**THE REPUBLIC OF UGANDA**

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

**LABOUR DISPUTE MISC.APPLN. 246 OF 2019**

**ARISING FROM LD NO. 65/2019.**

**JULIET BADARU ………..APPLICANT**

**VERSUS**

**KAKIRA SUGAR LTD ……… RESPONDENT**

**BEFORE:**

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

**PANELISTS**

**1. MS. HARRIET MUGAMBWA NGANZI**

**2.MR. EBYAU FIDEL**

**3. MR. F X MUBUUKE**

**RULING**

This application is brought by notice of motion under Order 9 rule 17, 0rder 5 rule 1 and 2 and Section 98 of the Civil Procedure Act, for orders that:

1. That Court reinstates and sets down for hearing on its merits, Labour Dispute No.65 of 2019 which it dismissed on 30/09/2019
2. That courts appoints next convenient date for the case to be heard and disposed of.

The grounds of the application are set out in an affidavit of Juliet Badru the Applicant and briefly state as follows:

1. That the applicant filed LD No. 65 of 2019 against the Respondents who were always desirous of defending the same.
2. That the applicant was engaged in dialogue with the respondent in a bid to amicably resolve the Application.
3. When the matter was fixed for hearing on 30/9/2019, Counsel for the Applicant was indisposed and although he communicated the same to the Applicant she did not make it to court in time.
4. The Applicant is still interested and willing to continue prosecuting the main suit until judgement therefore the application should be allowed.

Henry Nyegenye in reply deposed that it was true that Labour Dispute No.65 was dismissed on 30/09/2019 for want of prosecution. That Court directed the parties to settle but the Applicant did not send any proposal and therefore there was no settlement. The case was dismissed because of the Applicants negligent failure to attend the hearing on 30/09/2019. The Applicant was always in the know about the hearing date and therefore has no reasonable excuse for none attendance, therefore the application should be dismissed with costs.

**REPRESENTATION**

Mr. Komakech Alex appeared for the Applicant and Mr. Kinyera Rodney was for the Respondent

**SUBMISSIONS**

The Claimant instituted Labour Dispute No. 65 of 2019 against Kakira Sugar Limited for wrongful termination. It was his submission that on 23/09/2019, when the matter came up for pre- session hearing at Jinja Circuit, both parties informed court that they were desirous of settling out of court. The parties also told court that they had initially reached a settlement but the Applicant changed her mind before payment was effected.

Court suggested that both reconsider settling out of court and adjourned the matter to the 30/09/2019. According to him, the parties had in principle agreed to settle the matter finally in order to save Courts time and Mr. Kinyera Counsel for the Respondent undertook to seek final approval from his clients. We take exception to the manner in which Mr. Komackech Counsel for the Applicant attempted to bias Court by sharing the proposed sums for settlement before the confirmed them.

Counsel Komakech, further submitted that Counsel in personal conduct of the Applicant’s case called the Applicant on the 29/09/2019 and informed her about his ill health, and inability to make it to court the following day, 30/09/2019. The Applicant however failed to make it to court in time and found the matter had been dismissed for non- appearance of the parties.

Counsel admitted that Order 9 rule 17 gives this court discretion to dismiss any suit which is called for hearing and none of the parties appears and rule 18 gives party whose case has been dismissed opportunity to apply for its reinstatement or to bring a new suit if they can show that there was sufficient cause for not appearing in the first place.

He also cited section 98 which grants Court a wide discretion to ensure that the ends of justice are met. He further cited **Nicholas Roussos vs Gulamhussien Habib Virann& Another (SCCA No.9/93)** which he did not attach therefore we shall not rely on it.

He admitted that on 30/09/2019, both the Applicant and her lawyer did not appear in court and this was not deliberate, but was because of Counsel’s poor health which may be regarded as sufficient cause.

In reply Counsel for the Respondent restated the law as provided under Order 9 rule 16 and 17 and argued that for the applicant to succeed she had to demonstrate that she had sufficient cause, which prevented her from appearing in Court. Citing **Florence Nabatanzi vs Noame Binsobedde, SCCA ApplicationNo. 6 of 1987** and **Sipiriya Kyaturesire Vs Justine Bakchulike Bagambe CA No 201/1995,** to the effect that *“ first and foremost the application must show sufficient reason which relates to the inability or failure to take some particular step within the prescribed time. The general requirement not withstanding each case must be decided on facts*”

According to Counsel the Applicant did not demonstrate sufficient cause for not appearing in Court herself or with her lawyer. He contended that although she claimed that her Counsel informed her about his poor health on 29/09/2019, and therefore he would not make it to court on 30/09/2019, she did not attach any medical evidence in support of his claim. In his view her affidavit did not meet the test in Order19 rule 3 which provides that;

*“Affidavits shall be confined to such facts as the deponent is able of his or her own knowledge to prove, except on interlocutory applications on which statements of his or her belief may be admitted, provided that the grounds thereof are stated.”*

He refuted the assertion that the Respondent had agreed to settle the matter in full whereas not. It was his submission that the Applicant was always aware about the requirement for her and her lawyer to appear on 30/9/2019, therefore the assertion that by the time her lawyer informed her about his illness she was upcountry cannot hold. He vehemently argued that she was just disinterested in prosecuting her case and although she seeks to rely on ***Edward Kamana Wesonge Vs Interim Electrol Commission Petition No 30/97,*** for the legal proposition that mistake of Counsel and his clerk should not be visited on an innocent client who had no control over their actions, her case was distinguishable. Whereas in Wesonge’s case, he did not attend court because his clerk had given him a wrong date, in her case she was merely disinterested because she knew when she was supposed to appear. Therefore the application should be dismissed.

**RULING**

The main suit LDR 65/2019 was cause listed for hearing and disposal at regional session at the Jinja High Court, held between 23/9/2019 to 4/10/2019. It is not disputed that on the 23/9/2019, when the file was called for pre-session hearing, both parties were in Court. They both informed Court about the steps they had taken to try and settle the matter out of court. Mr. Kinyera Counsel for the Respondent particularly stated that the parties had agreed to a tentative figure for settlement which was not paid to the claimant due to cashflow issues at the Respondent. As a result of the delay the Applicant demanded and increased the amount which was not affordable to the Respondent. Mr. Komaketch stated that the Applicant was still interested in settling the matter out of court and on the basis of both parties submissions, Court adjourned the matter to 30/09/2019, to allow the parties to conclude the terms of settlement and or to appear for hearing in the event that they failed to settle . When the file was called on the 30/09/2019, both parties were absent. Court assumed that the Applicant had lost interest in the case. As a result, it was dismissed for want of prosecution, hence this application.

We respectfully do not accept the Applicant’s reason for failing to appear on the 30/09/2019, because she was in court when the matter was adjourned for the parties to settle or return for a hearing on the 30/09/2019, if they had not settled it. She was aware that the case would proceed for hearing if there was no settlement, therefore she should have ensured that she was in Court on the 30/09/2019, as scheduled. Even if she had assumed that the matter was settled, there was no formal consent entered, therefore she would still be required to confirm the settlement on or before 30/09/2019. The fact that she chose to go upcountry instead of pursuing her case in our view showed a lack of interest in it. We are inclined to agree with Counsel for the Respondent that she was actually not interested in proceeding with the matter. The least she could have done would have been for her to appear to explain her lawyer’s absence and probably seek for an adjournment to another date. Even then if her lawyer was ill as alleged, she should have attached evidence in form of a medical report to prove it, but she did not do so.

In the circumstances, we find no merit in this application, it is therefore dismissed with no orders as to costs.

Delivered and signed by:

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

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

**PANELISTS**

**1. MS. HARRIET MUGAMBWA NGANZI ………..**

**2.MR. EBYAU FIDEL ………..**

**3. MR. F X MUBUUKE …………**

**DATE: 5TH MAY 2020**