

THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE MISC. APPLN. No.174 OF 2020
ARISING FROM LDR 74/2020

WAGENINGEN UR UGANDA LIMITED **APPLICANT**

VERSUS

PETER YIKI **RESPONDENT**

BEFORE:

1. THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA

PANELISTS

1.MS. HARRIET MUGAMBWA NGANZI

2. MR. FX MUBUKE

3. MR. EBYAU FIDEL

RULING

This application is brought by notice of motion, under Rule 6 of the Labour Disputes (Arbitration and Settlement) (Industrial Court Procedure) Rules, 2012 and Sections 96 and 98 of the Civil Procedure Act, for orders that:

1. Enlargement of time within which to file a memorandum of reply to the claim in Labour Dispute No. 74 of 2020, is granted.
2. In the alternative Validation of the Applicant's memorandum of reply to the claim in Labour Dispute No. 74 of 2020.

The Applicant's case

The Applicants case is contained in the Affidavit in support, deposed by Phina Kamyanyire, the Applicant's Chief Operations Officer, and is summarised as follows:

1. That the Applicant has several work stations in Uganda, but has its headquarters at Studio House Bandali rise Bugolobi, Kampala. One of the other stations is in Arua town where the Respondent and Claimant in Labour Dispute No. 74 of 2020 was employed.
2. That in February 2020, the Respondent delivered a copy of a memorandum of claim in **Labour Dispute No. 74 of 2020, Peter Yiki vs Wageningen UR Uganda Limited**, at the Applicant's Arua office and it was stamped by the receptionist as received.
3. However, the Memorandum of Claim was only brought to the attention of the Applicant's Principal officers about mid-March, upon which the Applicant duly instructed their lawyers, M/s Marlin Advocates to study the documents and file an appropriate response thereto.
4. That the Applicant was advised by its lawyers that, the prescribed time within which to file a response to the claim had passed and leave of court had to be sought to file out of time.
5. That the Applicant was disenabled from seeking leave by a nationwide lockdown to curb covid 19, which was imposed at the time and she was notified by the Applicant's lawyers that owing to the lockdown Courts of Judicature suspended all activities save for urgent ones of which Labour dispute 74 of 2020 was not among.
6. That the applicant had a good defence to the claim and in the interest of justice this application should be granted.

The Respondent's case

The Respondent's case as stated in the Affidavit in reply deposed by Peter Yiki the Respondent, is summarised as follows:

1. He refuted paragraphs 2,3 and 4 of the Affidavit in support and stated that, on 20/03/2020, the memorandum of claim in labour dispute 74 of 2020, was actually served on the Applicant at her head office at Studio House Bandali rise Bugolobi, Kampala, and she acknowledged receipt by signing and stamping on the Notice of claim and the memorandum of claim as evidenced by annexures "A" and "B" attached on the Affidavit of reply.
2. That the court process server a one Adan Oale sworw and affidavit of service after serving the applicant at her head office in studio house at plot 5 Bandali rise bugolobi in Kampala and the claim that the notice and memorandum of claim were only drawn to its Principal officers in early March is their internal problem of improper conduct of business which should not cause him to suffer.
3. That having effected service of the claim on 20/03/2020, the Applicant ought to have replied accordingly but it did not do so because it undermined him and this court and is only using the covid 19 lockdown as an excuse.
4. He prayed that this excuse is rejected and the application is dismissed with costs.

SUBMISSIONS

It was the submission of counsel for the Applicant that, as stated in the Affidavit in support, the Applicant has several working stations in Uganda and one of these stations is Arua town where the Respondent to this Application and claimant in labour Dispute 74/2020, was employed.

The Advocates, headquarters are however situate at Studio house Bandali Rise Bgolobi, Kampala.

It was his submission that the memorandum of claim was served on to the Applicant's Arua offices and its existence was not brought to the attention of the Applicant's principal officers until March 2020.

He argued that the service of the claim at the Arua office was not effective service because it was not effected on any of the Principal officers of the Applicant. It was also his submission that, the intervening lockdown in March 2020 disenabled the Applicant's efforts to seek leave and these were sufficient reasons for court to grant this application for leave to extend time within which to reply and in alternative validate the Applicant's reply on the court record.

The Respondent did not file any submissions in reply.

DECISION OF COURT

We have carefully perused the notice of Motion together with the Affidavits in support and against the application. We have also carefully perused the submissions of counsel for the Applicant and find as follows:

Rule 6 of the Labour Disputes (Arbitration & Settlement) (Industrial Court Procedure) Rules, 2012, dresses this Court with jurisdiction and discretion to extend time within which to file documents out of time. Rule 6 provides as follows:

"6. Extension of time

- 1) A party to a dispute who fails to file documents within the prescribed time, may apply to the court for extension of time.*
- 2) the Court may determine the application as it deems fit..."*

This court has adopted the Civil Procedure Act, the Civil Procedure Rules and authorities of the Supreme court on the Subject and for sufficient reasons, can extend time within which to do certain things though the time prescribed by statute has expired.

In the circumstances an applicant seeking for leave to extend time, within which to file any documents out of time, must satisfy the court with sufficient cause/reasons to warrant the grant of such extension.

The contention in the instant Application as we understood it is that, the fact that the Notice and memorandum of claim were served on the Arua office and not the Head office at Studio house on Bandali Rise Bugolobi, it was not effective service because, it was not served on any of the Principal officers.

Order 49 of the Civil Procedure Rules provides that all orders, notices and documents shall be served in the manner provided for the service of summons. Order 5 rule 11 provides, for the delivery and tendering of a duplicate copy of the plaint and other documents, endorsed by a judicial on to the Respondent in person, to a recognized agent or an advocate duly instructed.

It is trite that service on an agent is as effectual as if the same had been served on the party in person, unless the court directs otherwise. Therefore, the argument that, service having made on the Applicant's Arua office was not effective service cannot stand. We are also not convinced that the fact that the documents were served on the Secretary and not a Principal Officer rendered service ineffective. This Court's holding in **Harriet Amony vs Madhvani Ltd Labour dispute misln Appl, No. 066 of 2019**, which was relied on by the Applicant, is to the effect that, the failure of a Secretary to an Advocate to deliver documents in time to her boss would not constitute

sufficient reason for court to exercise its discretion to extend time, otherwise every other advocate and every other litigant would take advantage and make this routine before Courts of law. Similarly, we are not convinced that the Secretaries failure to bring the memorandum of Claim to the attention of the Principal Officer's attention in time, as claimed in the instant application is sufficient reason for this court to be moved to grant extension of time to file a reply to the Claim.

The fact that there was a countrywide lockdown is also not sufficient reason why the applicant did not file their reply in time, but rather a reason for their failure to apply for the extension of time within which to file a reply, in time and this is not the issue in contention in this application.

In the circumstances, the Applicant has not given sufficient cause for its inability to take the necessary steps to file its reply within the prescribed time. Therefore, we find no merit in this application. It is dismissed with no order as to costs.

delivered and signed by:

1.THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA

PANELISTS

1.MS. HARRIET MUGAMBWA NGANZI

2. MR. FX MUBUKE

3. MR. EBYAU FIDEL

DATE: 8TH NOVEMBER 2021