THE REPUBLIC OF UGANDA

IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA

LABOUR DISPUTE REFRENCE NO.06 OF 2017

ARISISNG FROM LABOUR DISPUTE NO. 142 OF 2016

JAMES HIGAYE……………………………………….…………..**CLAIMANT**

VERSUS

ECO BANK UG. LTD……………………………..…………......... **RESPONDENT**

**BEFORE**

1. The Hon. Chief Judge, Asaph Ruhinda Ntengye
2. The Hon. Judge, Linda Lillian Tumusiime Mugisha

**Panelists**

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

**RULING**

This ruling arises from a preliminary objection raised by counsel for the respondent. He argued that the complaint before the Labour Officer was filed outside the required time of 3 months contrary to **section 71(2) of the Employment Act 2006.** This being the case he prayed this court to hold that the matter was improperly before it having been filed out of time and therefore being statute barred.

In reply counsel for the claimant argued that although the matter was filed out of time, the claimant wrote to the Labour Officer explaining why he had delayed to file the matter and the Labour Officer exercised her discretion to allow the claim.

In the alternative counsel for the claimant argued that the claimant had instructed Senkeezi-Ssali& Co. Advocates who let him down by failing to file the complaint within the prescribed time and that a mistake on their part should not be visited on the claimant.

Both counsel relied on various authorities in support of their positions.

**Section 71(2) of the Employment Act** provides:

**“(2) A complaint made under this section shall be made to the Labour Officer within three months of the date of dismissal or such later period as the employee shall show to be first and equitable in the circumstances"**.

In the case of **ApoloTwesigye Vs AIDS Support Organization Labour Dispute Ref. 292/2018** the Labour Officer in referring the matter to this court stated:

“**Notice was filed with this office on 19/03/2018. This office is not in position to handle the matter because it is barred by time. This is in accordance with section 71 of the Employment Act……….”**

In the above case this court upheld the preliminary objection since the Labour Officer had rightly considered the matter and refused to exercise his discretion to extend time and hear the matter.

In **Sure Telecom Vs Brain Azemchap L.D Appeal No. 008/2015** this court held that the discretionary power given to the Labour Officer (or any other court or tribunal) lies in the decision taken by exercising such discretion and not in the reasons given for exercise of such discretion since the reasons support the discretion. In this case the court dismissed the preliminary objection on the ground that by accepting the complaint the Labour Officer exercised her discretion and the failure of giving reasons for allowing the complaint beyond the time prescribed did not nullify the proceedings.

In the current scenario, the Labour Officer accepted the complaint, she entertained it by mediation and when mediation failed she referred the matter to this court. Both parties were represented by legal counsel before the Labour Officer and none of them raised the issue of the matter having been filed out of time. The letter of the claimant to the Labour Officer (**annexture** **“A”)** though itself having been filed late had prayed to the Labour Officer to consider the matter even if it had been filed late. In our considered opinion, just like in the **Sure Telecom case** above mentioned, by entertaining the matter even though filed out time, the Labour Officer exercised her discretion under **section 71(2) of the Employment Act**, even though she did not give reasons for the same. In the same way if a judge during court vacation entertains a matter, the proceedings may not be invalid merely because there were no reasons given for the judge to exercise his/her discretion to entertain the matter during court vacation or there was no application for a certificate of urgency.

In our considered view, the mere handling of the matter during court vacation means that the judge took the matter to be of urgent nature.

Accordingly, the preliminary objection is overruled. The matter shall proceed on merits. No order as to costs is made.

**Signed:**

1. The Hon. Chief Judge, Asaph Ruhinda Ntengye ……………………………..
2. The Hon. Judge, Linda Lillian Tumusiime Mugisha ……………………………..

**Panelists**

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

Dated: …………………………………..