

THE REPUBLIC OF UGANDA

IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA

LABOUR DISPUTE MISCELLANEOUS APPLICATION NO 153 OF 2022

CONSOLIDATED WITH LDMA 148,149,150,151 AND 152 OF 2022

(Arising from Labour Dispute References 328, 326, 327, 329, 330 and 331 of 2019)

BUGEMA ADVENTIST SECONDARY SCHOOL :::::::::::::::::::::::::::::::::::APPLICANT

VERSUS

NAMULEME ERINAH:::RESPONDENT

**BEFORE**

THE HON. MR. JUSTICE ANTHONY WABWIRE MUSANA,

**PANELISTS:**

Ms. ROBINAH KAGOYE,

Ms. CAN AMOS LAPENGA &

Mr. JIMMY MUSIMBI.

**RULING.**

**Introduction**

**1.0** This ruling arises out of 6(six) separate applications (*Miscellaneous Applications Nos. 148/2022, 149/2022, 150/2022, 151/2022, 152/2022 and 153/2022*) for extension of time to file replies to memoranda of claims and which applications were consolidated Labour Dispute Miscellaneous Application No. 153/2022.

**2.0** The application was brought under Section 98 of the Civil Procedure Act Cap. 71 and Order 51 r 6 and O 52 r 1 and 3 of the Civil Procedure Rules S.I 71-1(CPR). We note that there is a specific rule under Rule 6(1) of the Labour Disputes (Arbitration and Settlement) (Industrial Court Procedure) Rules, 2012 (*"the Rules"*) which provides that a party to a dispute who fails to file documents within the prescribed time, may apply to the court for extension of time. We posit that it would be appropriate to make an application such as this present one under the rules of this Court. This court adopts standards in the CPR where there is no specific provision under its own rules.

**Grounds of the application**

**3.0** Mr. Steven Bukenya, the applicant's headmaster, filed an affidavit in support deposing that the applicant instructed M/S Akampurira & Partners to file replies to memoranda of claims in Labour Dispute References No. 326, 327, 328, 329, 330 and 331 all of 2019, filed by former members of staff. When the matters came-up for pre-session, Mr. Bukenya

deposes that the applicant was shocked to learn that their former lawyers had not filed any replies. The applicant immediately instructed M/S Kibojana, Kakuba & Co Advocates.

**4.0** Mr. George Kamuremere, appearing for the applicant, submitted that a mistake of counsel was sufficient cause for a grant of extension of time to file pleadings out of time. He contended that the mistake ought not to be visited on the litigant. He cited the cases of **ABC Capital Bank Ltd vs A-I Industries Ltd M.A No. 1059 of 2016**, **Hajati Safina Nababi vs Yafesi Lule Civil Appeal No. 9 of 1998** and **Zamu Nalumansi vs Sulaiman Lule Civil Application No. 2 of 1992** in support of his proposition.

**5.0** The respondent was directed to file submissions by 19<sup>th</sup> October 2022 but did not file any affidavits in reply or written submissions.

#### **Analysis and decision of the Court**

**6.0** Under Rule 6(2) of the Rules, this court may determine the application as it deems fit. Having reviewed the motion, the accompanying affidavit and the applicant's submissions, we posit thus.

**7.0** Jurisprudence on the principle considerations for a grant of extension or enlargement of time is both expansive and very well settled. The primary test before time can be enlarged is whether the applicant was prevented by **sufficient cause** from taking a particular step within the time prescribed.<sup>1</sup> The Supreme Court of Uganda has held the omission or mistake of counsel ought not to be visited onto the litigant and that a mistake or error or misunderstanding of the applicant's legal advisor, even though negligent, is acceptable as a ground for allowing an application for extension of time.<sup>2</sup>

**8.0** The uncontested facts in the present application are that the applicant's former counsel did not file the relevant pleadings as instructed. On learning of this anomaly, the applicant instructed alternative Counsel who have filed the present applications for extension of time. The applicant attached to the affidavit, proof of payment of legal fees for filing of the replies or necessary defences. Additionally, the applicant's representative duly attended court when the causes were called for a pre-session. The applicant pleads that the mistake of their erstwhile lawyer ought not to be visited on them. Legal fees were paid for a service that was clearly not rendered. While we do not think that the respondent's affidavits in reply and submissions would have offered a believable alternative narrative, we find the applicant's proposition consistent and forthright. The applicant's conduct would not be classified as dilatory. We therefore find that the applicant was prevented from filing its replies/defences by sufficient cause.

**9.0** Accordingly, we determine as follows:

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<sup>1</sup> **James Bwogi vs KCCA and KDLB. S.C.C.A No 09/2017** Cited in **MTN(U)LTD vs Anthony Katamba LDMA No.004/2021**

<sup>2</sup> **Crane Finance Co. Ltd Vs Makerere Properties, Supreme Court Civil Appeal No. of 2001**

- (i) The consolidated applications stand unopposed.<sup>3</sup>
- (ii) We are satisfied that the Applicant was prevented by sufficient cause from filing the necessary replies to the memoranda of claim.<sup>4</sup>
- (iii) We are also satisfied that the mistake of counsel ought not to be visited on the litigant.<sup>5</sup>

We are fortified in each of the above determinations by the dictum in the cases in the respective footnotes below.

**10.0** We therefore direct the applicant to file replies to Labour Dispute References No. 326, 327, 328, 329, 330 and 331 all of 2019 within 7 days from the date hereof.

**11.0** Costs shall abide the outcome of the references.

It is so ordered.

**Dated at Kampala this 4<sup>th</sup> day of November 2022**

ANTHONY WABWIRE MUSANA, Judge

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**PANELISTS**

1. Ms. ROBINAH KAGOYE,
2. Ms. CAN AMOS LAPENGA &
3. Mr. JIMMY MUSIMBI.

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Ruling delivered in the presence of:

Mr. George Kamuremere, Counsel for the Applicant.

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| <ol style="list-style-type: none"> <li>1. Cranmer Lubanga</li> <li>2. Erina Namuleme and</li> <li>3. Juliet Nabadda</li> </ol> | } | Respondents |
|--|---|-------------|

Court Clerk: Mr. Samuel Mukiza

<sup>3</sup> "Where facts are sworn to in an affidavit and they are not denied or rebutted by the opposite party, the presumption is that such facts are accepted" Per Ntagoba J (*as he then was*) in **Samwiri Massa versus Rose Achen (1978) HCB, 297**. See also **Ssemanda Paul & Anor versus Nakato Lukwago Joyce & Others H.C.M.C No. 50 of 2019**

<sup>4</sup> **Banco Arabe Espanol Vs Bank of Uganda S.C.C.A No 8 of 1998**

<sup>5</sup> **Nicholas Roussos Vs Gulamhussein Habib Virani & Anor, Civil Appeal No. 9 of 1993**