

THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
MISC. APPL. NO. 047 OF 2021
[ARISING FROM LABOUR COMPLAINT NO. 80/2020 of KCCA, CENTRAL]

BETWEEN
UGANDA BUREAU OF STATISTICS.....APPLICANT
VERSUS
WAGIDOSO DAN.....RESPONDENT

BEFORE

1. Hon. Head Judge Ruhinda Asaph Ntengye

PANELISTS

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

RULING

This application is brought before this court under **section 98 of the Civil Procedure Act, Order 51r6, Order 52r1 and 3 of the Civil Procedure Rules and Rules 6(1) and 24(1) of the Industrial Court Rules.**

The application seeks for orders of this court

- 1) To validate the time within which Labour Dispute Appeal No. 007/2021 was filed
- 2) To validate the time within which a notice of Appeal was filed
- 3) To grant leave to appeal.

The application is supported by an affidavit sworn by one Chris M. Mukiza, Executive Director of the applicant to the effect that after being served with the Award of the Labour Officer on 1/2/2021, he, on 2/2/2021 wrote to the solicitor General's Chambers to pursue an appeal.

The affidavit also states that counsel in personal conduct of the matter was on sick leave and another State Attorney was allocated the file.

The respondent opposed the application via an affidavit in reply sworn by one Mathew Kiwunda. The affidavit in reply stated that the applicant misled the court when it obtained an order of stay of execution pending an appeal when there was no valid appeal pending in the court. It also stated that the notice of appeal having been filed over 1 month after service of the record of proceedings showed that the appeal was an afterthought intended as a delay tactic to keep the respondents from benefiting from the Labour Officer's Award. The affidavit in reply also asserted that the record of proceedings was issued to both parties on 23/03/2021.

REPRESENTATION

The applicant was represented by Mr. Twinomugisha – Mugisha, State Attorney together with Mr. Turyahabwa Robert. The respondents were represented by Mr. Charles Nsubuga and M/s. Bakunda Pearl Maria of M/s. Muwema & Co Advocates.

SUBMISSIONS

Whereas this court granted both parties leave to file written submissions and gave them timelines with which to file the same, the respondents filed theirs on 28/10/2021 instead of 20/10/2021. Although the applicant filed on 19/10/2021 instead of 18/10/2021, we find that those of the respondent were filed excessively out of time given that the panel of this court had to peruse the documents including the submissions before the Quorum discussion on 29/10/2021. Consequently, the submissions of the respondent are not considered in this ruling.

The applicant in its submission contended that having learnt of the Award only on 1/2/2021 could not lodge the appeal within the prescribed time. It was also contended that the applicant instructed the lawyers in time to file an appeal and that therefore there was no dilatory conduct on the part of the applicant.

DECISION OF COURT

It is trite that for an application for extension of time to be granted, the applicant must show sufficient or good cause why a certain step could not be taken within the prescribed time and that what constitutes sufficient or good cause depends on circumstances of each case.

In the instant case, although the respondent under **paragraph 5 of the affidavit in reply** states that the labour officer delivered the Award in the presence of all parties on 21/12/2020, the applicant under **paragraph 4 of the affidavit in support** of the application states that the applicant was only served with the judgement on 1/2/2020.

After perusal of **annexure “A”** to the application which is the Award of the Labour Officer, we are convinced, in the absence of evidence to the contrary, by the endorsement of a received stamp of 1/2/2021 that the applicant in fact received the Award on this date. Moreover, the labour officer’s proceedings attached as **“C”** clearly show at the end of the proceedings that the ruling would be on notice. Nothing in the affidavit of the respondent suggests that a notification was issued to the applicant to attend the ruling. The applicant having received the ruling on 1/2/2021, in accordance with **Regulation 45 of the Employment Regulations 2011**, it was expected that a notice of Appeal would be filed in court by 1/3/2021, which was 30 days thereafter. However, the Notice of Appeal was filed on 9/3/2021 8 days late.

On perusal of a letter dated 2/2/2021 addressed to the solicitor General by the executive Director of the respondent, which is attached as annexure **“B”**, we are convinced that the applicant took the necessary steps to instruct the lawyers to lodge an appeal against the decision of the labour officer and that this was immediately after receipt of the judgement from the labour office. In the absence of evidence of any dilatory conduct on the part of the applicant, the negligence of the lawyers in failing to lodge the notice of Appeal is not visited onto the applicant. Accordingly the application is allowed. The notice of Appeal filed on 9/03/2021 is hereby validated. No order as to costs is made.

BEFORE

1. Hon. Head Judge Ruhinda Asaph Ntengye

PANELISTS

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

Dated: 12/11/2021