

**THE REPUBLIC OF UGANDA**  
**IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA**  
**LABOUR DISPUTE MISC.APPLICATIONS Nos. 54 & 64 OF 2017**  
**ARISING FROM KCCA/RUB/LC/497/2016**

**BUREAU VERITAS UGANDA LTD** .....

**APPLICANT VERSUS**

**DALVIN KAMUGISHA** .....

**RESPONDENT**

**BEFORE**

- 1. THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE**
- 2. THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA**

**Panelists**

- 1. MR. EBYAU FIDEL**
- 2. MR. F. X MUBUKE**
- 3. MS. HARRIET NGANZI MUGAMBWA**

**RULING**

Counsel for the Applicants sought leave to argue 2 Applications together and it was granted. Each was brought by Notice of Motion. The first one was brought under Miscellaneous Application No. 64/2016, under the Employment Act, Regulation 45 of the Employment Regulations, 2011, Section 79(1) (b) & 98 of the Civil Procedure Act, Section 33 of the Judicature Act and Order 52 rules 1& 3 of the Civil Procedure Rules) for extension of time within which to file and serve a notice Appeal.

The second one was brought under Miscellaneous Application No.54/2016, under Section 94 of the Employment Act, Section 40 of the Labour Disputes (Arbitration and Settlement) Act, 2006

and Regulation 24 of the Labour Disputes (Arbitration and Settlement) (Industrial Court Procedure) Rules, 2012 , for leave to Appeal on questions of law and on questions of fact arising out of the decision of the Labour Officer. The grounds of each application were set down in the corresponding Notice of Motion.

## **REPRESENTATION**

Learned Counsel Mr. Ndyagambaki Raymond was for the Applicants and Learned Counsel Mr. Nicholas Atuhairwe for the Respondents.

## **SUBMISSIONS**

Through an affidavit in support of the 1<sup>st</sup> application 64/2016, deponed by Fidelis Otwao, dated 7<sup>th</sup> April 2017, Mr. Raymond Ndyagambaki for the Applicants submitted that the Applicants had filed a complaint before the Labour Officer under KCCA/RUB/LC/497/2016, the Labour Officer made her award in the absence of the Applicants their former Counsel, M/s Web Advocates & Solicitors. According to Counsel the Applicants only got to learn about the award when they were served with a notice to show cause why execution should not issue by this Court. He further stated that the Applicant had established that the former Counsel was not aware about the award. As a result the Applicants withdrew their instructions from them and instructed new Counsel Verma Jivram & Associates, hence this application.

Counsel prayed that in line with Article 126(e) of the Constitution of Uganda and in the interest of justice the negligence of the former Counsel should not be visited on the Applicants. Therefore Court should grant the application. He relied on **JOEL KATO & ANOR VS NUULU NALWONGA CIVIL MISC. APPLN. No.04 OF 2012 AND MAKERERE UNIVERSITY VS KUSAMBIRA LD. No 15 /2015.**

In reply Counsel for the Respondent invited Court to note that the Applicants had admitted to dismissing the claimant without according him a fair hearing and it was on the basis of this admission that the Labour Officer had made her award. Counsel contended that the affidavit in support of the application and the notice of change of Advocates did not show that Counsel had been instructed to make this application. Relying on **NICHOLAS ROUSSOS VS GULAMHUSSEIN HABIB VIRANI SCCA NO. 9/1993**, Counsel further contended that the Applicants' failure to instruct their Advocate was not sufficient cause and it was trite law that

lawyers cannot instruct themselves. In his opinion, the Applicants having failed to instruct their lawyer in time did not amount to sufficient cause and therefore the application should fail. He argued that when the award was extracted and served on them no step was taken and no evidence showed any rebuttal. Counsel insisted that trial Judges should desist from indulging in speculation but act only on evidence and arguments properly before them. He prayed that the application should be dismissed.

In rejoinder Mr. Ndyagambaki submitted that the last appearance of the former Counsel was on the 14/11/2016, and the award was made on the 17/11/2016 in their absence. The award only came to the attention of the Applicants when notice to show cause was issued to them. He insisted the issue relating to giving instructions to Counsel did not apply in this case because neither the Applicant nor Counsel were aware of the award and when the Applicant on his own volition found out he withdrew instructions from the previous lawyers and instructed new ones, the current lawyers who subsequently filed a notice of change of Advocates and this application. Therefore this application should be granted.

With regard to the application filed under 54/2016, on leave to appeal on both points of law and fact, Counsel for the Applicants stated that there was no evidence on the record to show that the Applicants summarily dismissed the Respondent and page 5 of the Labour Officers award made reference to agreed facts in which the Labour Officer had stated that, the Applicants were justified to dismiss the Respondent. Counsel argued that an admission had to be unequivocal and it had not been stated as such.

Counsel through an affidavit in support deposed by Edwin Kabuleeta, dated March 2017 submitted that, there were glaring errors on the Labour Officers record of proceedings at page 3 and particularly on page 3 where the Labour Officer relied on an expired fixed term contract dated 17/05/2013 to 30/11/2013 with no mention that this contract had been extended and why it had been used as a reference point. That the Labour Officer referred to key witnesses one Imrat HR, Edwin and Ali Wange who were never called to testify. He stated further that the Labour Officer had relied on a Code of Ethics that had not been brought to the hearing and an investigation report that was not on the record. He also contended that the award had also been changed.

That the Labour Officer made the award in the absence of the Applicants or their Counsel and yet they were all attending Kabuleeta's brother burial. According to Counsel these were good grounds for an Appeal. He relied on the case of **KEHGANZI ANGELLA VS METL (U) LTD MISC. APPLICATION No. 471/2015, 485**. In his opinion the application would not prejudice the Respondents. However not granting the same would close the doors of justice to the Applicants with no other recourse. He therefore prayed that the application is granted and costs are in the main cause.

Mr. Atuhairwe, in opposition to the application argued that it was trite law that where a contract had expired and the employer does not renew it, by conduct the employment still stands. The employer cannot assert that the contract expired. The contract was a fixed term contract for a period of 12 months. If the employee is still in the employment of the employer without renewal then by conduct the employer accepted.

With regard to the issue of the 3 witnesses purportedly relied on by the Labour Officer, he contended that the matter before the Labour Officer was an arbitration and not a mediation and according to him in the arbitration the applicant admitted to summarily dismissing the Respondent. It was this admission that formed the basis upon which the Labour Officer had made all the other decisions.

With regard to the omnibus ground of appeal he asserted that they had already filed for execution when the Applicants run to this court to seek redress. By then the Applicants had already been locked out of the proceedings and therefore they had no locus. He opined that Appeals of such nature are not of right on matters of law and fact.

He therefore prayed for the application to be dismissed.

### **RULING OF COURT**

We have carefully considered both parties submissions and studied the motions and affidavits in support and we find as follows: We decided to dispose of application 64/2016, on seeking leave to file and serve a notice of appeal out of time, first.

There are several Authorities which have held that the inadvertence of Counsel should constitute sufficient reason to grant an extension of time. In the case of **TROPICAL AFRICA BANK**

**LTD VS GRACE WERE MUHUMWANA CA NO. 3 OF 2012** cited with approval in **MUTABARISA KWETERAN LTD VS BAZIRAKYE YEREMIYA & ANOTHER CA NO. 158 OF 2014**, Justice Katureebs JSC (as he then was) had this to say:

*“This court has laid down in a long line of cases, that mistakes or inadvertence by Counsel should not be visited on the litigants themselves who come to court seeking substantive justice..... In the earlier case of Godfrey MAGEZI AND BRAIN MBAZIRA VS SUDHIR RUPALERIA, Karokora JSC (as he then was) reviewed a number of authorities on the interpretation of rule 5 and on the matter of the effect of mistakes of counsel on appeals of litigants. The learned Justice quoted in extenso, the decision of this court in CRANE FINANCE CO. LTD VS MAKERERE PROPERTIES SCCA NO 1 OF 2001 on the application of rule 5 (then rule 4)*

*The rule envisages.... Scenarios in which extension of time for the doing of an act so authorized or required may be granted, namely:*

- a) Before expiration of the limited time*
- b) After the expiration of the limited time*
- c) Before the act is done*
- d) After the act is done ....*

*“It is now settled that the omission or mistake or inadvertence of Counsel ought not to be visited onto the litigant, leading to the striking out of his appeal there by denying him justice. There are many decisions from this court and other jurisdictions in which it has been held that an application for extension of time such as this one, where mistake or error or misunderstanding of the applicants legal advisor, even though negligent have been accepted as a proper ground for granting relief under rules equivalent to rule 4 (read5) of the rules of this Court which is the rule under which this application was brought....”*

We are convinced that the Applicants had different Counsel when the matter came before the Labour Officer. It seems the previous Counsel was negligent in failing to follow up the award. We found the contention by the Respondents that there was no evidence to show that the Applicants had instructed the current Counsel untenable. We do not think that Counsel could have instructed himself to make this application and therefore he was instructed.

The Respondents Counsel did not refute the Applicants claim that the Labour Officers award had been made in the absence of their previous Counsel nor did he adduce any evidence to show that the Applicant and his Counsel were aware of the delivery of the award. We see no reason to visit the mistake of Applicants previous Counsel on them.

We therefore grant the Applicants leave to file a notice of Appeal on the Respondents within 10 days of this ruling.

With regard to application No. 54/2016, on leave to Appeal on points of law and facts, Counsel complied with the requirement under section 92(2) of the Employment Act, to seek leave of Court to appeal on both points of law and fact forming part of the Labour Officer's decision. However a lot of the arguments raised by the applicants almost bordered on the appeal itself.

We strongly believe there is a reason why the law restricted the right of appeal to points of law and not on facts. We were persuaded by the English case of **GEOGAS SA VS TRAMMO GAS LIMITED (THE BALEARES) 1993 1 Lloyds REP 215 AT 228** in which **STEYN J** affirmed the principle that *any question as to the admissibility, relevance or weight of any evidential material was a matter solely for the arbitrator. The arbitrator's finding of fact were effectively immune from scrutiny by the Courts and this includes not only the primary facts but also the secondary findings or inferences of a factual nature. The arbitrators are the masters of the facts having heard the case.* We believe that the framers of Section 92(2) of the Employment Act, 2006 were aware of the importance of preserving the autonomy of the Labour Officer as an arbitrator, hence the mandatory provision that a party seeking to appeal based on fact must first seek leave of court to do so. We believe the legislature intended that the facts would be evaluated by the lower Courts and the Appellate Court would be left to evaluate points of Law.

We are not convinced by the Applicant's arguments and reasons as to why we should allow them to Appeal based on facts. The points of law raised alongside the points on facts in Mr. Kabuleeta affidavit in support of this application are in our view sufficient.

In the premises leave to appeal based on points of fact is denied. However the Applicants are granted leave to appeal on points of law.

In conclusion the Applicants are granted leave to file a notice of Appeal and leave to Appeal on points of law only. It is so ordered.

Delivered and signed

3. THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE  
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4. THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA  
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**Panelists**

1. MR. EBYAU FIDEL  
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**DATE: 25/JULY/2017**