

THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE APPLICATION NO. 83 OF 2021
[ARISING FROM LC/168/1/1/156/2019]

BETWEEN

ALLIANCE ONE TOBBACO.....CLAIMANT

VERSUS

MOSES NSENGA RUDAHIGWARESPONDENT

BEFORE

1. Hon. Head Judge Ruhinda Asaph Ntengye

PANELISTS

1. Ms. Adrine Namara
2. Ms. Susan Nabirye
3. Mr. Michael Matovu

RULING

This is an application under Section 98 of the Civil Procedure Act, Section 94(2) of the Employment Act and 0.52 Rules 1, 2 and 3 of the Civil Procedure Rules. It seeks an order of this court for leave to appeal on matters of fact forming part of the Award of the Labour Officer sitting at Hoima in complaint No. 168/1/156/2019.

REPRESENTATION:

The applicant was represented by M/s Nabale Shilla on brief for M/s Byarugaba Kusiima from M/S Shunubi Musoke & CO Advocates while the respondent was represented by Mr. Allan Bariyo and M/s Sofia Kigozi from a firm of advocates not disclosed on the file.

The grounds of the application are well set out in the notice of motion which is supported by an affidavit sworn by one Patricia Tukahirwa of M/s. Shonubi Musoke & Co. Advocates and a Human Resource Manager of the applicant.

The affidavit (among others) asserts that questions of fact are material in reversing the Award of the labour officer against which the Appeal has been lodged and that these facts illustrate the failure of the labour officer to properly evaluate the evidence thereby arriving at a wrong decision.

By the time this matter came up for a panel discussion, no affidavit in reply was filed by the respondent, although the applicant's submissions were on record.

Decision of court:

We have perused the Notice of Motion carefully and the affidavit in support as well as the submissions of the applicant.

In the case of DFCU Bank Limited Vs Godfrey Muwanga Misc. Appl. 240/2018 (Land Division), relying on the case of Agro Supplier Ltd. Vs Uganda Development Bank, HCCS 379/2005, the Hon. Justice Henry I. Kaweesa held that the effect of not filing an affidavit where the law requires is a fatal omission and that the absence of an affidavit in reply implies there is no rebuttal to an application.

In the instant application there is no rebuttal of the assertions in paragraph 7 and 8 of the affidavit in support of the application that the questions of fact are material to the appeal and that the same facts illustrate the failure of the labor officer to evaluate the evidence.

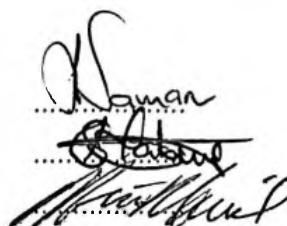
Accordingly, we agree with the submission of counsel for the applicant that leave be granted so as to revisit the correctness of the decision of the labour officer by reviewing the questions of fact. The application is accordingly allowed. No order as to costs is made.

DELIVERED & SIGNED BY:

1. Hon. Chief Judge Ruhinda Asaph Ntengye

PANELISTS

1. Ms. Adrine Namara
2. Ms. Susan Nabirye
3. Mr. Michael Matovu



Dated: 05/11/2021