

THE REPUBLIC OF UGANDA

IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA

LABOUR DISPUTE MISC. APPLN. NO. 257 OF 2019

ARISING FROM LC No.MGLSD/LC/078/20

UNION OF MUSLIM COUNCIL EAST CENTRAL&

SOUTHERN AFRICA

..... APPLICANT

VERSUS

SSENDIJJJA HASSAN

..... RESPONDENT

BEFORE:

- 1. THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE**
- 2. THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA**

PANELISTS

- 1.MR. ABRAHAM BWIRE**
- 2.MS. JULIAN NYACHWO**
- 3. MR. PATRICK KATENDE**

RULING

This Application is brought by Notice of Motion under Section 94 of the Employment Act, Regulation 45 of 2011 and Rule 6 of the Labour Disputes (Arbitration and Settlement) (industrial Court Procedure) Rules 2012, for orders that:

- 1. The Applicant is granted extension of time within which to file a notice of appeal to the decision of the labour officer **Labour Complaint No. MGLSD/LC/078/2019**, dated 10/06/2019.**

2. Costs of the Application are provided for.

The application is supported by an Affidavit deposed by **Kasangaki Rashid Haroun**, the Secretary General of the Applicant and is summarised as follows:

1.The Applicant is aggrieved by the decision of the Labour Officer, in **Labour Complaint No. MGLSD/LC/078/2019**, dated 10/06/2019.

2.That the Applicant was prevented from lodging an appeal against the decision because she only got to know about it, on 25/09/2019 and she has sufficient cause which prevented her from filing a notice of appeal.

3.That the Applicant is desirous of prosecuting the appeal with serious grounds of appeal against the decision and with a high chance of success.

4.It is just and equitable that this application is granted.

REPRESENTATION

The Applicant is represented by Ojakol Livingstone of M/s Alaka & Co Advocates, Kampala and the Respondent is represented by Lubulwa Peter of Lubulwa Peter &Co Advocates Kampala.

The Applicant's case

The Applicant's case, as contained in the notice of motion and supporting Affidavit is:

1. The Respondent filed a complaint before the Labour Officer against the Applicant in March 2019, vide **Labour Complaint No. MGLSD/LC/078/2019**, marked "A" on the record.
2. The parties decided to settle the matter out of Court and entered into a memorandum of understanding which settled the dispute between them.

3. On 18/04/2019 the consent agreement was endorsed by the Labour officer and on 11/06/2019, the Respondent was given partial payment of Ugx.500,000/= in respect of the settlement of Ugx. 4,000,000/-.
4. That on 30/06/2019, the Mr. Kasangaki met with the Respondent and informed him that the Applicant had changed management and although she was experiencing financial difficulties, she still had intentions of fulfilling her obligations under the settlement agreement.
5. However, on 25/09/2019, the Applicant received a letter (marked “D”) notifying her that the Respondent had commenced execution proceedings for the sum of Ugx. 10,000,000/- resulting from an award of the labour officer. In addition, Kasangaki was also served with an application for execution of a decree vide Misc. Application No. 221 of 2019 and a court Order dated 16/09/2019.
6. According to Kasangaki the matter between the parties had long been settled. He obtained the record of the proceedings of the Labour Officer from which the award arose on 25/09/2019.
7. The Applicant and her officers were never served with any hearing notice or summons for the resumption of proceedings of the labour complaint therefore, the decision was arrived at in her absence.
8. According to Kasangaki this is sufficient cause for this Application to be allowed

The Respondent's case

The Respondents case as set out in the Affidavit reply sworn by **Hassan Ssendijja Zaki**, is that:

1. On the advice of his lawyers, **M/S Lubulwa Peter &Co. Advocates**, he vehemently opposes the Application for being an abuse of Court process.

2. He admits that he filed **Labour Complaint No. MGLSD/LC/078/2019**, against the Applicant and the Principal Labour officer delivered an award in his favour amounting to Ug.10,498,000/-
3. He admitted that he entered into a memorandum of understanding with the Applicant with specific conditions, the breach of which would entitle him to proceed with further hearing of the complaint.
4. The Applicant breached all the terms of the agreement leading to his application to the labour officer, for further hearing of the Complaint.
5. He denied any knowledge of about the Applicant's change of management or about her being in bad financial stead.
6. The Applicant was served with hearing notices on 2 occasions and he personally affirmed the affidavits of service marked as "G" on the Affidavit in support, following which, the Labour officer proceeded to hear the matter, after he was satisfied that proper service had been effected.
7. The Applicant opted out of the hearing, but he personally delivered the award to the Applicant's office in Kololo. The Applicant chose to defy the orders in the award and the Applicant, through Kasangaki Rashid was always aware of the Labour officer's award of Ugx. 10,000,000/-.
8. He later instructed his lawyers to commence execution proceedings against the Applicant which was done via **Mics Appln. No 221 of 2019**, (marked "D" and "E"), which is pending determination by the Industrial Court.
9. According to him the Labour complaint will only be settled when the Applicant pays the Ugx. 10,000,000/= together with costs.
10. He believes that justice will only be served if Court compels the Applicant to pay the Ugx. 10,000,000/= due to him.

SUBMISSIONS

It was submitted for the Applicant that, **Section 79(1) of the Civil Procedure Act, cap 71** and **Section 96 of the Civil Procedure Act Cap 71**, empowers any person to file an appeal within 30 days of the date of the decree, **Section 94(1) of the Employment Act, 2006**, and **Regulation 45 of the Employment Regulations, 2011**, empowers a person aggrieved by the decision of a labour officer to file an appeal in the Industrial Court within 30 days and **Rule 6 of The Labour Disputes (Arbitration and Settlement) (Industrial Court Procedure) Rules, 2012**, and **Order 51 rule 6 of the Civil Procedure Rules** enables a party who fails to file documents within the prescribed time, to apply to court for extension of time. It also gives Court discretion to determine the application.

Citing **Amony Harriet vs Madhivan group limited Misc. Appl.No.066 of 2019**, he submitted that this Court was not barred to apply the Civil Procedure rules and the holdings in **James Bwogi & sons Enterprises Ltd Vs Kampala City Council and Kampala District land Board Civil Appln. No.09/2017** and **Honondi Daniel vs Yolamu Engondi Civil Appeal 67/2003** were to the effect that, for sufficient reason Court has power to extend time within which to do certain things even if the time prescribed by statute has been overtaken.

He restated the evidence in the affidavit in support and stated that, the Applicant was not aware that, the matter had been reopened before the Labour office until she received a letter from the Respondent's Agents to the effect that, execution proceedings had commenced in this Court her.

According to him this matter had long been settled by consent of the Parties as stated in the memorandum of understanding which they both executed and partial fulfilment of the said agreement, the Applicant made an initial payment to the Respondent.

Counsel insisted that, contrary to what was stated in the Affidavit in reply, the Applicant was never served with any notice indicating that, the matter had been re-opened by the Labour Officer and even if he did, he should have commenced to resolve the cause in respect of the outstanding balance of Ugx. 3,500,000/- under the memorandum of understanding and nothing else.

Counsel insisted that the dispute between the parties was that, the Respondent has a claim against the Applicant which ought to be determined by this court and this Application was intended to safeguard the Applicant's right to Appeal against the decision of the labour Officer, therefore the Application should be granted.

In reply, Counsel for the Respondent restated the evidence in the Affidavit in reply and submitted that, the Parties were granted an opportunity to resolve the matter between them amicably and they did enter into a memorandum of understanding which was presented to the labour officer with a condition that in the event that the Applicant breached any of the terms of the memorandum then the proceedings before the labour officer would resume. The Applicant did not comply and on 13/05/2019. The labour officer re opened the case, and notified the Applicants to enter appearance before him on 23/05/2019, which the Applicant declined to do. According to Counsel the labour officer sent out another notification on 27/05/2019 which was also not complied with, hence the ex parte hearing and resultant award on 10/6/2019 in the sum of Ugx. 10,498.000/-

Counsel for the Respondent argued that this application should not be granted because the labour officer in his award awarded the Respondent sufficient compensation. He contended that, the Applicant did not show sufficient cause as envisaged in **Florence Nabatanzi vs Naome Binsobedde SCC Appln, No. 06/1987** to warrant the grant of this application. He insisted that even if the Applicant made part payment in fulfillment of the memorandum of understanding she still breached the

agreement, which prompted the resumption of the hearing before the labour office. He argued further that, the agreement had specific conditions the breach of which would entitle the Respondent to proceed with the hearing of his labour claim. He insisted that, when the Applicant became aware of the award, her representative undertook to pay a sum of 10,000,000/- towards this award within 7 days, but he omitted to state this fact in his Affidavit in support of this application.

Counsel insisted that, contrary to the submission by Counsel for the Applicant, the matter between the Parties has never been resolved and that is why the Respondent prompted the Labour officer to proceed with the hearing.

He contended that, the application was baseless and an abuse of court process. He insisted that the Applicant had not shown sufficient cause and the memorandum of understanding between the parties was notice to her that the matter was always before the labour office, therefore the Court should follow the holding in **Attorney General vs N.M Heida and others SCCApIn.No.5 of 1998** and find to that effect.

He refuted the assertion that, the labour officer should have commenced further hearing on the cause in respect of the outstanding balance of Ugx. 3,500,000/-under the memorandum of understanding between the Parties because, the labour award of Ugx. 10,000,000/-is due to the Respondent as a result of his unfair termination and this claim was duly considered by the labour officer.

He further argued that the Applicant's right to appeal is not absolute because appeals are creatures of statute with strict timelines which once violated should be considered an abuse of court process and should be disallowed. It was his prayer that the Application is dismissed with costs.

DECISION OF COURT

We have carefully perused the Notice of Motion, the Affidavits in support and against it and both Counsel's submissions and resolve as follows:

It is trite that, Court may for good cause, grant extension of time within which to Appeal. However, the Applicant must satisfy court that he or she was prevented from adhering to the time limits, for sufficient reason and the reason must relate to inability to take particular steps and not because of dilatory conduct.

The Applicant, in the instant application claims she was not able file a notice of Appeal because ,she was not aware that, the matter which she considered long settled between the Parties under a memorandum of understanding which they both entered into on 18/04/2019, had been reopened before the labour office, resulting in an award had being entered in favour of the Respondent in total disregard to the settlement agreement. The Applicant contended that, she was only made aware of the said award when the Respondent issued her with notice of commencement of execution proceedings on 25/09/ 2019.

It was not disputed that, on 18/03/2019, the labour officer invited the Applicant for Arbitration proceedings scheduled on 25/03/2019 and according both Parties, the Labour Officer gave them an opportunity to resolve the matter amicably, which they did and on 18/04 2019, they entered into a memorandum of understanding. The Memo was endorsed by the Applicant's Administrator, the General Manager Voice of Africa, the Chief Accountant, Ssendijja Hasan Zak1, the Respondent and the Labour Officer on 18/4/2019. On 1/0/2019, the Applicant made a partial payment of Ugx. 500,000/- in respect of the Consent Agreement.

It was the Respondent's evidence that, the memorandum of understanding had conditions which if not complied with would entitle the Respondent to resume the proceedings before the labour Office. The memorandum provided in part as follows:

“... this memo of understanding/Agreements between union of muslim Councils, UMC and Sendijja Hasan Zaki regarding claims on Voice of Africa is made today 18th April-2019 as follows:

1.That the total amount claimed by Ssendijja Hasan Zaki from Voice of Africa Lt has been agreed by all parties to be shs.4 million.

2.That the above funds shall be paid in 4 installments of 1.0 million as follows:

- a) 1st may 20191.0 million*
- b) 1st June 2019 1.0 Million*
- c) 1st July 2019.....1.0 Million*
- d) 1st August 2019.....1.0 million*

Total = 4 million

- 3. That after the payment of all the shs. 4 millon, Ssendijja Hasan Zaki shall have no claims whatsoever from UMC or Voice of Africa.*
- 4. This Agreement is hereby endorsed by: ...”*

Section 13(1)(a) of the Employment Act provides that:

“(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...”*

As already discussed above, on 18/04/2019, the Labour officer who was authorised to settle matters by conciliation among other methods, endorsed the Memorandum of

understanding which settled the dispute between the parties in and partial payment towards the settlement was effected by the Respondent on 1/06/2019.

Although the Respondent submitted that the Memo had conditions which if breached would entitle him to proceed with the matter before the labour officer, a scrutiny of the Memo(supra) did not reveal any such conditions save for a provision that, once all the installments amounting to 4 million were paid to the Respondent, the matter would be settled finally between the Parties.

It is trite that once Parties resolve a dispute between them by consent and the consent is reduced in writing once it is endorsed by an officer authorised to adjudicate the same matter, the consent agreement becomes a Consent Judgment which is enforced like any other Judgement.

In the circumstances, when the labour officer who was empowered to adjudicate the dispute between the parties, endorsed the Memorandum of understanding it became a Consent Judgment and the matter at that point was settled finally in a sum of Ugx. 4 Million and the said Judgment like any other judgment should have been enforced by commencing execution proceedings in this Court.

Therefore, it was irregular for the labour Officer to reopen the matter for further hearing instead of causing the enforcement of the Consent agreement/memorandum of understanding, by referring it to this Court for execution. By endorsing the Memorandum of Understanding, the Labour Officer, was rendered functus officio and the matter stood determined after his endorsement.

The matter having been finally settled by Consent of the parties as stated under the memorandum of understanding, could therefore not be re-opened moreover before the same labour officer who had already been rendered functus officio by his endorsement of the same memorandum of understanding.

In the circumstances, the resumption of the proceedings by the Labour officer and the resultant award could not overturn the Consent Agreement, they are therefore, null and void abinitio. They are hereby set aside.

It is further our considered opinion that it would be a waste of Court's time, to grant this application given the circumstances discussed above. The application has no relevance given the circumstances. It is therefore dismissed with no order as to costs.

The correct procedure is for the Respondent is to commence execution proceedings before the Registrar Industrial Court for the recovery of the outstanding balance of Ugx. 3,500,000/-under the Memorandum of understanding which he entered into with Applicant on 18/04/2019 and is still in force.

In conclusion the Application is dismissed with no order as to costs.

Delivered and signed by :

1. THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE

2.THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA

PANELISTS

1.MR. ABRAHAM BWIRE

2.MS. JULIAN NYACHWO

3. MR. PATRICK KATENDE

DATE: 21ST MAY 2021