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**THE REPUBLIC OF UGANDA**

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

**LABOUR DISPUTE: MISCELLANEOUS APPLICATION No.065 OF 2021**

**ARISING FROM LABOUR DISPUTE APPEAL NO. 23/2020**

**BAGANDA JULIUS WILLIAM & 25 OTHERS ..... APPLICANTS**

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**VERSUS**

**MAYUGE SUGAR INDUSTRIES LTD .....RESPONDENT**

**BEFORE:**

**I. THE HON. JUDGE, LINDA LILLIAN TUMUSHIME MUGISHA**

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**PANELISTS**

**1. MS. ROSE GIDONGO**

**2. MS. ACIRO BEATRICE OKENY**

**3. MR. JACK RWOMUSHANA REUBEN**

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**RULING**

This application is brought under Section 98 of the Civil Procedure Act, Order 43 Rule (22)(1)(b) and Order 52 Rules (1) and (3) of the Civil Procedure Rules as amended, seeking orders that:

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(a) Leave be granted to the Applicants to adduce fresh evidence at the hearing of the appeal.

b)Costs of the application be provided for.

**The Applicants case:**

The Applicants case, as contained in the notice of motion and supporting Affidavit deposed  
30 by Baganda Julius William, one of the Applicants, and is that: The Applicants filed Labour  
Dispute No. 2 of 2019 before the Labour Officer Mayuge District, against the  
Respondent. The Labour Officer summoned all parties to appear in his office and after the  
Parties introduced themselves to him, he informed them that he was going to resolve the  
matter by adjudication. According to the Applicant, on 24 /09/2019, when the matter came  
35 up for the first time the Labour Officer decided to opt for Arbitration. However, the  
Respondent and or its representatives did not appear on the day scheduled for the hearing  
and no explanation was rendered for their absence. The matter was rescheduled and the  
Respondent was accordingly served with the hearing notices. Even then the Respondent  
didn't appear leading to the Labour Officer proceeding exparte and delivering his Award.  
40 The Applicants attached the summons for the proceedings of 24/09/2019 marked "A", as  
fresh Evidence. According to them their lawyers advised that, fresh evidence is not  
admitted unless leave is granted, therefore in the interest of Justice and equity, this  
application should be allowed.

**The Respondent's Case**

45 The Respondent's case as set out in the Affidavit in reply deposed by Semei Samuel, the  
Respondent's Legal Officer, is that; the Labour Officer invited the parties for Mediation

Sessions which he conducted on 24/09/2019 after which, he adjourned because the parties failed to reach a settlement. He however, did not inform them of his alleged decision to arbitrate the matter and the parties did not consent to it as is required by law. The  
50 Respondent denied ever being served with any hearing notices for the alleged arbitration hearing as alleged.

She contended that, the Application is only intended to circumvent the decision of this Court in MA No. 158/2020 so as to directly review the said decision and in the in the interest of Justice, this Application should be rejected.

## 55 **REPRESENTATION**

The Applicant is represented by Namusabi Jalia of M/s Ouma & Co. Advocates, Jinja and the Respondent by Eric Eloket Holding brief for Henry Nyegenye of M/s Arcadia Advocates, Kampala.

## **DECISION OF COURT**

60 We have carefully perused the Notice of Motion, the affidavits in support and opposition and the submissions of both Counsel and find as follows:

**Whether leave to adduce Fresh Evidence on appeal should be granted to the Applicants?**

**Section 98 of the Civil Procedure Act Cap 71** is to the effect that;

65    *"Nothing in this Act shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court."*

Further to add; **Order 43 rule 22(1) of the Civil Procedure Rules as amended** is to the effect that;

70        *"(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the High Court; but if—*

*(a) the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted; or*

75        *(b) the High Court requires any document to be produced of any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the High Court may allow the evidence or document to be produced, or witness to be examined."*

80    The Appellate Court can therefore allow such an application if it is satisfied that the lower Court denied the Applicant leave to adduce additional evidence and this evidence is material to enable the Appellate Court to completely resolve the case.

In light of the decisions in **Bismillah Trading Limited vs Falcom Estates Limited CACA No. 328/2018** and **Makubuya Enock William t/a Polly Post vs Bulam Muwanga Kibirige t/a Kowloon Garment Industry, Civil Application No. 133/2014** which are to the effect that: an Appellate Court may exercise its discretion to admit additional evidence  
85    only in exceptional circumstances, which may include the following:

- i. Discovery of new and important matters of evidence which, after the exercise of due diligence, was not within the knowledge of, or could not have been produced at the time of the suit or petition by, the party seeking to adduce the additional evidence;
- ii. It must be evidence relevant to the issues;
- 90 iii. It must be evidence which is credible in the sense that it is capable of belief;
- iv. The evidence must be such that, if given, it would probably have influence on the result of the case, although it need not be decisive;
- v. The affidavit in support of an application to admit additional evidence should have attached to it, proof of the evidence sought to be given;
- 95 vi. The application to admit additional evidence must be brought without undue delay.”

We have not found anything on the record on the lower court in the instant application, to indicate that, that the applicants applied for and were denied leave to adduce additional evidence by the labour officer or that they discovered any new matter that merits the grant of this application. In any case, in **Mayuge Sugar Industries limited VS Baganda Julius William & 25 others MA 158/2020**, established that; the Labour officer erred when he chose to arbitrate or adjudicate the matter yet he had initially entertained it as a mediation and it granted the Applicants leave to file their Appeal out of time.

We also found no evidence on the record to indicate that, the Applicants at any point during the proceedings before the Court applied to the labour officer to adduce any additional evidence and it was denied. A perusal of the Certificate of Transcription and Translation

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Ref CLCSDC/L30/29/11/2021 attached to the Applicants written submissions, clearly shows that, on 24<sup>th</sup>/09/2019, the parties participated in a mediation and there nothing to indicate that, the Applicants applied to adduce additional evidence and it was denied. This Court having resolved in MA 158/2020, that indeed the labour officer conducted a mediation and not an arbitration or adjudication, we found no reason to warrant the adducing of the summons for the proceedings of 24/09/2019 as additional evidence and as already discussed, the Applicants have not demonstrated that, relevance of the evidence or the discovery of any other new and important evidence which if not considered by the Court would prejudice them in any way.

115 In the circumstances, we find no merit in this Application.

Consequently, it fails. No order as to costs is made.

Delivered and signed by:

**THE HON. JUDGE, LINDA LILLIAN TUMUSHIME MUGISHA**

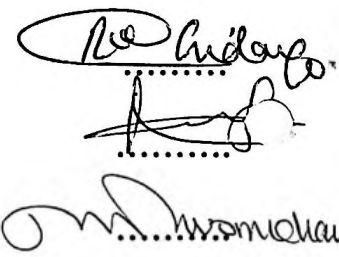


**PANELISTS**

120 **1. MS. ROSE GIDONGO**

**2. MS. ACIRO BEATRICE OKENY**

**3. MR. JACK RWOMUSHANA REUBEN**



**DATE: 27/10/2022**