



THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
MISCELLANEOUS APPLICATION NO.001 of 2023

(Arising out of Labour Dispute Claim No. 023 of 2016 & HCT-CS 263/2008)

BAITAMWENE FREDA:.....APPLICANT
VERSUS

MUKWANO INDUSTRIES (U) LTD:..... RESPONDENT

BEFORE:

THE HON. MR. JUSTICE ANTHONY WABWIRE MUSANA

PANELISTS:

1. HON. JIMMY MUSIMBI,
2. HON. ROBINAH KAGOYE &
3. HON. CAN AMOS LAPENGA.

RULING

Introduction

- [1] Ms. Freda Baitamwene sought this Court's determination on an application for orders of reinstatement of Labour Dispute Appeal No. 23/2016. It was brought under Section 33 of the Judicature Act Cap.13(JA), Section 98 of the Civil Procedure Act Cap.71,(CPA) Order 9 Rule 23 and 52 rules 1, 2 and 3 of the Civil Procedure Rules S.I 71-1(CPR).
- [2] The applicant's affidavits are that she was prevented by sufficient cause from prosecuting the matter on 7th February 2022, when it was dismissed. She had sat outside the Court in compliance with COVID-19 protocol and was under a mistaken belief that her file would be called at noon, but it was called and dismissed at 9:30 am in her absence. She deposed to a mistake of Counsel which ought not to be visited on her.
- [3] The Respondent opposed the application. In reply, Mr. Edgar Mugenyi deposed to falsehoods in the Applicant's affidavit, the application being barred in law after dismissal and non-payment of costs in LDA 018 of 2022, which the Applicant withdrew.

- [4] In rejoinder, the Applicant deposed to her right to a fair hearing and that it was just and equitable that the application be granted.

Submissions of the Applicant

- [5] M/s. OSH Advocates, appearing for the Applicant, submitted that her failure to appear in court was for good or sufficient cause. It was submitted that the failure by Counsel to appear in court amounted to good cause, and such negligence ought not to be visited on a litigant. Counsel argued that the administration of justice requires that the Court should set aside a decision where there are serious issues for determination. It was also submitted that the Applicant was not guilty of dilatory conduct. Not granting the application would be tantamount to condemning the Applicant unheard without a fair hearing.

Submissions of the Respondent

- [6] Mr. John Magezi, appearing for the Respondent, raised a preliminary point of law to the effect that where a suit is dismissed under O 17 Rule 5(1) CPR, the remedy is to file a fresh suit under O 17 Rule 5(2) CPR. It was, therefore, incompetent.
- [7] Regarding the application's merits, Mr. Magezi submitted that the Applicant was not truthful. Counsel did not find her explanations for sitting outside Court waiting for the file to be called believable. He also doubted the purported mistake of Counsel. The Applicant and her Counsel were in Court on 1st November 2021 when the matter was fixed for hearing on 7th February 2022. It was Learned Counsel's view that the Applicant had not established sufficient cause, and the application was brought with undue delay, and therefore it ought to be dismissed.

Submissions in Rejoinder

- [8] Regarding abatement, Counsel submitted that the six-month period had not passed when the claim was dismissed. Counsel cited the cases of **Nalumansi & Anor v Lule SCCA No.2 of 1992**, **Kyomulabi v Zirondemu CACA No. 41 of 1979**, and **Bamanya v Zaver C. A No. 53 of 2003** supports the proposition that mistakes of Counsel should not be visited on the litigant. Relying on the case of **Makerere University Business School v Amolo Beatrice & Ors LDR No. 134 of 2017**, Counsel submitted that Courts should investigate the substance of disputes. Finally, it was explained that the application was filed seven days after the dismissal, and upon instructing new Advocates, the initial application was withdrawn and the present application filed.

Resolution of preliminary point

- [9] The substance of Mr. Magezi's objection is that the application is barred in law. It was dismissed under Order 17 Rule 5 CPR, under which the Applicant could only file a fresh suit, subject to the law of limitation. Counsel suggested that the

Applicant had conceded to the dismissal for want of prosecution in paragraph 11 of her affidavit in support. The record of proceedings of the 7th of February 2022 is as follows:

'7/2/2022 **Mr. Magezi John for Respondent**
None for Claimant
.....
Mr. Magezi: **For hearing. In the absence of the Claimant, I pray**
the matter be dismissed.

Court: **This is a 2016 matter. It was fixed for hearing**
today. In the absence of both the claimant and
counsel, it is dismissed....."

[10] The order under the hand of the Registrar indicates that the matter was dismissed for want of prosecution. The provision reads as follows:

"5. Dismissal of suit for want of prosecution. (1) In any case, not otherwise provided for, in which no application is made or step taken for a period of six months by either party with a view to proceeding with the suit after the mandatory scheduling conference, the suit shall automatically abate; and (2) Where a suit abates under subrule (1) of this rule, the plaintiff may, subject to the law of limitation bring a fresh suit."

Mr. Magezi cited the case of **Suryakant Manibhai Patel v Gume Fred Ngobi & Anor H.C.C.S No. 98 of 2017**, where the case of **Abdul Ddamulira v Mss Xsabo Power Ltd H.C.M.A No. 046 of 2021** was cited. Her Lordship, the Honorable Lady Justice Faridah Shamilah Bukirwa, found the Ddamulira case instructive on the principle that reinstatement of the suit that abated where the law provides for bringing a fresh suit is not tenable. Accordingly, she held the order for reinstatement of the abated suit was contrary to the law and, as such, an illegality. We agree with this restatement of the law. As it now provides, a suit automatically abates where no step is taken to proceed with a matter six months after a mandatory scheduling conference. In the Manibhai case, the matter came up on 23rd March 2020. On 10th December 2021, the Defendant moved the Court to abate the suit. The Registrar did this on the 13th of February 2021. As Her Lordship concluded, there was no contention that the suit had automatically abated.

[11] In the case before us, the record reflects that the matter came up for mention on the 1st of November 2021. Mr. Kisalu, appearing for the Claimant, sought a nearby date for hearing. The Court adjourned the matter to the 7th of February 2022 for hearing. On that date, the Claimant and her Counsel were absent. Mr. Magezi, for the Respondent, sought a dismissal, and the Court proceeded to



dismiss the matter for want of prosecution as reflected in the order of the Court. The question would be whether the suit automatically abated. The record does not reflect a scheduling conference held to bring the matter within the ambit of Order 17 CPR. No mandatory scheduling conference was held from which the six months could be reckoned. This claim could not be said to have automatically abated from a strict construction of the provisions of Order 17 Rule 5 CPR. The High Court has also taken the view that under Order 17 Rule 5 CPR, hearing of a case should take place within six months after the scheduling conference.¹ We do not think that the present matter automatically abated and would therefore overrule the objection and turn to the merits of the application.

Issues for determination

- [12] The question for determination in this application is whether the applicant was prevented by sufficient cause from prosecuting LDR No. 23 of 2016.

Analysis and Decision of the Court

- [13] The history of the case is that the suit was initially filed on the 2nd day of December 2008 at the civil division of the High Court of Uganda. The Applicant also filed Civil Suit No. 2755 of 2008 at Mengo Chief Magistrates Court. The cases appear to have been consolidated. On the 11th day of May 2010, the Honourable Mr. Justice Yorokamu Bamwine (*as he then was*) dismissed the suit for want of prosecution. On 4th October 2010, the suit was restored to the Court Register. The matter was later allocated to the Hon. Mr. Justice Stephen Musota (*as he then was*). It was transferred to the Industrial Court and assigned the number LDC 23 of 2016. It was called on the 19th day of July 2017. The parties sought time to conclude a joint scheduling memorandum and adjourned to 22nd August 2017. The parties suggested mediation that day, and the matter was adjourned to 20th September 2017. On the 20th of September 2017, the parties indicated they were ready for submissions.
- [14] The Industrial Court gave directions for submissions, and a date for coram was set for 10th November 2017. The award was set for 24th November 2017. On the 15th of December 2017, the award was not ready because it appeared that parties needed to adduce evidence. It came up on 30th January 2018; directions were given for the witness statement to be filed and adjourned to 29th February 2018. It was set for mention on 7th May 2018 and hearing on 29th August 2018. On 29th August 2018, the matter was set for hearing on 8th November 2018. The matter then came up on 3rd July 2019 and was set for 11th November 2019 for submissions. On 11th November 2020, it was adjourned to 25th January 2020. It came up on 6th April 2021 and 27th April 2021, when it was adjourned to 13th

¹ Per Kazaarwe LJ in Muhammed Njagala v Mutumba Andrew (HC Miscellaneous Application 192 of 2019) [2021] UGHCLD 51 (09 April 2021);

July 2021. On 1st November 2021, it was adjourned to 7th February 2022 in the presence of the Applicant and her Counsel. On the 7th of February 2022, Mr. Magezi sought a dismissal. The Industrial Court dismissed the matter. Hence this application on the grounds spelled out in paragraphs [2] and [5] above.

- [15] There is some reliable guidance from decisions of the High Court on what amounts to sufficient cause. This includes mistakes of counsel, faults, lapses, and dilatory conduct.² In the case of **Onesmus Bakanga and Anor v Uganda Electricity Distribution Company Ltd**³, the Honourable Lady Justice Olive Kazaarwe found that an applicant who had not taken any steps to prosecute a case following the demise of their Counsel not to have demonstrated sufficient cause for reinstatement.
- [16] The Applicant suggested she was seated outside the Court, waiting for the file to be called. Her lawyer was absent on that date. Mr. Magezi argued that this was false. We agree. We do not find her explanation believable. The chronology of events in her affidavit does not explain the steps she took if the matter was fixed for noon and she was seated at the Court premises at 9:30. We do not think there is sufficient cause in this regard.
- [16] The application poses a secondary challenge as to the law applicable. The enabling provision of law cited in the notice of motion was Order 9 Rule 23CPR. However, Counsel for the Applicant opted not to base their submission on this provision. This rule bars filing a fresh suit on the same cause of action. The order dismissing the application read '*dismissed for want of prosecution*'. The Respondent suggested that the suit had abated under Order 17 Rule 5(2) CPR. We have already found that the claim had not abated. This would leave the application under Sections 98 CPA and Section 33 of the Judicature Act Cap. 13. These provisions relate to the inherent powers of the High Court to grant remedies to meet the ends of justice. The High Court has, for consistency, held that it could exercise inherent powers where the Civil Procedure Act is silent.⁴ Similarly, the Applicant's matter would be determined under the inherent provisions. She had also advanced an alternative reason as negligence of Counsel.
- [17] What is evident from the record is that the Applicant and her lawyer attended to this matter from 2016 to 2021. Perhaps they were not as vigorous in the prosecution, but the Applicant was consistent in her attendance. The case did not progress to its hearing on the merits. On the 7th of February 2020, the Applicant's lawyer's absence from Court would be a negligent act that should not be visited on her. This would be an exception to enable reinstatement of the case because Mr. Kisalu had been in court at the last hearing in November

² Obote David v Odora Yasoni High Court Civil Miscellaneous Application 50 of 2022[2023] UGHC 20

³ High Court Civil Miscellaneous Application 1495 of 2020 [2021] UGHCLD 52

⁴ Obote v Odora(ibid)

2020 when the matter was adjourned. On this premise, we would consider reinstatement to hear the matter on its merits. As rightly pointed out by Counsel for the Applicant in the **Makerere University Business School v Amolo Beatrice and 19 others**⁵ case, we posited that denying a subject a hearing should be a last resort of the court. This dictum aligns with the constitutional prescription under Article 126(2)(e) of the 1995 Constitution, enjoining the Courts to administer justice without undue regard to technicalities. We would therefore attribute her failure to prosecute the matter to negligence of Counsel. The matter is to be reinstated but there will be conditions, to which we shall return shortly.

- [18] There was the matter of undue delay. The Court record reflects that the Applicant filed Miscellaneous Application No 28 of 2022 for reinstatement which was withdrawn by her new Counsel on the basis that they needed to file a fresh application. Counsel for the Respondent submitted that such withdrawal would be subject to costs. That is correct. Indeed, on the 10th of January 2023, the Order of this Court was that the application was withdrawn under Order 25 Rule 1 CPR with taxed costs to the Respondents. That order subsists.
- [19] We now return to the conditional reinstatement of LDR 023 of 2016. The history of the conduct of this matter is necessary. The case was first filed in 2008. The record does not show a robust approach towards the disposal of the case and includes a previous dismissal before the Hon. Mr. Justice Bamwine. The Courts⁶ have accommodated and entertained this matter for well over 13 years now. Judicial Officers have expended time and opportunity for the Applicant to conclude her case. Prepared litigants would have utilized this time much more effectively and efficiently. It goes without saying that it is not very economical to entertain, without certainty, endless litigation. Therefore, there is to be some sanction for unmerited delays. Mr. Magezi submitted that if the Court was inclined to grant the application, it should be with costs. We agree. The Respondent has expended resources in defending the position and should be compensated for the effort. We have ruled that in employment disputes, the grant of costs to the successful party is an exception on account of the nature of the employment relationship except where it is established that the unsuccessful party has filed a frivolous action or is culpable of some form of misconduct.⁷ The Claimant has not exhibited sufficient diligence, and the Respondent would be deserving of costs in this application. We are fortified in imposing these conditions by the decision of the High Court in the case of **Abel Balemesa v Mugenyi Yesero**⁸ where his Lordship, the Honorable Mr. Justice

⁵ LDR 134/2017

⁶ The matter was before the Chief Magistrates Court at Mengo, the High Court Civil Division and the Industrial Court from 2016

⁷ Joseph Kalule Vs GIZ LDR 109/2020(Unreported)

⁸ High Court Civil Miscellaneous Application 126 of 2019 [2021] UGHCCD 108

Gadenya Paul Wolimbwa, in a suit that had been in the court system for 14 years and an appeal dismissed five years before the filing of the application, granted a conditional order for reinstatement considering the justice of the case. In the present case, the matter arose from an employment dispute and had been in the Court system for several years until the 7th of February 2022. While the Respondent might be inconvenienced, hearing and disposing of the matter on its merits following a strict timeline would be possible.

[20] In the final analysis, we make the following orders:

- (i) Labour dispute Reference No. 023 of 2016 is hereby reinstated to be disposed on merit upon fulfilment of the following conditions:
- (ii) The Respondent shall have taxed costs of the application to be paid within 45 days of the date of taxation.
- (iii) The Claimant shall complete all pre-trial filings within 21 days of this order and ensure readiness for trial. This matter shall be called for mention and compliance check on the 22nd of May, 2023.
- (iv) If the Claimant does not comply with any of the above orders, the matter shall be liable to dismissal.

It is so ordered.

Dated and delivered at Kampala this 24th day of April 2023

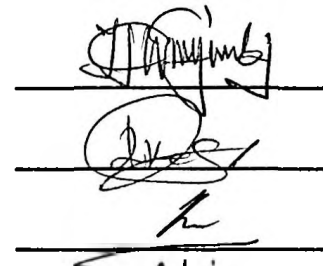
SIGNED BY:

THE HON. MR. JUSTICE ANTHONY WABWIRE MUSANA
JUDGE, INDUSTRIAL COURT



THE PANELISTS AGREE:

- 1. HON. JIMMY MUSIMBI,
- 2. HON. ROBINAH KAGOYE &
- 3. HON. CAN AMOS LAPENGA.



Ruling delivered in open Court in the presence of:

- 1. For the Applicant:
- 2. For the Respondent:

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