and a right of appeal to the Court of Appeal**. These distinctions serve to highlight the fundamental change introduced in the Uganda labour dispute resolution legal framework by the Labour Disputes (Arbitration & Settlement) Act, when this legislation is read together with the related provisions of the Employment Act of 2006.

The need for and importance of a vibrant and properly functioning Industrial Court cannot be over emphasized, because industrial peace and harmony are key indicators of a vibrant democracy.

The Vision of the Court is **“Labour Justice For All”**

The Mission of the Court is **“To administer Labour Justice For all in A timely and Effective Manner”**

The Court’s Objectives are;

- 1) To provide a platform for people to equitably express their labour grievances as to achieve equal opportunity in employment in Uganda.
- 2) To facilitate decent productive work and better living standards to the people through timely adjudication of labour disputes within Uganda.
- 3) To ensure industrial Peace and Justice in the Uganda economy through timely adjudication of labour disputes.
- 4) To contribute towards a conducive industrial climate and investment through timely adjudication of labour disputes.

These statements are drawn from the ILO Mission: "**bringing decent work and livelihoods, job-related security and better living standards to the people of both poor and rich countries,**" and were chosen to highlight the plight of employees, who are frequently victims of delayed or denied justice, because of inequalities that exist in the employment market. Promoting justice for all is only possible, if we are able to reach out to the most vulnerable segments of society, through an adjudicative mechanism that is physically and functionally accessible to all in accordance with the Constitution.

PART 2

THE ROLE OF THE COURT IN THE ADMINISTRATION OF JUSTICE

The role of the Industrial Court is to promote industrial harmony, and regulate the relations between employers and their employees; between the trade unions and employer organizations; and resolve disputes arising from these relations. The Industrial Court is the linchpin of democracy, without industrial harmony, a democracy cannot be stable.

1. The Industrial Court was established to provide a timely and an efficient mechanism for resolution of industrial disputes.

The establishment of the Industrial Court followed persistent demands by employees and employers to Government to set a **specialised** court to deal with labour disputes that were not well suited for the traditional courts. Workers are understood to have no equality of bargaining power. Employers are the wielders of capital. They have a head-start, in the authoring of the employment contract. Workers therefore need court protection, which is a function exercised by the Industrial Court.

2. The Court goes about mediating the boundaries of rights and obligations of employers and employees in accordance with equity, good conscience and the substantive merits of the dispute. The primary objective is to attain social justice by upholding fair work practices. It is through the instrumentality of the Industrial Court that these fundamental rights are actualized.

3. The Industrial Court contributes to the aims of the Social Development Sector by resolving Labour disputes.

When labour disputes are allowed to accumulate, workers discontent remains latent and may at any time explode into violent strikes and lock-outs. This kind of situation is not conducive to the economic growth and development of the country. Strikes and lock outs cause a decline in production and national income. This lowers the standard of living and leads to unemployment for the affected workers. The presence of the Court contributes to industrial harmony and peace

which contributes to economic growth and improved standards of living and this leads to economic development.

The Industrial Court resolves disputes in a manner that weighs social justice against the needs of economic growth.

4. The traditional role of the Industrial Court as an Institution of Social Justice is to avail quick, uncomplicated and inexpensive justice to workers.

The procedures of trade dispute resolution have always been crafted to enable the workers, deemed not to have the same bargaining strength with their employers, access quick, affordable, and effective remedies.

5. The Industrial Court facilitates social dialogue by defining and adjudicating the rights and obligations of the tripartite players- governments, employers and employees.

In the promotion of Industrial harmony, the Industrial Court; regulates the relations;

- between employers and their employees;
- between the trade unions and employer organizations;
- and resolves disputes arising from these relations.

6. The Industrial Court, more than any other Court has a role in applying, international law to our domestic labour market. We are the Institution that the International Labour Organization looks up to implement the International Labour Standards. We are committed to the ILO agenda and its fulfillment. We therefore have the role to promote and protect international labour standards.

7. The role of the Industrial Courts all over the world, as instruments of social change has been recognized. Workers and employers have achieved a platform to equitably express and resolve their grievances without recourse to violent strikes and lockouts.

8. The Court plays a role in promoting sound labour relations through protection and promotion of freedom of association, the encouragement of effective collective bargaining and promotion of

orderly and expeditious dispute settlement, conducive to social justice and economic development.

9. The Court is also mandated under the International labour standards to declare and define the fundamental rights of employees, to provide basic conditions of employment of children and to provide for matters connected with the foregoing.
10. The Court plays an important role in promoting and protecting Labour Rights, Social and Economic Rights, as enshrined in the Constitution.

The Industrial Court plays a vital role in the dispensation of labour justice and is therefore an indispensable arm of Justice.

PART 3 SUCESSES AND CHALLENGES

The Industrial Court faces opportunities as well as challenges.

SUCESSES

1. The Industrial Court opened its doors to the Public in July 2014 and as at 31st December 2017, the Court has registered 2135 cases, inclusive of those transferred from the High Court.

This is indicative of the growing confidence the public and users have in the institution. 515 have so far been disposed of. The disposal rate has not yet hit target due to the fact that the two judges sit together to hear one matter, but we expect the disposal rate to double when the panel is split.

2. The Court has also held pilot circuits in different regions of the country, where we have registered tremendous success. The Court has held circuits in Masaka, Lira, Gulu and Fort Portal. We have planned up coming sessions in Mbale and Jinja scheduled in this quarter. This is in a bid to make labour Justice accessible and less expensive.
3. The Court has contributed to the Law Review process.
4. The Court has built jurisprudence on labour Justice through its decisions.
5. The Court has established a Court Users Committee to formulate best practices and to address its challenges.

On the other hand, the Court is still faced with challenges;

1. JURISDICTION

The court's jurisdiction is only referral. The Labour officers who are mandated to act as "**courts of first instance**" do not have the capacity to effectively and efficiently exercise that mandate

There is need to effect **a constitutional amendment** to give the court inherent, original and unlimited jurisdiction over all Employment and labour disputes in Uganda.

2. ACCESS TO JUSTICE

The Issue of accessibility of the Court has raised public outcry throughout the country. There is only one Court and it is situated in Kampala. Litigants are required to trek long journeys to attend to their cases in Kampala.

Under the Constitution labour justice is decentralized. The Labour officers by virtue of their mandate under the Employment Act, 2006, are in essence the *Courts of first instance*. There is a labour officer operating in each district and Municipality in Uganda, bringing the total number to **170 labour officers**.

The law requires that all labour disputes not disposed of by the labour officer within 8 weeks are referred to the Industrial Court. To date the Court has registered **1550** References from all the different regions of the country.

Access to justice is defined as the ability of the people to seek and obtain a remedy through formal or informal institutions of justice for grievance in compliance with Human rights standards. There is no access to justice where citizens cannot access the justice institutions.

Currently the Industrial court has a very limited reach.

The Industrial Court is only located in Kampala and yet, it is expected to serve the whole country with populations in far off places like Kotido, Zombo, Kisoro, Bukwo, Pader, just to name but a few. If the court is to promote justice for all, then Government must empower the court to have more than one panel to reach out to the many employers and workers out there, who need the services of the court. (Proposed Amendments to the LADASA, have already been submitted to the Hon. Minister of Labour)

The most appropriate remedy now is for the **court to set up sub registries in all High Court Circuits as collecting centres for cases and then conduct Regional sessions.**

The Judiciary currently has 20 High Court Circuits and it would be prudent and very important for the Industrial court to adopt the same and open up 20 Regional centres at the High Courts and conduct out of station circuits in the different regions.

This would improve effectiveness of the court and make access to justice achievable by all citizens including the marginalised and vulnerable ones.

3. THE NEED FOR LAW REVIEW

In 2006 Parliament passed four new labour laws that fundamentally changed the administration of labour justice in Uganda. These were the—

- (a) Employment Act;
- (b) Labour Unions Act;
- (c) Labour Disputes (Arbitration & Settlement) Act; and
- (d) Occupational Safety & Health Act.

When the court became operational in late 2014, inconsistencies and shortfalls between the provisions of the Labour Disputes (Arbitration & Settlement) Act and other laws, particularly the Employment Act, have been noted.

These changes introduced by the Labour Disputes (Arbitration & Settlement) Act were grafted onto and merged with provisions imported from the former legislation, i.e. the Trade Disputes (Arbitration & Settlement) Act Cap 224 without a full appreciation of whether the new provisions would merge well with the rest of the old provisions.

There are gaps in the current regime of labour laws and these create procedural gaps for the court. A comprehensive review of the sections of the Labour disputes (Arbitration & Settlement) Act, establishes internal inconsistencies, problematic provisions, and legislative lacunae.

This would necessitate subsidiary legislation to be made under the Act, i.e. the Labour Disputes (Arbitration & Settlement) (Industrial Court Procedure) Rules 2012.

S.40 LADASA empowers the minister in consultation with the Chief Justice to make rules regulating the procedure and conduct of court business.

Some of the areas that raise concern are;

Supervision of labour officers: the new labour law legal framework endows labour officers with enormous powers with little oversight. Labour officers exercise quasi-judicial power. The law does not require a labour officer to receive any legal training prior to exercising their functions, there is no monetary limit for disputes handled by labour officers. There is need, therefore, for the labour court to exercise oversight over labour officers when they are exercising their judicial function as arbitrators.

Enforcement of labour officer decisions: Although labour officer decisions are currently being enforced by the Industrial Court, there is no explicit legal provision entitling a party to apply to the Industrial Court for enforcement of a labour officer's award.

Jurisdiction of the court: Although the jurisdiction of the court was expanded the legislation is currently silent on the exact scope of the court's powers.

Quorum of the court: The court is meant to be accessible to workers but the current composition and quorum render litigation before the court as the most expensive and most tedious of all the courts in Uganda.

Although a panel of 5 members can be rationalised in the context of industrial labour disputes involving labour unions and collective action, this is not necessary in cases of individual labour disputes.

The deployment of a full quorum consisting of two judges and three panelists to hear every single dispute referred to the court involves commitment of considerable financial resources.

Decisions of the court are reached by consensus and where the court is unable to reach a common decision, the matter is decided by the Chief Judge. This renders the second judge redundant and therefore the need to split the panel and have each Judge sitting individually in hearing individual employment matters.

The legislation needs to be amended to introduce some measure of flexibility in the composition of the court so that the Industrial court is empowered to determine whether a dispute before it requires a quorum of a single judge or whether it requires a full quorum with panelists.

Also in case of one of the Judges being indisposed, the whole court does not function, so there is urgent need to split the panel.

Tenure of the judges: Currently the tenure of the judges is limited to a period of 5 years. The Constitutional Court has declared this provision unconstitutional in as far as it limits the tenure of judges to 5 years and now we can enjoy the tenure of office of judicial officers at the level of High Court Judges as prescribed in Article 144 of the Constitution.

Judicial power of the registrar: There has already been controversy regarding the question as to whether the registrar of the court can exercise judicial powers similar to those of a High Court registrar. It would be anomalous if a registrar, who is fully trained and qualified judicial officer, were precluded from exercising judicial functions in interlocutory matters. This issue was raised in the case of ***Mutaawe Andrew Vs. Sanlam General Insurance (U) Ltd Labour Dispute Misc. Appln. No.101/2016 (Arising from Misc.Appln. No. 24/2016.***

(This decision can be found on the Court's website).

The contention in this case was that under 0.44 r.4 CPR, stay of execution was vested only in the High Court and that the registrar could only handle an interim application of stay and not a substantive application.

S.12(2) LADASA provides that “*the Registrar shall be a public officer with relevant knowledge in industrial relations and shall be the administrative head of the Industrial Court, under the supervision of the Chief Judge*”.

S.16 LADASA provides that “*An award or decision of the Industrial Court shall be enforceable in the same way as decision in civil matter in the High Court.*”

In this case we held that the registrar is empowered to hear and determine both applications for interim orders and substantive applications pending determination of the main suit by a Judge. On reaching this decision, we were mindful that fixing the main

application before the full quorum would cause undue delay contrary to the mandate of the Court as provided for under S.8 LADASA.

This however excludes the Registrar's power to stay execution of a judge's order.

Importation of the administrative provisions of the Employment Act: Currently, provisions relating to the administration of labour justice are split between two legislations, i.e. the Employment Act and the Labour Disputes (Arbitration & Settlement) Act leading to confusion and conflict between the two laws. There is need to cure this problem by importing and harmonising the administrative provisions of the Employment Act into the Labour Disputes (Arbitration & Settlement) Act.

Procedural rules: Currently the procedural rules of the court are the mandate of the Minister. This conflicts with the provisions of Article 133(1)(b) of the Constitution of the Republic of Uganda that empowers the Chief Justice to direct the procedures in the courts of Uganda.

Harmonisation of the Labour Disputes (Arbitration & Settlement) Act and other laws: There is a need to establish the primacy of the court as the employment court of Uganda and cement its jurisdiction to handle all employment related matters as provided for in the legislations passed by Parliament prior to the creation of the court, e.g. the Workers Compensation Act that refers to magistrates courts instead of the Industrial Court.

There are inconsistencies in the Employment Act that are in conflict with the LADASA, which lays down procedures of the Court.

There are also other legislations that form part of the labour law framework of Uganda that require modification or amendment to bring them in line with the changes introduced by the operationalisation of the Industrial Court. These are;

- ✓ Occupational Safety & Health Act, No.9 of 2006
- ✓ Minimum Wages Advisory Boards & Wages Councils Act, Cap 221, Laws of Uganda
- ✓ Workers compensation Act, Cap 225, Laws Of Uganda

4. COURT PREMISES

Currently the court is housed in shared premises situate at Plot 25-27 Off Martyrs Way, Ntinda. The premises are shared with the National Council offices for the Youth, Children and Women.

The court is greatly constrained in space both for the Staff, Registry, Archive, Library, Mediation room and chambers for the Panelists. It would be necessary to find the court sufficient accommodation.

5. TRAINING GAPS

The MGLSD currently has no training Programme designed to keep the Judges, Panellists, Registrar, and staff abreast with new practices and procedures.

- ▶ The Judges and Panellists have not been inducted since operationalisation of the court.
- ▶ Labour officers who act as courts of first instance need training to enable them execute that mandate which is essential in the administration of labour justice.
- ▶ There are global labour standards that we need to maintain. The Judicial Training Institute, should be able to facilitate the Judges to participate in the programs of the International Labour Organization. The Judges must be facilitated to attend the ILO annual delegates' conference and ILO Turin Training Institute, in order to keep abreast of the International Labour Standards.

6. RESOURCE MATERIALS

The Court lacks a library and there are no reference materials which makes legal research difficult. There is need to procure law books, periodicals, Volumes of Laws of Uganda, case digests, Compendium of labour laws. There is also need to subscribe to online information legal websites to access cases.

7. ICT REQUIREMENTS

The Court is not networked and we still use the outdated manual case management. There is need to computerize case management and digitalization of the court case filing system. The court still lacks sufficient ICT equipment.

8. ADDITIONAL FUNDING is needed to empower the Court and make it self sustaining in order to fulfill its mandate.

The above cited problems hinder and delay the effective administration of labour justice. Delays in the resolution of labour disputes dampen employee morale, undermine labour productivity, and threaten industrial harmony. In Order to build public confidence in the court, there is need to curb and reduce the growing case backlog and to make labour justice accessible to all.

CONCLUSION

The court should be able to deliver timely and effective justice to the marginalized and vulnerable groups and create a conducive atmosphere that will promote industrial peace and harmony

Therefore any obstacles to the expeditious resolution of labour disputes should be addressed promptly.

It should be noted that the court inherited a backlog of nearly 500 labour disputes that will take a considerable amount of time to dispose of unless the Labour Disputes (Arbitration & Settlement) Act be amended.

There is need to promote progressive access to labour justice to all areas of Uganda.

Clarifying the procedures for the administration of labour justice and optimizing the capacity of the specialist court dealing with employment and labour relations will make a positive impact on the labour force in the country.

Challenges notwithstanding, we have made strides in promoting Labour Justice which is not only prime for development, investment and growth but is also a novel area of jurisprudence.

We have reasserted our role, in bringing about social change and social justice. The aspiration for social justice, through which every working man and woman can claim freely and on the basis of equality of opportunity their fair share of the wealth which they have helped to generate, is as great today as it was when the ILO was created in 1919.

Labour justice is very pivotal in the administration of Justice and so is the role of the Industrial Court.

Thank you for listening.

Justice Asaph Ruhinda Ntengye
CHIEF JUDGE
INDUSTRIAL COURT

ANNEXTURE

A. CASES REGISTERED PER YEAR

CASE CATEGORY	2014	2015	2016	2017	SUB-TOTAL
LD CLAIMS	322	66	64	36	488
LD REFERENCES	24	320	258	295	897
LD APPEALS	12	27	32	42	113
LD MISCELLANEOUS APPLICATIONS	7	88	146	211	452
MEDIATION	-----	36	78	71	185

B. THE COURT CASE STATISTICS AND PERFORMANCE AS AT 31ST DECEMBER 2017

CASE CATEGORY	REGISTERED	COMPLETED	PART HEARD CASES	PENDING
LD CLAIMS (FROM HIGH COURT)	488	154	90	244
LD REFERENCES (from labour officers)	897	111	109	677
LD APPEALS (against awards from labour officers)	113	28	7	78
LD MISCELLANEOUS APPLICATIONS (Arising from any matters either before court or execution proceedings)	452	151	25	276
LABOUR DISPUTES MEDIATION	185	71	37	77
TOTAL	2135	515	268	1352

