**THE REPUBLIC OF UGANDA**

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

**MISC. APPL. NO. 166 OF 2020**

**[ARISING FROM LDR NO. 229/2019]**

**BETWEEN**

**SARI CONSULTING LTD.…………………..……………………………………………..CLAIMANT**

**VERSUS**

**GIORGIO ZENAGALIA.………………………………………………….……………RESPONDENT**

**BEFORE**

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

**PANELISTS**

1. Ms. Adrine Namara
2. Mr. Matovu Michael
3. Ms. Susan Nabirye

**RULING**

This is an application brought under **Section 22 and 40 of the Labour disputes (Arbitration and Settlement) Act 2006, Rule 23 of the Labour disputes (Arbitration and Settlement) (Industrial Court Procedure) Rules 2012, Section 79 and 98 of the Civil Procedure Act and O44 rule 1(1), (2), (3), (4) and rule 2 of the Civil Procedure Rules.**

The application seeks orders of this court to grant leave to the applicant to appeal against this court’s ruling on a preliminary objection and to stay proceedings in LDR 229/2019 pending the determination of the appeal by Court of Appeal.

The application is supported by an affidavit of one Omoloy Ivan to the effect that the applicant has filed a notice of appeal against the ruling of this court and that the intended appeal raises serious questions of law and fact and has a likelihood of success. The affidavit under paragraphs 8, 9, and 10 raised 3 grounds thought to be the serious questions of law.

An affidavit in reply by one Angela Kahairwe is to the effect that the intended appeal is a ploy to occasion an injustice, a delay tactic and an attempt of the applicant to seek procedural advantage. The affidavit contends that the application was filed after a long delay of 90 days from the delivery of the ruling indicating it was an afterthought.

The applicant was represented by Mr. Omoloy Ivan of Okello Oryem & Co. Advocates while the respondent was represented by one Mr. Harlold Turigye of CR. Amanya Advocates & Solicitors.

**Submissions**

It was submitted for the applicant that there were serious grounds of appeal meriting judicial consideration by the Court of Appeal. Counsel went on to submit on each of what was termed as serious questions of law raised under paragraphs 8, 9, and 10 of the affidavit in support of the application.

He strongly argued that the grounds were meritorious with a high likelihood of success. On the question whether the application was brought without undue delay, counsel contended that a notice of appeal and a letter requesting for a typed record and ruling were filed within 14 days which did not constitute delay, although the application itself was filed 2 months after the ruling because of issues to do with Covid-19 pandemic.

In response to the above submissions, counsel for the respondent contended that, the applicant was using the legal process to avoid an obligation to pay the workers which this court should not encourage. It was his contention that the provision in the contract providing for settlement by Arbitration in Rome, being the basis of the grounds of the intended appeal was ably determined by this court, and considering that **Section 9 of the Arbitration & conciliation Act** provides that the Act does not apply to the Industrial court, the intended appeal was devoid of merit.

**Decision**

We have considered the grounds of the application together with both the affidavit in support and in reply to the application. We have perused and considered submissions of both counsel. It is our decision that the question of jurisdiction of this court was resolved while handling the preliminary objection.

This application arising from a decision of this court from which there is no entitlement as of right to appeal, means that allowing it is at the discretion of this court. The discretion of this court can only be exercised judiciously considering the repercussions of the exercise of the discretion.

The ruling against which the claimant seeks to appeal to the court of appeal, was against a preliminary objection that sought this court to refer the matter to Rome simply because the contract provided so and this court ordered that it had jurisdiction to hear the merits of the case. In a similar application on a preliminary objection, this court in **LDR No. 189/2015** stated **“The respondent has a right of appeal in the main claim and will be at liberty to raise the issue in the main Appeal.”** Reflecting on the above statement, we strongly feel that hearing the matter in this court on the merits will see the justice of the case served since lack of jurisdiction of this court will most likely form the main ground of the Appeal in the court of Appeal, should the applicant find it plausible and necessary. It will save this court and the parties the probability of the court of Appeal, sending the matter back to this court for hearing once found with jurisdiction to hear the same. The repercussion of allowing the application therefore will be increase of back log in this Court which will not add value.

In the circumstances, the discretion of this court is inclined towards hearing this matter and completing it on its merits so that the court of Appeal finally determines the merits rather than determining a preliminary objection. In our view this services the justice of the case. Consequently we are not convinced that the application has merits and we agree with the respondent that it fails.

We are of the strong considered view that the applicant ought to have known that the merits of the case would satisfy the justice of the case and so not indulge into filing this application and as a result the application is dismissed with costs to the respondent.

**Delivered & signed by:**

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

**PANELISTS**

1. Ms. Adrine Namara ……………………….
2. Mr. Matovu Michael ……………………….
3. Ms. Susan Nabirye ……………………….

Dated: 05/03/2021