

**THE REPUBLIC OF UGANDA**  
**IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA**  
**LABOUR DISPUTE MISC. APPLICATION NO. 16 OF 2021**  
**ARISING FROM LABOUR DISPUTE APPEAL NO. 39 OF 2019**  
**ARISING FROM KCCA-NAKAWA LABOUR COMPLAINT NO. 353 OF 2018**

**THE COOPER MOTORS**  
**CORPORATION (U) LTD**

.....**APPLICANT**

**VERSUS**

**BASIL BISASO**

.....**RESPONDENT**

**BEFORE:**

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

**1.MS. HARRIET MUGAMBWA NGANZI**

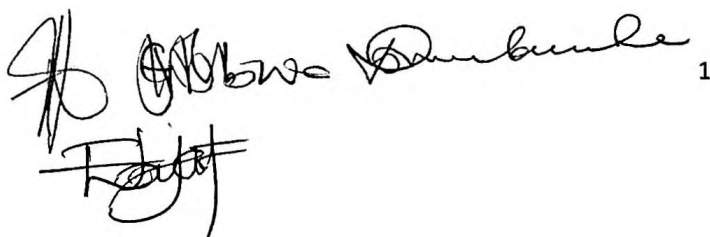
**2. MR. FX. MUBUKE**

**3.MR. EBAYAU FIDEL**

**RULING**

This application is brought by Notice of Motion under section 82 and 98 of the Civil Procedure Act Cap 71, S.33 Judicature Act, O.46 r 1, 2&8 of the Civil Procedure Rules S.1 71 – 1 seeking the following:

1. The review of the award and orders of Court made in Labour Dispute Appeal No. 39 of 2019
2. That Labour Dispute Appeal No. 39 of 2019 is reinstated and determined on its merits.

  
1

3. In the alternative, Labour Complaint No. 353 of 2018 is referred back to a different Labour Officer for re- hearing and determination.
4. Costs of the Application are provided for.

### The Applicant's case

The Applicants case as stated in the Notice of motion and supporting Affidavit sworn by Ms. Sabano Mercy Pabire, an Advocate practicing with Nakiranda & Co. Advocates, is summarised as follows:

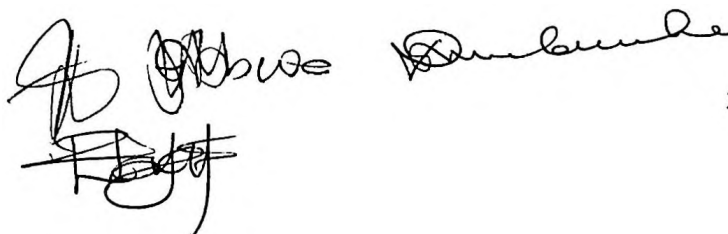
1. The Applicant filed Labour Dispute Appeal No. 39 of 2019 against the decision of the Labour officer at Nakawa via Labour complaint 353 of 2018.
2. That the Applicant did not file submissions in response to the Respondent's Preliminary objections.
3. That on 29/01/2021, this Court delivered an award in the Appeal wherein the Appeal was set aside on the grounds that, the ruling and record of proceedings which the Labour officer had forwarded were unauthentic for being unsigned, undated and unstamped.
4. This award was made in error because, the Applicant filed submissions in response to the Preliminary objections and there existed on record a signed, dated and stamped ruling which the labour officer forwarded subsequent to the record of proceedings she had forwarded.
5. That the said mistakes and errors are so manifest and clear that they do not require extraneous matters to show their correctness and no court ought to permit them to remain on the record.
6. That there exists sufficient reason to warrant the review of the decision in the Appeal and for the Appeal to be heard and determined on its merits.
7. In the alternative, but without prejudice that Labour complaint 353/2018 is referred to another labour Officer for re- hearing and determination.

8. It is just fair and equitable for the award and orders made under Labour Dispute Appeal No. 39 of 2019, is reviewed and set aside and the Appeal is reinstated and decided on its merits.

### The Respondent's case

The Respondent's case as set down in the Affidavit in reply sworn by the Respondent Basil Bisaso, is summarised as follows:

1. That the Respondent was suffering from Covid 19, and was therefore unable to meet with his lawyers on 24/02/2021, to appreciate this application. However, with the aid of his lawyers M. Kamanazi & Co. Advocates he read and understood the Notice of Motion and the affidavit in support.
2. He opposed the application for review and specifically, paragraphs 2-17 of the Affidavit in support of the Application sworn by Sabano Mercy Pabire and on the advice of his lawyers and his own believe that, the application is misconceived and bad in law and his lawyers will raise a preliminary point of law to strike it out.
3. He opposed the review of this Court's award in Labour Dispute Appeal No 39/2018, because the basis of this Application is a disguised Appeal.
4. That as advised by his lawyers, he believes that this Court's award in LDA No. 39/2018 cannot be reviewed to set it aside because the Applicant expressly admits that the ruling which formed the basis of her appeal was unsigned, undated and unsealed, thus rendering the appeal a nullity abinitio and not an error on the face of the record necessitating review.
5. Refuted the assertion that, the authentic ruling sent by the labour officer to the Registrar of the Court formed part of the record of Appeal neither was it intended to perfect an incompetent Appeal.



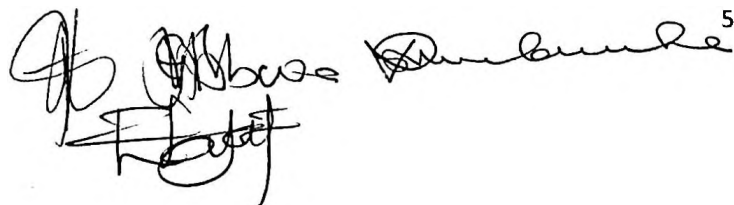
6. That as advised by his lawyers, Counsel for the Applicant had a duty to prepare a correct record of appeal and to ensure that the ruling she was appealing against was signed and authentic.
7. That this court's award in the Appeal was accurate and based on admitted facts was not made in error apparent on the face of the record.
8. That the fact that the Applicant avers under paragraph 10 of the affidavit in support that she does not contest the signed ruling forwarded by the labour officer, meant that the Appeal was filed in error and she cannot turn around now and ask for a retrial which is outside the scope of review and was never ground of appeal.
9. That no new matter has been adduced as evidence that was not in the Applicant's knowledge or could not be adduced by her when the order was passed, therefore there is insufficient cause to warrant review of the decision of this court since the signed ruling will not change the mind of this court.
10. That it is in the interest of Justice that the Application for the review of LDA No. 39 of 2018 is dismissed with costs to the Respondent.

#### **Preliminary Objection against the Reply to the Application**

Before arguing the Applicant's case, Counsel for the Applicant contested the validity of the Respondent's Affidavit in reply, on grounds that, it was filed and served on the Respondent out of the time without leave of court. Counsel argued that, whereas, the Respondent was served with the Application through his Advocates M/s M. Kamanzi & Co. Advocates on 22<sup>nd</sup> February 2021, he only filed his reply on 12<sup>th</sup> April 2021, which was outside the 15 days permitted by law and moreover without first applying for extension of time. She relied on **Senyondwa Partrick & another Vs Lucy Nakito H.C.M.A. (Land Div.) No. 1103 of 2018**, in which Justice Hon. Henry I. Kaweesa emphasised the requirement for a party to reply to an application within 15 days, failure of which it would be out of time,

unless leave to file out of time is sought from and granted by court. Therefore, the Respondent having filed his to the instant application out of time and without leave of Court, it should be struck out so that, application remains unopposed.

In reply, Counsel for the Respondent submitted that, Courts have stated that, affidavits in support or opposition of an application are evidence on oath and not pleadings. Therefore, time constraints regarding affidavit evidence is misplaced. Citing **Lam-Lagolo VS Muni University (Misc.Civile Cause No. 007 of 2016) [2017] UGHCCD 85**, in which Hon. Justice Steven Mubiru 's holding is to the effect that, unlike pleadings which are intended to disclose to the other party the facts of one's case, therefore requiring adherence to timelines within which they should be filed, Affidavits on the other hand most often contain evidence in support of a case. Therefore, even if it is not good practice for affidavits in reply to be filed in disregard to procedure it was not mandatory and *Order 52 Rules 3 and 7 of the Civil Procedure Rules... indicate that the filing of an affidavit alongside a notice of Motion or Chamber summons is optional, only when evidence is required in support of the application.* It was his submission that, the Respondent was unable to reply to the instant application in time because on 24/02/2021, he was diagnosed with the COVID 19 pandemic which made it difficult for him to meet his Advocate to prepare a response. In his view, the late filing of the affidavit in opposition to this application is a technicality which does not go to the root of the case and which can be cured by Article 126 (2) (e) of the 1995 Constitution as amended. Additionally, he contended that, failure by Counsel to apply for extension of time to file an affidavit out of time should not be visited on innocent litigants. He relied on **Mutaba Barisa Kweterana Ltd vs Bazirakye Yeremiya ,Court of Appeal Civil Application No. 158 of 2014**, and **Lam -Lagoro vs Muni University (supra)** which are to the effect that, in the interest of Justice court is entitled to refuse to take heed to a technicality in procedure which does not

 5

cause prejudice to the opposite party because rules are not an end in themselves, but they are provided to secure inexpensive and expeditious completion of litigation in courts and this is the rationale for *Article 126 (2) (e) of the 1995 Constitution of the Republic of Uganda*.

Counsel argued further that, in any case, the applicant did not file an affidavit of service in accordance with Order 5 Rule 16 of the Civil Procedure Rules. According to him and it is trite law that, the serving officer must file an affidavit of service as proof of service. He relied on **Bishop Patrick Baligasiima vs Kiiza Daniel (Misc. Application No. 1459 of 2016)**, in which the affidavit of service was not attached to the pleadings or to the submissions, thus rendering it difficult for court to determine the date of service and contended that, the Applicant in the instant case did not file an affidavit of service to warrant audience of this Court on this point, therefore, the preliminary objection should be overruled.

In rejoinder, Counsel for the Applicant insisted that Order 12 rule 3(2) provides that;

*"... a reply to the application by opposite party shall be filed within fifteen days from the date of service of the application and be served on the applicant within 15 days from the date of filing of the reply and on **Mulindwa George William vs Kisubika Joseph CA No. 12 of 2014**, in which the supreme court stated that, a litigant who relies on the provisions of Article 126(2)(e) must satisfy the Court that in the circumstances of the particular case before the court it was not desirable to pay undue regard to a relevant technicality,"* she insisted that the Respondent did not move court to allow him an extension of time to file or validate the reply out of time therefore, and yet Order 51 rules 3 and 6 of the Civil Procedure Rules provides for circumstances where limited time has been fixed for doing any act or taking any proceedings under the CPR, can be extended with leave of court. She argued that the Respondent has not shown sufficient cause for court to

exercise its discretion to allow the reply filed out of time and refuted the claim that, the Respondent was diagnosed with Covid 19, because he did not prove it. She argued that, the Applicant filed an affidavit of service on 10/03/2021 and a copy of the same is attached on the record.

### DECISION ON PRELIMINARY OBJECTION

After carefully considering both Counsel's submissions, on the Preliminary point, the Notice of Motion and the affidavits in support and in opposition of and in rejoinder, to the application, it was established that the contention of Counsel for the Applicant, is whether the Affidavit in reply is competent before this Court, having been filed outside the time prescribed by law?

Order 12 rule 3(2) of the Civil Procedure Rules(CPR) provides that, service of an interlocutory application on to the opposite party shall be made within 15 days from the filing of an application and a reply to the application by the opposite party shall be filed within 15 days from the date of service of the application and be served on the applicant fifteen days from the the date of filling of the reply. **Fredrick James Jjunju & Anor vs Madhvani Group Limited Misc. Application No. 688 of 2015 (Arising from Civil Suit No. 508/2014**, settled the position of the law regarding service of Applications whether by Chamber Summons, Notices of motion or Hearing Notices as follows:

*"... the position of the law is that Applications, whether by Chamber Summons or Notices of Motion and or Hearing Notices, are by law required to be served following after the manner of the procedure adopted for service of summons under Order 5 r.1 CPR. This position was taken in the case of Amdan Khan vs Stanbic Bank (U) ltd HCMA 900/2013, in which this court followed the supreme Court decision in Kanyabwera vs Tumwebwa[2005] 2 EA 86 where, at page 94 of the judgment, Oder JSC(R.I.P) held as follows: "What the rule stipulates about service of summons in*

*J. M. Mwe Mwe*

*my opinion applies equally to service of hearing notices.* [underlined for emphasis.

Order 5 r. 2 of the CPR, provides as follows:

2) *"Service of summons issued under sub rule (1) of this rule shall be affected within twenty-one days from the date of issue; except that the time may be extended on application to court, made within fifteen days after the expiration of the twenty-one days showing sufficient reasons for the extension."*

The Applicant contended that, whereas the Respondent was served on 22/02/2021, he only filed his reply on 12/04/2021, which was outside the time prescribed by law . However, when we perused the record, we established that the Affidavit of service which the Applicant attached as evidence of service, bears an illegible stamp which was purportedly appended by the Respondent's Lawyers on the first page of the notice of motion as acknowledgement of service. We were therefore unable to concisely determine whether the Respondent was actually served with the Notice of motion as alleged by Counsel for the Applicant.

In the circumstances, even if we do not associate ourselves with the Respondent's explanation for his late reply and it is the legal position that rules of procedure must be complied with, the Applicant affidavit of service as already discussed was not sufficient to show that, the Respondent was effectively served. We are also persuaded by Justice Mubiru in **Lam-Lagolo VS Muni University** (Misc. Civil Cause No. 007 of 2016) [2017] UGHCCD 85, that "... Whereas a Written statement of Defence presents allegations of facts the defendant will reply on, an affidavit in reply represents evidence on oath. Affidavits are a way of giving evidence to Court other than by giving oral evidence. they are intended to allow a case to run more quickly and efficiently as all parties know what evidence is before court. Consequently, time constraints applied to defences maybe misplaced when applied to affidavits..."



His holding was further to the effect that, an Affidavit in reply being evidence ought to be filed onto the opposite party within reasonable time before the hearing date to allow the party to respond to it, therefore it is not fatal to exercise some level of flexibility and discretion as provided under Article 126(2)(e) in circumstances where it will not prejudice the opposite party.

As already stated above, we were unable to ascertain that, the Respondent was served because the purported receiving stamp is illegible. We are however certain that, the Applicant on the other had received the reply before the hearing of the application and even filed a rejoinder. In the circumstances, we find no merit in the preliminary objection because there is no prejudice suffered by the Applicant. It is therefore overruled.

#### **Respondent's Preliminary Objection**

Counsel for the Respondent also raised a preliminary point of law to the effect that, the deponent of the affidavits in support of the Application dated 18/02/2021 and in rejoinder, sworn by a one Sabano Mercy Pabire, was incompetent because she lacked authority from the Applicant Company to depone it on its behalf. Counsel contended that, there was no evidence on the record to show that Sabano Mercy Pabire, was authorised to swear the Affidavit as provided under Order 3 rule 1 of the Civil Procedure Rules SI71-1, which provides that any appearance or act in any Court may be done by a person authorised to act on behalf of another. He also relied on **Owori Media (U) Limited & another vs. Eco Bank Uganda Limited (Misc. Application No.1105 of 2014)**, which cited **Makerere University vs Mark Education Institute & Ors, (HCCS No. 378 of 1998)**, where it was held that; "An affidavit is defective by reason of being sworn on behalf of another without showing that the deponent has the authority of the other".



Counsel quoted paragraph 1 of Sabano's affidavit, as follows: *"I am a female adult Uganda (sic) of sound mind and an Advocate of the High Court well versed with the facts in this matter and depone this affidavit in that capacity..."* and contended that, she does not explain how she obtained authority to depone the affidavit on behalf of the Applicant Company nor did she attach the said authority to the affidavit. It was his submission that, the circumstances under which an Advocate's affidavit can be accepted were discussed by Justice Madrama in **Standard Chartered Bank Uganda Limited vs Mwesigwa Godfrey Philip** (Misc. Application No. 477 of 2012), where he held that;

*"... an Advocate is entitled to make an affidavit in support of application as may be enabled in Order 19 Rule 3 of the Civil Procedure Rules Cap 71. All the Advocate needs is to indicate is that he has instructions or that he or she is handling the matter as an advocate having conduct ...".*

He insisted that, from the reading of the affidavit in support of this application and that in rejoinder both sworn by Sabano Mercy Pabire there is nothing to indicate that she received authority to swear them on behalf of the Applicant Company. According to him, there is no nexus between the deponent and the Applicant Company. He insisted that, she has no powers of attorney neither is she an authorized agent or an advocate with instructions or personal conduct to depone such affidavits on behalf of the Applicant Company. Therefore, the said affidavits purportedly sworn by Sabano Mercy Pabire, on behalf of the Applicant Company should be struck out for being inherently defective for want of authority and this Application should be dismissed with costs.

In reply Counsel for the Applicant, in rejoinder submitted that Sabano Pabire clearly states that she is an advocate in M/s Nakiranda & Co Advocates, a firm retained by the Applicant to handle this case and is thus fully aware of the facts of the case. According to her, Sabano depones on matters relating to the law

relating to review of Judgements and filing of documents outside the legal timelines, which matters are within her knowledge and belief. She argued that Order 19 rule 3(1) provides that, affidavits shall be confined to facts in one's own knowledge to prove. She relied on **Ham Enterprises Ltd & Others vs Diamond Trust bank ganda Ltd & Another** HCMISc. ApplN No. 654/2020.

## **RESOLUTION OF PRELIMINARY POINT OF LAW**

### **Whether the Affidavit in support of the Application is competent?**

The gist of the objection as we understand it is that, Ms. Sabano Mercy Pabire who swore the Affidavit in support of this application did not adduce any evidence to show that she had authority to depose it.

It is trite that an Affidavit is a statement in writing, made on oath or affirmation. It basically contains matters which the deponent knows or believes to be true, and which are the basis for determining questions of facts.

Order 19 rule 3(1) provides the scope of affidavits as follows:

***(1) Affidavits shall be confined to such facts as the deponent is able on his or her own knowledge to prove, except on interlocutory applications on which statements of his or her belief may be admitted, provided grounds thereof are stated.***

In the Affidavit in support of the instant Application, Sabano Mercy Pabire states that, her address is C/o Nakiranda & Co Advocates , Kisozi Complex. In paragraph 1 of the Affidavit she states that;

***"1. That I am a female adult Ugandan of sound mind and an advocate of the High Court of Uganda well conversant with the facts of this matter and depone this affidavit in that capacity.***



The fact that she is an Advocate, leaves no doubt in our minds that, she practices law in the law firm of M/s Nakiranda and Co Advocates, which has instructions to argue this application. It is our considered opinion that, the law firm was therefore, authorized to appear, plead or act for the Applicant in any proceedings or legal matters and by implication all the law firms' officers(lawyers) were by virtue of these instructions, ceased with the authority to act for and on behalf of the Applicant in any legal matter. Therefore, the law firm and its officers are duly appointed to act for and on behalf of the Applicant Company.

Order 3 rule 1 provides that:

*"Any application to or appearance or act in any court required or authorized by the law to be made or done by a party in such court may except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his or recognized agent, an advocate duly appointed to act on his her behalf, (emphasis ours), except that any such appearance shall if the court so directs be made by the party in person."*

Therefore, as an officer of the firm which had instructions to represent the Applicant Ms. Sabano Pabire was dressed with authority to represent the Applicant and by implication she was authorized to swear an Affidavit on behalf of the Applicant.

A perusal of the affidavit indicates that, its substance and content substantially relate to the grounds for this application for this Court to review its award. There is no evidence on the record to indicate that Sabano Mercy Pabire is counsel in personal conduct of this application, which would amount to a violation of Regulation 9 of Advocates (Professional Conduct) Regulations, which prohibits Advocates from being involved in clients cases. She therefore was within Order 3 rule 1 supra.

In the circumstances, the affidavit is competent before this court. The Preliminary objection is therefore, disallowed.

### SUBMISSIONS THE SUBSTANCE OF THE APPLICATION

Whether the application for review of the award in LDA. No. 39 of 2019 should be allowed.

It was the submission of Counsel for the Applicant, that an Application for review is governed by Section 82 of the civil Procedure Act Cap 71 and Order 46, Rule 1,2 and 8 of the Civil Procedure Rules SI. 71-1. she also cited **Al. Shefi Investment Group LLC vs Ahamed Darwich Dagher and another (Land Div)** M.A.No. 901 of 2017, which relied on *Re-Nakivubo Chemist (u) Ltd (1979) HCB 12*, where Manyindo J, as he then was, held that the three cases in which a review of a judgement or orders is allowed are those of:

- a) Discovery of new and important matters of evidence previously overlooked by excusable misfortune.
- b) Some mistake apparent on the face of record.
- c) For any other sufficient reasons, but the expression "sufficient"
- d) Should be read as meaning sufficiently analogous to (a) and (b) above.

According to Counsel, "error apparent on the face of record", was expounded upon in *Mulla The code of Civil Procedure (18<sup>th</sup> Ed. Vol. 1 at page 1147*. as follows; "*where a statement appears in the judgement of a court that a particular thing happened or did not happen before it, it ought not ordinarily to be permitted to be challenged by a party unless both parties to the litigation agree that the statement is wrong or the court itself admits that the statement is erroneous. In such circumstances, the remedy available is review.*" She also relied on *Attorney General & Ors vs. Boniface*

The block contains several handwritten signatures and initials in black ink. On the left, there are two distinct initials, possibly 'JF'. In the center, there is a signature that appears to be 'Omar'. To the right of 'Omar' is another signature that looks like 'Dukun'. Below these, there are more initials, including what looks like 'HJ' and '13'.

**Byanyima HCMA No.1789 of 2000 and MK Creditor Limited vs Owara Patrick H.C.M.A. (Comm) No. 143 of 2015**, for the legal proposition, that the error must be self-evident; not one that has to be detected by process of reasoning, it must be part of the record, must be visible, it must be a patent, manifest and self-evident error which does not require elaborate discussion of evidence or argument to establish.

She argued that it was the evidence of in the Affidavit in support that, Court in its ruling found that the Applicant did not file submissions in response to the Respondent's preliminary objections, yet the said submissions were filed on 22/09/2020 and served on the Respondent's advocates on the same day. She attached the same to the Affidavit as **Annexure "B."** She also contended that, Court in the same ruling stated that, the record did not have an authentic award by the Labour Officer, yet after realising that she sent an unsigned and undated award to the Industrial court, she wrote to the Registrar on 21/10/2020, forwarding what she referred to as "a certified copy of the ruling which she delivered on 4/10/2019 . Counsel contended that, the Applicant did not express any objection to the said ruling as it was not different from the unsigned one in material particular. Therefore, the court's ruling and award which was made without consideration of the Applicant's submissions and the Labour Officer's ruling constituted errors apparent on the face of record and this amounts to sufficient grounds for review. She contended further that, it would be an injustice to allow the Applicant's Appeal to collapse on account of the Labour Officer, who deliberately forwarded to this court an unsigned ruling. In her view, this was sufficient reason to warrant review of the decision of court, setting aside the judgement and orders of this court and the hearing and determination of the Applicant's appeal No. 39 of 2019 on merit. It was her submission that, in the alternative but without prejudice, if court is inclined to maintain its position that, the Labour Officer's unsigned award was unauthentic, Court should order that,

Labour Claim No. 353 of 2018 is tried again before an independent Labour Officer, because an unsigned and unauthentic ruling cannot be authenticated by the same Labour Officer who vehemently denied authoring it, yet she is the very person who forwarded it to Court. It was her prayer that, the unsigned ruling which was forwarded by the Labour Officer and later denounced by herself should be declared null and void and the Application and prayers made thereunder are allowed with costs to the Applicant.

In reply, Counsel for the Respondent opposed the Application and stated that, when Labour Dispute Appeal No. 39 of 2019 came up for hearing, the Respondent's Counsel raised a preliminary point of the law to the effect that, the ruling which constituted part of the record of Appeal was unsigned, undated, and unsealed a fact which the Applicant does not deny. The parties addressed the court on the preliminary point of law and the Court upheld the said preliminary point of law in its ruling delivered on 29<sup>th</sup> day of January 2021, thereby striking off LDA No. 39 of 2019 for being incurably defective. It is the said ruling which struck off the Labour Dispute Appeal No. 39 of 2019 which the Applicant intends to be reviewed by this Court. Counsel contended that, review is provided for under Section 82 of the Civil Procedure Act Cap 71, Laws of Uganda as follows:

*"Any person considering himself or herself aggrieved-*

- a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred or*
- b) by a decree or order from which no appeal is allowed by this Act, may apply for review of judgment to the Court which passed the decree or made the order and the court may make such order on the decree or order as it thinks fit".*

According to Counsel, Hon. Justice Musa Ssekaana defined Review in **Deox Tibeingana vs Vijay Reddy (Misc. Application No. 665 of 2019)** to mean "...

  
15

*reconsideration of order or decree by a Court which passed the order or decree. The law on review is set out in Section 82 of the Civil Procedure Act and Order 46 of the Civil Procedure Rules SI 71 – 1 and review can only be granted under the circumstances outlined in the law.*

He also cited Order 46 Rule 1 of the Civil Procedure Rules SI 71 – 1 provides for Review and argued that; application for review of a decree or order of a court, upon some ground other than the discovery of the new and important matter or evidence as is referred to in Rule 1 of this order, the existence of a clerical or arithmetic mistake or error apparent on the face of the decree, shall be made only to the Judge who passed the decree or made the order sought to be reviewed and this position is reiterated in **Jim Nganwa & others vs Gemtel Limited Labour Dispute (Misc. Application No. 99 of 2019)**, where this court stated that; it is trite law that for a court to be moved to review its own decree or order the Applicant must prove that ;

- a) He or she had discovered new and important matter of evidence which in spite of the exercise of due diligence was not within his knowledge at the time the Judgment or decree was entered.
- b) There is an error on the face of the record, the error must be so manifest and clear that no court would permit such an error on the record. A wrong application of the law or failure to apply the appropriate law is not an error on the face of record. (see **FX Mubuke vs UEB HCMA No. 98 of 2005**)
- c) That there is sufficient cause to warrant the review of the decree similar to discovery of the new evidence or error apparent on the record.”

He also relied on **Re Nakivubo Chemists (U) Ltd [1979] HCB 12**, in which it was held that *the expression sufficient cause should be read as meaning sufficiently of a kind of analogous to the discovery of new and important matter of evidence*





The Respondent's evidence under paragraph 7 of his affidavit in opposition to the application is that this Honourable court held that "we have carefully perused the record of appeal and found that indeed the award oattached thereto on pages 13 to 21, is unsigned, undated, and unsealed by the Labour Officer. It is trite that for a judgment or order to be considered authentic and binding, it must be signed by the Judge or quasi -judicial officer who delivered /made it. It must be sealed with the Court Seal or in the case of a quasi-judicial officer such as the Labour Officer with the stamp of the Labour Officer where it was made and it must bear the date on which it was handed down or made."

He argued further that, under paragraph 8 of the Respondent's affidavit in opposition , the Respondent states that the Applicant expressly admits under paragraph 5 of its Affidavit in support that the copy of the ruling which formed part of her appeal vide LDA No. 39 of 2019 was unsigned, undated and unsealed and it is an admitted fact that, the said appeal was a nullity and/or void abnitio and not an error /or mistake apparent on the face of the record necessitating review.

He submitted further that, it is the Respondent's evidence in paragraph 5, 6, 11, 13 and 14 of the affidavit in reply that, Labour Dispute Appeal No. 39 of 2019 cannot be subjected to review since the applicant does not satisfy any of the grounds for review.

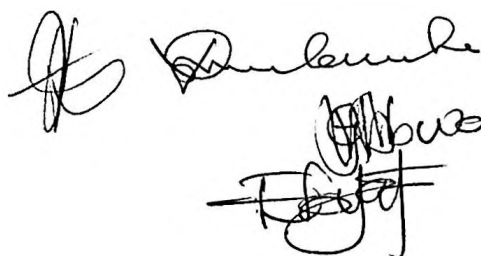
The applicant's prayers that, the decision and award made in the Labour Dispute No. 39 of 2019 be reinstated and an order that the Labour Complaint No. 353 of 2018 be referred to a different independent Labour Officer for rehearing were not envisioned by the law on review and are meant to mislead court into reinstating an appeal which is incurably defective on account of being founded on unsigned, undated and unsealed award/ruling which was even disowned by the Labour Officer in her letter dated 21<sup>st</sup> October 2020. He argued that the record of appeal

in Labour Dispute Appeal No. 39 of 2019 was filed by Counsel for the Applicant and the award on which the said LDA No. 39 of 2019 emanates and which forms part of the record of appeal is unsigned, undated and unsealed. In preparations of records of appeal, the Advocates/Counsel for the Appellants have the duty to ensure correctness of the record of appeal, which duty was abdicated in this matter by Counsel for the Applicant. He contended that after admitting that the it filed defective ruling/award, it was strange for the Applicant to turn around to put the blame on the Labour Officer. He insisted that there is no error on the face of the record as Counsel for the Applicant claims, because Court rightly struck out a an appeal which was based on an unauthentic ruling of the Labour officer.

In his view, mere error or wrong view is certainly no ground for review although it may be a ground for appeal. He relied on **Abdala Ramathan (Administrator of the late Noah Ramathan) vs Agony Swaib (Misc. Application No. 67 of 2016)**.

He submitted that, Order 46 Rule 3(1) of the Civil Procedure Rules SI 71-1 this Court has power to reject an application for review which does not have sufficient grounds for review. It provides that *"Where it appears to the Court that there is no sufficient ground for review, it shall dismiss the application."*

He contended that Application was an abuse of court process as defined by as defined by Hon. Justice Musa Ssekaana defined abuse of Court process to in **Deox Tibiengana vs Vijay Reddy (Misc. Application No. 665 of 2019)** where he cited the definition in Black's Dictionary (6<sup>th</sup> Edition) as *"A malicious abuse pf the legal process which occurs when a party employs it to some unlawful object, not the purpose which it is intended by law to effect, in other words a perversion of it. and in Seraki vs Katoye (1992) 9 NWLR (pt 264) 156 at 188*. He insisted that the application was an abuse of court process, intended to reinstate an incompetent



appeal and to frustrate the execution of the decree for the Labour Officer's award, therefore, it should be dismissed with costs to the Respondent.

## DECISION OF COURT

Section 82 of the Civil Procedure Act cap 71 provides that, "... any person aggrieved by a decree or order from which an appeal is allowed but no appeal has been preferred or by a decree or order in which no appeal is allowed may apply for review of judgment to the Court which passed the decree or order, and the Court may make such order on the decree or order as it thinks fit.

Order 46 rule 1(b) of the Civil procedure Rules also provides that any person considering himself or herself aggrieved;

a) ...

b) *By decree or order from which no appeal is hereby allowed and who from discovery of new and important matter or evidence which after the exercise of due diligence (emphasis ours) was not within his or her knowledge or could not be produced by him or her at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order against him or her, may apply for a review of judgment to the court which passed the decree or order for review.*

It is trite law that for a court to be moved to review its own decree or order the Applicant must prove that:

a) *He or she had discovered new and important matter of evidence which in spite of the exercise of due diligence was not within his knowledge at the time the judgment or decree was entered.*

- b) *There is an error on the face of the record, the error must be manifest and clear and no court would remit such an error to remain on the record such as a wrong application of the law or failure to apply the appropriate law (see FX Mubuuke vs UEB HCMA No. 98/2005.*
- c) *That there is sufficient cause to warrant the review of the decree similar to discovery of new evidence or an error apparent on the record.*

The Applicant seeks a review of this court's award in LDA No 39 of 2019 on the grounds that the court omitted to consider its submission in response to a Preliminary point of law raised by the Respondent contesting the Validity of the Appeal because it was based on an unauthentic unsigned, unstamped and undated award of the labour officer, leading this Court to setting Appeal aside.

It is not in dispute that the record of Appeal which was filed in this court on 13/03/2020 bore an unsigned, unstamped and unsealed award of the labour officer.

It is not in dispute that when the Respondent raised a preliminary objection to that effect, on 1/10/2020, M/S Kamanzi Counsel for the Respondent wrote to the Labour officer contesting the validity of an unsigned, unstamped and undated award which she forwarded to the Industrial Court as part of the record of proceedings in Labour Dispute Appeal No 39 of 2019. It is not in dispute that the labour officer in her letter dated 21/10/2020 in response to Counsel for the Respondent, strongly refuted having authored the contested unsigned, unstamped and undated award. The Labour officer went further to point out the discrepancies in the contested award and forwarded a certified copy of the correct award she said she delivered on 4/10/2019. It is also not in dispute that on 4/11/2020, Counsel for the Applicant wrote to the Registrar of this Court seeking her intervention in this matter and particularly refuting allegations that the



Applicant had forged the contested unsigned, unsealed and undated award which formed part of the record of Appeal in LDA No. 39/2019.

In its finding this Court established that, the Appeal was based on an unauthentic award of the Labour office, and it emphasised that, for a Judgement to be considered authentic and binding it must be signed by the Judge or quasi-Judicial officer who delivered or pronounced it as provided under Order 21 rule 3 of the Civil procedure rules SI 71-1.

It is a fact that the labour officer's award that, was part of the record of Appeal in LDA No 39 of 2019 was unsigned, unsealed and undated. It is a fact that the Labour officer denied ever issuing the said was unsigned, unsealed and undated award. In fact, she later forwarded what she considered to be the correct award which she to delivered on 4/10/2019. Counsel for the Applicant was alive to this fact when she submitted that, if court was inclined to maintain its position that the Labour Officer's unsigned, unsealed and undated award was unauthentic, it should order that, Labour Claim No. 353 of 2018 is tried again before an independent Labour Officer, **because an unsigned and unauthentic ruling on the record cannot be authenticated by the same Labour Officer...**(emphasis ours) who vehemently denied authoring it, yet she is the very person who forwarded it to this Court.

Therefore, even if it were the position that this court arrived at its decision without considering the Appellants submission in response to the preliminary objection regarding the authenticity of the contested award by the Labour officer, the fact remains that, having been unsigned, unstamped and undated, the award was unauthentic and as stated by both Counsel the purported correct version which she forwarded later could not authenticate it.

Having said this, Section 94 (1) and (3) of the Employment Act provide that,

*"... 1) A party who is dissatisfied with the decision of a labour officer on a complaint made under this Act may appeal to Industrial Court in accordance with this section.*

*3) The Industrial Court shall have power to confirm, modify or overturn any decision from which an appeal is taken and the decision of the Industrial Court shall be final...."*

The Court stated that. *"...According to Regulation 45(2) of the Employment Regulations 2011,*

*"Upon receipt of notice of appeal with the registrar within fourteen days, the labour officer shall furnish the industrial Court with information concerning the complaint, the parties involved, the hearing proceedings, the decision of the labour officer and the matter of appeal."*

*Sub regulation 3 of the same regulation makes it a requirement for the labour officer to present this information to the Industrial Court within 21 days. Therefore, the record of appeal is prepared and forwarded to the Industrial Court by the Labour officer who adjudicated the matter and handed down the award/Decision and not either of the parties to the claim. It is not in dispute that by letter dated 15/01/2020, the labour officer Ms. Irene Nabbumba, forwarded a copy of the Record of proceedings and relevant documents relating to the matter on which this appeal is based, to the Registrar of this Court. Although the Decision she attached on the record bears her name, "Irene Nabbumba", it is unsigned, undated and does not bear the stamp of the Labour office. The Judgement is therefore not authentic..."*

Therefore, having as discussed above it is the responsibility of the Labour Officer to prepare and submit the record of proceedings to the labour officer and not Counsel. In the circumstances this court was correct to set aside the Appela which was based on an unauthentic award.



However in given of the provisions of section 94(3), the Appellant/ Applicant had no other recourse to Justice because the Industrial court is the final court in an appeal arising out of the Labour Officers decision.

Therefore, even if there was no error apparent on the record to warrant a review, of the the Appeal based on an unauthentic award which was denied by the same Labour officer who submitted it to the Industrial Court as part of the record of proceedings in LDA no. 39 of 2019, and even if it is not strictly ground for review as provided under section 82 of the CPA, it was an omission on the part of the Court not to provide an alternative remedy to the innocent Appellant/Applicant after setting aside the Appeal, given that this Court is the final court of Appeal.

Therefore, in the interest of substantive Justice as provide and in accordance with Article 126(2)(e) and for completeness, the authenticity of the Labour Officer's award having been rightly questioned and cause the Appeal on which was based to be rightly set aside, It is our considered opinion, that, Labour Complaint No. 353 of 2018, should be referred to an independent labour officer for adjudication.

In the circumstances the ruling to set aside the Appeal in LDA No. 39 of 2019 is reviewed to include a reference of the Labour complaint No. 353 of 2018 to an independent Labour officer for proper adjudication. No order as to costs is made.

delivered and signed by:

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


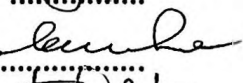
**1.MS. HARRIET NGANZI MUGAMBWA**

**2. MR. FX MUBUUKU**

**3.MR. FIDEL EBYAU**

**DATE 4/03/2022**

  
.....

  
.....  
  
.....  
  
.....