

**THE REPUBLIC OF UGANDA  
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA  
MISCELLANEOUS APPL. NO. 75 OF 2019  
(ARISING FROM KCCA/CEN/LC/117 of 2015)**

**FINANCE TRUST BANK:.....APPLICANT**

**VS.**

**ISAAC OKETCHO OKODI:.....RESPONDENT**

**BEFORE:**

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

**PANELISTS**

1. Mr. Rwomushana Reuben Jack
2. Mr. Anthony Wanyama
3. Ms. Rose Gidongo

**RULING**

This application by notice of motion was filed by the applicant seeking extension of time within which to file a notice of appeal.

The grounds of the application (among others) were set out in the affidavit sworn by one Ssabwe Stephen and they included the fact that on 30/10/2017 the applicant's advocates wrote to the labour officer for typed proceedings; the fact that on 01/11/2017 a notice of appeal was presented to the registry of this court but was rejected; the fact that on 27/02/2018 the respondent's advocates demanded payment of the award; the fact that on 05/3/2018 the applicant's

advocates requested once again for the typed proceedings and yet again on 11/3/2018. According to the affidavit up to the time of this application no typed proceedings were availed to counsel.

In an affidavit in reply, one Isaac Okecho Ododi, the respondent, stated (among other things) that after 27/10/2017 the day of the award by the labour officer, his lawyers on 27<sup>th</sup> day (the month of which is not mentioned in paragraph 4 of the affidavit) 2018, wrote to the applicant reminding them of the Award and thereafter commenced execution proceedings. According to him, there was a lot of time available for the applicant to file an appeal and writing letters for proceedings was a method of delaying payment of the Award.

The applicant was represented by Mr. Moses Kimuli from United Advocates and the respondent was represented by Mr. Peter Mangeni & Co. Advocates of M/s. Masereka, Mangeni & Advocates. In the submission of counsel for the applicant time within which to file the appeal did not run until the applicant's advocates obtained, for the first time a copy of the Award from this court which was 28/03/2019. He relied on Sanlam General Insurance Uganda Limited Vs Andrew Mutaawe L. D Application No. 101/2016. According to counsel it would be unjust and inequitable for the applicant to be locked out of the Appeal just because the labour officer failed in his duty to provide the proceedings to enable the applicant file its memorandum of appeal. He argued that since the applicant had already deposited security for the performance of the Award and the respondent would be able to have full benefit of the Award of the appeal if unsuccessful, the application should be allowed.

In reply, counsel for the respondent strongly argued that in accordance with **Section 94(1) of the Employment Act and Regulation 45(1) of the Employment Regulations 2011**, the applicant ought to have filed a notice of appeal within 30 days of the Award by the labour officer. Counsel argued that although the court had a discretion to extend the time within which to appeal, the notice of appeal having been lodged close to 2 years after the award did not call for this discretion. It was submitted that obtaining the record of proceedings was not a prerequisite to lodging an appeal under the regulations of this court. In his submission the applicant failed to justify why extension of time should be granted.

**Regulation 45 of the Employment Regulations provides**

**“45 Appeal**

**(1) A person aggrieved by the decision of the labour officer may within 30 days give a notice of appeal to the Industrial Court in the form prescribed in the seventh schedule.”**

We agree with the submission of counsel for the respondent that there is no requirement of the proceedings or an award to accompany the notice of appeal. The contention of the applicant that the registry staff refused to admit the notice of appeal without an Award or decree of the labour office is not acceptable to us. We have taken interest in the letter of counsel for the respondent dated 27/2/2018 informing the Head/Legal Services of the applicant about the need to settle the Award or prepare appeal papers. The letter is attached to the affidavit in reply and it reads

**“The Head Legal Services**

Finance Trust Bank

Katwe Kampala.

Re: ARBITRATION AWARD IN KCCA/CEN/LC/117 OF 2015 (ISAAC –  
OKETCHO OKODI VS FINANCE TRUST BANK LIMITED)

*We represent the claimant/Award holder in the above claim and we address you in that capacity.....By the Award read on the 27<sup>th</sup> October 2017, the claimant was Awarded 65,609,839. By letter dated 30<sup>th</sup> October 2017, you intimated that you intended to appeal the Award and the claimant has been gracious enough to allow you time to do so. To date, no appeal has been preferred by you and we find no reason either as to why you are not paying the claimant the sum awarded to him. We therefore demand the payment of the above decretal sum by the 7<sup>th</sup> day of March 2018.....”*

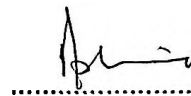
The above letter was received by the respondent on 03/03/2018 and by Advocates of the respondent on 02/03/2018. The application was filed on 01/4/2019 almost 1 year after receipt of the demand to make good the contested award. We do not appreciate the submission of counsel for the applicant that he was prevented from lodging the notice of appeal within 30 days of the Award by the failure of the labour officer to avail the records. As already indicated we are not convinced that the registry staff rejected the notice of motion. Both the respondents and their lawyers having known that there was an impending execution, they should have done better than continuing to write letters to the labour officer for proceedings which were not necessary for the purpose of lodging a notice of appeal in accordance with Rule 45 of the Employment regulations. This court has a registrar who

is in charge of the registry who should have been made aware of the alleged rejection of the notice of appeal.

The circumstance of this case tend to show that the respondent being a financial institution with capacity to pay security for the performance of the decree sat down and believed it could use its financial muscle to get this application allowed. Unfortunately, the mere fact that security for performance of the decree has been or is agreed to be deposited into court is not sufficient for the court to exercise its discretion to extend time. The applicant must show that there was no dilatory conduct on his/her part to enable the non-performance of the specified act within the specified period. The conduct of the respondent in failing to file a notice of appeal even after being warned by the applicant or at the very least to file the application after the said warning is a pointer to the dilatory conduct of the applicant. For the above reasons, we are not convinced that the applicant had sufficient reason to have failed to file the appeal within the time prescribed by law. Accordingly we dismiss the application. No order as to costs is made.

**DELIVERED AND SIGNED BY:**

1. Hon. Chief Judge Ruhinda Asaph Ntengye

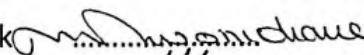


2. Hon. Lady Justice Lillian Linda Tumusiime Mugisha

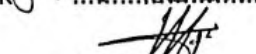
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**PANELISTS**

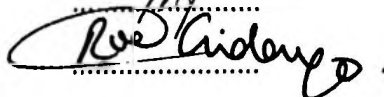
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Dated: 04/11/2019