



c. The costs of the Application be provided for.

## **BACKGROUND**

On 7/05/2018, the Respondent registered a labour dispute for abrupt termination with the Yumbe District Labour Office. On 31/5/2018, the Labour Officer notified the Applicant about the dispute. On 8/6/2018, the Applicant responded to the labour officer and submitted her defence on 13/06/2018. Subsequently, the Labour officer held an arbitration meeting between the parties on 2/07/2018. During the arbitration, the Applicant applied for more time to bring more evidence leading to an adjournment of the matter to 16/07/2018. However, on 16/07/2018, the Applicant did not enter appearance on grounds that she had a busy schedule. The labour officer proceeded to dispose of the matter *ex parte* and delivered his ruling on 2/08/2018. On 20/08/2018, the Applicant wrote to him protesting the award he had made and seeking the record of proceedings to enable her file an Appeal. According to her the Labour officer did not give them the record of proceedings, hence this application for leave to extend time, to enable her to Appeal out of time.

### The Applicants case:

The Applicant's case, as contained in the notice of motion and supporting Affidavit deposed by Ndagire Tracy an Advocate in the firm representing the Applicant is:

1. On 31/03/2018 the Labour officer Yumbe, notified the Applicant about the Complaint Ref: 168/1/2018 by letter marked "A" on the record and delivered his ruling on 2/08/2018 in favour of the Respondent.

2. The Applicant notified the Labour officer of her intention to appeal by letter dated 20/08/2018 and requested for a record of proceedings to enable her frame grounds of appeal.
3. The record of proceedings was not provided, but the Applicant has since filed a fresh notice of Appeal which she intends to pursue to its logical conclusion.
4. That the applicant will suffer an injustice if this application is not granted.

### The Respondent's Case

The Respondent's case, as set out in the Affidavit of reply deponed by Andura Munira the Respondent, is that:

1. That the Application is wanting and devoid of merit and intended to waste Court's time because, it was deponed by a person who did not participate in the hearing before the labour officer, therefore the affidavit is defective in its material particulars.
2. The Respondent opposes paragraphs 2,3 and 4 of the affidavits of reply.
3. That the complaint before the labour officer was heard in the presence of both parties and determined in favour of the Respondent, therefore he is entitled to the proceeds of the labour officer's award.
4. That the Application has been unduly delayed, because the labour officer delivered his award on 2/08/2018, therefore it would be a miscarriage of justice to grant this application.

## **SUBMISSIONS**

### **Issues for determination**

#### **1. Whether the reference was competent before the Industrial Court ?**

Counsel for the Applicant submitted that Tracy Ndagire who swore the Affidavit in support was aware of the facts. It was his submission that, on 20/08/2008, the Applicant requested for the record of proceedings from the Labour Officer to enable her frame grounds of Appeal.

According to Counsel there were irregularities by the labour officer which required Court to resolve. He stated that, according to Section 79 of the Civil Procedure Act, there was sufficient cause because the Applicant was condemned unheard. He said that the Applicant requested for an adjournment to enable her prepare to be heard but, the Labour Officer refused and proceeded to make his award. Secondly, the labour officer did not issue a record of the proceedings.

In reply Mr. OJuku for the Respondent submitted that, Rule 24 of the **Labour Disputes(Arbitration and Settlement) (Industrial Court Procedure) Rules, 2012**, under which the Applicant brought this application, was the wrong law. According to him the correct provision for seeking extension of time to Appeal was Section 94(2) of the Employment Act. Therefore, the application should be dismissed.

He argued that the Applicant did not participate in the matter before the Labour officer and she has not availed Court with any letter seeking for the proceedings of the Labour Office, and none was attached on the notice of Appeal.

He contended that there was clearly dilatory conduct on the part of the Applicant because, the award was made in 2018 and this is 2021, thus barring the Respondent from enjoying the fruits of her award. In any case the decision is only for Ugx. 10,800,000/- which the Applicant is capable of paying. He prayed that the Application should be dismissed with costs.

In rejoinder Mr. Ngabirano submitted that, there are a number of issues which Court needs to resolve such as the interpretation of probationary contracts and the Applicant proceeded via Rule 24 of the **Labour Disputes (Arbitration and Settlement) (Industrial Court Procedure) Rules, 2012**, and **O52 rule 1** because, there are no other procedures stipulated in the Industrial Court, for proceeding under Notice of Motion and the Applicant is willing to pay the small sum if she is given an opportunity to be heard. He stated that the request for proceedings was attached in support of the Application as Annex.“B”.

## **RULING**

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*
- (2) An Appeal under this section shall lie on a question of law and with leave of court on a question of fact forming part of the decision of the labour officer.*
- (3) the Industrial Court shall have power to confirm, modify or overturn any decision from which an appeal is taken and the decision of the Industrial Court shall be final...”*

Similarly, Rule 24 of the **Labour Disputes (Arbitration and Settlement) (Industrial Court Procedure) Rules, 2012**, provides for the scope of the appeal and is not different from substantively not different from the wording under Section 94, although it is supposed to provide for the form the Appeal should take, it provides that:

- (1) A party who is dissatisfied with a decision of a labour officer on a complaint made under section 13 of the Employment Act 2006 or section 4 and 5 of the Act may appeal to the court.*
- (2) An Appeal under subrule (1) shall lie on a question of law and with leave of court on a question of fact forming part of the decision of the labour officer.*
- (3) The court may confirm or modify or reverse any decision from which an appeal is made ....”*

We have carefully analysed the Notice of motion, Affidavits in support of and against the Application and the submissions of both Counsel and find as follows:

The Supreme Court has extensively discussed the issue of Advocates swearing Affidavits on behalf of their Clients thus rendering such affidavits defective and directed Counsel to allow their clients to swear their own Affidavits.( see **Banco Arabe Espanol vs Bank of Uganda SCCA No. 08 of 1998**).

It is not disputed that, the Affidavit in support of this application was sworn by a one Ndagire Tracy an Advocate practicing with the firm representing the Applicant. She does not provide any evidence to show that she was authorised by the Applicant to swear the affidavit on her behalf, within the meaning of Order 3 rule 1 of the Civil Procedure Rules nor does she disclose the source of her information. In fact Counsel for the Respondent in reply this Application sought to cross examine her, which could have led to the contravention of Rule 9 of the Advocates (Professional Conduct) Regulations (SI 267-2). In the circumstances we inclined to agree that the Affidavit having been deposed by an advocate from the law firm representing the Applicant, without authorization to do so and moreover who could be called upon to testify in the matter renders the Affidavit defective and untenable.

For completion however, we shall discuss the merits of the Application as well. Section 79 of the Civil Procedure Act, Gives Court the mandate to extend time within which to Appeal if the Applicant shows good cause. The good cause must relate to the Applicant's inability to take the required steps and not for dilatory conduct.

Apart from the Applicant's letter to the labour officer dated 20/08/2018, protesting his award and seeking a record of proceedings from him, the Applicant has not given any other reason which could have disabled her from pursuing the Appeal in time. We are not satisfied that, the fact that the record of Appeal having not been provided to her in 2018, the Respondent only woke after more than 2 years to pursue the Appeal to its logical conclusion. In any case, the Applicant had the option of seeking the intervention of the Registrar of the Industrial Court who is mandated by Regulation 45(2) of the Employment Regulations 2011, to:

*"Upon receipt of notice of appeal the registrar shall within fourteen days, the labour officer shall furnish the industrial Court with information concerning the complaint, the parties involved, the hearing proceedings, the decision of the labour officer and the matter of appeal."*

Sub regulation 3 of the same regulation makes it a requirement for the labour officer to present this information to the Industrial Court within 21 days after being required to provide the information. It is the Industrial Court which summons the parties for a hearing after receiving the information from the Labour officer. (sub regulation (4)). The Labour Officer is therefore expected to prepare the record of appeal and forward it to the Registrar Industrial Court and not to the Applicant or any other party.

We are therefore not convinced that, the Labour officers' failure to issue the Applicant with the record of proceedings is sufficient cause to warrant a grant of extension of time for the Applicant to file an Appeal after more than 2 years.

This Application therefore fails, it is dismissed, with no orders 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. 1.MS. ROSE GIDONGO** .....

**2.MS. BEATRICE ACIRO** .....

**3. MR. JACK RWOMUSHANA** .....

**DATE: 23/03/2021**