

THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA

LABOUR DISPUTE MISC. APPLN No.126 OF 2021.

ARISING FROM LDR NO. 135/2019 AND KCCA/CEN/LC/092/2018.

MUKISA ANATOLI **APPLICANT**

VERSUS

THE BOARD OF GOVERNERS

UGANDA MARTYRS HIGH SCHOOL **RESPONDENT**

BEFORE:

- 1. THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE**
- 2. THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA**

PANELISTS

- 1.MS. ROSE GIDONGO**
- 2.MS. BEATRICE ACIRO**
- 3. MR. JACK RWOMUSHANA**

RULING

BACKGROUND

This application is brought under Order 9 rules 18 and Order 52 rules 1 and 3 of the Civil Procedure Rules (CPR) and section 98 of the Civil Procedure Act(CPA), seeking orders that:

1. The dismissal of Labour Dispute Reference No. 134 of 2019 be set aside and suit be reinstated and heard on its merits.

2. Costs of the application be provided for.

When the matter was called for mention on 13/12/2021, the Respondent had not filed any reply and has not done so to date. There is evidence of affidavits of service on the record which indicates that, the Applicant made attempts to serve the Respondent as follows: on 19/11/2021, the Respondent was served through the School, by a one Nuwamanya Alex process server at M/S Kajeke, Magurru and Co Advocates, on 29/11/2021, the School's Director of studies was served by the Court's process server a one Kabanda Douglas, but she declined service. On 16/12/2021, the Claimant himself made an attempt to serve the Respondent through the school's Head teacher, who refused to acknowledge service. Having already filed submissions, Counsel Nakazzi Margaret for the Applicant, applied for court's indulgence to accept them and proceed to resolve the matter *ex parte*.

We were satisfied that the Respondent was effectively served. To date there is no reply to the Application. In circumstances the Applicant's prayer to proceed *ex parte* was granted hence this ruling.

The Applicants case:

The Applicant's case, as contained in the notice of motion and supporting Affidavit deposed by the Applicant, himself is summarised as follows:

1. That there is sufficient cause for reinstatement of the suit.
2. That on 13/09/2021, the Applicant honestly intended to prosecute his case, but he was misled by the Court's registry staff, to appear in the Court presided over by the Head Judge. By the time the registry staff notified him

that the matter was in the wrong Court, his file had already been called and dismissed for want of prosecution.

3. That at all material times he has always attended court for the hearing of his case but and its dismissal because of the misinformation he received from the registry staff at the Industrial Court, to enter a the court room which was presided over by the Head Judge, which he honestly believed was the correct court, having appeared in it on previous occasions.

4. That he has a prima facie claim against the Respondent.

5. That it is Just and equitable that the labour dispute reference No. 135 of 2019 is reinstated and heard on its merits.

REPRESENTATION

The Applicant was represented by Ms. Nakazzi Margeret of M/s Malik Advocates, Kampala.

The Respondents Case

The Respondent did not file a reply.

SUBMISSIONS

Counsel for the Applicant restated the Claimant's case as stated in the Notice of Motion and Affidavit in support to the effect that, the Applicant was misdirected by the Court's Registry staff to sit in the wrong court and when his matter was called in this court it was dismissed for want of prosecution. She argued that this was sufficient cause to set aside the dismissal. She further argued that the Claimant's right to a fair hearing as provided under Article 28 of the Constitution included a right to know the Judge before whom one was supposed to appear, before the hearing took

place. According to her, in this case the Applicant's knowledge was that the matter was before the Head Judge of the Court, whereas not. She asserted that the administrative changes which had taken place at the Industrial Court affected the Applicant's right to a fair hearing, therefore his case should be reinstated.

DECISION OF COURT

It is true that following the amendment of the Labour Disputes (Arbitration and Settlement) Act 2006(LADASA), the Panel which hitherto comprised of 2 Judges and 3 Panelist was separated to provide for 2 panels, each comprising 1 presiding Judge and 3 Panelists. The actual separation of the Panel took effect on 3/09/2021, when the LADASA (Amendment Act)2021, was commissioned by the Minister responsible for labour Relations at the Ministry Of Gender labour and Social Development. It is therefore not farfetched to believe that, on 13/09/2021, the Applicant found himself in a wrong court given that this was only 10 days after the separation of the Panels had taken place. It is also very possible that, the administrative allocation of cases between the 2 panels was not yet harmonized by then, hence the mistaken belief by the registry staff that the matter was under Court room No. 1 which is presided over by the Head Judge and not court room No.2 to which it was allocated after the separation.

We have also perused the parent file, LDR No 135/2019, and established that the Applicant had always attended Court. We are therefore convinced that he always had intentions to pursue his case save for the administrative impasse that led him to sit in the wrong court. We therefore have no reason not to reinstate LDR 135/2019 for it to be heard on its Merits.

We take exception with the conduct of the Respondents in this case, therefore we shall grant the costs of this application.

LDR No 135 is reinstated with costs.

Delivered and signed by:

1. THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA
PANELISTS

1.MS. ROSE GIDONGO

2.MS. BEATRICE ACIRO

3. MR. JACK RWOMUSHANA

DATE: 7TH MARCH 2022