THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
MISC. APPL. NO. 147 OF 2021
[ARISING FROM LABOUR DISPUTE REFERENCE NO. 187/2019]

BETWEEN

KATEYO ELIEZER MUJUGWA……..……..APPLICANT

VERSUS

MAKERERE UNIVERSITY…….....……RESPONDENT

BEFORE

1. Hon. Head Judge Ruhinda Asaph Ntengye

PANELISTS

1. Mr Bwire John Abraham
2. Mr. Patrick Katende
3. Ms. Julian Nyachwo

RULING

This is an application by notice of motion brought to this court under **section 82 and 98 of the Civil Procedure Act and Order 46rr 1 & 8 of the Civil Procedure Rules.**

The application is for orders of this court to review its ruling dated 17/9/2021. The application is supported by an affidavit deposed by the applicant to the effect that this court in its ruling of 17/9/2021 dismissed a prayer for interest in **L.D.R 187/2019** basing on the fact that the applicant had filed submissions out of the time ordered by court. The applicant deposed also that he did not know that his lawyer had not filed the submissions in time and that court should not condemn him based on his advocate's mistakes.

The respondent filed an affidavit in reply deposed by one Kiranda Yusuf, the University Secretary of the respondent to the effect that the applicant having been

present in court when the time lines for submissions were issued by court, he could not deny knowledge of what took place and that he was not diligent in following up the matter with his advocates. It was further deposed for the respondent that it was the applicant who initially rejected the computation of the respondent only to accept the same after filing the claim and getting involved in litigation.

REPRESENTATION

Mr. Akena Solomon of M/s. Sempala & Co. Advocates represented the applicant while M/s. Natukunda Phiona of Makerere University Directorate of legal affairs represented the respondent.

BRIEF BACKGROUND

The applicant filed a claim against the respondent for payment of 226,884,010/= as accumulated retirement benefits and 35% interest thereon. Subsequently the parties agreed to settle and settled at 35,096,621/= but failed to agree on interest which was left for the court to determine. Then court granted the parties to file written submissions and issued to them timelines within which to file and issued a date for the ruling. The applicant filed submissions so late that the court could not be able to hold a quorum and discuss the submissions of both parties and issue an Award on time.

Consequently the court did not consider any of the submissions and held that the applicant having had the burden to prove entitlement to interest which he had not proved, no interest accrued at all. The applicant was not amused by this ruling and hence this application.

SUBMISSIONS

The applicant, relying on several cases, strongly submitted that it was the negligence of his advocates that caused failure of filing submissions in time which led to the dismissal of the claim for interest. He argued that having solicited services of counsel he was not expected to prosecute his own case and to understand technicalities associated with failure to file submissions in time and the consequences arising therefrom. According to counsel, a client believes that an

advocate is clothed with the requisite knowledge and skill to prosecute the matter and relies on the same. Counsel finally submitted that to condemn the applicant based on his counsel's dilatory conduct would be to stifle the spirit of a fair hearing and administration of substantive justice.

In response to the above submissions, counsel for the respondent argued strongly that the applicant was not an aggrieved person as spelt out in **Section 82 of the Civil Procedure Act** and **Order 46 rule 1 and 2 of the Civil Procedure Rules** since he had not suffered a legal grievance.

Counsel relied on the authorities of **Muhammed Allibhai Vs E. E. Bukenya Mukasa & Departed Asians Property Custodian Board SCCA 56/1996; Ladak Abdulla Mohammed Hussein Vs Griffiths Isingoma Kiiza & another Civil Appeal 81/1995** and other authorities.

Counsel contended that the applicant was the sole cause of the delay to be paid his in house retirement benefits which was the initial computation before litigation. According to counsel, having been paid all his benefits, the claimant was not an aggrieved person deprived of any interest or property by this court's decision's failure to determine whether or not he was entitled to interest.

Decision of court

We have perused carefully the notice of motion, the affidavit in support thereof as well as the affidavit in reply. We have at the same time perused carefully the submissions of both counsel together with the legal authorities cited therein.

We are cognizant of the right of parties to be heard before a decision against them is taken by a court of law or by any tribunal.

In that regard we agree with the applicant that in accordance with the authority of Nicholas Roussos Vs Gulamhussein Habib Virani & Anor, Civil Appeal No. 9/1993, a mistake by an advocate even if negligent, should not be visited on the applicant.

In the case of Banco Arabe Espanol Vs Bank of Uganda SCCA 8/1998 while 1. Order, JSC (RIP) was giving the background of the principle in the cases regarding not blaming a party for wrongs of his or her advocate stated;

> **"The question whether an "oversight" or "mistake", "negligence" or "error", as the case may be, on the part of counsel should be visited on a party the counsel represents and whether it constitutes "Sufficient reason" or "sufficient cause" justifying sufficient remedies from courts has been discussed by courts in numerous authorities. Those authorities deal with different circumstances; and may relate to extension of time for doing a particular act, frequently in cases where time has run out; some of them concern setting aside a default judgement as in the present case. But they have a common feature whether a party shall, or shall not, be permanently deprived of the right of putting forward a bonafide claim or defence by reason of the default of his professional advisor or advisors clerk."**

The instant scenario did not involve extension of time or a default judgement. The parties had agreed on the substance of the claim and had settled for a certain amount of money as full and settlement of the claim. The only question for this court was whether or not the claimant was entitled to interest.

An order for payment of interest in addition to the amount in the judgement or Award, is dependent on the discretion of the court. It is not a substantive claim in the whole suit before the court. Consequently, where a party is granted opportunity to seek the indulgence of the court to grant interest (or any other discretionary order) such party in our view, ought to be more diligent, more persistent and more persuasive than where the same party is seeking a substantive legal remedy.

The claimant, in the instant case was in court personally when this court granted his advocate to file submissions by 16/8/2021. It is these submissions that were expected to persuade the court to grant the discretionary order for interest. The respondent was expected to reply by

20/8/2021 and a rejoinder to be filed on 8/9/2021 so that each member of the panel would take a short time reading both submissions which was only one day of 09/09/2021 to be able to discuss the same on 10/9/2021 a date known to both parties. An Award was to be delivered on 17/09/2021 also known to both parties.

Instead, counsel for the applicant filed the submissions on 08/09/2021, and when the quorum sat on 10/09/2021 to discuss the submissions only the claimant's submission were on record for the single reason that they were filed so late and most probably the respondent was not yet served to be able to file a reply or if service had been effected it was so late that a reply could not be filed by the time the court sat to discuss the same.

As already noted an order for payment of interest is at the discretion of the court. The circumstances are such that it is what the respondent originally offered to the applicant before litigation that the applicant subsequently accepted to take, meaning that if he had accepted it earlier on, the question of interest would not have arisen. It also means that the claimant had a duty to be more vigilant and more diligent in pursuit of the claim of interest. The fact that in his presence the court granted itself only 1 day to look at the submissions and deliver a ruling only 7 days later should have encouraged him to follow up with his advocate to file submission in time. The legal proposition that a mistake or error of an advocate should not be visited on his client is not absolute; it depends on the circumstances of a given case.

While holding that the claimant was not entitled to interest because of failure to file submissions in time, this court in **LDR 187/2019**, the subject of this application**,** remarked

> **Allowing discussions outside the time tables would have meant postponing judgement not at the instance of the court but at the instance of the unexplained delay of the claimant to file submissions. In our view this was not acceptable…"**

We are reluctant in the instant application to allow the application having not been persuaded by the applicant that in the circumstances the delay to file submission was explained especially when he was partly blamed for having litigated against the offer he was given only to accept the same offer long after, the reason he sought interest on the same offer. Consequently the application fails and it is hereby dismissed with no orders as to costs

Delivered & signed:

1. Hon. Head Judge Ruhinda Asaph Ntengye ……..

PANELISTS

1. Mr Bwire John Abraham ……..
2. Mr. Patrick Katende ……..
3. Ms. Julian Nyachwo ……..

Dated: 14/01/2022