

THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
MISC. APPL. NO. 158 OF 2018
(ARISING FROM MAYUGE LC NO. 002/2017)

MAYUGE SUGAR INDUSTRIES LIMITED.....CLAIMANT

VERSUS

BAGANDA JULIUS WILLIAM & 25 OTHERS).....RESPONDENT

BEFORE

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

PANELISTS

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

RULING

This application by Notice of Motion brought under **Section 98 of the Civil Procedure Act** and **Order 51 rule 6, Order 52 rules 1 and 3 of the Civil Procedure Rules** seeks orders of this court to extend the time within which the applicant may file an appeal and that Labour Dispute Appeal No. 23/2000 filed out of time be validated. The application also seeks costs of the same.

The application is supported by an affidavit sworn by one Semei Samuel, Legal Officer of the applicant to the effect that the Labour Officer gave short time notice for hearing after a failed

mediation. When the applicant objected to the labour officer entertaining the matter he ignored and dismissed him upon which a complaint was raised to the commissioner.

According to the affidavit the labour officer went ahead to hear the matter *exparte* and entered an award in exaggerated amounts contrary to what he was empowered legally.

The affidavit goes on to state that the labour officer refused to hear the application to set aside the *exparte* Award and declined to accept a letter requesting proceedings for purposes of appeal.

An affidavit in reply sworn by one Baganda Julius William was to the effect that the applicant chose not to attend the hearing as they were aware of the hearing date.

Brief background

The respondents lodged a complaint to a labour officer of Mayuge to which the appellant replied. According to the appellant the matter was fixed for mediation on 24th September 2019 and after mediation proceedings, it was adjourned to 4/10/2019. On this date no agreement was reached.

Summons for 10/10/2019 was then issued for arbitration proceedings to which the appellant objected by letter to the labour officer as well as to the commissioner. Despite the objections the labour officer went ahead to determine the matter in the absence of the appellant. The Award was outrageous and illegal as it was beyond the jurisdiction of the labour officer.

According to the respondent, the appellant was well aware of the proceedings and she decided not to present her side. There was never any complaint to the labour officer and the complaint to the commissioner was only speculation. There was nothing illegal in the proceedings and the labour officer had jurisdiction to award whatever was contained in the Award.

SUBMISSIONS

Relying on **Engineer John Eric Mugyenzi Vs Uganda Electricity Transmission Co. Ltd, Civil Appeal 167/2018 (Court of Appeal)** the applicant argued that the labour officer being not a court of law and empowered only to settle disputes by conciliation and mediation, was not competent to preside over the matter in an adversarial manner like a court of law and make various awards.

Relying on **Makula International Ltd. Vs His Eminence Cardinal Nsubuga & Anor, 1982 HCB 11,** Counsel argued that the proceedings of the labour officer were an illegality which overrides all questions of pleading.

It was counsel's submission that the summons was not served on the Advocates or Secretary or Director of the Company and whoever signed on the summons was not known to the company and therefore denying this application would be condemning the applicant without being heard.

In reply to the above submissions, counsel for the respondent argued that the legal officer attended the proceedings on 24/9/2019 and later on the said legal officer, Samuel Semei, declined to show up warranting the labour officer to proceed exparte. According to counsel, the applicant was served with the Award on 24/2/2020 and no step was taken to show that the applicant was aggrieved until 9/7/2020 when they filed a letter to set aside the exparte Award.

Relying on **Section 13 of the Employment Act**, counsel argued that the labour officer had powers to arbitrate the dispute and parties were informed about this on 24/09/2019. Counsel also relied on **NETIS Uganda Vs Charles Walakira LDA No. 022/2016** for the legal proposition that a labour officer has power to choose which of the four methods provided under **Section 13 of the Employment Act** he/she may use to resolve the conflict. According to counsel there was no illegality in the proceedings to amount to a sufficient cause for allowing this application.

It was counsel's submission that there was no mediation of the conflict and no mediation took place. According to counsel the failure of the labour officer to refer the dispute to the Industrial Court could not be a sufficient cause to allow this application since the applicant could have personally referred the same under **Section 5(3) of the LADASA**.

It was argued for the respondent that the applicant was served with summons and there was no reason to grant this application. According to counsel, the legal officer of the applicant was aware

of the 15/10/2019 when the matter was heard. In counsel's submission, it was unbelievable that the legal officer of the applicant, as an advocate could be chased from attending proceedings before a labour officer and all he did was to complain to the commissioner and wait until a decision was made by the labour officer.

Decision of court:

It is settled that an application of this nature can only succeed if the applicant satisfied court that he/she did not take a particular step within which to do certain things as required by law for reasons that constitute sufficient cause for such failure (see **Supreme Court Civil application 09/2017, James Bwogi & Sons Enterprises Ltd. Vs Kampala City Council and Kampala District Land Board** and **Honondi Daniel Vs Yolamu Egondi court of Appeal, Civil Appeal No. 67/2003.**

Where the applicant is established to have by dilatory conduct contributed to the failure of taking a certain step within the prescribed time, the court would not normally grant the application.

The Authority of **Makula International Vs Cardinal Nsububga 1982 HCB 11** is of the legal proposition that an illegality can be brought to the attention of court at any time during the proceedings and once brought to the attention of court such illegality overrides any pleadings relevant to the matter.

It was the submission of counsel for the applicant that in accordance with the decision of **Eric Mugyenzi Vs Uganda Electricity Distribution Company Ltd.** (supra) the labour officer not being a court of law had no jurisdiction to grant the remedies that he did. Although counsel did not say so, we understood him to be saying that the fact that the labour officer had no jurisdiction was an illegality that easily overrode the pleadings of the respondent that there was no sufficient cause shown to enable this court to grant the application.

The court of Appeal in the above **Eric Mugyenzi** case had this to say at page 14 of the Judgment in the last paragraph

“The expression “court” means a court of judicature or a subordinate court and does not refer to a labour officer or the Industrial Court. From the above premises, it follows that the orders envisaged under Section 71(5) for unfair dismissal, in terms of the right to reinstate the

employee or order compensation to the employee must mean an order of a court of judicature or a subordinate court. An employee appearing before the labour officer can only apply the methods of settlement by conciliation or mediation. Conciliation and mediation by necessary implication lead to a settlement agreeable or acceptable to the parties.”

Section 13 of the Employment Act provides

“13 Labour Officer’s power to investigate and dispose of complaints

(1) A Labour Officer to whom a complaint has been made under this Act shall have the power to-

- (a) Investigate the complaint and any defence put forward to such a complaint and to settle or attempt to settle any complaint made by way of conciliation, arbitration, adjudication or such procedure as he or she thinks appropriate and acceptable to the parties to the complaint with the involvement of any Labour Union present at the place of work of the complainant; and**
- (b) Require the attendance of any person as a witness or require the production of any document relating to the complaint after reasonable notice has been given.**
- (c) Hold hearings in order to establish whether a complaint is or is not well founded in accordance with this Act or any other law applicable and the labour officer shall, while conducting the hearing employ the most suitable means he or she considers best able to clarify the issues between the parties;**
- (d) Presume the complaint settled if the complainant fails to appear within a specified period; or**
- (e) Adjourn the hearings to another date.**

(2) The labour officer shall, while exercising the powers under paragraph (a) state reasons for his or her decision on a complaint.

Given the express provisions of **Section 13 of the Employment Act** that gives adjudicatory powers to the labour officer and given **Section 94 of the same Act** that gives this court appellate powers against the decisions of Labour officers it is clear that the court of appeal never considered the above sections of the law as it deliberated the matter in the **Eric Mugenyi** case. The decision

therefore did not interpret **Section 13**. Accordingly, we find that the labour officer in the instant case had jurisdiction and his handling the matter could not in any way amount to any illegality overriding pleadings of failure to take a particular step in order to file an appeal.

It was the contention of counsel for the applicant that the labour officer entertained the matter and delivered an Award when he had entertained the same matter in mediation. The respondent denied this and contended that the labour officer never entertained a mediation between the parties.

In the cases of **Sure Telecom Vs Brian Azemchap LDA 008/2015** and **The AIDS Support Organisation (TASO) Vs Nandala Annet Betty LDA 029/2018** this court emphasised the point that once a Labour Officer opted to use a mediation method to resolve the dispute he/she could not at a later stage entertain the matter by the process of adjudication or arbitration.

A letter dated 11/10/2019, addressed to the commissioner of labour is a complaint that the labour officer on the 24/09/2019 entertained a mediation between the parties who had rigorous negotiations and had adjourned the matter to 4/10/2019.

Looking at the proceedings of 24/09/2019, it is noted that the claimants were not represented and that the labour officer allowed counsel for the respondent to address him and counsel started a conversation on the nature of the dispute that according to him dated 10 years back when there were different parties at the respondent company. He suggested that if the claimants had agreements that spelt terms and conditions of work, the parties would **“agree on mutual grounds.”**

The record shows that after the address of the lawyer of the respondent the claimants declined to comment in the absence of their lawyer but that the labour officer adjourned to 4/10/2019 for the claimants’ lawyer to respond.

Whereas the affidavit in support of the application under paragraph 4 asserts that on 24/9/2019 the labour officer presided over mediation proceedings, in reply the affidavit of the respondent does not state what exactly occurred on this date when the parties appeared before the labour officer. Considering the record of the labour officer as to what transpired on

24/09/2019, although he declined to name the proceedings as mediation, what is recorded as having been said by the lawyer for the respondent and the reply by the claimants in the absence of their lawyer, could only be referred to as a mediation.

In our view it was wrong for the labour officer to refer to the statements of the lawyer as defense submissions since the claimant who had a right to begin had not submitted yet.

Since the labour officer listened in to the statements of the respondent intended to settle the matter and listened in to the replies of some of the claimants, it is safer to conclude that by virtue of the holdings of the **Sure telecom and the Aids Support organization (TASO) cases (supra)** he was precluded from entertaining the case later on as an arbitrator or an adjudicator under **Section 13 of the Employment Act**. It was an illegality which overrode the pleadings in objection of this application and therefore amounted to sufficient cause for this court to allow the application and so it is ordered.

No order as to costs is allowed. For expeditious disposal of this matter the filing of labour Dispute Appeal 23/2020 is hereby validated.

Delivered & Signed:

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

PANELISTS

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

Dated: 19/02/2021

