

THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
MISCELLANEOUS APPLICATION No.125 OF 2020
ARISING FROM LABOUR DISPUTE REFERENCE NO: 240 PF 2019
ARISING FROM KCCA/CEN/LC/165/2017

GUARANTY TRUST BANK(U)LTD **APPLICANT**

VERSUS

SUSAN DEMBE **RESPONDENT**

BEFORE:

1. THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA

PANELISTS

1.MS. EBYAU FIDEL

2.MR. F.X. MUBUKE

3. MRS. HARRIET MUGAMBWA

RULING

This application is brought under Section 79(1)(a) & 98 of the Civil Procedure Act, Section 33 of the Judicature Act, Order 51 Rules (1) and (2) of the Civil Procedure Rules, seeking orders that:

1. That the time within which to lodge an appeal against the award of the Labour Officer delivered on 22/08/2019 in Labour Complaint No.165 of 2017 be enlarged set aside and suit be reinstated.

BACKGROUND

The Respondent was an employee of the Applicant Bank from 15/02/2013 to May 2017 when her employment was terminated.

She filed a complaint before the Labour officer for wrongful and unlawful termination, for orders that salary arrears amounting to Ugx.3,150,000/-, severance allowance, overtime charges, general damages and punitive damages and costs of the suit are paid to her. The Labour officer issued an award in her favour.

The Applicant's case:

The Applicant's case, as contained in the notice of motion and supporting Affidavit deponed by Ngonzi Mary the Applicant's Legal Officer, is summarised as follows:

- a) That the Labour Officer erred in law in determining the complaint to which errors were made in the award against the Applicant.
- b) That there are serious triable issues in law to be resolved on appeal.
- c) That Counsel for the Applicant was not vigilant to file a notice of cross appeal in Labour Dispute Appeal No. 30 of 2019, on time despite being instructed to do so.
- d) That there were unexplained delays in obtaining the record of proceedings from the labour court.
- e) That the Applicant has always been desirous of cross appealing against the decision of the labour officer but the Respondent withdrew the appeal in this court without notifying the Applicant's.
- f) That if this Application is not granted, the Applicant will be subjected to undue financial loss. In the interest of Justice, it should therefore be granted.

The Respondents Case

The Respondents case as set out in the Affidavit in reply deponed by Dembe Susan, the Respondent as follows:

- a) That she read and understood the Applicant's affidavit and as advised by her lawyers', the application is misconceived and untenable in law, because the applicant has not shown sufficient grounds to warrant the extension of time within which to file its appeal against the Labour officers award.
- b) That the Application is out of the statutory time limits required for filing an appeal and the applicant is guilty of inordinate delay.
- c) That the Application is improperly before this Court, it is an afterthought and brought in bad faith rendering it an abuse of court process, given the fact that the Respondent already notified Court about the nonexistence of an appeal in an application pending determination before this Court vide Miscellaneous Application No. 126 of 2020.
- d) The Applicant's bad faith is further demonstrated by ~~the~~ its conduct of misleading the Respondent for over 6 months, to believe that ~~the~~ it was ready to settle the Labour officer's award and instead it had intentions of prolonging the dispute hence the improper appeal.
- e) That to the extent that this application purports to remedy a defect in a matter pending determination in this court, the present application is prejudicial as it purports to prejudge or prejudice the outcome of this court.
- f) That the application bears material false hoods and inconsistencies in so far as the applicant avers that she was in the process of lodging a counter appeal yet while there was no appeal filed by the Respondent at the time.
- g) That this a case where the lack of diligence and or negligence as admitted by the applicant should be visited on the applicant, having retained the

same legal department to pursue an incompetent appeal, the applicant is bound by the actions of the same department including its omission to take the necessary steps or for incompetently doing so.

- h) That the appeal has no chance or likelihood of success as there is no bonafide and arguable grounds of appeal.
- i) That, as advised by her lawyers this application does not warrant any exercise of court's discretion to extend time, otherwise the applicant will have succeeded in using the court process to approbate and reprobate.
- j) That granting this application would amount to court condoning attempts by the Respondent to prevent her from enjoying the fruits of her award from the labour office.
- k) That the balance of convenience lies in her favour because she continues to be inconvenienced by the applicant who remains in contempt of the Labour officer's award by deliberate delays caused by the Applicant. Therefore, the application should be dismissed for being meritless.
- l) Rejoinder

REPRESENTATION

SUBMISSIONS

1. Whether the Applicant has sufficient grounds for enlargement of time?

Citing **Rule 6 of the Labour (Arbitration & Settlement) Industrial Court Procedure) Rules 2012**, which provides that where a party fails to file documents within the prescribed time he or she may apply to the court for extension of time, Counsel submitted that, Section 96 of the Civil Procedure Act vests this Court with Jurisdiction to enlarge time where sufficient cause is shown. He relied on **James Bwogi & Sons Enterprises Ltd vs Kampala City Council and Kampala District Land Board, Civil Application No. 09/2017** and

Hadondi Daniel vs Yolam Egondi Civil Appeal No. 67/2003, for the same legal proposition. He further cited, **Bishop Jacinto Kibuuka Vs the Uganda Lawyers Catholic Society & 2 Others HCT Misc.Appln No. 039 of 2018**, to describe sufficient Cause as, a situation where a party had not acted in a negligent manner or where a party had not been diligent or inactive due to given circumstances of a case.

It was his submission that, this application was filed without undue delay and the Applicant was not guilty of dilatory conduct. According to him, the Respondent being dissatisfied with the labour officer's decision, filed a notice of appeal thus disabling the Applicant from filing its notice of appeal. Its intentions of filing a cross appeal in accordance with the rules of procedure, were also inhibited by the Respondent's failure to notifying it, that she had withdrawn her Appeal on 17/12/2019. The Applicant as soon as it was informed that the Respondent had withdrawn her appeal, without undue delay then filed its notice of Appeal in this Court, together with this application

It was his submission that the Applicant duly instructed inhouse Counsel, the then Head of Legal and Company Secretary to file a notice of appeal in this matter. However, after it was established that the Respondent had filed an Appeal, Counsel was advised to follow the proceedings of the Appeal and file a cross Appeal. However, Counsel resigned from employment without acting upon the instructions and without notifying management and it was only later that the Applicants newly recruited officers discovered that the Respondent had withdrawn her appeal without notice to the Applicant.

He contended that, the Applicant had always been desirous of pursuing the appeal and should be allowed to exercise its rights of appeal to enable Court determine the matter on its merits. Counsel further cited **Julius Rwainumi vs**

Hope Bahimbisomwe CA No. 14/2019, where an applicant sought to file their memorandum of appeal 9 months out of time, and Court held that where there is mistake of Counsel, this can be considered to be sufficient grounds to grant an extension. He also cited **Tiberio Okeny and another vs The Attorney General and 2 others CA No. 51 of 2001**, for the legal proposition that, unless the Appellant was guilty of dilatory conduct in instructing his lawyers, errors or omissions on the part of Counsel should not be visited on the litigant. According to him the court went further to state that where an applicant instructed a lawyer in time his rights should be blocked on the grounds of his lawyers negligence or omission to comply with the requirements of the law.

He further argued that, the Respondent would not suffer any prejudice if an order for extension of time is granted and the appeal is heard on its merits. According to him, the Applicant is a reputable Bank, it is a going concern, regulated by the Bank of Uganda and it has shown sufficient cause for court to grant this application and proceed to hear the grounds of appeal as enumerated in the proposed memorandum of Appeal attached herewith.

In reply Counsel for the Respondent submitted that, whereas the Applicant filed this application on 10/09/2020 and the Respondent replied on 7/04/2021, no rejoinder has been filed to date therefore the Respondent's evidence in the Affidavit remains uncontroverted.

He contended that the application is an abuse of court process because there are ongoing proceedings in this court in Misc App No 126/2020 annexed to the Affidavit in reply in which contentions about the validity of the appeal, given that it is time barred, is pending determination by this court, therefore the Applicant cannot seek to have the same point adjudicated separately under different proceedings before the same court. He contended that this application

is prejudicial to the outcome of Misc Appln. No 126 of 2020 which was filed earlier. Therefore, this was sufficient ground not to allow this application.

Counsel further contended that, the Appeal is irredeemably out of the statutory time limits required for filing appeals against the awards of labour officers. According to Counsel Regulation 45 of the Employment Regulations restricts the time lines for filing such an appeal to 30 days and in the instant case the award of the Labour officer was issued on 22/08/2019 and the applicant more than 2 years after the issuance of the award, purports to apply for extension of time.

He refuted the Applicant's reliance on section 96 of the Civil Procedure Act, because the section only applies to extension of time where the timelines were fixed by Court Order to do and act prescribed by or allowed by the rules but it does not deal with time granted or fixed by statute and in this case by the Employment Regulations. He insisted that ~~the~~ in this case the time for appealing against the award of the Labour Officer was not fixed by Court order but by the Employment Regulations, which renders section 96 of the CPA(supra) inapplicable. He contended that, the Applicant cannot rely of section 98 of the CPA either, to invoke Courts inherent powers when time has been fixed by statute because, it is well settled that, Courts have no residual or inherent power to enlarge a period of time that is fixed by statute. He contended that Regulation 45 of the Employment Act fixes the time within which to file an appeal against the Labour Officer's decision and such period could not be extended as a matter of law. It was also his submission that section 79(1) of the CPA was also not applicable because it is only an operative provision which requires that every appeal is entered within 30 days of the date of a decree or order of court .

Counsel further contended that, although the Applicant cited several authorities in support of this application for extension of time, and although the

Respondent agrees with the principles established in these cases, they are distinguishable with this case because the Applicant has not showed sufficient cause to warrant grant of extension of time . He contended that that, the Applicant is guilty inordinate delay given that the application has been brought 2 years after the Labour Officer's award. He strongly refuted the Applicant's assertion that it intended to cross appeal because it was false and the Applicant cannot be aided by its lack of Vigilance.

He submitted that, it was an elementary principle that sufficient cause must relate to the inability or failure to take necessary step within the prescribed time and not to taking the wrong decision. Citing **Hadondi Daniel Vs Yolam Engondi CACA No. 67 of 2003**, he argued that where the applicant is found guilty of dilatory conduct, time will not be extended. It was his submission that the sufficient cause pleaded by the Applicant was not sufficient but rather an act of dilatory conduct occasioned by a wrong decision taken by its inhouse counsel to hope to cross appeal based on the Respondent's Appeal. He cited **Muhammed B Kasasa vs Jasphar Sirasi Bwogi CA No. 42 of 2008**, in which court stated that an applicant was bound by the actions of his counsel, including the omission to take a necessary step or incompetence in doing the same is not an excuse from the client to escape being bound by his counsel action. And given that, Counsel for the Applicant has already admitted willful negligence and lack of diligence in their own application and their submissions, the Applicant cannot come with unclean hands to seek an extension of time. He contended that having chosen to retain the same legal department which is guilty of an omission to take a necessary step is bound by the actions of the same lawyers withing the same legal department.

He further submitted that, the Applicant has not pleaded or demonstrated any likelihood of success of its appeal. He contended that the Applicant did not attach any evidence of the possible grounds of appeal, to show any serious issue for determination on appeal, but was merely engaging in abuse of Court process.

It was his submission that granting this application would be prejudicial to the Respondent which was demonstrated ^{under} paragraphs 6,7,8,9,12, 13 and 14 of her affidavit of reply and because of the Applicant's conduct, she continues to engage counsel to assist her which is costly. He contended that the Applicant has continued to display its bad faith by praying for cost of the Application.

He insisted that the Applicant has not satisfied the requirements for the grant of an application of time, therefore this application should be dismissed with cost to the Respondent and in the event that Court is inclined to grant the application, the respondent should be compensated with costs.

DECISION OF COURT

We have carefully perused the Notice of Motion together with the supporting affidavit and affidavit in opposition and the submissions of both Counsel and find as follows:

Regulation 45 of the Employment Regulations provides that:

45. Appeal

1) a person aggrieved by the decision of the labour officer may within 30 days give notice of appeal to the Industrial Court in the form prescribed in the 17th schedule. ..."

It is a settled matter that Court may in its discretion enlarge time within which to appeal unless the applicant is guilty of unexplained or inordinate delay in seeking Courts clemency, has failed to provide justifiable reasons for his or her

failure to file an appeal within the time prescribed by law or unless the extension of time will prejudice the Respondent or where the appeal has no merits. It is our considered view that it would not be prudent to lock the applicant out unless the circumstances stated pertain.

Regulation 45(supra) however, does not provide for the procedure and considerations to be applied, when applications for leave to appeal outside the prescribed 30 days are made therefore, this Court has adopted Section 79(1)(b) of the Civil Procedure Act read together with Order 43 rules 1 and 2 and Order 51 rule 6, of the Civil Procedure Rules, which mandates an appellate court for "good cause" to enlarge time within which to appeal after the prescribed 30 days have lapsed when determining such applications.

In **Eriga Jos Perino vs Vuzzi Azza Victoe & 2 Others HCCA No. 09/2009** and **Moyo Civil Suit No 015/2004**, which cited **Shanti vs Hindocha and others [1973] EA 207** held that :

"The position of an applicant for extension of time is entirely different from that of an applicant for leave of appeal. He is concerned with showing sufficient reason (read special circumstances) why he should be given more time and the most persuasive reason that he can show is that the delay has not been caused or contributed by dilatory conduct on his own part, but there are other reasons and these are all matters of degree."

The applicant must therefore prove good cause for Court to grant the extension of time. Courts have resolved that, Sufficient Cause has been defined. The applicant must therefore show why it was unable to take the steps to appeal in time.

The Applicant in the instant case states that, the Respondent filed a notice of Appeal and the Applicant was always desirous of filing a cross appeal, but due to the negligence of inhouse ~~of~~ Counsel the cross appeal was not filed in the time prescribed by law. The Respondent further submitted that, there were unexplained delays from the labour officer who issued the award to transfer the record of proceedings hence its commencing preparations to file a cross appeal only on 4/09/2020 and it also only recently learned that the Respondent had filed notice to withdraw her appeal on 17/12/2019.

It is not in dispute that the labour officer's award was issued on 22/08/2019, therefore the Applicant was expected to file its notice of appeal within 30 days from the date of this award, at least by 22/09/2019. In any case having received the Respondents notice of Appeal, it should have filed its notice of cross appeal not later than, 30 days from receipt of the notice. Court was however not told when the Respondent served her notice of appeal on it.

The Applicant would like Court to consider mistake of its inhouse Counsel in failing to follow its instructions to file an appeal and cross appeal as its justification for the grant of this application for extension of time.

We find it very difficult to believe the submission of Counsel for the Applicant that, in house Counsel resigned from employment in 2019, without notifying management that he or she had not acted on its instructions to file an appeal or a cross appeal and it was only notified by its newly recruited officers in September 2020 when they discovered that the Respondent had withdrawn her appeal without notice to the Applicant.

In our considered opinion this submission is testimony of the Applicant's lack of vigilance in pursuing this matter. First of all there is no evidence indicating that the Applicant did not participate in the litigation of the matter at the lower

office for it not to be aware that the labour officer issued an award against it on 22/08/2019. In fact it was its counsel's submission that the respondent was served with the Respondent's Appeal against the labour officer's decision and it was desirous of filing a cross appeal and in house counsel was instructed to file a cross appeal. It is therefore unbelievable for the Applicant to state that inhouse Counsel omitted to act as instructed and she did not notify it after counsel resigned. It was the submission of Counsel for the Applicant that, the Applicant was a reputable Bank, therefore the expectation is that , it would assign the management of the case to another lawyer in its legal department or it would hire external counsel to take the necessary steps to pursue an appeal or cross appeal after the resignation of inhouse counsel as claimed. We do not believe that having instructed in house Counsel to file an appeal and later to file a cross appeal after receiving the Respondent's notice of Appeal, it simply sat t back and only woke up 2 years after the Labour Officers award to pursue the same matter on the grounds that it was not aware that in house counsel had omitted to follow its instructions. Even if the Applicant would like Court to believe that it has only recently recruited new Counsel since the previous one resigned, which is unbelievable, it had already instructed previous in house Counsel to take the necessary steps but, it omitted to follow up after Counsel left, which in our considered opinion cannot^{be} visited on Counsel.

We also do not accept the excuse that there were unexplained delays in receiving the record of proceedings from the labour office without any evidence of any efforts taken to secure the record of proceedings for the labour officer. There is no evidence of any form of request whether in form of letters to the Registrar of the Industrial Court or the labour office applying for the said record. The applicant should have at least adduced evidence of a letter requesting for the record of proceedings as proof that it really had intentions to pursue an

appeal or cross appeal against the decision of the Labour officer to warrant a grant of this application, but this was not the case.

We do not accept the excuse that counsel made any mistake, because we were not able to discern the dilatory conduct of inhouse Counsel having not been given any evidence to show when the said in house Counsel resigned. Therefore the Applicant cannot rely on this ground. We insist that, the Applicant had the duty to assign the matter to another inhouse lawyer or to an external lawyer after inhouse counsel's resignation which was not done.

We were also not able to determine whether the Applicant's appeal had any merits because it was not attached for our consideration.

We are not satisfied that the Applicant has shown sufficient cause to warrant the grant of this application. We are convinced that, it is guilty of dilatory conduct having not instructed alternative counsel to immediately take over the matter after inhouse counsel resigned. We are inclined to believe Counsel for the Respondent that, this application was an afterthought and an abuse of court of process which cannot be condoned by this court.

The application is therefore denied with no order as to costs.

Delivered and signed by:

1. THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA

PANELISTS

PANELISTS

1.MS. EBYAU FIDEL

2.MR. F.X. MUBUKE

3. MRS. HARRIET MUGAMBWA

DATE: 15/10/2021

