

THE REPUBLIC OF UGANDA

IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA

LABOUR DISPUTE MISCELLANEOUS APPLICATION NO. 193 OF 2021

(Arising from KCCA Labour Complaint No. 296 of 2019)

UGANDA CIVIL AVIATION AUTHORITY:.....APPLICANT

VERSUS

OJIAMBO SAMUEL:.....RESPONDENT

BEFORE

THE HON. JUSTICE ANTHONY WABWIRE MUSANA,

PANELISTS:

Ms. ADRINE NAMARA,

Ms. SUSAN NABIRYE &

Mr. MICHAEL MATOVU.

RULING.

- 1.0** This ruling is in respect of an omnibus application for leave to appeal the findings of fact of the Labour Officer in MGLSD/LC/296/2019, extension of time to file an appeal and alternatively, an order of validation of Labour Appeal No. 11 of 2021. It was brought under Section 94 of the Employment Act, 2006, Section 33 of the Judicature Act Cap.13, Section 98 of the Civil Procedure Act Cap.71 and Order 51 rules 1 and 3 of the Civil Procedure Rules S.I 71-1.
- 2.0** Ms. Maureen Agaba, Principal Legal Officer of the Applicant, filed affidavits in support and rejoinder. The gist of these affidavits is that the Applicant was prevented from filing the appeal in time due to the untimely illness of In-house Counsel in personal conduct of the proceedings before the Labour Officer.
- 3.0** In the affidavits in opposition, the Respondent deposed to the Applicant's dilatory conduct, delay and collusion with the Court Officials to illegally alter and falsify the contents of this application.
- 4.0** Mr. Ferdinand Musimenta, appearing for the Applicant, contended that the Labour Officer had made findings of fact without properly evaluating the evidence before him thereby arriving at a wrong conclusion.

- 5.0** Mr. Jotham Assimwe, appearing for the Respondent, opposed the application because in his view, (i) the Notice of Appeal was lodged 82 days after the time to file an appeal was allowed and as a reaction to execution proceedings and (ii) the application was smuggled onto to the record. He contended that the Respondent had initially been served with Miscellaneous Application No. 193 of 2021 which contained different prayers from the present application. He sought a dismissal of the application.
- 6.0** In a brief rejoinder, Mr. Musimenta suggested that Mr. Assimwe was being speculative. He asked that the application be allowed. He also abandoned, and quite wisely in the Court's view, the prayer for costs.
- 7.0** From the motion and affidavits in support of and against the motion, the primary questions for determination are whether the Applicant should be granted leave to appeal and whether time to file the appeal should be extended.
- 9.0** Under Regulation 45 of the Employment Regulations, 2011, a notice of appeal from a decision of a labour officer is to be filed within 30 days. The statutes do not make similar provisions for an application for leave to appeal. To address the lacuna, this Court has adopted the standard under Section 79(1) (b) of the Civil Procedure Act read together with Order 43 Rules 1 and 2 and Order 51 Rule 6 of the Civil Procedure Rules.¹ In terms, an appellate Court may enlarge time within which to file an appeal or an application for leave to appeal, for **"good cause"**. Precedent is to the effect that good or sufficient cause relates to mistakes by an advocate, ignorance of procedure, illness of a party, lapses or dilatory conduct of counsel or the party.²
- 10.0** The Applicant attributed the delay in filing the appeal to untimely illness of in-house Counsel. While there has to be respect for the privacy of medical records, the affidavits in support of the application did not provide any details as to the date on which in-house Counsel was taken ill. The Applicant's Principal Legal Officer did not state when she found out that the appeal had not been filed. In- House Counsel previously in personal conduct of the matter did not file an affidavit detailing the circumstances under which the appeal was not filed. Above all else, the application for leave to appeal or validate the appeal was filed on the 7th day of December 2021, after the Respondent had commenced garnishee proceedings in or about the 23rd November 2021. There is a common position that the labour officer made an award on the 9th February 2021 and the deadline for filing the appeal or notice of appeal would have been the 9th March 2021. The Notice of Appeal (Appeal No 11 of 2021)

¹ See LDMA No.125/2020 Guaranty Trust Bank(U) Ltd vs. Susan Dembe, LD No.271/2016 Kasese Cobalt Co. Ltd Vs. David Kabagambe, LDMA No. 18/2021 Kampala Playhouse Ltd vs. Oligo James

² Per Mubiru J in HCMA No. 0009 OF 2017 Eriga Jos Perino vs. Vuzzi Azza Victor & 2 Ors

was filed on 3rd May 2021. Ms. Agaba suggests that she instructed external counsel to follow-up. No letter of instructions to follow-up was presented to this Court to explain the time between which Counsel were instructed and the filing of the application. This period was at least 6 months apart. This would lead us to the inevitable conclusion that there is a variance between the reasons that the Applicant attributes for the delay and what might have caused the delay. In our view, an application for extension of time requires an honest and detailed explanation of the inability or failure to take a particular step in time. This would be followed by a very careful scrutiny of the evidence in support of the application as we have now done and find that the motion and Ms. Agaba's affidavits produce the result that the Applicant's conduct was demonstrably questionable. It is our summation that the Applicant has not established good or sufficient cause for extension of time in parity with excusable delay.

- 12.0** Be that as it may, modern precedent has developed other considerations for grant of extension of time. In the *Eriga* case(*ibid*), it was held that an indolent party may yet succeed in an application for extension of time if he were to show that there are serious questions to be tried. The nature of the subject matter of the dispute, absence of any significant prejudice likely to be caused to the respondent and the Court's constitutional obligation to administer substantive justice without undue regard to technicalities are good considerations for a grant of extension of time. Indeed, the Court of Appeal has held that denying a subject a hearing should be the last resort of court.³ The Courts, in the administration of justice would normally be required to investigate the substance of all disputes and decide the cases on the merits and that error and lapses should not necessarily debar a litigant from pursuit of his rights.⁴
- 13.0** Following that dicta, we found it necessary to consider the intended grounds of appeal attached to the affidavit in support of motion. A reading of the draft memorandum of appeal lists 5 possible grounds of appeal. These grounds are drafted as mixed law and fact. Grounds 3, 4 and 5 fault the labour officer for failing to properly evaluate the evidence and arriving at the wrong conclusions and findings. In tandem, we perused the Judgment/Award of the labour officer sought to be appealed from and observe a possibility of a less than critical evaluation of the evidence before the labour officer arrived at his conclusions. Mr. Assimwe did not advance any argument for the Respondent in this respect. He adopted the affidavits in opposition which do not buttress the labour officer's findings. Our reading of the labour officer's award is that it is quite plausible that the labour officer did not properly evaluate all the evidence before him. Matters of law are appealable as of right while matters of fact require leave of this Court as provided under Section 94(2) of the Employment Act.

³ National Enterprises Corporation v. Mukisa Foods, C.A. Civil Appeal No. 42 of 1997

⁴ Banco Arabe Espanol v. Bank of Uganda [1999] 2 EA 22, Tiberio Okeny & Anor v. The A.G C.A.C.A No. 51 of 2001 and LDMA No.145/2017 The Registered Trustees of Kasese Diocese vs Benuza Jane

This Court has ruled that the ground of failure to evaluate evidence is essentially a matter of law.⁵ We have not been moved nor do we find reason to depart from that decision. For these reason, we observe a possibly serious question of law. We are inclined to grant the present Applicant extension of time to file the appeal and we so do.

13.0 Before taking leave of this matter, the Respondent suggested possible collusion between Counsel for the Applicant and Court officials to illegally alter or falsify the contents of the motion as filed and served on them. These are serious allegations and it is only proper that due attention is given to them. It was Mr. Assimwe's contention that the orders sought in Annexure "E" of Mr. Justus Balimwijuka Tumusiime's supplementary affidavit dated 21st December 2021 were different from the grounds in the motion attached as "F". Mr. Musimenta's response was that this was merely speculation and the varied attachments were all in draft form. The motion that this Court considered in M.A 193 of 2021 was under the hand of the Registrar, and bore the Seal of the Industrial Court. Annexure "D" to the Respondent's affidavit in reply was an application to set aside the garnishee proceedings and stay of the labour officer's decision. Annexures "E" and "F" were in respect of the present application but bore different orders. Annexure "F" mirrors the present application. We note that it is not entirely uncommon for parties to file multiple versions of pleadings or amend the same before finally settling on one set or another to which an opposing party would reply. Indeed the rules on amendment of pleadings under the CPR permit for amendment without leave under Order 6 Rules 20 and 21. The framers of the rules mitigated prejudice to the opposing party by entitling them time to respond. Further, allegations of collusion, falsification, illegal alteration of court records, smuggling of documents and kindred issues are difficult to prove by way of affidavit evidence. At submissions, Mr. Assimwe did not canvass or push the point any further. That may have been helpful. We find, absent of cogent proof of the allegations, the allegations of collusion, falsification of documents and illegality are not well founded or established in this application.

11.0 It is therefore our order that the application succeeds. However, the Court is of the persuasion to expedite the appeal. The parties would be entitled to timely resolution of the dispute as an award was rendered on the 9th of February 2021. In that regard, the Court issues the following directions:

- (i) The Memorandum of Appeal in Appeal No. 11 of 2021(*if it is on record*) is hereby validated. In any event, the Memorandum and Record of Appeal shall be filed within 10 days from the date of this ruling. Concurrently, the Applicant/Appellant is directed to file and serve their written submissions in support of the appeal.

⁵ See LDA No. 040/2018 Onyango Robert vs Security Group (U), LDA No. 028/2018 Mubiru Martin vs Red Cross Society as cited in LDMA 018/2021 Kampala Playhouse Ltd & 20 ORS vs Oligo James & 19 ORS

For avoidance of doubt, the filings shall be by the 17th of October 2022. If this timelines is not adhered to, the appeal is liable to dismissal.

- (ii) The Respondent shall file and serve their written submissions by the 24th of October 2022.
- (iii) The Appellant may rejoin by the 31st of October 2022, if it so wishes.
- (iv) The submissions are limited to 5(five) typed pages of font size 12, 1.5 spacing and with all authorities relied upon attached with relevant portions highlighted.
- (v) The Court shall hold Coram on the 18th of November 2022.
- (vi) A ruling shall be delivered on the 9th of December 2022.
- (vii) There shall be no order as to costs.

Dated at Kampala this 5th day of October 2022

ANTHONY WABWIRE MUSANA, Judge

PANELISTS

1. Ms. ADRINE NAMARA,

2. Mrs. SUZAN NABIRYE &

3. Mr. MICHAEL MATOVU.

Ruling delivered in open Court in the presence of:

- 1. Mr. Robert Irumba for the Respondent.
- 2. Mr. James Zeere holding brief for Mr. Ferdinand Musimenta for the Applicant and
- 3. The Respondent.