**THE REPUBLIC OF UGANDA**

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

**MISC. APPLN. NO. 023 OF 2021**

**(ARISING FROM LABOUR DISPUTE REFERENCE. No. 40/2020)**

**BETWEEN**

**ATTORNEY GENERAL ……………………………………………………….…………..…..APPLICANT**

**AND**

**NTEGE IDA & 11 OTHERS…………………..………………..………………....…….RESPONDENT**

**BEFORE**

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

**PANELISTS**

1. Mr. Ebyau Fidel
2. Ms. Harriet Mugambwa Nganzi
3. Mr. F. X. Mubuuke

**RULING**

This ruling arises out of the above application brought under **Section 40(2) of the Labour Dispute (Arbitration &Settlement) Act**; **Section 33 of the Judicature Act; Labour Dispute (Arbitration & Settlement) (Industrial Court Procedure Rules), Order 51 Rule 6 and Order 52 Rules 1 & 2 of the Civil Procedure Rules.**

The application seeks mainly that the applicant’s response to the memorandum in Labour Dispute Reference No. 40/2020 served out of time be validated.

The application was supported by an affidavit sworn by one Emelda Adong of the Attorney General’s Chambers to the effect that delay to file a reply to the memorandum of claim was due to the lockdown caused by Covid-19. According to the affidavit, by the time the notice of claim was served to the applicant government had issued guidelines on Public Health and safely and it was not until late Nov 2020 that the applicant’s chambers returned to full capacity. The affidavit states also that it was not until counsel returned in chambers that she realized, through the clerks that the notice of claim had been served in July 2020.

An affidavit in reply was filed by one Ntege Ida, the fist respondent to the effect that paragraphs 5, 6, 7 and 8 of the affidavit contained falsehoods. Mr. Ntege in paragraph 3 of the affidavit in reply states that he personally served M/s. Emelda Adong who acknowledged receipt of the Notice of claim by signing on a copy which he returned to counsel.

According to the affidavit in reply allowing this application will occasion prejudice to the respondent because this is a matter filed in 2016.

In rejoinder, M/s. Adong under paragraph 6 of the affidavit stated that whereas she received the Notice of claim, the file was taken back by the Clerk in the Attorney General’s chambers for filing in the management system and the same was only returned in November 2020 to her which was out of time to file a reply.

We have perused carefully the notice of motion together with the affidavit in support. We have also perused the affidavit in reply and the affidavit in rejoinder. We have carefully perused the authorities cited by both counsel in their submissions.

It was submitted for the applicant that it was the fault of non-coordination between the lawyer in personal conduct of the case and the clerks in the Attorney General’s Chambers in addition to the lockdown that caused delay in filing a reply to the memorandum of claim. Counsel contended that within the authority of **Nicholas Raussos Vs Gulan Hussein Virani Supreme Court Civil Appeal 9/1993 at page 6,** negligence of counsel may be considered as a factor for allowing an application of this nature. He contended that it would be just not to impute the mistakes of one Government lawyer and her clerk on the whole establishment of Government which has a defence to the claim.

In response to the above submission, counsel for the respondent gave the background of the matter to the effect that it had been decided by the labour officer and an Award given against the applicant who appealed to this court and the court ordered a retrial, from which these proceedings emanate. Counsel contented that no exceptional circumstances or sufficient cause was shown for the application to be allowed.

Counsel argued that even if public offices were working below capacity, work still continued, the reason a memorandum of claim was received by this court.

In the case of **James Bwogi & sons Vs KCCA & Kampala District Land Board, M.A. 9/2017** the court of appeal at page 4 stated:-

**“What constitutes “sufficient reason”** **is left to the court’s unfettered discretion. In this context the court will accept either a reason that prevented an applicant from taking the essential step in time, or other reasons why the intended appeal should be allowed to proceed though out of time. For example, an application that is brought promptly will be considered more sympathetically than one that is brought after an unexplained inordinate decay. But even when the application is unduly delayed the court may grant the extension if shutting out the appeal may appear to cause injustice.”**

The gist of the instant application is to ask the indulgence of this court to allow the applicant file a reply to the claim constituting a defence of the claim. Although the Attorney General’s Chambers were served through a State Attorney in time to file a reply which they did not, given that they have sought to file one, belatedly though, we take it that they are prepared to defend the claim.

Under Article 28 of the Constitution a right to be heard is fundamental and condemnation without being given opportunity to be heard in the instant circumstances will be prejudicial to the applicant since disallowing the application would mean proceeding without pleadings and evidence by the applicant in the main claim. It is our position that where a party intends to file a defence to a claim and court is convinced that such a party is interested in being vigilant in defending the allegations in the claim and not delaying the same at the expense of the claimant, denying such a party the opportunity to file the same would be amounting to shutting out the defence thus causing an injustice as explained in James Bwogi Vs KCCA &Kampala Land Board (supra).

Accordingly, although court is not completely satisfied with the reason given by the applicant for having failed to file the defence in time, we form the opinion that it will serve the cause of justice if the application is allowed since this will allow both parties to be heard as provided for under the Constitution. The application is allowed and the reply if already filed is hereby validated. For the negligence of the Attorney General’s Chambers the respondent shall have taxed costs of this application.

**DELIVERED & SIGNED BY:**

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

**PANELISTS**

1. Mr. Ebyau Fidel ………………………….
2. Ms. Harriet Mugambwa Nganzi ………………………….
3. Mr. F. X. Mubuuke ………………………….

Dated: 28/05/2021