

**THE REPUBLIC OF UGANDA**  
**IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA**  
**LABOUR DISPUTE: MISCELLANEOUS APPLICATION No.101 OF 2021**  
**ARISING FROM KCCA/RUB/LC/260/2018**

**MICRO CREDIT FOR DEVELOPMENT AND  
TRANSFORMATION COOPERATIVE SAVINGS  
AND CREDIT SOCIETY**

**..... APPLICANT**

**VERSUS**

**SEMANDA EDWARD**

**..... RESPONDENT**

**BEFORE:**

**1. THE HON. JUDGE, LINDA LILLIAN TUMUSHIIME MUGISHA**  
**PANELISTS**

**1.MS. HARRIET MUGAMBWA NGANZI**

**2.MR. FX MUBUKE**

**3. MR. FIDEL EBYAU**

**RULING**

This application is brought under Section 94 of the Employment Act, Rules 24(1) and (2) of the Labour Disputes (Arbitration & Settlement) (Industrial Court Procedure) Rules 2012, Section 98 of the Civil Procedure Act, Section 33 of the

Judicature Act, Order 51 Rules (6) of the Civil Procedure Rules, seeking orders that:

- (a) For extension of time within which to file an appeal out of time
- (b) That the Applicants Appeal be validated.
- (c) Costs be provided for in the Appeal.

**The Applicant's case:**

The Applicant's case, as contained in the notice of motion and supporting Affidavit deposed by Atuhaire Daphine, an advocate practicing with Walusimbi & Co. Advocates, appointed to Act for and on behalf of the Applicant, is summarised as follows:

- a) That on 11/06/2021, she proceeded to the Industrial Court to file an appeal arising out of KCCA/RUBLIC/260/2018 and found the premises closed from the Public for fumigation.
- b) That on the 18/09/2021, a Presidential directive which restricted movement as a measure to curb Covid 19 pandemic for 42 days was issued and it rendered it difficult for her to file the appeal within the stipulated timelines.
- c) That the Applicant's appeal has high chances of success.
- d) That she has been advised by her lawyers that this Court can intervene and grant her this application and it is in the interest of Justice, that it is allowed.

**The Respondent's Case**

The Respondent's case as set out in the Affidavit in reply deposed by Mwanda Edward the Respondent, is summarised as follows:

- a) That he read and understood the Applicant's affidavit in support and as advised by his lawyers. He raised a preliminary objection as to the validity

of the Applicant's Affidavit in support of the application, on grounds that it is full of false hoods and the deponent Ms. Atuhaire Daphine, had no authority to depone on behalf of the Applicant in the matter.

- b) That it is not true that, Ms. Atuhaire Daphine is duly appointed to act for or depose an Affidavit on behalf of the Applicant and it is not true that she went to the Industrial Court to file the alleged Appeal, as stated in her Affidavit in support.
- c) That he was informed by his lawyers that during the entire period of fumigation, the Registry of the Industrial Court remained open and there was an officer stationed, to receive documents.
- d) That the Presidential directive did not fully restrict movement because essential workers and persons with special permits were allowed to move, therefore, it cannot be the reason why the deponent failed to file the appeal but rather it was because of dilatory conduct on her part.
- e) That in any case, the Chief Justice's directive (marked "A" on the record), directed Advocates to take advantage of e-filing of documents and his lawyer informed him that, Advocates who obtained Special permits from the Ministry of Works, through the Uganda Law Society were allowed to move. In fact, his lawyers were able to apply for and secure such permits to enable them execute clients work. He relied on a permit is marked as annexure "B" on the record as evidence.
- f) That, there is no evidence to demonstrate that, any effort was made by the deponent to contact his lawyers about the filing of the appeal nor is there any evidence to show that any efforts were made to secure a special permit, or to establish whether the Industrial court had e- filing facilities.

- g) That further, the Applicant has not demonstrated how plausible the grounds of appeal are and whether the Appeal really has a high chance of success.
- h) The Applicant has further not demonstrated that, it was vigilant in pursuing the process of instituting an Appeal and has not shown how it will be prejudiced if the application is not granted.
- i) That the application is brought in bad faith and it is intended to delay the course of justice, therefore it should be disallowed.

### **REJOINDER**

The Affidavit in rejoinder was deponed by Cissy Zizinga, the Applicant's CEO, to the effect that Ms. Atuhaire who swore the Affidavit in support was duly authorised to do so and the appeal had high chances of success.

### **REPRESENTATION**

The Applicant is represented by Daphne Gunn of Walusimbi and Company Advocates, Kampala and the Respondent by Emwagu Gerald of M/s Kasiisa and Company Advocates, Kampala.

### **SUBMISSIONS**

**1. Whether the Applicant should be granted extension of time to file/validate an appeal filed out of time?**

Citing Rule 6 of the Labour (Arbitration & Settlement) Industrial Court Procedure) Rules 2012, which provides that, where "... a party to a dispute fails to file documents within the prescribed time he or she may apply to the court for extension of time, ...Court may determine the application as it deems fit...", Counsel for the Applicant, submitted that, this court has discretion to entertain and determine this application. She also cited James Bwogi & Sons Enterprises Ltd

vs Kampala City Council and Kampala District Land Board, Civil Application No. 09/2017, for the legal proposition that, for sufficient cause, Court is empowered to extend time within which to do certain things and argued that, the fumigation process that was being undertaken at the Industrial Court premises, as stated in the Affidavit in support, was sufficient cause because, the Court premises were locked for the fumigation and later there was a Covid 19 lock down. And this was not in dispute because the Respondent under paragraph 9 of his Affidavit in reply, also acknowledged that, there was an ongoing Fumigation exercise at the Court premises and there was a lockdown for 42 days. It was her submission that, only those with special permits were allowed to move and this was no fault of the Applicant and the Applicant had no control of the situation which disenabled her from filing the Appeal within the stipulated 30 days.

She argued that, the Applicant had a plausible appeal which she stated was attached on the record as **Labour Dispute Appeal No. 016 of 2021**, which was filed in accordance with, **Section 94 of the Employment Act and Rule 24(1&2) of the Labour Disputes Arbitration & Settlement (Industrial Court Procedure) Rules 2012** which gives a party aggrieved by the Labour Officer's decision a right of appeal. She also relied on **Kifamunte Henry Vs Uganda SC Criminal Appeal No. 10 of 1997**, which reasoned that it was the duty of an appellate court to reevaluate the evidence to establish whether to uphold or disallow the conclusions reached by the trial Court, as the basis for this Court to grant this application for extension of time to file/validate the appeal. She further argued that, the Applicant had a right to be heard as provided under Article 28 of the Constitution of Uganda 1995 and that Article 126 which provides that, the right to justice should not be affected by mere technicalities. In her view, the

Applicant having demonstrated the desire to exercise its right of appeal, this application should be granted.

In reply Counsel for the Respondent opposed the Application on the grounds that, the affidavit in support is incurably defective. According to Counsel, the deponent Atuhairie Daphnie does not state whether she is employed as Counsel or Court Clerk, Advocate or an authorised agent. He contended that, she did not attach any authority in writing from the applicant which contrary to the holding in **Bagalamisa vs Kizza Misc Application 1495 of 2016**, although he fell short of stating the holding. He further contended that, the Deponent did not state in what capacity she deposed the Affidavit contrary to the holding in **Standard Chartered Bank Uganda Ltd vs Mwesigwa, Civil Application No. 0138 of 2013**.

He further contended that, the deponent of the Affidavit in support was Counsel for the Applicant in the lower Court, therefore, she was incompetent to swear an Affidavit on behalf of the Applicant because this is in contravention of Rule 9 of the Advocates (Professional Conduct) Regulations SI 267-2 rules and the holding in **David Mutyaba Segulani vs Eriabu Sebyatika Vicent, HCT Civil Revision No 005/2018**.

He further contended that, the Applicant seeks court to extend or validate an appeal which was already served onto the Applicant, before seeking extension of time and in addition, the Applicant did not extract the decree or order before filing the memorandum of Appeal, which rendered the Appeal incompetent contrary to the holding of Justice Oyuku Anthony, in **Mbanbu vs Monda Nicholas HCT 001-CA- 2016/10(2017)**. It was his submission that, Courts have already settled what an applicant must prove before an application for extension of time can be granted. He cited **Molly Kyalukinda Turinawe and Others Vs**

**Engineer Turinawe and Another Supreme Court Application No. 27 of 2010**, which laid down the guiding principles as follows: that the Applicant should have established sufficient reasons for Court to extend time within which to lodge the appeal, that the Applicant is not guilty of dilatory conduct and no injustice would be occasioned to the Applicant if the application is not granted.

According to Counsel, the Applicant in the instant application, did not show sufficient cause, which according to him must relate to inability or failure to take particular steps in time. He refuted the argument that, the deponent was unable to move due to covid 19 restrictions because, all Advocates upon online application to the Ministry of Works, through the Uganda Law Society, were able to obtain travel permits to undertake their legal duties, but the deponent, did not demonstrate that she tried and failed to obtain the said permit and this was an indication that she was not vigilant.

It was further his submission that, it was not true that the Industrial Court Registry was closed off during fumigation, because, the Court registry was always open. In any case, following the Chief Justices' directive on COVID 19, during working hours, some Court staff were always present at the registry. He insisted that, the Affidavit in support was tainted with lies and falsehoods which should not be condoned by this Court. He relied on **Mulenga Joseph vs Photo focus (1966) IV Kampala, 19**, for the legal proposition that, where an Affidavit contained falsehoods such false hoods must render it incompetent and it must fail. According to him the Applicant is guilty of dilatory conduct because it was not vigilant enough.

He also contended that the Applicant's reliance on Article 126(2)(e) cannot stand because it did not fulfill the minimum legal requirements/ taking the essential steps before filing and serving the appeal onto the Respondent. He also cited

**Mulindwa vs Kissubika Civil Application No. 28/2015**, it was held that, Article 126(2)(e), does not mean that Court would have no regard to procedure or technicalities and it should only be relied on, where there are compelling circumstances which Court believes would render an injustice to the Applicant. In his view, the Applicant in the instant case, did not demonstrate how the denial of the application would lead to an injustice against it, therefore, this Court cannot invoke its discretion under Article 126(2)(e) of the Constitution to grant the Application, therefore it should be denied.

#### **REJOINER**

In rejoinder Counsel for the Applicant argued that, whereas the Respondent submitted that the Applicant's affidavit in support is defective for being sworn without Authority, Order 19 rule 3(1) of the Civil Procedure Rules SI71-1, provides that an Affidavit shall be confined to facts as the deponent is able of his or her own knowledge to prove, expert on interlocutory applications. It was further her submission that, the Deponent stated the capacity in which she swore the Affidavit and she was duly authorised by the Applicant to swear the Affidavit as stated in paragraph 3 of the affidavit in rejoinder which was sworn by Ms. Cissy Zzizinga, the Applicant's CEO. According to her the CEO confirmed that Daphine Atuhaire, was duly authorised to depone the Affidavit on behalf of the Applicant. In any case, the Respondent did not make any rebuttal because there is no sur rejoinder on the same and the facts sworn to an affidavit and not denied are deemed admitted. she relied on **Oloka Onyango and others vs A.G Constitution Petition No.8 of 2014**, to support her argument.

She refuted the Respondent's assumption that, the deponent was Counsel in personal conduct of the matter yet it has always been Counsel Walusimbi Nelson to whom Counsel Gunn Hellen Daphne held brief for at the last hearing.



Therefore, there was no violation of the Advocates professional Conduct Regulations as claimed.

Citing **Baligasiima Vs Kizza & Others Misc. Appln. 1495 of 2016**, she insisted that, Courts are enjoined under Article 126(2)(e) of the Constitution to administer substantial justice and avoid technicalities. She argued that, this case was distinguishable because in **Baligasiima** (supra) the affidavit was defective under order 1 of the CPR, on joinder of parties, where the deponent swore an affidavit on behalf of Co-Respondents without written authority.

she also refuted the argument that for an advocate to swear an affidavit, they had to be on record as Counsel in personal conduct but rather the Regulations bar an Advocate in personal conduct of a matter from swearing an affidavit on behalf of his or her client on contentious matters. It was her submission that the matters in the instant application are not contentious, therefore there was no violation of the Regulations. She also argued that, whereas in **Bonny M Katatumba** (supra) the application delayed for 2 years, in this case the Labour officer issued the award on 11/05/2021, but the said application for extension of time was filed on 3/08/2021, which is less than 3 months and the delay was a result of fumigation at the court premises and covid 19 lockdown. Therefore, there was no undue delay.

## **DECISION OF COURT**

We have carefully perused the Notice of Motion together with the supporting affidavit and affidavit in opposition and the submissions of both Counsel and find as follows:

Regulation 45 of the Employment Regulations provides for a right of appeal for persons aggrieved by the decision of the labour officer. It provides as follows:

#### **45. Appeal**

***1) a person aggrieved by the decision of the labour officer may within 30 days give notice of appeal to the Industrial Court in the form prescribed in the 17<sup>th</sup> schedule. ..."***

It is a settled matter that, Court may in its discretion enlarge time within which to appeal unless the following exist; the applicant is guilty of unexplained or inordinate delay in seeking Courts clemency, the applicant has failed to provide justifiable reasons for his or her failure to file an appeal within the time prescribed by law or unless the extension of time will prejudice the Respondent or where the appeal has no merits.

Regulation 45(supra) however, does not provide for the procedure an applicant for extension of time within which to file should follow nor does it provide the principles to be applied, when applications for leave to appeal outside the prescribed 30 days are made before this Court. In the circumstances, the Court has adopted the Civil Procedure Act, and Civil Procedure Rules, particularly Section 79(1)(b) read together with Order 43 rules 1 and 2 and Order 51 rule 6, of the Civil Procedure Rules, which mandate an appellate court for "good cause" to enlarge time within which to appeal.

**In *Eriga Jos Perino vs Vuzzi Azza Victoe & 2 Others* HCCA No. 09/2009 and *Moyo Civil Suit No 015/2004*, which cited *Shanti vs Hindocha* and others [1973] EA 207 held that :**

*"The position of an applicant for extension of time is entirely different from that of an applicant for leave of appeal. He is concerned with showing sufficient reason (read special circumstances) why he should be given more time and the most persuasive reason that he can show is that the delay has*

*not been caused or contributed by dilatory conduct on his own part, but there are other reasons and these are all matters of degree."*

The applicant must therefore prove good "cause" before Court can exercise its discretion to grant the extension of time. The applicant must therefore show why it was unable to take the necessary steps to appeal in time. Sufficient cause must relate to the reasons for his or her inability to take particular steps in the first instance.

### **THE PRELIMINARY OBJECTION**

Before we resolve the instant Application, we shall first resolve the Preliminary objection raised by the Respondent, as to the validity of the Applicant's Affidavit in support of the application. The contention is that, the deponent had no authority to depone on behalf of the Applicant because she was not duly appointed to act for or depone an Affidavit on behalf of the Applicant and the Application is riddled with falsehoods.

It is trite that an Affidavit is a statement in writing, made on oath or affirmation. It basically contains matters which the deponent knows or believes to be true, and are the basis for determining questions of facts.

In paragraph 1 of the Affidavit in support of the instant Application, Daphine Atuhaire deposed that:

***"1. That I am a female adult Ugandan of sound mind and an advocate of the High Court of Uganda and all its subordinates practicing law at Walusimbi & Co. Advocates, duly appointed to act for and on behalf of the applicants in this matter, fully conversant with the matter pertaining hereto, and swear this affidavit in such capacity; ..."***

We are persuaded by Justice Madrama's response to the question whether an advocate needed authority to swear an affidavit in matters of his client and especially in contentious matters, in **Niko Insurance (U) Limited vs Southern Union Insurance Brokers (U) Limited & 4 others HCMA 817 of 2015**, to the effect that; ... *An appointment to act on behalf of a client must be in writing. This applied to making an affidavit in the capacity of the party to the action. .... That having written authority shields an advocate from committing an offence under the Advocates Act namely; the Advocates (professional Conduct) Regulations and regulation 15 thereof which provides that an advocate shall not include in any affidavit any matter which he or she knows or has reason to believe is false. The basis of the ruling is order 3 r 1 of the Civil procedure rules which provides that ...an appearance or act in court required or authorized by the law to be made or done by a party in such court may except where otherwise expressly provided for by law for the time being in force, be made or done by the party in person or by his or her recognized agent or by an advocate duly appointed to act on his or her behalf..*"

In an earlier decision in **Lena Nakalema Binaisa & 3 others vs Mucunguzi Myers HCMA No 0460 of 2013** Justice Andrew Bashaija held that:

*"...whether it be a representative action under O.1 rule 10(2) and 13 CPR or suit by a recognized agent under order 3 rule 2(a) CPR or by order of Court, the person swearing on behalf of the others ought to have their authority in writing which must be attached as evidence and filed on the court record. Otherwise, there would be no proof that the person purporting to swear on behalf of the others has express authority....*

*That an affidavit is defective by reason of being sworn on behalf of another without showing that the deponent had authority of the other. In this case*

*the affidavit is incurably defective for non-compliance with the requirements of the law..."*

It was the submission of Counsel for the applicant in the instant application that, Atuhaire who swore the Affidavit in support, was duly authorised by the Applicant to do so. However, there was no evidence of written authorization on the record. Although Cissy Zizinga the Applicant's CEO swore an Affidavit in rejoinder, stating that, the applicant had authorised Daphine Atuhaire to swear the Affidavit in support on behalf of the Applicant, she did not attach any evidence of written authorization as proof that, Atuhaire had express authority to swear on behalf of the applicant. In our considered opinion, the affidavit in rejoinder was an afterthought, and in the absence of written evidence of authorization, it has no force of law. It was submitted by Counsel for the Applicant that Atuhaire was not Counsel in personal conduct either. The fact that she was an advocate with the law firm that represents the Applicant in our view is not sufficient, in the absence of written authorization.

In the circumstances, the affidavit in support of this application is defective, reason being that it was sworn on behalf of the applicant without proof that the deponent had written authority to swear it. It is incurably defective for non-compliance with the requirements of the law. It cannot support this application for extension of time to file an appeal.

Be that as it may, as already discussed, in order for an application for extension of time within which to file an appeal to succeed, the applicant must show good cause/ reason why he or she did not take the necessary steps to file the appeal, before the expiry of the time prescribed. The Applicant in the instant case, laboured to argue about its right of appeal, but fell short of showing why it did not take the necessary steps to file the Appeal within the prescribed 30 days.

The deponent did not furnish court with any evidence to show that she actually went to file the appeal on 11/06/2021, and found the Court premises undergoing fumigation. We are also not convinced that the covid 19 lockdown disenable her from taking the necessary steps to file the appeal within the prescribed 30 days because the lockdown took effect from 18/06/2021, which was 7 days after the expiration of the prescribed time within which the appeal should have been filed, the labour officer having issued the decision on the 11/05/2021. To compound it all, the grounds of appeal which she claimed were plausible, were not attached to the application to enable this court determine whether the Appeal really had high chances of success. In our considered opinion, all the reasons which the Applicant advances, do not show why it did not take the necessary steps to file the Appeal before the expiry of the 30 days but rather argued about its right of appeal. Therefore, even if the Affidavit in support was not defective, the application is meritless.

The Application is therefore dismissed with no order as to costs.

Delivered and signed by:

THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA



PANELISTS

1. MS. HARRIET <sup>U</sup>MGAMBWA NGANZI

2. MR. FX MUBUKE

3. MR. EBYAU FIDEL

DATE: 8/11/2021

