

THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE MISC. APPLN. NO. 255 OF 2019
ARISING FROM KCCA/RUB/LC/241/2018

SARAH NANTONGO **APPLICANT**

VERSUS

1.MTN UGANDA **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. KATENDE PATRICK

RULING

This Application is brought by Notice of Motion under Section 98 of the Civil Procedure Act, section 33 of the Judicature Act and rule 52 of Civil procedure rules, for orders that:

1. The Applicant is granted extension of time to file an appeal to the decision of the labour officer in his letter dated 18/06/2019 and Labour Dispute No.KCCA/RUB/LC/241/2018
2. Costs of the Application are provided for.

The application is supported by an Affidavit deposed by the Applicant Sarah Nantongo, summarised as follows:

That she filed an application for extension of time but it was filed outside the time specified by the rules of this court and therefore she has also filed an application to validate it.

That the application raises serious grounds with a high chance of success.

It is just and equitable that this appeal is granted.

BACKGROUND

On 15/04/2014, the Applicant was dismissed from employment.

On 16/05/2019, She filed an application at the labour office seeking leave to file her complaint out of time.

On 18/06/2019, the labour officer dismissed her application.

On 16/10/2019, she applied to this court seeking leave to appeal the labour officer's decision.

The Applicant's case

The Applicant was dismissed from her position of Prepaid Production clerk in the Respondent Company on grounds that she embezzled over Ugx.

50,000,000/-. According to her she was falsely accused, arrested and detained because she refused to confess to the crime and blamed it the Security Company which was supposed to ensure the safety of the stock, at the time the alleged crime took place. She was dismissed from employment immediately after her arrest, without a hearing .She also claims that, she was defamed when her name was published in the papers for a crime she did not commit. (Copy of News Paper Marked Annexure "B")

She could not file a labour claim because, she was pursuing the criminal matter with the police and Director Public prosecutions. On 2/7/2018, the criminal

charges against her were withdrawn, however, the labour officer refused to entertain her complaint on the grounds that she filed them out of time. She applied for extension of time before him, but he refused to hear her application contrary to the principles of natural justice and her case involved colossal sums of money. She prayed the application is granted.

The Respondent's case

The Respondents case as set out in the Affidavit reply sworn by Isaac Rusiimwa Muhame, Legal Officer in the Respondent Company is that:

1. On the advice of the Respondent's lawyers, M/S Shonubi Musoke & Co. Advocates, the Affidavit is incurably defective, incompetent frivolous without merit and an abuse of court process.
2. The Respondent only admits the contents of the Affidavit in support of the Application to the extent that the Applicant was an employee of the Respondent.
3. The Applicant was dismissed owing to gross negligence and dishonesty on her part.
4. That the follow up on the criminal matter did not deter her from pursuing the civil claim.
5. The Applicant had no excuse for not pursuing a case of unlawful termination until now because the guidance and procedure to do so has been in place since 2006 and she was not incarcerated therefore she has no excuse for not pursuing legal remedies against her alleged unlawful termination.
6. The Respondent agrees with the labour officer that the matter is filed out of time and it should not be entertained 6 years later and to entertain it would occasion a grave miscarriage of justice.

7. That based on the information of the Respondent's lawyers the application for extension of time is incurably defective and therefore it should be denied.

SUBMISSIONS

It was submitted for the applicant that under regulation 45 of the Employment regulations 2011, section 29(1)(b) and Section 96 of the Civil Procedure Act and Order 52 rules 1 and 3 of the Civil procedure rules, an applicant for extension of time within which to appeal must show that there existed reasonable cause which is defined under the Black's law dictionary 8th Edition as probable cause. He also relied on **Boney Katatumba vs Wahheed Karim, SCCA No 27, Roussos vs Gulam Hussien Habib Virani Nasmudin Habib, SCCA No. 9 of 1993, and Banco Arabe Espanol vs Bank of Uganda [1999] 2 EA 22**, (which he did not attach to his submissions therefore we shall not rely on them) and **Ojara Otto Julius vs Okwera Benson Msic. Appln. No.0023 of 2017**, for the legal proposition that a party should not suffer the penalty of having his case determined on its merits merely because of errors or lapses.

He argued that the applicant as stated under paragraph 8 of the affidavit in support of the application could not report the matter to the labour office because she was pursuing a criminal case with police and the Director of Public prosecutions, which prosecutions was later dismissed.

According to Counsel being lay in matters of the law she was not aware that the labour matter could be handled concurrently with the criminal case and she only sought the services of Counsel after the dismissal of the criminal case. He contended that the mistake on her part should not bar her from having her case determined without a hearing. He further submitted that, when the Applicant made attempts to file a labour claim after the criminal charges

against her were withdrawn, the labour officer refused to entertain her case on the grounds that the matter was time barred. All attempts to seek extension of time to file out of time before the labour officer were futile.

He relied on **Shah vs Jamnadas (1959) EA 838**, which was to the effect that the the provision of rules for ensuring the limitation for filing documents should not result in manifest denial of justice where there is sufficient cause for delay. According to him no prejudice will be suffered by the Respondent if the application is allowed.

He argued that the application had good grounds as stated in the affidavit in support and it should be granted in the interest of justice and costs should be in the main cause.

In reply, counsel submitted for the Respondent opposing the application on grounds that the Applicant contrary to Regulation 45 of the Employment Regulations, filed this application outside the prescribed 30 days having filed it on 16/10/2019 after the labour officer dismissed it on 18/06/2019.

He contended that whereas she was supposed to furnish this court with the unique circumstances that prevented her from filing this application in time as guided by **Boney katatumba vs Waheed Karim**(supra), she dealt with the reasons that led to her delay in filing the initial complaint before the labour officer.

He further contended that whereas it was correct that in **Nicholas Roussos Vs Gulamhussien Habid Virani & Anor**, it was stated that, the ignorance of civil procedure rules by a self-represented litigant may be ground for appeal against a court decision. In the instant case, on appeal, the applicant was represented by a law firm in the names of M/s Kinobe Mutyaba, therefore the failure to file

an affidavit with sufficient cause why she did not lodge her appeal within the prescribed time cannot be attributed to her being self-represented. He further submitted that based on **Nicholass Roussos** (supra), failure to instruct an advocate is not sufficient cause. He insisted that Court should not disregard the absence of justification for failing to file the appeal within the 30 days and in any case in **Afayo Liji and Another vs Izio Enzama and another Misc. Application No. 73 of 2018**, the court observed that applications for enlargement of time shall not be granted where there is no reasonable justification. It was his prayer that this ground of the application is dismissed.

It was further his submission that, although the Respondent agrees with the principle in **Banco Arabe Espanol Vs Bank of Uganda**, in respect of matters being determined on their merits, “... *unless a lack of adherence to rules renders the appeal process difficult and inoperative...*”, in his view the none adherence to the rules with regard to the statute of limitation should not be ignored by this Court , because in this case it would render the appeal difficult and inoperative due to the following reasons:

The Applicant was dismissed in April 2014 and time begins to run from the time the cause of action accrued until the suit is actually filed, he relied on **F.X Miramago vs Ag [1979] HCB 24**.

According to him, section 70 of the Employment Act provides that: *where an employee complains that he or she has been summarily dismissed without justification* he or she may lodge a claim before the labour officer *within 6 months after the date of dismissal* and section 71 provides that a complaint for unfair termination shall be filed before a labour officer within 3 months from the date of dismissal. He argued that, the Applicant filed her complaint in May 2019, several years after the period prescribed by the law. The labour officer

took note of the length of the delay and the reasons advanced which in his opinion were not equitable and dismissed the complaint. He cited **Hilton vs Sutton steam Laundry[1964] 1 KB** cited with authority in **Mohammed B Kasasa Vs Jaspher Bunonga Sirasi Bwogi** to the effect that, “... *the statute of limitations is not concerned with merits . Once the axe falls, it falls and a defendant who is fortunate enough to have acquired the benefit of the statute of limitations is entitled, of course to insist on his strict right.*”

Citing **Afayo**(supra), Counsel submitted that while court may upon justification exercise discretion to enlarge time, it should be done judicially and **Ojara Otto Julius vs Okwera Benson**, was to the effect that if the evidence in support of an application for enlargement of time does not make it clear that the application comes within the terms of the established considerations, then the application ought to be denied. According to him the instant application, failed the tests because the application was delayed for over 6 years from the time it should have been filed.

Although she alleged that she was following up the criminal case at the time she ought to have filed the labour claim, she did not adduce any evidence indicating that she was incarcerated to disenable her to concurrently follow up with the civil case. He relied on **Bonny Alzeze Bineka Ochwo vs Kyambogo University LDR No. 302 of 2015**, for the proposition that the absence of incarceration is not justification for failure to take steps within the requisite time. He also cited **Kasese Cobalt Company Limited vs Bwambale Eriab Misc. Appln No. 234 of 2018**, in which this Court disallowed the application because of the delay in filing. Counsel insisted that ignorance of the law was no defence and that time limits set by statute are not mere technicalities but are of substantive law.

He contended that whereas the Applicant argued that she was ignorant about the law hence her failure to pursue the criminal and civil matter concurrently, she did not explain why she did not lodge her claim with the labour officer for over 1 year. Citing **Uganda vs Orem Nicholas Criminal session No. 459/2010**, he argued that it is now trite law that ignorance of the law is no defence.

He also relied on **Hermezdas Mulindwa vs Stanbic Bank HCCS 46/2004**, for the legal proposition that time limits set by statute are not mere technicalities but are substantive law and must be complied with, therefore any matter filed outside these limits must be struck out irrespective of any merits in the case.

DECISION OF COURT

It is indeed the correct position of the law that, time limits set by statute are not mere technicalities but are substantive law and must be complied with.

This court is dressed with discretion to expand time within which to file pleadings, but this discretion can only be exercised if there is a justifiable explanation and the delay is not inordinate.

The Employment Act, 2006, under Section 94 of the employment Act provides that:

(1) A party who is dissatisfied with the decision of a labour officer on a complaint made under this Act may appeal to the industrial court in accordance with this section....”

Regulation 45 of the **Employment Regulations 2011**, provides that:

(1) A person aggrieved by the decision of a labour officer may within the thirty days give a notice of appeal to the Industrial Court in the form prescribed in the seventh schedule.

The applicant in this case only filed her appeal after 5 months hence this application for leave to file out of time, in the same vain she filed this application out of time.

After carefully analysing the notice of motion, Affidavits in reply and the submissions of both counsels, we established that it was not in dispute that the applicant was dismissed from employment in April 2014 and She did not file a labour dispute until May 2019, because according to her, she was not represented by Counsel at the time and therefore she was not aware that she could pursue a criminal and civil matter concurrently. She therefore started pursuing the civil matter/labour dispute, in July 2018, after the criminal charges against her were dropped. She however only instructed Counsel, Kinobe Mutyaba and Company Advocates in June 2019 1 year later and they filed an application for leave to file a labour dispute before the labour office, out of time by letter, in May 2019. The labour Officer's response to the application reads in part as follows:

"... Reference is made to your letter dated 16th May 2019 applying for leave of office to file a complaint by Nantongo Sarah against MTN Uganda out of time. It is clear from the letter ...

The reasons advanced in the said letter are not equitable given the extremely long period of (6 years) that has been taken without filing the claim. In the circumstances we find that the claim was filed out of time and the reasons advanced are not equitable in the circumstances. This application is therefore denied...."

From this letter we have no doubt in our minds that, the decision of the labour officer to dismiss the application was based solely on a consideration of the contents of the letter and not on a hearing of the applicant.

It is trite that the right to a fair hearing is non-derogable, however this right can only be exercised in accordance with law. Therefore, where time limits within which one can file any claim have been established by statute, they must be respected, although Courts in certain circumstances have the discretion to enlarge time.

It is the position of the law that an order for enlargement of time to file an appeal should ordinarily be granted unless the applicant is guilty of unexplained and inordinate delay in seeking the indulgence of court. It may be denied however, where the applicant has not presented justifiable reasons for his or her failure to file the appeal within the time prescribed time or where Court believes it will be prejudicial to the other party or that the intended appeal is not arguable. Therefore, an applicant who seeks the indulgence of court to extend the time must be diligent in applying for it, expeditiously and without undue delay.

In **Afayo Luiji** (supra) Court stated that, the enlargement of time is a discretion which must be exercised judicially after proper analysis of facts and the application of the law to the facts. In the circumstances, an applicant for enlargement of time must show “Good Cause” to warrant the exercise of such discretion.(see **Tight Security Ltd vs Chartis Uganda Insurance Company Ltd &Anor H>C Misc Appln No 8 of 2014**, which was cited in **Eriga Jos Perinot vs Vuzzi Azza Victor Vunzi Innocent and Anor Misc Appn No 09/2017**) In **Pinnacle Projects limited vs Business in Motion Consultants Limited H.C Misc.Appl No 362 of 2010** cited in **Ojara Otto Julius Vs Okwera HC Misc Appln**

No.0023 of 2017, in which it was held that, sufficient reason must relate to the inability or failure to take a particular step in time. The circumstances which court could consider as sufficient cause were also well laid down in **Roussos V Gulam HussienHabib Virani**(supra) as follows: *a mistake by an advocate, though negligent, may be accepted as a sufficient cause, ignorance of procedure by an unrepresented defendant may amount to sufficient cause, illness by a party may also constitute sufficient case but failure to instruct an advocate is not sufficient cause.* However, the reasons may not be limited to explaining the delay, but consideration of the merits of the case, absence of any prejudice on the part of the Respondent and Court's obligation to administer substantive justice without regard to undue technicalities.

It is the legal position that denying a litigant a hearing should be the last resort of court. In **Banco Arabe Espanol vs Bank of Uganda [1999] 2 EA 22** cited in **Eriga** (supra) it was held that:

"The administration of Justice should normally require that the substance of all disputes should be investigated and decided on their merits and tat errors and lapses should not necessarily debar a litigant from pursuit of his rights and unless a lack of adherence to rules renders the appeal process difficult and inoperative, it would seem that the main purpose of the litigation, namely the hearing and determination of disputes should be fostered rather than hindered"

Tiberio Okeny and Anor vs The Attorney general and 2 others CA No. 51 of 2001, cited in **Ojaro**(supra), further elaborated the following as considerations

in arriving at the appropriate decision in an application for enlargement of time:

- (a) first and foremost, the application must show sufficient reason related to the inability or failure to take some particular step within the prescribed time. the general requirement notwithstanding each case must be decided on facts.*
- (b) the administration of Justice normally requires that the substance of all disputes should be investigated and decided on the merits and the error and lapses should not necessarily debar a litigant from pursuit of his rights.*
- (c) whilst mistakes of Counsel sometimes may amount to sufficient reason, this is only if they amount to an error of judgement but not inordinate delay or negligence to observe or ascertain plain requirement of the law..."*
- (d) Unless the Appellant was guilty of dilatory conduct in the instructions of his lawyer , errors or omission on the part of Counsel should not be visited on the litigant.*
- (e) where an Applicant instructed a lawyer in time, his right should not be blocked on the grounds of his lawyer's negligence or omission to comply with the requirements of the law.... it is only after sufficient reason has been advance that a court considers, before exercising its discretion whether or not to grant extension, the question of prejudice or the possibility of success and such factors..."*

The Applicant in the instant case filed this application for leave to extend the time within to appeal against the decision by the labour officer in October

2019, 5 months after the labour officer made his decision. This was more than the prescribed 30 days under Regulation 45(supra). She has not given any explanation whatsoever why, even after instructing counsel to pursue her labour dispute, an appeal against the decision of the labour officer not to entertain her complaint out of time was not filed within the prescribed 30 days. We associate ourselves with the submission of counsel for the Respondent that, the reasons she advanced in her affidavit in support of this application, were in fact reasons for her initial failure to file the labour dispute before the labour officer and not reasons for her failure to file an appeal against his decision not to entertain her dispute out of time.

We have scrutinized the record and found nothing to show what steps she took between the May 2019, when the labour officer dismissed her application to file her complaint out of time and 19/10/2019 when she filed this application for leave to be appeal out of time. She instructed Counsel to handle her labour dispute late in 2018, when she filed an application by letter for leave for the labour officer to hear her complaint out of time and the matter was dismissed by letter to the same Counsel. There is nothing on the record to show that she instructed, Counsel to file an appeal against the Labour officer's decision in time and he refused to do so. She did not make any averment about any negligence on the part of her Counsel, neither did make any averment to indicate that she did take steps to instruct counsel to lodge an appeal in time and counsel failed and or refused to do so. It seems to us that she only opted to appeal as an afterthought. She has not fulfilled any of

the considerations in **Tiberio**(supra) and as stated therein, “...it is only after sufficient reason has been advanced that a court considers, before exercising its discretion whether or not to grant extension...” Even if the supreme Court in several cases has granted extension to time where there has been long delays, in those cases there was an explanation rendered for the delay.(see *Andrew Bamanya vs Shamsherali zaver SCCApIn No 20 Of 2001* and *Sabitti Kachope and 3 others vs Margaret Kamuju SCApIn. No 31/1999* cited in *Muzamil Ayile Vs Roses Taraka and 3 others HC Misc Appln. No. 0024/ 2013*). The applicant in the instant case has not explained the delay at all.

We have no basis whatsoever to grant this application because the discretion to grant extension of time to appeal must be based on “good cause” which the applicant has not shown to this court. We are convinced that she is guilty of unexplained and inordinate delay in seeking indulgence of this court to expand the time within which to file this application and her appeal.

In the circumstances this application fails, it 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: 6TH AUG 2021