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THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE No.178 OF 2021
ARISING FROM KCCA/CEN/LC/544/2019

AMIO DOREEN**CLAIMANT**

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VERSUS

MUA INSURANCE (U) LTD**RESPONDENT**

BEFORE:

1. THE HON. AG HEAD JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA

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PANELISTS

1. MS. ROSE GIDONGO

2. MS. ACIRO BEATRICE OKENY

3. MR. JACK RWOMUSHANA

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RULING ON A PRELIMINARY OBJECTION

Brief Background:

The Claimant filed this Claim against the Respondent for reliefs among others, for unfair termination, Compensation, General Damages, Special Damages, punitive

damages, Certificate of service, interest and costs. However when it came up for the
25 first time on the 17/06/2022, Counsel for the Respondent raised a preliminary
objection on the grounds that Claim was out of time.

When the matter came up in court on the 17/06/2022, both counsel were given
directions to file submissions. By the time the panel caucused on the matter on
2/09/2022 as scheduled, none of the parties had filed their submissions. The court
30 went ahead and found as follows:

REPRESENTATION

The Claimant was represented by Mr. Ayokire Arthur of M/s ASB Advocates,
Kampala while the Respondent was represented by Mr. Ferdinand Musimenta of
M/s S & L Advocates, Kampala.

35 DECISION OF COURT

Whether the Claim is out of Time?

Section 71(2) of the Employment Act, 2006, provides that:

“(2) A complaint made under this section shall be made to a labour officer within
three months of the date of dismissal, or such later date as the employee shall show
40 to be just and equitable in the circumstances.”

*The Court of Appeal in John Eric Mugenyi vs Uganda Electricity Generation Co.
Ltd, CA No. 167 of 2018, held that,*

“... Section 71 deals with the minimum period of employment which would entitle an employee to lodge a complaint

45 *... section 71(2) is not a limitation period for the commencement of any action in a court of law or a court of Judicature... a limitation period is a bar to an action, but section 71(2) of the Employment Act just prescribes the period within which to lodge a complaint with the Labour officer with the rights of the labour officer to allow the complaint outside a period of three months. It does not limit the Labour office as to*
50 *when to allow the application. It only requires the complainant to justify the filing of the complaint outside the period of three months. In this case the labour officer without making notes allowed the complaint to be filed. In any case, he had powers to abridge the time within which to allow the complaint to be filed.”*

The import of this holding in our considered opinion, is that, that section 71(2) grants
55 the labour office the discretion to entertain a matter which is filed outside the time prescribed under it and he or she is under no obligation to give reasons for exercising such discretion.

This court in many cases has held that, the labour can exercise this discretion as long as the time within which the matter has been brought does not exceed the 6 years
60 time prescribed under section 3(...) of the Limitation Act Cap....

A perusal of the file indicated that, the Claimant allegedly left the employ of the Respondent on 5th December 2018 and only filed the complaint to the Labour Office on 20th November 2019, almost eleven months later. Indeed the labour officer, a one

Irene Nabumba exercised her discretion under section 71(2) entertained the matter
65 and eventually referred it to this court, as a reference. 11 months is within the ambit
of section 3(1) of the limitation Act.

In the circumstances, it is our finding that, the labour officer was not at fault to
handle / entertain the matter out side the 3 months prescribed under section 71(2) of
the employment Act, in the absence of evidence that there was an application to
70 extend time.

It is our finding therefore, that this Claim is properly before this Court. The
Preliminary Objection if hereby overruled. Claim shall proceed on its merits. No
order is to costs is made.

Delivered and signed by:

75 **THE HON. AG. HEAD JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA**

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PANELISTS

1. MS. ROSE GIDONGO

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2. MS. ACIRO BEATRICE OKENY

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80 **3. MR. JACK RWOMUSHANA**

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DATE: 14/10/2022

