**THE REPUBLIC OF UGANDA**

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

**LABOUR DISPUTE MISC.APPLN. NO.103/2020**

**ARISING FROM LUWERO DISTRICT LABOUR CLAIM NO.1D/013/2018.**

**BOARD OF GOVERNORS KATIKAMU SDA SSS**

**AND HEAD TEACHER KATIKAMU SDA SSS .………….. APPLICANT**

**VERSUS**

**MULWANA CHRISTOPHER …….……… RESPONDENT**

**BEFORE:**

1. **THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE**
2. **THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA**

**PANELISTS**

**1. MS. ADRINE NAMARA**

**2. MAVUNWA EDSON HAN**

**3 . MS.SUSAN NABIRYE**

**RULING**

This application is brought by Notice of Motion under section 98 of the Civil Procedure Act, Rule 6 of the Labour Disputes (Arbitration and Settlement) (Industrial Court Procedure) rules and Order 52 rules 1 and 3 of the Civil Procedure Rules , SI71-1, for orders that:

1. The applicants are allowed to appeal the judgement and awards of the Labour Officer, Luwero District, in Luwero District labour claim No. LBR/D/013/2018, out of time.
2. Costs of the application be provided for.

**BACKGROUND**

According to the Applicants, in September 2018, the Respondent filed a complaint against the Applicants for unfair termination, before the Labour Officer Luweero District, who notified the Applicants accordingly.

Mr. Mutabaazi Mathew was head teacher at the time. He adhered to the notices issued and attended mediation meetings before the labour officer as evidenced on pages 6 and 7 of the Labour Officer’s Judgement marked as Annex “A”. According to the Applicants the matter was adjourned several times until 29/05/2019. Mr. Mutaabazi had however left the school and was replaced by Mr. Namasnsa on 28/01/2019. Mr. Namansa, continued to attend the mediation meetings together with Mr. Biasao Vincent.

When Mr. Namansa appeared for the hearing o n 8/5/2019, the labour officer denied him audience on the ground that the chairperson of the Board had to attend the meeting in person. She adjourned the matter and instructed him to come back with the chairperson on the 29/05/2019.

On 29/05/2019, Mr. Namansa, together with Pastor Kaggwa Rogers representing the chairperson Board, Mr. Bisaao Vincent the Deputy Head teacher and Mr. Mutabazi former head teacher appeared for the hearing but the labour officer denied them audience because they did not possess their appointment letters at the time. She dismissed them and proceeded to handle the matter exparte.

Although it was purported that the Labour officer entered Judgement in favour of the Respondent on 30/1/2019, according to the Applicants the matter was still proceeding by May 2019. The Judgement and notice to show cause why execution should not issue was served on the Applicants on 29/7/2019.

The Applicants decided to appeal against the award but because of limitation of time having been served with the Judgement in July 2020, they could not proceed hence this application for extension of time to Appeal.

**Issues for determination**

1. **Whether the applicants should be allowed to file their appeal out of time?**
2. **Whether the applicants notice of appeal No/ 15 of 2020 filed on 7/08/2020 can be validated?**
3. **Whether costs of this application should be provided for?**

**The Applicants case:**

The Applicant’s case, as contained in the notice of motion and supporting Affidavit is:

1. That the Judgement Decree of the Labour officer was delivered exparte and the Applicants were denied a right to be heard on merit.
2. The Applicant was only served with the exparte judgement claimed to have been issued and granted by the Labour Officer Luweero District, on 30/1/2019th January 2019 by the labour officer, on 29/07/2019 together with a notice to show cause why execution should not issue.
3. The Applicants have a strong case with a likelihood of success and the same should be heard on merit.
4. The application has been brought in time and it is in the interest of justice that it is granted.

**The Respondents Case**

The Respondents case as set out in the Affidavit reply is that:

1. That the Applicant was aware of the Complaint before the Labour officer, having been served with copies of the same complaint and summoned to reply to it and to appear for mediation. The summonses were received and acknowledged.
2. The 1st Applicant, the chairperson of the Board of Governors declined to appear and defend the matter or have it conciliated.
3. Having refused to cooperate the Respondent applied to the labour officer to proceed with the matter exparte, which was granted. The matter proceeded exparte. On 30/01/2019, the Labour Officer entered an exparte award in the Respondents favour
4. The Respondent applied for execution on 18/03/2019.
5. The Applicants only entered appearance on 29/07/2019, after the Respondent served them with a notice to show cause why execution should not issue against them.
6. The application is an abuse of court process and it is tainted with lies, therefore it should be dismissed with costs.

**REPRESENTATION**

Counsel Sarah Banenya of Banenya-Mugalu and Company Advocates, was for the Applicants and Mr. Batte Paul of M/s Kityo and Company Advocates was for the Respondent.

**SUBMISSIONS**

1. **Whether the applicants should be allowed to file their appeal out of time?**

In submission, Counsel for the Applicants contested the Respondent’s opposition to the application because this court granted the Respondent extension of time to file his reply. She cited Rule 6(1) of the Labour Disputes (Arbitration and settlement) (Industrial Court Procedure) Rules, 2012, which provides that, a person who fails to file documents within the prescribed time had an opportunity to apply for extension of time. She also cited **Tushabe Cris vs Cooperative Bank Ltd** whose holding was to the effect that, the law prescribes rules of procedure with specific time limits within which to take certain steps and in rare circumstances Courts are dressed with the discretion to extend these time limits, where sufficient reason relating to the inability or failure to take a particular step is given.

She contended that the Affidavit in reply was misleading in as far as it stated that the Applicants did not cooperate and did not adhere to the labour officers summons because at all times they adhered to the summons and cooperated. According to her the labour officer even stated at page 6 of her judgement that she had taken an oral statement from Mr. Mutabazi the head teacher.

She contested the assertion made by the Respondent that, the Applicants appearance on the 29/05/2019, was way after the judgement had been delivered on 30/1/2019, because the labour officer had entertained them on 8th and 29th May 2019 and she did not inform them that she was functus officio.

According to Counsel, there was also no explanation why the award was made on 30/01/2019 and the decree was extracted on the same day but it was only served on to the Applicants together with the notice to show cause why execution should not issue, on 29/07/2020, 1 year and half later.

She contended that had the judgement and decree been served on the day it was passed and extracted, the Applicants would have filed their Appeal in time. In any case after being served on 29/07/2020, they filed their Appeal on 8/8/2020, only 10 days later.

She insisted that the fact that the Applicants were served 1 year and half later was not refuted in their affidavit in reply, therefore Court should find the late service on them as sufficient reason for their failure to file the Appeal on time.

She also insisted that contrary to the Respondents assertion the Applicants at all times adhered to the Labour officers summons as stated in paragraphs 3,4,5,6,78,9,10 of the Affidavit in support of the Application and this was not controverted by the Respondent. She contended that it was therefore, unfair for the Applicants to be condemned unheard yet they complied with the Labour Officer’s summons.

She argued that the Appeal has high chances of success and poses questions of law which if resolved will save the Applicants from suffering irreparable loss, if the Labour officers Judgement is not quashed.

She called on court to disregard the assertions that the application is an abuse of court process and that it is tainted with lies because there is no proof to that effect. She prayed for the application to be granted with costs.

In reply Counsel the Respondent submitted that the Head teacher and chairperson Board of Governors of Katikamu SDA were notified about the Respondent’s complaint about unfair termination on the 22/10/2018. The Labour officer then issued summons on 19/11/2018 notifying them, that she would proceed to adjudicate the matter if they did not appear on 27/11/2018. According to Counsel the summonses were duly received by the Applicants but they chose to ignore them, which prompted the labour officer to proceed with the matter exparte resulting in her entering an award in the Respondent’s favour on 30/01/2019. The Award was made in the presence of the Respondent but the Applicants were absent.

Counsel raised a preliminary point of law to the effect that the appellants were never party to the labour Claim in LBR/D/013/2018 in which this application arises, therefore it was untenable and should be dismissed with costs.

He argued that, the award of the labour officer in this case, can only be set aside in accordance with the provisions of Order 9 rule 27 and not appealed against. According to him, the fact that the labour officer made her award exparte was not in dispute and Order 9 rule 20 of the Civil Procedure Rules SI 71-1 enables a party to proceed exparte if the defendant does not appear on the date scheduled for hearing.

Therefore, the only remedy available to the Applicants was for them to invoke O9 rule 27, which provides that a person who is dissatisfied with an exparte award or decree can apply to the court which passed the Judgement or decree to set it aside. If the court is satisfied that the Applicant was not duly served or for any other sufficient cause, the court shall make an order setting aside the Judgement or decree. He also cited **Stanbic Bank vs Christine Karungi LDA No 29/2016 ( per in curium)** for the same proposition.

On the issue **Whether the applicants should be allowed to file their appeal out of time**, he submitted that the Applicants must satisfy Court that there was sufficient reason that prevented them from taking the necessary steps within the prescribed time. In support of this argument, he cited **Molly Kyalukinda and others vs Engineer Ephraim Turinawe and others SCCA No. 27/2010**, in which Kisakye JSC, posed 3 questions that had to be resolved before an extension of time within which to appeal can be granted as follows:

1. **Whether the applicant has established sufficient reasons for the court to extend the time in which to lodge the Appeal?**
2. **Whether the applicant is guilty of dilatory conduct?**
3. **Whether any injustice is likely to be caused if the application is not granted?**

According to him, the Applicants chose to lock themselves out of the labour officers’ proceedings as shown on page 2 of the labour Officers Judgement, marked as annexure “A” on the record.

He refuted the Respondents assertion that they entered appearance before the labour officer on 8/05/2019 and further on 29/05/2019 because they did not furnish any evidence in form of summons or hearing notices as proof. According to him this was after judgement had been entered, which was admitted by the Respondent.

He made reference to the notices which the labour officer issued marked 1-7, 8(a,b,c), 9-11 at page 7 of the Judgment marked “A” on the record, but none of these notices is a notice for the 8th and 29 of May 2019. Counsel asserted that the only mention of the Respondent’s appearance was under paragraph 4 of page 7 of the judgment in which the labour officer stated that on “*6th December 2018, Mr. Mutabazi Mathew”* appeared with instructions not to represent the school and the Board of Directors (the 1st Applicant).

Therefore, the supposed appearance of the Respondents on the 8/5/2019 and 29/05/2019, after the judgment was passed on 30/01/2019, put them on notice that the Labour officer had already concluded the matter. They however did not take any further steps to either have the award set aside or demonstrate any other form of dissatisfaction with it.

It was further his submission that Court should find that the Applicants were guilty of dilatory conduct and that they lack sufficient reason to account for the delay to resolve this matter.

In rejoinder Counsel for the Applicants insisted that the Applicants responded to the Labour officers summons through the then Head teacher, who was secretary to the Board of governors of the School as shown on page 6 of her award, but since she referred to the award as an exparte award they had no choice but to consider it as such and seek to appeal against it.

Counsel argued that Stanbic **Bank Vs Karungi Appeal No.29 of 2016 is per in curium,** was distinguishable form the current case because unlike karungis case, the head teacher in this case, appeared in the labour officer court as per page 7 of her award.

Counsel insisted that the award which was delivered on 30/01/2019 was only served on the applicant together with the notice to show cause on 29/07/2020 one and half years but notwithstanding the Applicants facted promptly and lodged this application together with the notice of appeal.

**DECISION OF COURT**

Before we delve into discussing the Appeal, we shall resolve the Preliminary point of law raised by the Respondent first. The Preliminary Point which we shall restate as follows: *is to the effect that he Applicants were never party to the Claim in LBR/D/013/2018 in which this application arises, therefore it was untenable and should be dismissed with costs.*

*He argued that, the award of the labour officer in this case, can only be set aside in accordance with the provisions of Order 9 rule 27 and not appealed against. According to him, the fact that the labour officer made her award exparte was not in dispute and Order 9 rule 20 of the Civil Procedure Rules SI 71-1 enables a party to proceed exparte if the defendant does not appear on the date scheduled for hearing.*

*Therefore, the only remedy available to the Applicants was for them to invoke O9 rule 27, which provides that a person who is dissatisfied with an exparte award or decree can apply to the court which passed the Judgement or decree to set it aside. If the court is satisfied that the Applicant was not duly served or for any other sufficient cause, the court shall make an order setting aside the Judgement or decree. He also cited* ***Stanbic Bank vs Christine Karungi LDA No 29/2016 ( per in curium)*** *for the same proposition.*

The holding of the Court of Appeal in **Engineer John Eric Mugyenyi vs Uganda Electricity Generation Co. Ltd CA No. 167/2018,** was to the effect that, the Labour Officer is not a Court of Judicature to be able to apply and be guided by the Civil Procedure Rules. In the circumstances this court set aside its decision in ***Stanbic Bank vs Christine Karungi LDA No 29/2016*** for being per in curium.It is now settled that the remedy available to a party aggrieved by an exparte decision of a Labour officer is by appeal to the Industrial Court. This application is therefore tenable and is properly before this court. The preliminary point is therefore, over ruled.

**Merits of the Application**

1. **Whether the applicants should be allowed to file their appeal out of time**?

We have carefully perused the Notice of Motion, the Affidavits in support and against it and both Counsel’s submissions and resolve as follows:

It is trite that, Court may for good cause, grant extension of time within which to Appeal. However, the Applicant must satisfy court that he or she was prevented from adhering to the time limits, for sufficient reason and the reason must relate to inability to take particular steps and not by dilatory conduct.

The Applicants in the instant application claim they could not file their Appeal because the Labour officer refused to entertain them when they appeared on the 29/05/2019, on the grounds that they had not carried their appointment letters with them. They also contend that they were not served with the Labour Officers exparte Judgement and decree until 29/07/2020, 1 year and a half, 4 after the Judgment was issued on 30/1/2019.

It is true that the Labour officer in her letter dated 19/11/2019, notified the applicants that she would proceed with adjudication of the matter if they did not enter appearance. Although the award on the record is dated 30/01/2019, it is not clear on which date the proceedings leading to the award actually took place. We have carefully perused pages 6 and 7 of the Judgement and found that the Labour Officer took the oral submission of the 2nd Claimant on the 6/12/2018 and not the 27/11/2018 as stated in her letter of 19/11/2019.

It was also not disputed that the whereas the award was entered in favour of the Respondent on 30/01/2019, it was only served on the Applicants together with the notice to show cause why execution should not issue, on 29/07/2020 exactly one and a half years later. It is also clear that the Applicants filed the notice of appeal and this application 10 days later.

Given the discrepancies in labour Officers Judgement regarding whether the Applicants attended the Labour Court or not and given that Judgement and notice to show cause why execution should not issue was only served onto the Applicant on 29/07/2020, one and half years later, after the 30/1/2020, this court is satisfied that this was sufficient reason for this application to Appeal out of time. It is our finding that the application has merit. The Applicant is granted leave to file their Appeal within 14 days of this ruling.

**2.Whether the applicants notice of appeal No. 15 of 2020 filed on 7/08/2020 can be validated?**

Having found that the Application has merit, the Applicants notice of Appeal No.15of 2020 is validated.

No order as to costs is made.

Delivered and signed by:

**1. THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE …………….**

**2.THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA …………….**

**PANELISTS**

**1. MR. MCHEAL MATOVU …………….**

**2.MS. ADRINE NAMARA ..…………..**

**3.MS. SUSAN NABIRYE ..…………..**

**DATE: 28TH JANUARY 2021**