**THE REPUBLIC OF UGANDA**

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

**LABOUR DISPUTE: MISC APPLN. NO 234/2018**

**ARISING FROM M.A NO 233/2018**

 **KASESE COBOLT CO. LTD ………………APPLICANT**

**VERSUS**

 **BWAMBALE ERIAB ……………RESPONDENT**

**BEFORE:**

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

**PANELISTS**

**1. MS. ADRINE NAMARA**

**2. MS. SUSAN NABIRYE**

**3. MS. MICHEAL MATOVU**

**RULING**

This notice by motion is brought under Section 94 of the Employment Act and Rule 45 of the Employment Act. We believe Counsel meant Rule 45 of the Employment Regulations of 2011. The application is Seeking extension of time within which to file a Notice of Appeal against the award of the Labour Officer of Kasese in Labour Complaint No.1/2/8/2013. The application further seeks that the Notice of Appeal, Memorandum of Appeal and other pleadings that were filed out of time are validated and that the costs of the application be in the cause. The application is supported by an Affidavit deponed by Byarugaba Kusiima of M/S Shonubi, Musoke & Company Advocates.

The summary of the grounds of the application as stated in the body of the notice of motion are that; being dissatisfied by the Labour Officers award in favour of the Respondent, this court having not been functional at the time, the applicant filed Misc. Cause No.0027 of 2014 before the High Court of Uganda at Fort portal, for orders to quash the Award. That the presiding Judge then administratively transferred the file to the Industrial Court for determination, but by then, the time within which to file the appeal before this Court had lapsed and to date the applicant has not succeeded in transferring the file from the labour officer and the High Court of Fort portal to this court. That the applicant is still dissatisfied with the award and has filed a notice of Appeal as well as a Memorandum of Appeal out of time because of among other reasons the mistake of counsel. That the applicant has a good and valid ground of appeal which raises several matters of law which ought to be heard.

The reasons in support of the application as set out in Affidavit in support are not different from the grounds in the notice of motion, save that the Annexures A and B referred to are not attached. Annexure “A” and “B” refer to the award and Misc. Cause 0027 of 2014 respectively.

The affidavit in opposition was filed by the respondent Bwamabale Eriab and it is to the effect that the application was incompetent and incurably defective because Misc. Cause No. 0027/2014 which was instituted by the applicant had no basis in law and ought to be struck out. He contends that this court became operational in 2014 and the applicant having failed to file an appeal before the High court which has unlimited jurisdiction or to this court that commenced operations in 2014, this was dilatory conduct on its part. According to him there is no evidence to show that the Applicant sought to transfer the file to this court and on the contrary it was the Respondent who caused the Labour Officer’s file to be transferred for execution, in 2018. The Applicant only belatedly and as an afterthought wrote annexure “B” to the registrar after receiving a notice to show cause why execution should not issue against it in November 2018. He further contends that no memorandum has been served on him and the Notice of Appeal marked “C” having been filed after a notice to show cause why execution should not issue was served on to the respondent’s lawyers on 6/12/2018, it was an afterthought. The Respondent contends further that the Applicant does not have plausible reasons why it did not file an Appeal in 2014 and is merely bent on wasting courts time and preventing him from enjoying the fruits of his Award.

**REPRESENTATION**

The Applicant was represented by Mr. Paul Kawesi of Shonubi, Musoke& Co. Advocates Plot 14 Hannington Road Kampala and the Respondent by Mr. Samuel Kiriaghe of MRK Advocates, plot 4-5 Nyabong Road off Wampewo Avenue, Kampala.

**SUBMISSIONS**

In submissions, Mr. Kawesi, Counsel for the Applicant reiterated the grounds and reasons in support for the application as stated in the Notice of motion and Affidavit in support respectively. He insisted that the Respondents inability to file an appeal in time was because the Registrar High Court Fort portal had not transferred the file to this Court and in 2014 this Court had not yet been constituted. He cited **MUGABI VS SUDHIR RUPERLARIA CA.NO.10 OF 2002,** in support of his argument. He prayed that the application is allowed given that the Respondent already deposited Ugx. 31,322,177/- in this court as security for the application.

Mr. Kiriaghe, Counsel for the Respondent restated the reasons set out in the Affidavit in support of the opposition and opposed the application. He argued that the grounds and reasons in support as set out in Byarugaba’s Affidavit in support contained falsehoods. He argued that there was no evidence to show that the Respondent’s lodged an appeal before the High Court Fort portal, because para 3 of the Affidavit only mentions M.C No. 0027/2014 which sought to quash the decision of the Labour officer. He also contended that annexures named under para 4, 5 and 6 of the Affidavit were not attached on the record therefore they are false. He cited **SIRASI RUTYATANA &4 OTHERS VS KANANURA CA No.47/1976.**

According to him an appeal against the decision of a Labour Officer must be lodged within 30 days after the award in accordance with Section 94 of the Employment Act & Regulation 5 of rules. He insisted that the award was made in March 2014 and the court was constituted in 2014 and therefore there is no plausible explanation for the delay. He insisted that the notice and memorandum of Appeal which the Applicant sought to validate were all filed after the issuance of the Notice to show cause why execution should not issue against the Respondent and they were not served on to the Respondent.

He also contended that in the absence of any action taken by the Respondent, the delay was inordinate and inexcusable and only intended to deny the Respondent the right to enjoy the fruits of his award, therefore the application should be dismissed with costs.

In rejoinder Mr. Kawesi argued that the non-attachment of the annexures did not falsify an affidavit. He conceded that M.A 0027 of 2014 which was filed at the High Court in Fort portal was for Judicial Review against the labour Officers decision. According to Counsel there were no rules on how to tender an appeal arising out of the decision of a Labour office to the High Court. He also conceded that he had not yet filed the memorandum of appeal because the court had not yet endorsed it. He maintained that the Application should be allowed.

**DECISION OF COURT.**

Before we proceed to resolve this matter we wish to bring it to the attention of Counsel for the Applicant that this matter was brought under a wrong law. Section 94 of the Employment Act 2006 and Regulation 45 the Employment Regulations 2011 under which Counsel brought this matter only apply to the procedure for lodging Appeals arising out of the decisions of a Labour Officer. However the Employment Act and Regulations made under it do not provide for the procedure to extend time to file an Appeal. The Applicant should have therefore added Section 98 of the Civil Procedure Act, Order 51 rule 6 and Order 52 rule 1 of the Civil Procedure Rules.

This Court in many decisions has held that although it is not bound by the Civil Procedure Act and rules made thereunder, it is not barred from applying them especially where there is a lacuna in the Employment Legislation. In the premises this application ought to have been brought under Section 94 of the Employment Act 2006, Regulation 45 of the Employment regulations 2011, Section 98 of the Civil Procedure Act and Order 51 rule 6 and Order 52 rule 1 of the Civil Procedure Rules, which provide for the right to apply for extension of time.

We shall now resolve the Application.

It is trite that extension of time within which to appeal may be granted at the discretion of Court, where there applicant gives justifiable reasons for the delay. This discretion must be applied judicially. (See Section 98 of the Civil Procedure Act).

After a thorough analysis of the facts of this applications and the laws applicable, we found as follows;

Although Mr. kawesi argued that the Applicant’s effort to file an appeal in time were frustrated by the Applicants inability to retrieve M.C 0027/2014 which sought to quash the Labour Officers award at the High Court in Fort portal, purportedly because the file had been administratively referred to this when the court was not yet operational, and that the labour officer had failed and or refused to forward the proceedings leading to the award, to the Applicant, he did not adduce any evidence to show that the Applicant had vigilantly pursued the Registrar of the High Court at Fort portal or the Labour Officer for the same. There is nothing on this record to show that the Labour officer was formally requested to furnish the Applicant with the record of proceedings and the labour officer declined to do so. Annexure “B” which is the applicants letter to the registrar of High at Court Fort portal, regarding the said file was only written on 30/11/2018, which was 4 years after the Labour delivered the award and 3 days after the issuance of the notice to show Cause why execution should not issue.

It is also not true that this court was not yet constituted by 2014. This Court was actually was constituted by April 2014 and it commenced its operations in July 2014. Even then the Court has been in operation since 2014 but the Applicant did not show that it had taken any steps to make the Appeal.

We are not convinced that the Applicant took any steps before it was issued with a notice to show cause why execution should not issue. We believe that Annexure “B” was prompted by the receipt of the notice to show cause and not because the case was frustrated by the High Court Fort portal and the labour officer. Besides the Respondent was able to secure the same file from the Labour Officer for execution. There is nothing to show that the Judge High Court Fort portal administratively transferred the file to the Industrial Court. There is no communication to the Registrar of the industrial Court to establish whether the file was actually received by the Industrial Court.

Mr. Kawesi’s argument that the Appeal had very high chances of success was also not substantiated and he did not attach the Memorandum of Appeal the enable us ascertain the probable likelihood of success of the appeal or whether the appeal could actually stand in law.

We are not satisfied with the reasons advanced by the applicant in support of the application. We are therefore inclined to believe with Mr. Kiraghe Counsel for the Respondent that the Applicant inordinately delayed to take the required steps to file the Appeal and only remembered after it received notice to show cause why execution should not issue. The fact that the applicant deposited Ugx. 31,322,177/- in this court as security for the ap plication is also not sufficient.

The reasons advanced by the applicant, in our view are not sufficient to warrant the grant of this application. It is therefore denied. No order as to 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. MS. ADRINE MAMARA ………….**

**2. MS. SUSAN NABIRYE ………….**

**3. MS. MICHEAL MATOVU ………….**

**DATE: 2ND DECEMBER 2019**