

**THE REPUBLIC OF UGANDA**  
**IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA**  
**LABOUR DISPUTE NO. MISC. APPLN NO.46/2019**  
**ARISING FROM MA. NO.187/2018**

**BUDUDA DISTRICT LOCAL**

**GOVERNMENT**

**..... CLAIMANT**

**VERSUS**

**TSOLOBI DAVID &2 OTHERS**

**..... RESPONDENT**

**BEFORE:**

**THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE**

**THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA**

**PANELISTS**

- 1. MR. RWOMUSHANA JACK**
- 2. MS. ROSE GIDONGO**
- 3. MR. ANTHONY WANYAMA**

**RULING**

The Applicant Bududa District Local Government, brought for an order to stay execution of the Judgement of this court Labour Dispute No. 91/2017, until the determination of the applicant's appeal to the Court of Appeal and costs of the application.

The Application is brought by Notice of Motion under section 98 of the CPA and Order 43 (1), (3) and (5) of the Civil Procedure Rules on the following grounds:

The Applicant filed an appeal against the whole decision of the Industrial Court Labour Dispute No. 91 of 2017 which has a likelihood of success.

The Respondent has threatened to execute the Decree.

The Appeal will be rendered nugatory if an interim order for stay of execution is not granted.

The Applicants will suffer substantial irreparable loss if execution is not stayed.

That the application was brought without delay.

The application is supported by the affidavit sworn by the Chief Administrative Officer of the Applicant, Namulondo Tappy, on the 12/12/2018.

In reply the Respondents filed individual affidavits opposing the application. The gist of their opposition is that the application is incompetent because it was served outside the time prescribed by law, without leave of court and therefore it should be struck out with costs because the notice of motion was sealed by court on 22/03/2019 and was only served on the Respondent on 30/04/2019.

Therefore, the applicant is guilty of dilatory conduct. That this Court rightly made the award in their favour and the application is only intended to delay the Respondents realization of the fruits of their award. It was their evidence that substantial loss would be occasioned to them if the execution is allowed and the Respondent's have the ability to refund any monies should the applicant succeed in the appeal, but since the appeal has no chance of success, they should not be denied the fruits of their award. It was further their evidence there was inordinate delay on the part of the applicant who took no steps since March 2018.

When the matter came up for hearing, Nakanaaba Barbra, from the Attorney General's Chambers in Mbale, was for the Applicant and Samuel Kiriaghe of M/S MRK Advocates was for the Respondent.

## **SUBMISSIONS**

Counsel for the applicant submitted that the Applicant was dissatisfied with the decision of the Industrial court in LD No. 91/2017, in which the Applicant is said to have unlawfully dismissed the Respondents, yet they had been appointed into the District Service contrary to the law and policy and they were awarded

excessive remedies which do not accrue in such circumstances. The Applicant therefore Appealed to the Court of Appeal at Kampala against the whole award. The Respondents however filed Misc. Application 187/2018 seeking execution of the award and decree of the Industrial Court hence this application. Counsel restated the grounds of the application as stated above and according to her the following were the issues for determination:

**1. Whether there are grounds for stay of execution?**

**2. What remedies are available to the parties?**

Based on National Housing and Construction Corporation vs Kampala District Land Board & Anor, No.6/2002, and cited in **Gashumba Maniraguha Vs Sam Nkudiye SCCA No 24/2015**, she submitted that the principles for consideration to grant a stay of execution were stated as follows:

1. The applicant must establish that the appeal has a likelihood of success or a prima facie case.
2. It must be established that the applicant will suffer irreparable damage or that the appeal will be rendered nugatory if the stay is not granted.
3. If 1 and 2 above has not been established Court must consider where the balance of convenience lies.
4. That the applicant must also establish that the application was instituted without delay.

**1. Whether there are grounds for stay of execution?**

In her submission on this issue, Counsel for the Applicant asserted that Rule 23 of the Labour Disputes (Arbitration and Settlement) Industrial Court Procedure Rules 2012 empowers a party who is dissatisfied with a decision of the Industrial Court to Appeal to the Court of Appeal. According to Counsel Annex A, the

memorandum of appeal attached to the application, was evidence that the applicant filed an appeal.

Secondly the appellant will suffer irreparable damage if the application is not granted because, the applicant's funds and properties in respect of which the execution is intended are for offering services to the public and in the event that the services are not offered because of the execution which will deprive the applicant such substantial sums as indicated in annex "B" attached to the Affidavit in support, (Ugx. 425, 673,754/-), the damage occasioned cannot be repaid by the Respondents, yet a budget to specifically settle the liability can be made by the Applicant, without affecting other services, in the likely event that the appeal fails. It was counsel's submission that it was the duty of Court to which an application for ~~to~~ stay of execution is made, to ensure that the appeal is not rendered nugatory. Counsel argued that the balance of convenience was in favor of the applicant because execution has not yet issued and the application was brought without delay, therefore the application should be granted.

The Respondents in reply opposed the application on the grounds that it was not competent before court because it was served outside the prescribed time for service . He contended that whereas the application was endorsed and sealed by the Registrar on 22/03/2018 it was served upon Counsel for the Respondent on 30/04/2019 which was over 38 days after the Notice of motion was sealed by this court. He cited Oder 5 rule (3) which provided as follows:

***"where summons have been issued under this rule and***

***a) Service has not been affected within twenty-one days from the date of issue; and***

***b) There is no application for an extension of time under sub- rule (2) of this rule ; or***

***c) the application for extension of time has been dismissed, the suit shall be dismissed without notice.***

It was his submission that the applicant having failed to serve the Notice of Motion within the 21 days from the date the Motion was sealed and having not applied for extension of time within which to serve the Notice of Motion, this application should be dismissed with costs.

Ms. Nakanaaba did not raise any rebuttal in rejoinder.

## **DECISION OF COURT**

### **Whether the Application as filed is incompetent?**

We have carefully perused the notice of motion and the Affidavits in support and in opposition and the submissions of both counsel in reply and find as follows:

The position of the law regarding service of summons, whether by chamber Summons, Notice of Motion or hearing notices was stated in ***Fredrick James Jjunju & Anor vs Madhvani Group Limited Misc. Application No. 688 of 2015***, where Andrew Bashaija J, stated that:

***“ ... the position of the law is that Applications, whether by Chamber Summons or Notices of Motion and or Hearing Notices, are by law required to be served following after the manner of the procedure adopted for service of summons under Order 5 r.1 (2) CPR. This position was taken in case of Amdan Khan vs Stanbic Bank (U) Ltd HCMA 900/2013, in which this court followed the supreme Court decision in Kanyabwera vs Tumwebwa[2005] 2 EA 86 where at page 94 of the judgment, Oder JSC(R.I.P) held as follows:***

***“What the rule stipulates about service of summons in my opinion applies equally to service of hearing notices.” [underlined for emphasis.***

Therefore, the procedure of service of summons under *Order 5(supra)* also applies to service of hearing notices and applications for purposes of the issuance and service.

In view of this holding therefore the service of this application had to comply with the service of summons under **O5 r 1(2) CPR**, which states as follows:

***2) "Service of summons issued under sub rule (1) of this rule shall be effected within twenty-one days from the date of issue; except that the time may be extended on application to court, made within fifteen days after the expiration of the twenty one days showing sufficient reasons for the extension."***

In the instant case the Notice of Motion was duly endorsed and sealed with the Industrial Court by the Industrial Court Registrar on the 22/03/2019, it was served on to the Respondents on the 30/04/2019. Given that the date from which the computation of time begins to run is 22/03/2019, that is the date on which the Registrar endorsed and sealed the application and given that the application was served upon the Respondent on 30/04/2019, clearly it was served outside the 21 days stipulated under Order 5 Rule 1. The applicant had the option of invoking Order 5 rule 1(2) of the CPR *supra*) to apply for leave to extend the time to be able to file within 15 days from the expiry of the 21 days but she did not.

In the circumstances she locked herself out of the only options available under the law, to render service of its application upon the Respondents. Counsel Nakanaaba did not state any grounds why the Applicant failed to serve the application on time or why she did not apply for an extension to file out of time as provided by the law.

***O5 r1 (3) provides:***

***"where summons have been issued under this rule and***

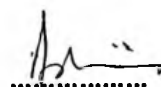
- a) Service has not been effected within twenty-one days from the date of issue; and*
- b) There is no application for an extension of time under sub- rule (2) of this rule ; or*
- c) the application for extension of time has been dismissed, the suit shall be dismissed without notice.*

The application in the instant case having not been effected within 21 days from the date of endorsement by the Registrar and having not applied to Court for leave to extend the time, as provided under Order 5 r1(2), it is incompetent before court.

It is therefore dismissed with no order as to costs.

Delivered and signed by:

**1.THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE**



**2.THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA**

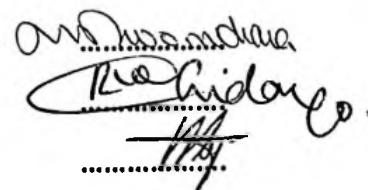
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**PANELISTS**

**1. MR. RWOMUSHANA JACK**

**2. MS. ROSE GIDONGO**

**3. MR. ANTHONY WANYAMA**



**DATE: 9/12/2019**