

**THE REPUBLIC OF UGANDA
INDUSTRIAL COURT OF UGANDA AT KAMPALA
MISC. APPL. NO. 18 OF 2019
(ARISING FROM LDC. NO. 129/2014)**

BASUULA SAMUEL :::::::::::::::::::: APPLICANT

VERSUS

1. ATTORNEY GENERAL
2. TREASURY OFFICER OF ACCOUNTS/
SECRETARY TO THE TREASURY
3. ACTING INTERNAL AUDITOR GENERAL:..... **RESPONDENT**

BEFORE:

1. Hon. Chief Judge Ruhinda Asaph Ntengye
2. Hon. Lady Justice Lillian Linda Tumusiime Mugisha

PANELISTS

1. Mr. Ebyau Fidel
2. Mr. Mavunwa Edison Han
3. Ms. Julian Nyachwo

RULING

This is an application for an order of mandamus against the second respondent for payment of a decretal sum of Ugx. 229,279,225/-. The application also seeks for an order of arrest and detention in civil prison of the 2nd and 3rd respondents until they comply with the certificate of order in the above sum, as well as an order of mandamus directing reinstatement of the applicant in his employment position.

The applicant was represented by Mr. Stuart Kamya of M/s Mbeeta, Kamya & co Advocates while the respondents were represented by Mr. Geoffrey Atwine of Attorney General's Chambers.

The application was supported by an affidavit sworn by the applicant. An affidavit in reply was sworn by one Richard Adrole, Principal State Attorney.

By way of background, the 1st respondent was sued by the applicant before this court which entered an award against the 1st respondent on 22/12/2017 with orders that:

- (1) The respondent pays the claimant salary arrears excluding allowances from the date it was stopped till the date of the Award at 8% interest per year.
- (2) The applicant be reinstated in his employment position.
- (3) The respondent pays 30,000,000/= as general damages and 15,000,000/= as aggravated damages with interest at 20% per year.

According to the affidavit in support of the application a certificate of order was prepared and served onto the applicant on 12/11/2012 (we think the year 2012 was a typing mistake).

In an affidavit in reply, Mr. Richard Adrole, Principal State Attorney deposed that having been dissatisfied with this court's Award the 1st respondent filed a notice of appeal on 2/2/2017 and requested for a record of proceedings and also applied for validation of the late filing of the Appeal and that the 1st respondent also applied for stay of execution in the court of Appeal, which is yet to be fixed and heard.

Submissions:

It was submitted on behalf of the applicant that failure by the respondents to attach an application for late filing of the notice of Appeal in the court of Appeal was an indication that the respondent was bent on delaying the applicant to realize fruits of his Award since there was no vigilance in prosecuting the Appeal.

It was the submission of counsel for the respondent that the applicant had only failed to collect the typed record of proceedings from the industrial court and not that the said proceedings were not readily available.

He strongly asserted that in the absence of evidence that there was an application in the court of Appeal to validate the notice of appeal filed late, there was no pending appeal in the court of Appeal.

In reply, the applicants submitted that this court had no jurisdiction to enforce the decree since it should be enforced by the execution and Bailiff's division of the High court. Counsel contended that the application was premature as no Notice to Show Cause why execution should not issue was served onto the respondent's. According to counsel, the 1st respondent was not served with a ruling notice and only came to know about the Award on 24/1/2018 when served with the same and filed an application to validate the same. He insisted that the 1st respondent had not been availed the typed copy of the proceedings.

We have carefully perused the notice of motion together with the affidavits of both parties. We have also perused the submission of both counsel.

JURISDICTION OF THIS COURT

It was the submission of counsel for the respondent that this court has no jurisdiction to execute an award passed by the court which jurisdiction according to counsel is exercisable by the execution and Bailiffs Division of the High court. Counsel relied on the authority of **Kiryabwire & others vs Attorney General Misc. Appn. 783/2016 and Administrative Circular 4/2011**

Counsel also submitted that the application was premature since no notice to show cause was filed.

With due respect to counsel, the Industrial court having been established by an Act of Parliament, the **LABOUR DISPUTES (ARBITRATION & SETTLEMENT) ACT, 2006** is not a division of the High Court so as to be bound by an Administrative Circular in the form of a Practice Direction requiring all decrees to be executed by the Execution and Bailiffs Division of the High Court. The position that this court is not

a Division of the High Court was well articulated in the Constitutional Petition of **Hon. Justice Ruhinda Asaph Ntengye and Hon. Lady Justice Lilian Linda Tumusiime Mugisha Const. Petition 33/2016.**

However, this court relying on **Section of 16 of LADASA** providing that execution of decrees of this court be in the same way of executing the High Court decrees, held in the case of **Muttawe Andrew vs Sanlam General Insurance limited, Labour Miscellaneous application 101/2016** that the Registrar of this court has powers to execute decrees of this court. The objection is therefore overruled. Although issuing a Notice to Show Cause why execution should not issue has been a good practice of the courts, it is not a legal requirement if execution is applied for within less than one year after judgment. The application therefore was not premature and this objection is as well overruled.

It seems to us that the objection to the application by the respondent is based on the fact that the applicant filed the notice of appeal to the court of Appeal out of time and that the respondent deliberately failed to process the proceedings of this court for purposes of appeal. From the submissions of the respondent, if the applicant was taking reasonable steps to prosecute the appeal, there would be no reason for filing this application.

According to the applicant, all reasonable steps have been taken to process the appeal having been aggrieved by the decision of this court. It is not disputed that the 1st respondent filed a notice of appeal to the court of appeal. It was the contention of the respondent that the applicant had not attached an application for extension of time within which to file a notice of Appeal. However, in their submissions the 1st respondent attached Misc. Appl. 257 of 2019 received by the court of Appeal on 06/8/2019. It is our strong opinion that whether or not to allow an appeal filed out of time is a question to be determined by the court of Appeal.

The duty to prepare the records for purposes of appeal is always bestowed on the court that delivered judgment/Award that is to be appealed from. Whatever delays are encountered in the process of securing the court records, may not be used against the appellant once the appellant takes reasonable steps to secure the same.

According to the applicant, the Award of this court was brought to their notice on 24/1/2018 and they filed a notice of appeal on 2/2/2018 and later on an application to validate the notice of appeal as already mentioned above. The respondent seems to suggest that this court prepared the proceedings but the applicant failed or neglected to collect them. This was a submission from the bar in reply to paragraph 7 of the affidavit in reply to the effect that the applicant had applied for but had not received the typed proceedings. The assertion in paragraph 7 of the affidavit in reply could only be challenged by an affidavit in rejoinder which was not the case. We therefore accept the submission of counsel for the applicant that in fact the proceedings were not availed to the 1st respondent for purpose of appeal.

We have perused the case of **Kiryabwire & Others Vs Attorney General Misc. Appn. 783/2016** relied upon by the applicant. Whereas in the cited case there was a consent judgment and no appeal was lodged, in the instant case the matter was contested and even the respondent lodged an appeal and seeks to be heard by the court of Appeal. The circumstances in the instant case are therefore distinguishable from those in the **Kiryabwire case**.

Accordingly the application fails with no order as to costs.

SIGNED BY:

1. Hon. Chief Judge Ruhinda Asaph Ntengye
2. Hon. Lady Justice Lillian Linda Tumusiime Mugisha



PANELISTS

1. Mr. Ebyau Fidel
2. Mr. Mavunwa Edison Han
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Dated: 15/11/2019