

**THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
MISC. APPL. 049/2020
ARISING FROM LABOUR DISPUTE REFERENCE NO. 123/2016
ARISING FROM LABOUR COMPLAINT NO. KWP/CB/078/2016**

BETWEEN

BATALE ALFRED BASULA..... APPLICANT

VERSUS

MAKERERE UNIVERSITY..... RESPONDENT

BEFORE

1. HON. HEAD JUDGE, ASAPH RUHINDA NTENGYE

PANELISTS

- 1. Ms. Namara Adrine**
- 2. Ms. Nabirye Suzan**
- 3. Mr. Matovu Micheal**

RULING

This is an application brought under Section 98 of the Civil Procedure Act, Order 9 r 23 of the Civil Procedure Rules and Order 52 r 1 of the same rules. It seeks an order of the court to set aside the dismissal of in Labour Dispute 23/2016 for none prosecution.

The background of the application is that the claimant lodged a complaint to the Labour Officer at Kampala on 01/2/2016. The complainant alleged that the Respondent had used a wrong formula to calculate his terminal benefits to his disadvantage. The respondent had confirmed readiness to pay him 21,819,785 rather than 66,287,160/= which he claimed. His contention was that his terminal benefits should have been calculated at the salary of 362,262 instead of the 150,274 which the respondent used. Although both parties agreed before the Labour Officer that the respondent deposits the initial 21,819,785 on the complainant's account within 1 week, this was not to be, hence a reference to this court on 16/6/2016. The reference was received in court on 26/7/2016

REPRESENTATIONS

Mr. Idambi Paul from Rwabwogo & Co. Advocates represented the applicant while Mr. Waiswa Salim from the respondent's directorate of legal affairs represented the respondent.

SUBMISSIONS

Relying on **Nicholas Roussos Vs Gulam Hussein Habib Viran & Another, Civil Appeal No.9/1993**, the applicant submitted that a mistake by an advocate cannot be visited on the client. Counsel argued that the applicant had a plausible claim of the respondent having used a wrong scale to ascertain the applicant's terminal benefits to his disadvantage which should be heard on its merits. He relied on **CHRISTINE NAMATOVU TEBEJUKIRA 1992- 93 HCB 985** for the legal proposition that administration of Justice requires that the substance of disputes should be investigated and decided on merits without regard to errors and lapses that may debar a litigant to pursue his/her rights. According to counsel, it was the duty of the claimant's counsel to prosecute the claim by appearing in court and furnish information to his client which responsibility the advocate failed to do.

In reply to the above submissions, counsel for the respondent relying on **National Insurance Corporation Vs Mugenyi & Co. Advocates 1987 HCB 28** and **Nakiride Vs Hotel international 1987 HCB 85** strongly argued that the test of reinstatement of a suit is whether the applicant honestly intended to attend the hearing and did his best to do so. According to counsel the failure of the claimant to follow up the matter with his lawyer and his filing the application 2 years after the dismissal constituted dilatory conduct on his part. Counsel contended that the applicant and his lawyer's lack of diligence was premised on the fact that the applicant's terminal benefits were fully paid and having utilized the same he came to lodge the application to get additional money illegally. Counsel in the absence of proof of sickness disputed the contention of the applicant that he was sick and unable to instruct new lawyers to follow up his matter.

Decision of court.

We have carefully perused the Notice of Motion together with the supporting affidavit and the affidavit in opposition. We have at the same time perused carefully the submissions of both counsel.

There is no doubt in our minds that in order for the applicant to succeed in applications of this nature he/she must prove that he/she or her advocates had sufficient reason for not attending court when the matter came for hearing and was dismissed. Order 9 rule 18 of the Civil Procedure Rules puts it this way:

“Where a suit is dismissed under rule 16 or 17 of the order; the plaintiff may, subject to the law of limitation, bring a fresh suit or he or she may apply for an order to set aside the dismissal aside; and if he or she satisfies the court that there was sufficient cause for his or her not paying the court fee and charges, if any, required within the time filed before the issue of the summons or for his or her nonappearance, as the case may be, the court shall make an order setting aside the dismissal and shall appoint a day for proceeding with the suit.”

It is clear from the court record that right from the beginning of court proceedings in court on 31/07/2017, both the applicant and the respondent were keen or at least showing court their interest in settling the matter out of court. The adjournments to 5/09/2017, 04/12/2017, 15/01/2018 were for the sake of giving the parties an opportunity to settle the matter. Although the claimant through his advocate on 4/04/2018 informed court that settlement had failed and the claimant was to prosecute his claim, thus adjourning the matter to 09/05/2018, in the presence of the applicant, once again both applicant and counsel were not ready to prosecute the claim by this date causing another adjournment to 14/05/2018 on which date and in the presence of the applicant, counsel for the applicant once again prayed for time to resolve the matter amicably which was granted causing an adjournment to 11/07/2018. On this date neither the claimant nor his counsel was present and counsel for the respondent informed court that both claimant and counsel had disagreed on how to settle the matter which was adjourned to 20/8/2018 on which date it was dismissed at the application by the respondent in the absence of the claimant and counsel.

On perusal of paragraph 4,5 and 6 of the Notice of motion it is stated that the applicant entirely relied on his advocates who did not inform him of the progress of the case and that it was for this reason that he was not aware of the same leading to its dismissal at the instance of him and his counsel being absent in court. It was the applicant's evidence under paragraphs 9,10,11 and 13 of the affidavit in support of the application that having been informed by his counsel that on 10/07/2018 court would not sit because it was on vacation, he kept in touch with his lawyer who was telling him that the case was yet to be given a hearing date; yet when he followed up personally he discovered that the case had been dismissed on 6/08/2018 and that all this happened while he was sick and on medication without resources to engage another lawyer. Contrary to the affidavit of the applicant, the court record reveals that the matter came up on 11/07/2018 and not 10/07/2018 alleged to have been a court vacation. It is

therefore not believable that the claimant who was personally present in court on 14/05/2018 when the matter was adjourned to 11/07/2018 was not aware of the latter date.

From the perusal of the notice of motion and the affidavit in support, it is irresistible to conclude that the claimant was having financial problems in settling bills with his lawyer resulting in disagreements over how to attend the court sessions. Our inference from the affidavit is that even the applicant himself was not able to sponsor himself to be able to attend the court proceedings, the reason he was absent on 11/07/2018 and 20/07/2018. Unfortunately for the applicant, failure to raise costs of attendance in court is not a sufficient reason for non-attendance. Neither is failure to raise legal fees to enable counsel attend court.

We entirely agree with the submission of the applicant that an error or a mistake of an advocate negligent as it may be, is acceptable as a sufficient cause or reason for a litigant's failure to do certain acts within certain periods of time and may not be visited onto the litigant. However this court in the recent case of **Securex Agencies (U) Ltd Vs Odikiria Samuel baker M.A 041/2021 (arising from LDC 239/2017)**, while re-echoing the decision in **Appliance World Limited Vs Ocho John Micheal , Misc. Appln. No. 179/2018 (arising from Labour Dispute Reference No. 327/2015)** stated that

"Where a litigant contributes towards the negligence or omission or error of his advocates amounting to dilatory conduct on his part, the court may not favour the litigant"

In other words not every negligent act or error made by counsel will not be visited onto the litigant. Depending on the facts of every case, a given error by counsel may or may not be binding on the litigant. This is why in our considered opinion Hon. Justice Mulenga JSC (as he then was) in **Captain Phillip Ongoru Vs catherine Nyew owota SCCA 14/2001** at page 9 said

"It is an elementary principle of our legal system, that the acts and omissions of the advocates in the course of the representation bind a litigant who is represented by an advocates. However in applying that principle, the court must exercise care to avoid abuse of the systems and / or unjust or ridiculous results. To my mind, a proper guide in applying the principle is its premise, namely that the advocate's conduct is in pursuit of and within the scope of what the advocate was engaged to do. "

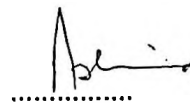
In the instant case, the applicant beginning as early as 31/07/2017 sought and was granted time to settle the matter out of court. On 04/04/2018, the applicant informed court that settlement had failed and in the hope that the matter would be prosecuted this time, the court granted an adjournment to yet another date by which date the applicant was not ready to prosecute the same thus causing another adjournment. Surprisingly this time the claimant through his lawyer reversed his decision to prosecute the claim and instead prayed for time to amicably resolve the dispute. It is our opinion that this was putting the court in a kind of a circus. In granting an adjournment to 11/07/2018 the expectation was that the applicant would come ready to fix the matter for hearing and the claim would proceed to its final completion on merits. We consider the absence of the advocate and his client on the two dates of 11/07/2018 and 20/08/2018 when the matter was dismissed as both negligence of the advocates and dilatory conduct of the applicant.

We accept the submission of the respondent that the retirement benefits of the applicant having been paid to him on 30/6/2017 he did not find any reason to appear in court on 11/07/2018 or 20/08/2018 and filing this application on 17/03/2020 1 ½ years after the dismissal was only an afterthought. This in our view compounded the dilatory conduct of the applicant which is unfavorable for exercise of the discretion of this court to reinstate the claim. We agree with the respondent that in the absence of any scintilla of evidence to support the sickness of the applicant during this period, his failure to file this application within a reasonable time cannot be excused.

Consequently, for the dilatory conduct exhibited by the applicant, the legal principle of non- visitation of the advocate's errors or negligence on the litigant could not apply and for that matter the application is found with no merits and dismissed. No order as to costs is made.

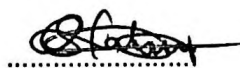
Delivered & signed by:

1. Hon. Head Judge Ruhinda Asaph Ntengye



PANELISTS

1. Ms.Namara Adrine.....
2. Ms.Nabirye Suzan
3. Mr. Matovu Micheal



Dated: 17/09/2021