



**THE REPUBLIC OF UGANDA  
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA  
MISCELLANEOUS APPLICATION NO. 095 OF 2023  
ARISING FROM LABOUR DISPUTE NO. MGLSD/LC/414/2021)**

**KAMPALA CAPITAL CITY AUTHORITY:.....APPLICANT**

**VERSUS**

**BUWUNGA RONALD :.....RESPONDENT**

**Before:**

The Hon. Mr. Justice Anthony Wabwire Musana:

**Panelists:**

1. Hon. Adrine Namara,
2. Hon. Susan Nabirye &
3. Hon. Michael Matovu.

**Representation:**

1. *Mr. Denis Byaruhanga of the Directorate of Legal Affairs, Kampala Capital City Authority for the Applicant.*
2. *Mr. Isaac Matovu of Kirumira & Co Advocates for the Respondent.*

**RULING**

**Introduction**

- [1] This ruling concerns an omnibus application seeking enlargement of time to serve a notice of appeal, validation of a notice and memorandum of appeal, leave to appeal on matters of fact and law forming part of the award by Mr. Apollo Onzoma, Labour Officer in Labour Dispute complaints No. MGLSD/LC/414/2021 delivered on 5<sup>th</sup> December 2022. It was brought under Section 33 of the Judicature Act Cap.13, Section 98 of the Civil Procedure Act Cap 71(*from now CPA*), and Order 52 r.1, 2 and 3 of the Civil Procedure Rules S.I 71-1(*from now CPR*).
- [2] In their supporting affidavits, Mr. Micheal Mukwana, Acting Manager of Litigation Services, and Mr. Jonathan Muhumuza, Legal Clerk, deposed to the


Applicant, having been aggrieved by the Labour Officer's decision. They further deposed to having been prevented by sufficient cause from filing and serving the notice of appeal, to having requested for a certified record of proceedings and award and the same not having been availed to date and to the interest of justice favouring a grant of the orders sought.

- [3] The application was not unopposed. In his affidavit in reply, the Respondent was deposed to an award being made on the 5<sup>th</sup> of December 2022 following his complaint of unfair and constructive dismissal. The Registrar of the Industrial Court sought a record of proceedings on 10<sup>th</sup> March 2023, which was served on all parties on 31<sup>st</sup> May 2023. The Appellant's notice of appeal was filed on 27<sup>th</sup> June 2023 in response to the notice to show cause dated 7<sup>th</sup> June 2023. On the advice of Counsel, he deposed that the intended appeal is frivolous, devoid of merit, and afterthought intended to delay justice.
- [4] In rejoinder, Mr. Mukwana denied receiving the letter forwarding the record of proceedings or any response to the request for a certified record of proceedings. He averred that filing a fresh notice of appeal was on the advice of Court Registry staff after failing to get a copy of the record. He was deposed to sufficient cause being demonstrated.
- [5] When the matter came up for hearing before this Court on the 31<sup>st</sup> of August 2023, we directed the parties to file written submissions. The Court is grateful for the brief submissions.

**Issues:**

- [6] Counsel for the Applicant framed three issues for determination viz:
- (i) *Whether the Applicant has sufficient grounds for enlargement of time?*
  - (ii) *Whether the Applicant has sufficient grounds for leave to appeal?*
  - (iii) *What remedies are available?*
- [7] We propose to dispose of the issues in the manner they were raised, starting with some preliminary points raised by Mr. Matovu for the Respondent.

**First preliminary matter**

- [8] By letter dated 27<sup>th</sup> September 2023, addressed to the Presiding Judge in this matter, Counsel for the Respondent suggested that the Respondent had been prejudiced by the Applicant filing an affidavit in rejoinder because it was not canvassed in the Respondent's submissions, alternatively, that the Court strikes out the affidavit in rejoinder.
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- [9] It is uncustomary for Counsel to write to the presiding Judicial Officer. As a rule of practice, all communication in a file is routed to the Registrar of the Court. Be that as it may, we will consider the complaint.
- [10] The filing directions were for the Applicant to file an affidavit in rejoinder with written submissions on or before the 8<sup>th</sup> of September 2023. The affidavit in rejoinder was filed on the 20<sup>th</sup> of September 2023, after the Respondent had filed his written submissions. He did not, therefore, have an opportunity to address the matters raised therein to his prejudice. Filing affidavits outside timelines given by the Court is not encouraged for the precise circumstances we now find ourselves in. It is the mischief that filing directions are intended to cure. The Respondent makes a valid complaint that would merit sanction. The affidavit in rejoinder sworn by Mr. Michael Mukwana on the 12<sup>th</sup> day of September 2023 and filed in the Registry of this Court on the 20<sup>th</sup> day of September 2023 is out of time. It was filed without leave and is accordingly struck out.

#### Second preliminary point


- [11] The second complaint is that the affidavits in support of the application contain falsehoods. Counsel for the Applicant cited the case of **Mugume Ben and Another v Akankwasa H.C.M.A NO.04 of 2008** in support of the proposition that inconsistencies in affidavits cannot be ignored, however minor. The law relating to falsehoods in affidavits was expressed in **Rutuku Francis and 5 Others v Eliphas Ndamagye**,<sup>1</sup> where Barishaki J. A observed that false affidavits cannot support an application. His Lordship also observed that the Supreme Court of Uganda had, in the case of **Colonel Besigye Kizza v Museveni Yoweri & EC Election Petition No. 1 of 2001**, adopted a liberal approach in dealing with affidavits that contained falsehoods opting to sever the false portions of the affidavit. The Court of Appeal was bound, as are we, by the decision of the Supreme Court.
- [12] Regarding the affidavits in support of the application, the Respondent contends that paragraph 8 is false as the notice of appeal and letter requesting proceedings cannot be found on the Court record. It is also suggested that paragraph 7 of the affidavit in support makes another assertion that the Applicant is yet to receive a certified copy of the record of proceedings. Yet, annexure O to the affidavit in reply shows that the lower Court record was served on 31<sup>st</sup> May 2023. We think it is entirely plausible that the notice of appeal may have been mislaid because it is required to be endorsed by the Registrar of this Court. There is, however, a letter ref. DLA/KCCA/1001/05 dated 8<sup>th</sup> December 2022, requesting a certified copy of proceedings. This letter,

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<sup>1</sup> C.A.Civ.App No. 111 of 2017

which would be served on Counsel for the Respondent, was addressed to the Labour Officer, and copied to the Registrar of this Court. It was served on the Labour Officer on 9<sup>th</sup> December 2022 and filed on the record on 22<sup>nd</sup> December 2022. In this regard, we are persuaded that the Applicant filed a letter requesting proceedings, and the notice of appeal may have been mislaid in the precincts of this Court. We cannot accept the Respondent's contention of falsehood and would decline to sever paragraphs 7 and 8 of the affidavit in support. We will proceed to dispose of the application in the main.

***Issue One: Whether the Applicant has sufficient grounds for enlargement of time?***

- [13] Counsel for the Applicant cited Rule 6 of the Labour Disputes (Arbitration and Settlement) (Industrial Court Procedure) Rules 2012 (*from now I.C Rules*), which provides for the extension of time when a party fails to file documents in the prescribed time. He also cited Section 96 of the Civil Procedure Act Cap.71 (*from now CPA*). On the authority of **Bishop Jacinto Kibuka v Uganda Catholic Lawyers Society & 2 Ors H.C.M.A 039 of 2018**, Counsel submitted that sufficient cause was defined as acting in a negligent manner or where a party had not been diligent. The case of **Nicholas Roussos v Gulam Hussein Virani and Another S.C.C.A No. 9 of 1993** was also cited for the proposition that a mistake of Counsel, though negligent, may be accepted as a sufficient cause.
- [14] Counsel argued that the Applicant had requested a record of proceedings but had not received the same to date and only obtained the same from the Industrial Court after the 31<sup>st</sup> of May 2023. The letter forwarding proceedings was not served on the Applicant. It was suggested that the original notice of appeal could not be found in the Court Registry, hence the filing of a fresh notice. Counsel argued that the intended appeal had a high chance of success on questions of constructive dismissal, unlawful dismissal, breach of bond agreement, and remedies. It was suggested that the Respondent violated the Uganda Public Standing Orders, the employment agreement, and the Employment Act by absconding from work and was subjected to disciplinary processes. There was an admission of abscondment, and the Labour Officer ignored this evidence. We were asked to allow the application.
- [15] On the authority of **Bugisu Cooperative Union Limited v Sabakaki LDMA 129 of 2022**, Counsel for the Respondent postulated sufficient cause to be mistakes by an advocate, ignorance of procedure, illness, lapses or dilatory conduct of counsel or a party. It was the Respondent's case that the Applicant did not raise any of the above grounds. The Applicant attributed the delay to the loss of the first notice of appeal filed on 9<sup>th</sup> December 2022, which was inconsistent with the letter seeking proceedings on the 22<sup>nd</sup> day of December 2022. The attachment of the draft notice of appeal was misleading and false. The second falsehood relates to the service of the record of proceedings, which had been
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served on the Applicant on 31st May 2023, and the application was filed on 7<sup>th</sup> June 2023. Based on the falsehoods, it was prayed that the application would fail.<sup>2</sup>

- [16] It was also argued that the lack of a certified record of proceedings was not an excuse for failure to file a notice of appeal. Counsel cited **Uganda Civil Aviation Authority vs. Ojiambo Samuel LDMA 193 of 2021** to support further the contention that the Applicant had not demonstrated sufficient cause.

### Analysis and Decision of the Court

- [17] There has been judicial concurrence on elements of sufficient or good cause, including mistakes by an advocate, ignorance of procedure, illness of a party, lapses, or dilatory conduct of counsel or the party.<sup>3</sup> In the case before us, it appears that a letter requesting proceedings was filed on 22<sup>nd</sup> December 2022. That a notice of appeal filed could not be found.
- [18] An appeal from a decision of a Labour Officer to this Court is commenced by a notice of appeal under Regulation 45(1) of the Employment Regulations S.1 61. 2011. The notice of appeal takes the form prescribed in the Seventeenth Schedule. That form contains the grounds of appeal. Therefore, unlike appeals to the Court of Appeal under Rule 66 of the Judicature (Court of Appeal Rules) Directions S.I 13-10, it is sufficient for a person aggrieved by the decision of a Labour Officer to commence an appeal with a notice of appeal without waiting for a certified copy of proceedings to frame the grounds of appeal. There is no requirement for the filing of a memorandum of appeal under the rules of procedure of the Industrial Court.<sup>4</sup>
- [19] In the present application, the Applicant filed its first notice of appeal, which appears to have been mislaid. It prepared a letter requesting proceedings and attributed the delay to not getting a certified copy of the proceedings. Given our observation in paragraph 17 above, it may well be said that there may have been a reference to the wrong law of procedure by preferring to await certified copies of proceedings to formulate grounds of appeal to be listed in a memorandum of appeal. In our view, that is far removed from the more straightforward task of filing a notice of appeal listing grounds of appeal in conformity with the Seventeenth Schedule to the Employment Regulations. In our view, there was a mistake of Counsel, and we find sufficient cause for extension of time has been established. We will return to this in our final directions.

<sup>2</sup> The Respondent cited *Mugumè Ben v Akankwasa Edward* H.C.M.A No. 04 of 2008

<sup>3</sup> Per Mubiru J in HCMA No. 0009 OF 2017 *Eriga Jos Perino vs. Vuzzi Azza Victor & 2 Ors*

<sup>4</sup> Per Wabwire J. et al in: *Royal Mabati Ltd vs Mandela Sulaiman* LDMA 122 of 2023

***Issue Two: Whether the Applicant has sufficient grounds for leave to appeal?***

- [20] The Applicant contended that the intended appeal has a high chance of success and raises serious issues of fact and law of great public importance requiring intervention of this Court. The draft memorandum of appeal listed four grounds of appeal, namely:
- (i) The Labour Officer erred in law and fact when he found that the Respondent was constructively dismissed by the Appellant.
  - (ii) The Labour officer erred in law and fact when he found that the Respondent was unlawfully dismissed by the Appellant without a fair hearing.
  - (iii) The Labour officer erred in law and fact when he found that the Respondent did not breach his bond agreement with the Appellant.
  - (iv) The Labour officer erred in law and fact when he found that the Respondent was entitled to a compensatory order for unfair termination, payment in lieu of notice, severance allowance, and salary arrears.
- [21] In a spirited rebuttal, Counsel for the Respondent argued that the grounds of appeal are devoid of merit. The Respondent was constructively dismissed and cited the case of **Waga Francis v Chief Administrative Officer of Maracha & Anor H.C.C.S No 0005 of 2016** to demonstrate the lack of merit. It was also argued that the Applicant was aware of the 2<sup>nd</sup> Bond Agreement when it granted the Respondent Study Leave and was estopped from alleging a breach of contract. Finally, it was contended that the Labour Officer was correct in granting compensatory orders.
- [22] Under **Section 94(2) of the Employment Act 2006**(*from now EA*), an appeal shall lie on a question of law, and with leave of the Industrial Court, on a question of fact forming part of the decision of the Labour Officer. The provision is reproduced in Rule 24 of the Labour Disputes (Arbitration and Settlement (Industrial Court Procedure) Rules 2012(*from now on, the LADASA Rules*). The import of these provisions is that an intending appellant must seek leave to appeal to a question of fact forming part of the decision. In **Uganda Civil Aviation Authority V Ojiambo**<sup>5</sup>, this Court observed that the threshold for a grant of leave to appeal is that the intending appellant must satisfy the Court that the question or questions of fact upon which they intend to anchor their appeal must have formed part of the decision of the Labour Officer and that they have a reason for seeking to make arguments on the question of fact. We

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<sup>5</sup> LDMA 193 of 2021

cited **Bureau Veritas Uganda Limited vs. Davlin Kamugisha**,<sup>6</sup> **Geogas SA vs. Tranno Gas Limited(the Baleares)** 1993 1 Lloyds Rep 215 at 228, **Action Aid Uganda v David Mbarekye Tibekinga**<sup>7</sup>, **The Aids Support Organisation (U) Ltd V Dr. Kenneth Mugisha**<sup>8</sup> and the case of the **Attorney General of Burundi and the Secretary-General EAC and Hon. Fred Mukasa Mbidde**<sup>9</sup> for the proposition that an error on a point of law occurs when a trial Court (i) misapprehends or misapplies a pertinent law or principle of law (ii) misapprehends the nature, quality, and substance of the evidence or (iii) draws wrong inferences from the proven facts. We concluded that issues or points of law relate to the interpretation and application of the law to the facts. In contrast, a question of fact relates to the findings because of the evaluation of evidence.

- [23] In the matter before us, we note the question of constructive dismissal in circumstances of study leave and a breach of a bond agreement. It was suggested to us by Counsel that there was a possible breach of the Uganda Government Standing Orders. In our view, while the more significant public importance was not immediately demonstrable in the Applicant's pleadings and submissions, these matters might require further judicial interrogation for which leave should be granted. Counsel for the Respondent rightly cited this Court's view in the **Uganda Civil Aviation Authority case** (supra) that the Court should ordinarily consider the whole substance of disputes. In terms of this particularly apt dicta, it would be helpful to all concerned that this intended appeal is heard on its merits. We are therefore inclined to grant leave to appeal on mixed law and facts.

### ***Issue three: Remedies***

- [24] We are fortified in granting this omnibus application for an extension of time to serve the notice of appeal, file the memorandum of appeal, and leave to appeal by the decision of the High Court in the case of **Eriga Jos Perino vs. Vuzzi Azza Victor & 2 Ors**<sup>10</sup> where Mubiru J. held that an indolent party may yet succeed in an application for extension of time if he were to show that there are serious questions to be tried. The nature of the subject matter of the dispute, the absence of any significant prejudice likely to be caused to the respondent, and the Court's constitutional obligation to administer substantive justice without undue regard to technicalities are good considerations for a grant of extension of time.

<sup>6</sup> Labour Dispute Miscellaneous Application No. 54 & 64 of 2017

<sup>7</sup> Labour Dispute Appeal No. 023 of 2016

<sup>8</sup> Labour Dispute Miscellaneous Application No. 38 of 2022

<sup>9</sup> Appeal No. 02 of 2019. See also **Simon Peter Ochieng & Anor v Attorney General of Uganda** Appeal No. 4 of 2015 (2015-2017) EACJR 509

<sup>10</sup> HCMA No. 0609 OF 2017.

[25] For the reasons elaborated above, this Court allows the application. For economy and optimal use of judicial resources, the Court issues the following directions:

- (i) The notice of appeal and memorandum of appeal shall be filed and served on the Respondent within 21 days of this ruling, together with a record of appeal. The Registrar of this Court shall cause the Appeal to be registered immediately upon the Applicant complying with this order.
- (ii) There shall be no order as to costs.

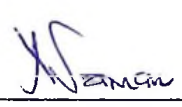
Signed in Chambers at Kampala this 20<sup>th</sup> day of November 2023.




Anthony Wabwire Musana,  
Judge, Industrial Court

The Panelists Agree:

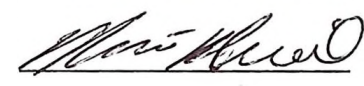
1. Ms. Adrine Namara
2. Ms. Suzan Nabirye
3. Mr. Michael Matovu



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20<sup>th</sup> November 2023  
9.40 a.m.

Appearances:

1. Applicant absent.
2. Respondent in Court.

Court Clerk: **Mr. Samuel Mukiza.**

**Court:** Ruling delivered in open Court.



Anthony Wabwire Musana,  
Judge, Industrial Court.