THE REPUBLIC OF UGANDA

IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA

MISC. APPL. NO. 190 OF 2019

[ARISING FROM LDR. NO. 203/2016]

[ARISING FROM MGLSD. NO. 431/2016]

BETWEEN

ENOS KASIRABO MPORA.....APPLICANT

VERSUS

KAMPALA INTERNATIONAL UNIVERSITY.....RESPONDENT

BEFORE

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

PANELISTS

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

RULING

This is an application by notice of motion for orders that Labour Dispute Claim 123/2016 be reinstated and the order dismissing the same be set aside.

The application is supported by an affidavit sworn by one Enos Kasirabo Mpora to the effect that the day the above labour dispute was dismissed he had just got a job and being the only doctor on duty he had instructed his lawyer to appear in court which his lawyer did not do. According to the affidavit, the applicant was

advised by his lawyers that his presence was not necessary while the matter was on scheduling. No affidavit in reply was filed by the respondent.

The applicant was represented by Mr. Brian Kirima while the respondent was represented by M/s. Evelyn Tumuhairwe.

The background of the application is that the claimant filed a memorandum of claim on 12/10/2016 and the file was called on 10/5/2018 for a pre-session hearing in open court. On this date Mr. Kirima for the claimant informed court in the presence of the claimant that having sent a draft joint scheduling memorandum to the respondent, no input by the respondent was forth coming and in the absence of the respondent he applied for a mention date. The matter was adjourned to 4/7/2018 for mention.

On this date both counsel were in court and the claimant was present. M/s. Tumuhairwe informed court that counsel in personal conduct, Mr. Kyazze was in the High Court and that the claimant had been asked to send a soft copy of the J.S.M. Mr. Kirima had no objection for as long as the respondent would file the necessary documents. The matter was adjourned to 17/07/2018.

On this date Mr. Kirima appeared for the claimant and the claimant was in court but the respondent and counsel were absent. Mr. Kirima informed court that he had not received any documents from the respondent and applied for a hearing date and hearing indeed was fixed for 4/2/2019. On this date none was present and the court said

> **"The claimant applied for hearing of the case today. He is not in court. Neither is his advocate. We think he has lost interest in the case. It is dismissed for non-prosecution".**

SUBMISSIONS

For the applicant it was submitted that the non-appearance of the claimant was caused by the fact that he had acquired a new job and was the only medical doctor at his place of work. Having instructed his advocate to appear in court and having been advised by his lawyer that the matter was for scheduling and therefore

personal attendance was not necessary, he attended to his job and did not come to court.

For the respondent, the submissions were mainly on the law. Relying on various authorities, she argued vehemently that the claim having not been dismissed under **Order 9 rule 22 of the Civil Procedure Rules** the applicant could not apply for reinstatement of the claim but could only file an appeal. She contended that dismissal was on merits and therefore reinstatement was not possible. She also argued that even then on the facts, a new job could not be more important than court business. It was her contention that negligence or mistake of counsel could not be pleaded by the same counsel in an application of this nature. She questioned the wisdom of the applicant in retaining the same advocate.

DECISION OF COURT

As seen from the history and background of this application, both applicant and his counsel seemed to be doing everything possible for the progress of the case, unlike the respondent who seemed to be reluctant to do the same. We therefore agree that the applicant was interested in pursuing his interests in the claim until the 4/2/2019 when the claim was dismissed.

The court did not mention under which rule of the CPR the matter was dismissed and only ordered.

> **"It is dismissed for non-prosecution".**

Order 17 rule 4 provides:

> **"Where any party to a suit to whom time has been granted fails to produce his or her evidence, or to cause the attendance of his or her witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the court may, not withstanding that default, proceed to decide the suit immediately".**

On perusal of the above rule, what comes in our mind immediately is that the above rule applies **when all pleadings have been either closed or the guilty party has been ordered to do something in further progress of the case which such party has failed to do within the given time.**

Indeed in the case of **Pentecostal Assemblies of God Lira Limited Vs. Pentecostal Assemblies of God Limited & Uganda Registration Services Bureau HCMA 014/2018 (Civil Division)**, relied upon counsel for the respondent, one witness had given evidence and the matter was adjourned for cross-examination with directions for parties to file remaining witness statement and additional trial bundles.

In **Road Master Cycles (U) Ltd Vs Tarlock Singh Sagh** also relied upon by the respondent, **Civil suit No. 1264/1999** was dismissed for non-prosecution when both counsel were present in court, indicating that pleadings were closed and the case was ready for hearing.

It is noted that in the **Pentecostal Assemblies case** the application for adjournment in the civil suit which the judge refused to reinstate, had been made by the applicant to which the respondent had objected on the ground that the case had taken a long time in the court system.

It is noted also that in the **Road Master Cycles case**, the Hon. the Principal Judge, Ntabgoba (as he then was) had dismissed an application for adjournment and the entire suit because of the **"uncertainty between the plaintiff and his counsel which caused so much vacillation and inordinate delay".**

In the instant case, although the case had been fixed for hearing on 4/2/2019, the respondent had not complied with any directives of court in furtherance of the case. Instead it was the claimant who had complied with the said directives. We believe that even if the respondent had appeared they would have sought an adjournment to file the necessary documents. It would be not only unjust but unconscionable to disallow the application when the respondent obviously appears with very unclean hands in the Industrial court which fundamentally is a court of

Equity. To make matters worse the claim in the instant case was dismissed even when the respondent was not in attendance.

We wonder what signal of justice this court would portray if it disallowed the application. Accordingly the application is allowed. No order as to costs is made.

BEFORE

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

PANELISTS

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

Dated: 28/2/2020