

THE REPUBLIC OF UGANDA
THE INDUSTRIAL COURT OF UGANDA HOLDEN AT KAMPALA
MISC. APPL. NO. 096/2017
(ARISING FROM LDC NO. 234/2015)

BARCLAYS BANK OF UGANDA.....CLAIMANT

VERSUS

AIJUKYE STANLEY..... RESPONDENT

BEFORE

1. Hon. Chief Judge Ruhinda Asaph Ntengye
2. Hon. Lady Justice Linda Tumusiime Mugisha

PANELISTS

1. Mr. Ebyau Fidel
2. Ms. Harriet Nganzi Mugambwa
3. Ms. Rose Gidongo

RULING

This ruling arises from a notice of motion seeking that proceedings of the court in Labour Claim 234/2015 be stayed pending the final disposal of the applicants intended appeal to the court of Appeal. The grounds are clearly set out in the Notice of Motion and the supporting affidavit.

The background of the application is that on 18/5/2016 the applicant raised a preliminary objection that sought to strike out the whole claim which preliminary objection was overruled by this court and the court ordered that the claim proceeds on merits. The ruling was delivered in open court in the presence of Mr. Lugayizi who was holding brief for Mr. Masembe Kanyerezi.

Subsequently the matter was always adjourned for one reason or another including the fact that the applicant had not yet filed the requisite documents. Eventuality on 29/11/2016, court set 6/2/2017 for hearing. On this date Mr. Adriko held a brief for Mr. Masembe and reported to court that certain documents were yet to be filed and sought an adjournment to which this court reluctantly agreed and ordered the respondent (present applicant) to pay costs of Ugx. 250,000/- for the adjournment and fixed 03/3/2017 for mention. On this

date Mr. Lugayizi for the respondent (now applicant) informed court that they had just signed a joint scheduling memo and that they would file witness statements in due course. The matter was fixed for hearing on 16/05/2017. On this date both Mr. Lugayizi and Mr. Tumwebaze (for the respondent and the claimant) respectively were ready to proceed with the hearing but the two judges were not available as they were urgently needed for visa's at the Italian Embassy and so the matter was adjourned to 10/7/2017 for hearing. It is on this date that the court was informed by Mr. Mukiibi on brief for Mr. Lugayizi that this application had been filed on 6/7/2017 and the matter was again adjourned to 9/8/2017 for mention pending hearing of this application.

Mr. Lugayizi for the applicant argued strongly that **Order 06 r 30(2) of the Civil Procedure Rules (CPR)** provides a right of appeal against striking out proceedings and that the applicant having filed a notice of appeal, the said appeal could be rendered nugatory if this application was not allowed. He argued that the affidavit in support of the application provides sufficient and legitimate grounds. He relied on the case of **BASAJABALABA HASSAN & OTHERS VS STANDARD CHARTERED BANK & TWO ORS MA 215/2014.**

In reply Mr. Tumwebaze for the respondent contended that the application was a blatant abuse of the court process. He argued that CPR rules were not applicable to this court and that this court properly applied section 40(2) of the Labour Dispute (Arbitration & Settlement) Act when it earlier on rejected the plea to appeal.

He argued there was inordinate delay on the part of the applicant, having brought the application a year after the ruling of this court.

We have listened carefully to both counsel's submissions. We have perused the notice of motion, the supporting affidavit and the affidavit in reply. We have also perused the authority of **Hassan Basajjabalaba & 8 others Vs Standard Chartered Bank (U) Ltd. MA 215/2014.**

As shown above, the background of this case says it all. The ruling of this court on preliminary objection was delivered on 19/07/2016 and this application was filed on 06/07/2017.

We would like to agree with the respondent that this delay was very inordinate and it could not be explained. This is especially so when counsel for the respondent were always in court making everybody believe that they were

proceeding on the merits of the case after the ruling of this court and this went on for more than 12 months.

We have perused also **Order XLIV (44) rule 1 Civil Procedure Rules** that provides for appealable orders as of right. An order under **order 6 r 30(2)** is not one of them. **Under rule 2 of order 44** any other order not provided for can only be appealable with leave of court which made the order or the appellate court. This is the position we get once **order 6 r 30(2)** is read together with **rule 2, order 44**. This being the case, it is our opinion that, the applicant should have first of all sought leave of this court to appeal against the order overruling the preliminary objection. Once this court gave leave, then counsel would seek stay of the proceedings pending the hearing of the appeal.

We agree with the applicant's submission that the CPR are useful and this court has had to borrow from the same where there is a lacuna in the rules of this court.

Rule 18 of the Labour disputes (arbitration and Settlement) (Industrial court procedure rules) 2012 provides for expeditious hearing of the Labour disputes. Whereas we appreciate that the preliminary points raised by counsel were points of law and that the appellate court may or may not agree with this court, it will not be in the interest of expeditious disposal of the matter, if this application were allowed. The preliminary points of law raised by counsel may be raised in the appellate court as a ground of appeal and once the court of appeal agrees with the respondent the matter will be finally settled at that level.

On the contrary if the court granted the application, the proceedings on the merits of the case will be put on halt pending the ruling of the court of Appeal. Should the court of Appeal agree with this court, then the proceedings of this court will start almost afresh as if nothing had happened in this Court. The ruling of Hassan Basajjalaba (supra) was made on 23/06/2015 but to our recollection, the court of Appeal has not yet pronounced itself on the same points and in the meantime, the proceedings on the merits are at a halt in the High court. This is not the position envisaged by the legislature when this court was established. We are of the position that no injustice will be caused by this court proceeding on the merits of the dispute so that the points raised are determined once and for all by the appellate court instead of the possibility of referring back the matter at an unknown future date.

It is the position of this court that appeals against preliminary points of law interfere with the expeditious disposal of matters in courts of law which in turn promotes backlog in the system. Given that the ruling of this court was made 1 year ago, we do not appreciate the intentions of the applicants as they seek an order of stay of the proceeding of this court. This is especially so when they have all along been ready to proceed on the merits. We have failed to understand this change of heart and consequently the application is not allowed. Because we are of the considered view that the application was brought in bad faith, the applicant shall pay costs of the same.

The Labour dispute shall proceed on its merits.

Signed:

1. Hon. Chief Judge Ruhinda Asaph Ntengye
2. Hon. Lady Justice Linda Tumusiime Mugisha

Panelists

1. Mr. Ebyau Fidel
2. Ms. Harriet Nganzi Mugambwa
3. Ms. Rose Gidongo

Dated: 28TH/07/2017