**THE REPUBLIC OF UGANDA**

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

**LABOUR DISPUTE MISC. APPLN. NO. 127/2019**

**ARISING FROM LD. APPEAL NO.33/2017.**

**ORIENT BANK LIMITED ….…….. CLAIMANT**

**VERSUS**

**WALUBI GODFREY …………………. RESPONDENT**

**BEFORE:**

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

**PANELISTS**

**1. MR. EBYAU FIDEL**

**2. MS. HARRIET MUGAMBWA NGANZI**

**3. MR. F X MUBUUKE**

**RULING**

This application is brought by notice of motion under Section 94 of the Employment Act and Rule 45 of the Employment Regulations, for orders that:

1. The time for filing a Notice of Appeal by the Applicant, BE EXTENDED /ENLARGED.
2. That the Appeal and other pleadings filed out of time be validated.
3. That the costs of this Application abide the result of the Appeal.

The grounds of the application are set out in and affidavit deponed Byrd Ssebuliba Counsel for the Applicant and is summarized as follows;

1. That he is Counsel for the Respondent and therefore knowledgeable of this case and competent to swear this affidavit.
2. That the Respondent lodged a complaint with the labour officer in Jinja on 30/08/2016, for alleged unfair summary dismissal.
3. That an award was entered in favour of the Respondent on 12/10/2016 in the sum of Ugx.550,000/- for damages and Ugx.50,085,000/- (Annexure”).
4. That the Applicant being dissatisfied with the award lodged an appeal under Appeal No.33/2017seeking orders to quash the award of the labour officer.
5. That the applicant sought for the record of proceedings and only received it on 20/02/2017 and soon after Counsel in personal conduct a one Nakiranda Rebecca got pregnancy complications which rendered her attendance to office intermittent.
6. That due to the aforementioned complications Counsel did not lodge the appeal until 5 months later beyond the prescribed time. (Marked Annexure “B”)
7. That Counsel subsequently went on maternity leave without notifying the firm about the matter and she later resigned from the firm. (annextureC1 and C2 and D respectively)
8. That whereas this court on 10/05/2019, delivered a ruling that affects a portion of the labour officers award, substantial matters relating to the award of the 50,085,000/- remain outstanding hence the appeal.
9. That it would be unjust and inequitable for the mistakes of Counsel to be visited upon Applicant.
10. The Applicant has a good and valid appeal which raises several matters of law which ought to be heard and resolved on its merits, therefore this Application should be granted and the Appeal lodged before this court in September 2017, should be validated.

In reply the Respondent Walubi Godfrey on the advice of his lawyers Wagabaza &Co. Advocates, opposed the application and stated as follows;

1. He admitted that he lodged a complaint to the labour officer in Jinja, the labour officers issued an award in his favour and a ruling of this Court affected a part of the award.
2. He refuted the assertion that the Applicant filed an appeal because by April 2018, when the Registrar referred the issue to Court for determination of the issue of award of damages to this court, there was no appeal.
3. He also the assertion that he Applicant had sought for a record of proceedings in vain, on the grounds that the Applicant did not adduce any evidence showing that it did request for the said record of proceedings and besides the labour officer issued the decree in October 2016 and the appeal was only filed in September 2017. He contended that a copy of the purported Appeal and the letter purporting to request for the record was never served on him or his lawyers.
4. He contended further that it was not a requirement to have the record of proceedings before drafting a Notice of Appeal and in any case the Appeal had no merit and no chance of success. He refuted the assertions that Ms. Nakiranda Counsel in personal conduct, had any complications and she resigned without notifying the applicant about the Appeal.
5. He prayed that in the interest of justice and equity this court should not to validate the alleged appeal lodged in September 2017, which was way out of time, the decree having been issued in October 2016.

SUBMISSIONS

Counsel for the Applicant’s submitted that this omnibus application should be granted on the grounds that :

1. The applications are of the same nature
2. One supersedes the other and
3. It is expeditious for disposal of the matter

She cited **Magemu Enterprises Vs Uganda Breweries Limited HCCS 462/1999** and **The Registered Trustees of Kasese V Benuza LDC Misc. Applications No. 155 of 2017,** in support of this submission. According to her on 30/08/2016, the Respondent lodged a complaint with the labour officer Jinja for alleged unfair dismissal. The labour officer made an award of Ugx. 50,085,000/=, for unpaid salary arrears, unremitted NSSF contributions and lunch allowance. Being dissatisfied with the exparte’ award the applicant lodged an appeal under No.33/2017, seeking for orders to quash the Award of the labour Officer. When the Applicant requested for the record of proceedings, they were only availed to this court on 20/02/2017, after the Registrar’s requested for the same on the 13/02/2017. Counsel cited section 79(2) of the Civil Procedure Act which provides that *“ in computing the period of limitation within which an appeal shall be lodged, the time taken by the registrar in making a copy of the decree or order appealed against and of the proceedings upon which it is founded shall be excluded.”* Therefore, in the instant case, time started running from 20/02/2017.

 It was further her submission that Counsel in personal conduct of the matter a one Nakiranda Rebbecca developed pregnancy complications and owing to doctor patient confidentiality, she could divulge the details of the said complications. As a result, Ms. Nakiranda did not lodge the appeal until a few months, on 12/09/2017, after the time prescribed under the law and soon after filing the appeal she proceeded on maternity leave and as such the firm was not able to proceed with the matter and in fact the firm was not aware that an appeal had been lodged out of time. She made reference to Nakiranda’s leave application form marked Annexture “D. Ms. Nakiranda subsequently resigned from the law firm as evidenced in Annexures “E” the resignation letter.

She asserted that given the chronology of events the delay in lodging the appeal was occasioned by the acts/omissions of Counsel and they should not be visited on the Applicant. She cited **Mutaba Barisa Kweterana Ltd vs Bazirakye Yeremiya & Another, C.A No 158 of 2014,** in support of this assertion.In her opinion the appeal was filed a few months later than it ought to have been filed, therefore such a delay did not amount to inordinate delay and to hold to the contrary would be to punish the applicant for the omissions of Counsel.

According to her a number of principles that guide applications of this nature including that the administration of justice requires that all substance of disputes should be heard and decided on merit as cited in **Banco Arabe Espanal v Bank of Uganda [1999] 2 EA 22,** in support of this principle. She contended that the award was delivered exparte without hearing the Applicant’s case contrary to right enshrined in Article 28(1) of the constitution of Uganda.

She also cited **Sango Bay Estates Ltd v Dresdmer Bank [1971] EA 17 and GM Combined (U) Limited VS A.K Detergents (U) Limited S.C Civil Appeal No. 34 of 1995** in which it was held that the general principle is that leave to appeal will be allowed where, prima facie there are grounds of appeal that merit judicial consideration or the intended appeal has reasonable chances of success, or if the decision sought to be appealed conclusively determines the rights of the parties**.** She insisted that the three were material and serious issues to be tried and the such as;

1. Whether there was sufficient service on the Applicant to thereafter warrant the delivery of an exparte award.
2. Whether the Labour officer rightly awarded the sum of Ugx.50,085,000/=for unpaid salary arrears, unremitted NSSF contribution, lunch allowance and untaken leave days of 48.3 days;
3. Whether the labour officer has jurisdiction to award costs

She asserted that the appeal had a very high likelihood of success, therefore the extension of time within which to lodge it should be granted.

She also argued that the Respondent would not suffer any inconvenience or prejudice if by the extension is granted but on the contrary if it is denied the Applicant’s constitutional right to be heard will be greatly prejudiced. She cited **Andrew Bamanya vs Shamserali Zaver SCCA No. 70 of 2001,** to emphasise the Applicant’s right to justice, its constitutional right to be heardand the prejudice it would suffer if the application was denied.

Counsel for the Respondent in opposition submitted that the Respondent who was convicted and remanded in Luzira prison for causing financial loss, theft, conspiracy and corruptly neglecting his duties as assistant Manager, was acquitted by the court of Appeal on 25/05/2016. He was terminated from employment while in prison and on 30/08/2016, following his acquittal, he lodged a complaint before the labour officer seeking remedies for unfair and unlawful termination. According to Counsel the Applicant was summoned for a hearing on 23/09/2016 but it failed to show up. The Labour officer then prompted the Respondent to serve the Applicant again, on 5/10/2016, for a hearing scheduled for 12/10/2016 which was done and service was acknowledged. When it did not show up, the Labour Officer then proceeded to hear the matter exparte and Judgement was entered for the Respondent/Claimant. According to Counsel the Applicant only filed Appeal No.33/2017, after the Respondent applied to this Court execution of the labour officers award.

Before responding to the Application, however Counsel raised the following Preliminary Objections:

That Affidavit in support of the Application is incurably defective because the Deponent, “Bryd Ssebuliba” for lacked of authority to swear it, therefore it should be struck off.

He asserted that according to Order 29 rule 1 which provides as follows:

 **“ Subscription and verification of pleadings**

**In a suit by or against a corporation any pleading may be signed on behalf of corporation by the secretary or by any director or other principle officer of the corporation who is able to depose to the facts of the case.**

It was his submission that Byrd Sebuliba is neither a Secretary, nor a director, nor a principle officer of the Applicant hence he has no authority whatsoever to depone the affidavit in support on behalf of the Applicant hence the affidavit is incurable defective. He cited **Lena Nakalema Binaisa & 3 others vs Mucunguzi Myers HCMA No 0460 of 2013,** in which Court held that;

***“… whether a representative action under O.1 rule 10 and 13 CPR or suit be a recognized agent under order 3 rule 2(a) CPR or by order of Court, the person swearing on behalf of the others ought to have their authority in writing which must be attached as evidence and filed on the court record. Otherwise there would be no proof that the person purporting to swear on behalf of the others has express authority.…***

***That an affidavit is defective by reason of being sworn on behalf of another without showing that the deponent had authority of the other.in this case the affidavit is incurably defective for non- compliance with the requirements of the law. It cannot support the application which seeks to add the other applicants. The application is dismissed with costs.***

Counsel contended that the deponent in the instant application furnished no evidence of authority granted to him to swear the affidavit on behalf of the Applicant. He quoted paragraph 1&2 of his affidavit as follows:

1. That Iam an advocate of the High Court of Uganda and all subordinate Courts thereto practicing law with the Firm of M/s Shonubi, Musoke &Co. Advocates.
2. That Iam counsel for the Applicant and hence knowledgeable of this case and competent to swear this Affidavit.

According to Counsel he does not state where he derived the authority to swear the affidavit on the Applicant’s behalf which is wrong in principle and in law.

He also cited the holding in **Niko Insurance (U) Limited vs Southern Union Insurance Brokers (U) Limited & 4 others HCMA 817 of 2015,** inwhich Justice Madrama answered the question whether an advocate needed authority to swear an affidavit in matters of his client and especially in contentious matters. His holding as cited by Counsel was to the effect that;

“… *An appointment to act on behalf of a client must be in writing. This applied to making an affidavit in the capacity of the party to the action. …. That having a written authority shields an advocate from committing an offence under the Advocates Act namely the Advocates (professional Conduct) Regulations and regulation 15 thereof which provided that an advocate shall not include in any affidavit any matter which he or she knows or has reason to believe is false. The basis of the ruling is order 3 r 1 of the Civil procedure rules which provides that …an appearance or act in court required or authorized by the law to be made or done by a party in such court may except where otherwise expressly provided for by law for the time being in force, be made or done by the party in person or by his or her recognized agent or by an advocate duly appointed to act on his or her behalf… There is a difference between a recognized agent and an advocate duly appointed to act on behalf of the client. Recognized agents are defined by O3 r rule 2 of the civil procedure rules. They include persons holding powers of attorney authorizing them to make applications and do acts on behalf of parties. Secondly they include persons carrying on trade or business for and in the names of the parties not resident within the local limits of the jurisdiction of the court.”*

Counsel further cited **Niko Insurance** (supra) which upheld **Lena Nakalema Binaisa(supra),** which was to the effect that whether it was a representative action under order 1 rule 10 (2) and 13 of the Civil procedure rules or a suit by a recognized agent under order 3 rule 2(a) of the CPR or by order of Court , the person swearing on behalf of others ought to have their authority in writing which must be attached as evidence and filed on the court record.

In Counsels view all these authorities were on all fours with the instant application. He contended that whereas Byrd Ssebuliba is Counsel for the Applicant, which is a limited liability Company, he ought to have written authority to depone the affidavit on its’s behalf and since the same has not been provided, the affidavit in support should be struck off the record and the application should be dismissed with costs.

In rejoinder and in reply to the Preliminary Objection, Counsel for the Applicant submitted that; the affidavit sworn by Mr.Byrd Ssebuliba is valid and should not be struck out. She argued that counsel had misinterpreted the position of the law with regards to affidavits. She submitted that the authorities relied on by the Respondent were not relevant and or applicable to the application because of the following reasons;

1. The Respondent erroneously argued that being Counsel for the Applicant does not grant him authority to swear pleadings on the Applicant’s behalf yet there is a distinction between pleadings and Affidavits.

She distinguished pleadings with an affidavit and stated that whereas pleadings are defined under section 2 of the Civil procedure Act, to include:

*“… any petition or summons and also includes the statement in writing of the claim or demand of any plaintiff and of the defence of any defendant to them and the reply of the plaintiff to any defence or counterclaim of a defendant.”*

An Affidavit on the other hand is defined to mean *“… a written statement or declaration in writing on oath or affirmation before a person having authority to administer oath or affirmation. She cited Dr. Runumi Mwesigye Francis vs Returning Officer& 2 others.*

It was her submission that Order 19 rule 3 clearly determines the scope of affidavits as being confined to such facts as the deponent is able on his or her own knowledge to prove. According to her a perusal of affidavit sworn by the Deponent clearly shows that the deponent is deponing to facts within his knowledge as having been involved in the appeal process and pleadings incidental thereto, therefore they fall within the ambit of order 19 rule 3, of the Civil Procedure Rules.

She further argued that reliance of Counsel for the Respondent on **Niko Insurance (Limited vs southern union Insurance Brokers and 3 others vs Mucunguzi Myers,** for the legal proposition that the requirement for a person who depones an affidavit on behalf of another to have express written authority is founded on Order 1 rule 12 (1) of the CPR and Order 3 rule 2 which provides as follows:

Order 1 r 12(1) CPR:

***“where there’s more plaintiffs than one any one or more of them may be authorized by any other of them to appear, plead or act for that in any proceedings and in like manner, where there are more defendants than one, any one or more of them may be authorized by any other of them to appear, to plead or act for that other in any proceeding…***

***Sub- rule (2) (supra) is mandatory and provides that;***

***The authority shall be in writing signed by the party giving it and shall be filed in the case.”***

***Order 3 rule 2 CPR***

***b) The recognized agents of parties by whom such appearances, applications and acts may be made or done are.***

***a) Persons holding powers of attorney .***

***b) persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the Court within which limits of the court within which the appearance, application or act is made or done in matters connected with such trade or business only, where no other agent is expressly authorized to make and do such appearances, applications and acts.***

According to her these definitions exclude advocate, because they were never intended to include Advocates and were meant for situations where a deponent was deponing on behalf of other parties to the suit, which was not the case in the instant case.

She asserted that according to the holding in **Republic vs National Environment Management Authority and Ors(2005) 2 EA 269,** there can never be a better deponent than an advocate on issues relating to archives or court records, such matters are within an advocate’s knowledge, therefore the affidavit deponed by Byrd Ssebuliba is competent and ought not to struck out.

She also relied on order 3 rule 1 which provides that:

***“Any application to or appearance or act in any court required or authorized by the law to be made or done by a party in such court may except where otherwise expressly provided by any law for the time being in force , be made or done by the party in person, or by his or recognized agent, an advocate duly appointed to act on his her behalf , expert that any such appearance shall if the court so directs be made by the party in person.”***

In her opinion the Civil Procedure Rules should be read in whole. She insisted that even where the law requires an application to be made by a party, the above provision did not exclude an advocate from making such an application.

**We think it is prudent to resolve this preliminary objection, before we consider the submissions on the main Application and shall resolve them as follows:**

**Whether the Affidavit in support of the Application is competent?**

The gist of the objection as we understand it is that Mr.Ssebuliba had not adduced any evidence of being authorized to swear the affidavit.

 It trite that an Affidavit is a statement in writing, made on oath or affirmation. It basically contains matters which the deponent knows or believes to be true, and are the basis for determining questions of facts.

Order 19 rule 3(1) provides the scope of affidavits and it states *that:*

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

In paragraph 1 and 2 Mr. Bryd Ssebuliba stated that:

He quoted paragraph 1&2 of his affidavit as follows:

*“1. That Iam an advocate of the High Court of Uganda and all subordinate Courts thereto practicing law with the Firm of M/s Shonubi, Musoke &Co. Advocates.*

*2.That Iam counsel for the Applicant and hence knowledgeable of this case and competent to swear this Affidavit.*

Mr. Ssebuliba stated that he was Counsel for the applicant practicing law in the law firm that had instructions to argue the application. In our considered opinion the instructions authorized the law firm to appear, plead or act for the Applicant in any proceedings or legal matters and by implication all the law firms officers were ceased with the same authority to do the same. Therefore the law firm and its officers are duly appointed to act on their clinets behalf and in this case to act on the Applicants behalf.

Order 3 rule 1 provides that:

***“Any application to or appearance or act in any court required or authorized by the law to be made or done by a party in such court may except where otherwise expressly provided by any law for the time being in force , be made or done by the party in person, or by his or recognized agent, an advocate duly appointed to act on his her behalf , (emphasis ours), expert that any such appearance shall if the court so directs be made by the party in person.”***

Mr. Ssebuliba stated under paragraph 1 of his affidavit, that he was an officer of M/S Shonubi, Musoke and Co Advocates which was duly instructed to represent the Applicant, by implication therefore he was authorized to act for and on the Applicants behalf.

A perusal of the affidavit indicates that its substance and content substantially relate to the law firm’s role in the delaying to file the appeal which the application seeks to be validated and given he is not Counsel in personal conduct of the Application, he is not barred from deponing the affidavit in support of the instant application.

In the circumstances, the affidavit is competent before this court therefore objection is disallowed.

The second objection was challenging the validity and competence of the intended appeal which the applicant seeks to validate, given the holding in **Stanbic Bank vs Christine Karungi, LDA No. 29 od 2016** and **Busoga University & Anor vs Kiiza Moses Labour Dispute Appeal No.003/2018**. In counsel View the appropriate remedy would have been to seek leave from the labour officer to set aside his decision, therefore it should be struck out as was stated by court in the 2 authorites.

In reply to the Preliminary objection, regarding the validity and competence of the Appeal, Counsel for the Applicant asserted that it offends the law relating to objections since it requires evidence to determine its competence. Relying on **Mukisa Biscuit Manufacturing Co. Vs West End [1969], at 701,** she submitted that a preliminary objection cannot be raised where a fact has to be ascertained. Therefore, it would require the consideration of the appeal by way of evidence to determine its competence which is clearly premature and in contravention of the principles specific to raising a point of law as an objection.

It was also Counsel’s submission in reply that; **Stanbic Bank vs Karungi** and has since become bad law and has been replaced by various authorities such as **Sanlam General Insurance Vs Mutawe Andrew Labour Dispute No. 3 of 2016,** in which court decided that a party aggrieved by the decision of a labour officer’s exparte award must lodge an appeal with the Industrial Court. Therefore, this objection should be over ruled.

The third objection alleged that the intended appeal was resjudicata , given that this court in considering LDR 93/2018, on the interpretation of the Labour officers award for damages, already disregarded the claims the applicant intends to bring on appeal. He argued that the matter was res judicata within the meaning of Section 7 of the Civil Procedure Act and **Perusi Bukirwa vs Nakibirango Janet Kiggundu Court of Appeal, CA, No. 4of 2003 ,** therefore it it should be dismissed with cost.

In reply to this objection Counsel for the Applicant, asserted that whereas the Applicant attempted to submit on the validity of the other aspects of the labour officer’s award, in addition to the issue of Labour officer’s award of general damages of Ugx.550,000,000/- which the Registrar had referred to the Court for determination, the Court was categorical in stating the scope of the reference, ant therefore its ruling was limited to the interpretation of the award of damages. Therefore given that the matter was not considered within the scope of the Registrar’s reference it cannot be considered as functus officio.

We shall consider objection 2 and 3 concurrently.

**Whether the Appeal was incompetent and premature before this court.**

The court of Appeal in **Engineer John Eric Mugyenyi vs Uganda Electricity Generation Co. Ltd** stated that a labour office is not a court of Judicature, therefore it would not be able to invoke the Civil Procedure rules to set aside its own decisions. Therefore it overruled **Christine Karungi**(supra). Subsequently, in **Sanlam General Insurance Vs Mutawe Andrwe Labour Dispute No. 3 of 2016,**and many other authorities, this Court has since held that a party who is aggrieved by the decision of a labour officers exparte award must lodge an appeal with the Industrial Court. Therefore such a party can nolonger apply to the Labour Officer to set his or her award aside. The appropriate course of action for the applicant therefore is to appeal against the labour officer’s award in the Industrial Court. The application to extend time and validate the intended appeal is therefore competent before this court.

**Whether the appeal is res judicata?**

A perusal of the ruling regarding the Registrar’s reference on the award of general Damages indicates that the Applicant in LDR 93/2018, which was considering the interpretation of the labour officer’s award of damages, attempted to contest all the reliefs that were awarded by the labour officer in addition to the award of damages. However the Court limited the scope of its decision to the award of damages which was what was actually referred to it for determination. In **Perusi** (Supra) it was stated that ***“… Res judicata presupposes that there are two opposing parties, that there is definite issue between them, that there is a court or body competent to decide the issue and that within its competence the court or tribunal has done so. … the plea of resjudicata not only applies to points upon which the first court was actually required to adjudicated but to every point which properly belonged to the subject matter of litigation and which the parties exercising reasonable diligence might have brought forward at the time …”***

The matter for determination before this court was a reference by the respistrar seeking Courts interpretation on the Labour officer’ s award of damages of Ugx. 550,000,000/-, to the Respondent in the instant Application. It was refernce and not an appleal therefore the contestation of other reliefs did not belong to the subject matter before the Court at the time, the Courts insistence on only considering the determination of the matter referred to it for interpretation. The issues that constitute the intended suit therefore cannot be taken to be functus officio and therefore rejudicata, within the meaning of section7 of the CPA. The objection is therefore disallowed. Having resolved tha objections we shall now consider the main application

**The main Application**

In reply to the Submissions of Counsel for the Applicant on the main application, Counsel for the Respondent refuted the assertion that the Applicants filed any appeal , because the Registrar noted that there was none at the time she made a referred the interpretation of the labour officer’s award of general damages to this court, on 30/4/2018. He insisted that the Alleged Appeal was filed in September 2017 yet the decree had been issued on 21/10/2016, which was way out of time. He contended that the Applicant did not adduce evidence of any request for the record of proceedings and in any case a record of proceedings was not required to draft the Notice of Appeal and the appeal has never been served on him or his lawyers.

He refuted the argument that the Counsel in personal conduct got complications because no evidence to that effect was adduced no evidence in support. He insisted that the Applicants attribution of their failure to file an appeal on Counsel Nakiranda’s taking maternity leave and later resigning from the law firm, amounted to dilatory conduct.

He asserted that the Appeal had no merit and no chances of success therefore its validation, would occasion a miscarriage of justice to the Respondent’s detriment therefore it should not be dismissed.

In rejoinder Counsel for the Applicant insisted that the applicant was not guilty of dilatory conduct , because the delay in lodging the appeal was occasioned by mistake of Counsel which should not be visited on the Applicant. According to her the finding in **National Insurance Corporation vs Sam Lukooya Misc .appln. No 43 of 2019,** was to the effect that a mistake by a lawyer who left the firm without undertaking an essential step constituted sufficient cause and the Application was granted. She contended that **Kananura Andrew Kansiime Vs Richard Henry Kaijuka SCCR No. 15 of 2016,** was not applicable to this case, because whereas it dealt with the mistake of counsel not being acceptable where the litigant expressed dilatory conduct which was not the case in the instant application.

She also argued that **Captain Ongom vs Catherine Nyero Owota SCCA No 14 of 2016,** is distinguishable because it suggests that the litigant must be privy to the default or the default was as a result of the litigant’s failure to give due instructions and no evidence was adduced to show how the mistake of a pregnant external advocate could be the default of the Applicant. And **Sepirya Kyamulesire vs Justine Bikanchurika**, decided based on the Supreme Court rules which are not applicable to the Industiral Court.

**DECISION OF COURT**

The gist of the main application as we understand it is that the delay in filing the appeal should not be visited on the application because it was occasioned by the mistake of Counsel.

It is the Respondent’s contention however that it was because of dilatory conduct on the Applicant’s part.

A perusal of the record of proceedings at the labour office shows that the Labour officer notified the Applicant’s Managing director about the Respondent’s complaint in his letter dated 23/09/2019 and by the same letter the managing director was invited for a conciliation meeting scheduled for 30/09/2016. From the record the meeting took place but the Applicant’s were absent and there was nothing on the record to explain their absence. The labour officer wrote another dated 5/10/2016, directing the Respondent to respond by 12/10/2016, but there was no response. The letters were written to the Applicant and not its advocates and each of the letters was embossed with the Applicants stamp on the respective dates. The record of proceedings indicates that the Labour officer held the 1st meeting as stated in the 1st letter on the 30/09/2016 and when the Applicant did not show up, he directed the Respondent served the applicant again and this was done by his letter dated 5/10/2016. Another meeting was held on 12/10/2016 and still the Applicant did not appear. He took down the Respondent’s evidence and and set down the matter for ruling on 21/10/2016. Clearly, the respondent was aware of the Respondent’s Complaint against it from the time it was lodged before the labour officer, but it chose not to defend the matter. It is not clear at what point Ms. Shonubi and Co advocates were actually instructed to take over the matter. It is not disputed that it was only when the Respondents applied for execution that the applicant intimated that they had filed a notice of appeal.

Regulation 45 of the Employment Regulations, 2011 provides that:

1. ***A person who is aggrieved by the decision of the labour officer may within 3 days give notice of appeal to the industrial court in the form prescribed in the seventeenth schedule.***
2. ***Upon receipt of a notice of appeal the registrar shall within 14 days, ask the labour officer to furnish the Industrial court with information concerning the complaint, the parties involved, the hearing proceedings, the decision of the labour officer on the matter of appeal.***
3. ***The labour officer shall present the Industrial court the information referred toin sub regulation (2) within twenty one days after being required to provide the information,***
4. ***After receiving the information on the matter of appeal from the labour officer, the industrial court shall summon the parties for a hearing.***

Therefore the an appeal can only be competent before this court if notice of the appeal is filed in the court within 30 days of the decision of the labour officer and not after the labour officer has sought for and received the record of proceedings from the labour officer as provided for in regulation 45(2) (supra). It should be emphasized that whereas Section 79of the Civil Procedure Act places the responsibility of making a copy of the decree or order appealed against and of the proceedings, where the appeal lies from the labour officer to the Industrial Court, The Employment Regulations 2011, place the responsibility on the Labour officer of making a copy of the decree or order appealed against and of the proceedings and not the Registrar of the Industrial Court as Counsel for the Applicant wanted court to believe.

Therefore, computation of the period of limitation in the Industrial Court, begins from the date of filing the notice of appeal in Court and not the date of receipt of the record of proceedings as argued. The time taken to produce the proceedings by the labour officer given the provision under regulation 45(2) would not affect the limitation period, as long as the notice of appeal has been filed within the time prescribed under regulation45(1) (supra).

In the instant case it was submitted that the appeal was only lodged in court on the 12/9/2017, 5 months after the registrar received the record of proceedings, and the delay was attributed to the mistake of Counsel Nakiranda who was in personal conduct of the matter, who developed pregnancy complications which made affected her attendance at work and she later took maternity leave after the delivery of her baby. Although Counsel did not divulge the nature of pregnancy complications given the doctor/patient confidentiality annex C2 indicates that Ms. Nakiranda applied to take her maternity leave with effect from 30/11/ 2017, the news about the birth of her baby was communicated to her fellow staff at the law firm on 4/12/2017, and she resigned effective 30/9/2018. Given the trajectory of events as stated by Mr. Ssebuliba on the face of it, it would seem that the law firm was not informed about the progress of the case given Counsel Nakiranda’scondition at the time. The record is however does not provide the actual date on which the Applicant instructed the law firm to represent it in this matter. Given that Ms. Nakiranda deliverd her baby in December 2017, and given that a pregnancy lasts for 9 months, she got pregnant around February or March of 2017, and the labour officer delivered his decision on 21/10/2016, as provided under regulation 45 (1) the notice of Appeal should have been filed in court on or before 21 November 2016.

It is our considered opinion therefore that given that all correspondences about the complaint were sent to the Applicant itself and not to its lawyers, and given that the Applicant ignored to responded to them or to attend the meetings as directed by the labour officer, the Applicant was not aware of the outcome from the labour office and it is very likely that the law firm in the instant application had not yet been instructed to defend the matter. Therefore notwithstanding Ms.Nakiranda’s circumstances, steps were on taken on the file when the execution proceedings commenced. We are not convinced that the Applicant took any steps to defend the matter and or that it instructed the firm to represent it before the execution notice was issued on them, because there is no record of any notice of appeal and by that time Ms. Nakiranda was not developed any pregnancy complications because she was not pregnant! The actual appeal was filed in court on 12/9/2017.

We are therefore inclined to agree with counsel for the Respondents that the Applicants conduct amounted to dilatory conduct which can not be concealed by the well settled principle that a lawyer’s mistake cannot be visited on an innocent litigant. The instant case is one of the exceptions. We reiterate that by ignoring the labour officers directives, the Applicant’s locked themselves out of the proceedings, and was not privy to their outcome , which was the exparte decision. We strongly believe that it only woke up when the matter was set down for execution. As already stated, the notice of appeal should have been filed within 30 days from decision of the labour officer and in this case it should have been filed within 30 days from 21/10/2016, but it was not filed. The appeal 33/2017 which it seeks to validate was only filed on 12/9/2017, 5 months after Registrar received the record of proceedings from the the Labour officer a on 13/3/2017 and 12 months after the labour officer issued the decree, which was way out of the prescribed time.

In exercising the discretion to extend time to appeal court must be satisfied that the applicant had sufficient reason for not filing the appeal in the time prescribed. We are not satisfied with the reason that the delay to file the appeal was occasioned by mistake of counsel Nakiranda. To allow this application in our considered would be to cause a gross miscarriage of justice and we are fortified by ***Kananura Andrew Kansiime vs Richard Henry Kaijuka SCCR No. 15/2016*** whose holding is on all fours with the instant case.

eIn the circumstances the application is dismissed, with no order as to costs.

Dlivered and signed by:

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

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

**PANELISTS**

**1. MR. EBYAU FIDEL …………………**

**2. MS. HARRIET MUGAMBWA NGANZI …………………**

**3. MR. F X MUBUUKE …………………**

**DATE: 11TH MARCH 2020**