



**THE REPUBLIC OF UGANDA**  
**IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA**  
**MISCELLANEOUS APPLICATION NO.181 of 2023**  
*(Arising out of Labour Dispute Reference No. 285 Of 2022)*

**GEMS LOW-COST SCHOOLS UGANDA LTD:.....APPLICANT**  
**T/A DREAM AFRICA SCHOOLS**

**VERSUS**

**NATUKUNDA RACHEAL MUTABAZI:..... RESPONDENT**

**Before:**

The Hon. Mr. Justice Anthony Wabwire Musana

**Panelists:**

1. Hon. Jimmy Musimbi,
2. Hon. Robinah Kagoye &
3. Hon. Can Amos Lapenga.

**Representation:**

1. *Mr. Peterson Mwesiga of M/S Meritas Advocates for the Applicant*
2. *Mr. Bright Natumanya of M/S TARA Advocates for the Respondent*

**RULING**

**Introduction**

- [1] By motion under Section 33 of the Judicature Act Cap.13(*from now JA*), Section 98 of the Civil Procedure Act Cap.71 (*from now CPA*) Order 9 Rule 21 and 52 rules 1, 2 and 3 of the Civil Procedure Rules S.I 71-1(*from now CPR*) the Applicant sought a setting aside of this Court's ex parte order of the 11<sup>th</sup> of October 2023, that the Applicant be permitted to enter appearance and defend the primary reference and provision of costs.
- [2] The applicant's supporting affidavits, deposed by Mr. Peterson Mwesiga Esq, were to the effect that Counsel, having travelled to Tanzania on 16<sup>th</sup> September 2023 to attend to a family emergency and being involved in an accident while abroad and thereby being prevented from attending Court on 11<sup>th</sup> October 2023. The Applicant was, therefore, prevented by good cause from attending Court.

- [3] The Respondent opposed the application. In reply, Mr. Bright Natumanya Esq averred that the application was without merit and that by the time of Mr. Mwesiga's travel, the Respondent was in contempt of the Court directives to file pre-trial documents by 22<sup>nd</sup> September 2023 and that Counsel only started receiving treatment on the 29<sup>th</sup> of September 2023. Mr. Natumanya averred that the application did not disclose good or sufficient reasons to have the exparte order set aside.
- [4] When the application was called for hearing on the 22<sup>nd</sup> of November 2023, we invited the parties to address us through written submissions.


#### **The Applicant's submissions**

- [5] It was submitted for the Applicant that the failure to appear in court was for good or sufficient cause owing to Mr. Peterson Mwesigwa's accident. It was submitted that the failure by Counsel to appear in court amounted to good cause, and alternatively, if nonappearance was negligent, that too amounted to sufficient cause.

#### **Submissions of the Respondent**

- [6] It was submitted for the Respondent that the order of the Court was for the matter to proceed with the Respondent's evidence and not exparte as suggested by the Applicant. As such there was a non-existent exparte order. It was suggested that the Court's order was hinged on Order 17 Rule 4 CPR.
- [7] It was also submitted that Mr. Mwesigwa was discharged on 1<sup>st</sup> October 2023 and had time to comply by 11<sup>th</sup> October 2023. It was the Respondent's position that the Applicant was in contempt of court, having failed to comply with the Court's orders. It was also submitted that the Applicant had failed to file witness statements, suggesting that there was an undue advantage in having read the Respondent's witness statement. We were asked to dismiss the application.

#### **Analysis and Decision of the Court**

- [8] There are two broad questions for determination:
- (i) The first relates to the nature of the order of the Court and;
  - (ii) The second would be whether the applicant has shown good or sufficient cause for setting aside the court's order.
- [9] On the first question, the procedural history of LDR 285 of 2022 demonstrates that on the 22<sup>nd</sup> of August 2023, when the case was called before this Court, Mr. Peter Mwesigwa, acting for the Applicant (*the Respondent in the main cause*), sought for time to file pretrial documents as he was freshly instructed. He also suggested the possibility of a negotiated settlement. We directed Counsel to meet within 14 days and discuss the joint scheduling memorandum(JSM). The matter was set for scheduling on the 11<sup>th</sup> of October 2023. On that day, the Respondent(*the Claimant in the main cause*) appeared in Court, and the Respondent was absent. Mr. Natumanya reported that he had sent a draft JSM to Mr. Mwesigwa on the 15<sup>th</sup> of August 2023 and followed up with an email on the 4<sup>th</sup> of October
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2023. In his view, the Applicant was uninterested, and Mr. Natumanya sought to proceed *ex parte*. The Court noted the Applicant's flouting of filing directives, and the absence of any explanation granted the parties time and set the matter down for scheduling and hearing on the 22<sup>nd</sup> of November 2023. On the appointed day, the present application was called.

- [10] From the record of proceedings, the Respondent sought an order to proceed *ex parte*, and the Court set down the matter for scheduling and hearing of the Claimant's case on the 22<sup>nd</sup> of November 2023. The Court did not order a hearing *ex parte*. The provisions and wording of Order 9 Rule 20(1) (a) CPR is that where the Plaintiff appears, and the Defendant does not, where the court is satisfied that the summons or notice of hearing was duly served, it may proceed *ex parte*. Where an order to proceed *ex parte* is granted, the provisions of Order 9 Rule 21 CPR can be invoked where a defendant appears at or before the hearing and assigns good cause for his or her previous nonappearance. This would be to set aside the order to proceed *ex parte* and any such proceedings. *Ex parte*, according to Black's Law Dictionary 11<sup>th</sup> Edn,<sup>1</sup> means on or from one party only without notice to or argument from the adverse party. This Court did not grant any order for the Respondent to proceed *ex parte*; The matter was set down for hearing on the 22<sup>nd</sup> of November 2023. We would, therefore, agree with Counsel for the Respondent that there is no order to proceed *ex parte* that would set in motion an application to invoke Order 9 Rule 21 CPR. In other words, there is nothing to set aside. For this reason alone, this application would fail.
- [11] Because of the finding in paragraph 10 above, it is not necessary to consider the second question as to whether the Applicant has demonstrated good or sufficient cause. Had the Applicant accurately perused the record of proceedings of the 11<sup>th</sup> of October 2023, they would have found that the Court discouraged the practice of disregarding filing directives.
- [12] This application fails. However, as this Court sits as a Court of equity whose maxims include *ubi jus ibi remedium* where equity will not suffer a wrong to be without a remedy, and Rule 6 of the Labour Disputes(Arbitration and Settlement) (Industrial Court Procedure) Rules, 2012 gives the Court a wide berth on extension of time, the Court would hasten to lock the Applicant out of these proceedings. The exercise of the coercive power of the Court is a last resort. In this regard, the Applicant is granted leave to file pre-trial documents, the same to be filed and served on the Respondent within seven days of the date of this order.
- [13] Finally, we have also ruled that in employment disputes, the grant of costs to the successful party is an exception because of the nature of the employment relationship, except where it is established that the unsuccessful party has filed a frivolous action or is guilty of some form of misconduct.<sup>2</sup> The Applicant, in the present matter, was at fault on the 11<sup>th</sup> day of October 2023. There had not been a meeting of Counsel or a filing of the

<sup>1</sup> Black's Law Dictionary 11<sup>th</sup> Edition by Bryan A. Garner, Thomson Reuters at page 722

<sup>2</sup> Joseph Kalule Vs GIZ LOR 109/2020(Unreported)

documents as directed by the Court. For this reason, the Respondent shall have taxed the costs of this application. This application could have been otherwise avoided.

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

- (i) The application is dismissed with costs to the Respondent.
- (ii) The Applicant is directed to file all pre-trial documents in LDR 285 of 2022 within seven days from this order.


It is so ordered.

Signed in Chambers at Kampala this 30<sup>th</sup> day of January 2024

  
Anthony Wabwire Musana,  
Judge, Industrial Court

The Panelists agree.

1. Hon. Jimmy Musimbi,
2. Hon. Robinah Kagoye &
3. Hon. Can Amos Lapenga.


30<sup>th</sup> January 2024

3:07 pm

Appearances:

1. Ms. Lauryn Ninsiima holding brief for Mr. Peterson Mwesiga for the Applicant .
2. Ms. Joanita Nanteza holding brief for Mr. Bright Natumanya for the Respondent:

Court Clerk: Mr. Samuel Mukiza.

Ms. Ninsiima: Matter for ruling, and we are ready to receive it.

Court: Ruling delivered in open Court.

  
Anthony Wabwire Musana,  
Judge, Industrial Court

3:12 pm