**THE REPUBLIC OF UGANDA**

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

**LABOUR DISPUTE MISC. APPL. NO. 251 OF 2018**

**[ARISING FROM LDR NO. 34 OF 2018)**

**BETWEEN**

**BUSAALE SENIOR SECONDARY SCHOOL.….…………...…..CLAIMANT**

**VERSUS**

1. **NALUBEGA PROSSY**
2. **MULONDO ROBERT…………...……………..…….……..RESPONDENT**

**BEFORE**

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

**PANELISTS**

1. Mr. Bwire Jonh Abraham
2. Ms. Julian Nyachwo
3. Mr. Mavunwa Edison Han

**RULING**

This is an application by Notice of Motion seeking orders of this court to set aside an exparte Award delivered by court on 13/12/2018 in Labour Dispute Reference No. 034/2018, extension of time within which to file a reply to the memorandum of claim, stay of execution and costs of the application.

The application is supported by an affidavit sworn by one Sserunkuma Bruno of C/o. M/s. Tiinshekwa A. Rukundo & Co. Advocates.

An affidavit in reply was sworn by one Mulondo Robert of C/o. M/s. Ekirapa & Co. Advocates.

**REPRESENTATIONS**

The applicant was represented by Mr. Ambrose Tiinshekwa of M/s. Tiinshekwa Rukundo & Co. Advocates while the respondent was represented by M/s. Nyafono of M/s. Ekirapa & Co. Advocates.

Briefly the facts and background from which the application is derived are that on 3/12/2018 in open court M/s. Emojong held brief for Mr. Ekirapa for the respondent in the original claim LDR 34/2018. At the time the Director of the appellant school, one Serunkuma was present. Mr. Serunkuma then applied for an adjournment because the advocate for the respondent was not in court. M/s. Emojong informed court that although the respondent had been served with the notice of claim and no reply had been filed, the claimant conceded to filing a reply out of time. The matter was then adjourned to 6/12/2018 and on this date none for the respondent was in court and court allowed the claimants to proceed exparte.

Judgment was pronounced on 13/12/2018 in Jinja. According to the affidavit in support the applicant tried on 12/12/2018 to file an application for extension of time within which to file a reply to the Notice of claim and this was rejected by the registry staff because the file had been taken to Jinja.

The affidavit states that the applicant was not aware of the main claim. The affidavit in reply states that; Mulondo Robert, one of the claimants assisted by one Agnes Nansubuga, a process server of Kayunga Magistrates court served the Headmaster of the school with the notice of claim and that the applicant was fully aware that the case was being heard in Jinja and the allegation of refusal of a reply by the registry staff was an afterthought.

**DECISION OF COURT**

We have perused and internalized both affidavits of the applicant and respondent. We have also perused and internalized the submissions of both counsel.

We appreciate the right of a party to be heard as guaranteed by article 28 of the Constitution.

However once a person locks himself/herself outside the proceedings of the court, he/she has only herself/himself to blame once proceedings commence in his/her absence and without him/her offering any evidence in defence.

There is no doubt that the respondent was served with a notice of claim by one Agnes Nasubuga as certified by an affidavit of service sworn on 30/4/2018 and a notice of claim signed as received by one Matovu Charles, Headmaster of the respondent on 26/04/2018. Despite this evidence of service the respondent through counsel conceded to filing out of time by the applicant when the matter came in court on 3/12/2018 in the presence of Mr. Sserunkuma, the director of the applicant school.

When this court adjourned the matter to 6/12/2018, it was expected that the then respondent (now-applicant) would by this time have filed a reply to the memorandum of claim or in the alternative to appear before court and explain why there was no reply filed.

Instead, according to the applicant, the Managing Director, Mr. Sserunkuma was not aware of the notice of claim and when he tried to file for extension of time within which to file a reply on 12/12/2019, the registry rejected the same on the ground that the file was in Jinja.

Granted that the proceedings on 6/12/2019 were in Jinja but the director of the applicant was in court when directions for 6/12/2019 were given in open court. The question is: why did he rather find it convenient to appear on 12/12/2019?

We find the failure of the applicant to appear at the court on the date directed by this court not justified. The fact that on 12/12/2019 when he appeared at the court, the court had gone to Jinja was not sufficient reason for him not to have appeared on the scheduled date. His appearance at court on 12/12/2019 only tends to show that he had locked the applicant outside the proceedings happening on 6/12/2019.

We agree with the submissions of the respondent that service of a headmaster of school is good service of the school and that therefore the Managing Director cannot plead ignorance of the claim and this is especially so when even after being granted the grace to file out of time the applicant failed to turn up on the scheduled date of 6/12/2019.

An exparte judgment can only be set aside by reason that the applicant was not aware of the hearing dates or of the claim. The court takes a lot of time to hear the evidence of witnesses in the absence of the respondent and takes time to write the Award or judgment.

Therefore, once there is evidence that the proceedings went on exparte due to the dilatory conduct of the applicant in his or her failure to turn up to hearing or to answer to the claim, the application to set aside an Award entered exparte shall be rejected.

For the above reasons we reject the submission of the applicant that the refusal of the registry staff to accept an application to file out of time on 12/02/2019 and the fact that the proceedings were in Jinja on 6/06/2019, were sufficient reason for his failure to be able to defend the claim. We find that the director of the applicant school was aware of the date of 6/12/2019 but locked the applicant out of the proceedings and the applicant has only self to blame.

Accordingly the application is rejected. The rejection of the application is with no order as to costs and this necessarily indicates rejection of the rest of the prayers in the application.

**Delivered & signed by:**

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

**PANELISTS**

1. Mr. Bwire Jonh Abraham ……..………
2. Ms. Julian Nyachwo …..…………
3. Mr. Mavunwa Edison Han ……………..

Dated: 21st February,2020