THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA,
LABOUR DISPUTE APPEAL NO. 11 OF 2022
(Arising from Labour Complaint No. MGLSD/LC/093/2021)

RIDAR HOTEL LTD::APPELLANT

VERSUS

BITIRA KHALID BEAT:::RESPONDENT

Before:

The Hon. Justice Anthony Wabwire Musana

The Panelists:

1. Hon. Jimmy Musimbi,
2. Hon. Emmanuel Bigirimana &
3. Hon. Michael Matovu.

Representation:

1. Mr. Dominic Emiru of M/s. Emiru Advocates & Solicitors, for the Appellant.
2. The Respondent appears pro se.

AWARD

Introduction

[1] This is an appeal against the decision of Mr. Apollo Onzoma, Assistant Commissioner of Labour and Industrial Relations, issued on the 17th of May 2022 *(from now ACIR)*, who found that the Respondent had been unlawfully terminated by the Appellant and awarded salary arrears.

The Respondent's case at the Labour Office

[2] In his memorandum of claim dated the 10th of June 2021, the Respondent said he had been employed by the Appellant as a night auditor from 12th June 2019 until the 15th of February 2021, when he was handed a termination letter. He said he was not given an opportunity to be heard and denied his salary arrears from March 2020 to February 2021 and social security benefits. He said he had been an essential worker who had worked throughout the COVID-19 Lockdown. That the Appellant had acted on an ill-intentioned internal audit report to dismiss him.

The Appellant's case at the Labour Office

[3] In a response letter dated the 29th June 2021, the Appellant contended that the Respondent was invited to a disciplinary committee. Based on an audit committee consisting of the Respondent and two others, he was found fraudulent, confessed to it, and dismissed. The Appellant also contended that the Respondent was insubordinate and disrespectful of his supervisor.

The Labour Officer's award

[4] In his decision dated 17th of May 2022, the ACIR found no evidence to show that the Respondent was given enough time to prepare representations before the meeting, which led to his dismissal. The ACIR also found no invitations for disciplinary hearings detailing the contents of accusations against the Respondent or his rights at such hearings. He found that Section 66 of the Employment Act, 2006*(from now EA)* was not complied with and that Respondent was unfairly terminated. He made specific monetary awards totalling UGX 1,657,948/= but declined to award overtime, interest and costs.

The grounds of appeal

[5] Dissatisfied with the decision of the Labour Officer, the Appellant filed this appeal on three grounds, hereafter following:

(i) The Learned Trial Labour Officer erred in law and, in fact, ACIR when he held that *"there was no invitation to the complainant to appear before the disciplinary hearing"* without any supporting evidence, thus occasioning a miscarriage of justice.

(ii) The Learned Trial Labour Officer erred in law and in fact when he held that "*there was no evidence that the complainant was given an opportunity or time for him to prepare for the disciplinary hearing*" without any supporting evidence an issue that was never raised either in the pleadings or any evidence thus causing miscarriage of justice.

(iii) The Learned Trial Labour Officer, one APOLLO ONZOMA, AC/IR, who gave the award and signed in the proceeding as "a presiding Labour Officer", erred in law and in facts when he left out vital evidence produced during the hearing and also included evidence that was never adduced during the hearing presided over by a lady Labour Officer, a one Martha, thereby occasioning a miscarriage of justice.

[6] We directed the parties to file their written arguments, which we have summarised in this award.

Analysis and Decision of the Court

The duties of a First Appellate Court

[7] The first appellate Court must re-evaluate or reappraise the evidence adduced before the Labour Officer in full and arrive at its conclusions. [1]

Appellant's submissions

[8] Counsel for the Appellant chose to argue grounds **1** and **2** together.

[9] The Appellant, RIDAR HOTEL LTD, faulted the Labour Officer for finding that because the Respondent did not sign the minutes, he did not attend any disciplinary meetings. It was submitted that the Respondent attended two disciplinary meetings, remained

[1] See Father Nanensio Begumisa and 3 Ors v. Eric Tiberaga [2004] KALR 236 and Kifamunte Henry V Uganda, S.C Criminal Appeal No. 10 of 1997

defiant, that the audit queries were baseless and blackmail and that the Respondent paid for the losses. Because he caused a loss of UGX 173,000/=, the Appellant had lost trust in the Respondent, and the employer/employee relationship had been destroyed. For this reason, we were invited to find that the Respondent was lawfully dismissed.

[10] On compensation, it was submitted that this was not justified because the Respondent admitted the losses and that, as a small business, asking the Appellant for evidence in the form of notices and attendance lists was "to demand too much from the Employer". Counsel cited **Stephen Mukooba v Opportunity Bank Ltd LDC NO. 51 of 2015** in support of this proposition. It was suggested that a meeting to discuss any anomaly in the business was sufficient, and a termination following such a meeting would be justified and lawful. Regarding the awards, the Appellant argued that the Respondent did not work for certain days of each respective month, hence the deductions.

[11] Regarding the rights under **Section 66 of the Employment Act 2006** (*from now EA*), the Appellant argued that the Employer does not have a statutory obligation to inform the employee of his right to a representative of his choice at a disciplinary meeting. The Appellant's argument is based on their interpretation of this specific section of the law.

The Respondent's submissions

[12] In a compelling reply, the Respondent, appearing *pro se*, argued that the Appellant filed the notice of appeal out of time and without leave, and the appeal was therefore barred by law.

[13] On ground 1 of the appeal, the Respondent submitted that Cindy Melissa Okware (RW3) had testified that the Appellant's policy did not require any written summons. Marione Akello (RW2) suggested that the Respondent was invited verbally.

[14] On ground 2 of the appeal, the Respondent argued that the ACIR's decision came directly from RW2's testimony of a verbal invitation. The Respondent also submitted that the Appellant had admitted to not paying wages for April, June, September, October, and December 2020, which was rightly awarded by the ACIR. Regarding compensation, the Respondent argued that ACIR was justified under **Section 78(2)EA** and Article 126(2) of the Constitution.

Rejoinder

[15] In rejoinder, Counsel for the Appellant argued that the wording of Regulation 45 of the Employment Regulations, 2011*(from now ER)* read "within 30 days" and that based on **Tools and Fasteners Ltd v Khimani Ravji Jadva**[2] computation of time from the date of the Labour Officer's decision to the filing of the notice of appeal excluded Sundays and public holidays. Therefore, the notice of appeal was in time as the last day was the 23rd of June, 2022. The Appellant's appeal was therefore filed within the specified timeframe.

[2] H.C.M.A No. 326 of 2014

Decision of the Court

Preliminary point

[16] We will deal first with the preliminary point of filing the notice of appeal out of time because this touches on the propriety of the appeal. Further, under Order 6 rule 29 of the Civil Procedure Rules S.I 71-1*(from now CPR),* if the Court thinks that a preliminary point of law substantially disposes of the matter, it can dismiss the matter or make such other just order.

[17] It is trite that appeal is a creature of statute. The right of appeal from a decision of a labour office is provided for in **Section 94(1)EA,** and an appeal to this Court is commenced by way of a notice of appeal under Regulation 45(1) of the Employment Regulations, 2011*(from now ER),* which provides as follows:

> *"A person aggrieved by the decision of the Labour Officer may within thirty days give a notice of appeal to the Industrial Court in the form prescribed in the Seventeenth Schedule."*

This regulation is clear and plain. The notice of appeal is to be filed within 30 days from the date of the Labour Officer's decision. Numerous decisions hold appeals filed outside timelines to be incompetent and have been struck out.[3]

[18] The procedural history of this appeal is as follows:

(i) On the 17th day of May 2022, the Labour Officer entered an award in favour of the Respondent.

(ii) On the 22nd day of June 2022, Messrs. Emiru Advocates and Solicitors lodged a notice of Appeal in the Industrial Court Registry.

(iii) On the 26th day of May 2023, Messrs. Emiru Advocates and Solicitors filed a memorandum of appeal on behalf of the Appellant.

[19] Mr. Emiru argued that the appeal was filed in time because the computation of time did not include Sundays and public holidays. Counsel relied on Order 51 rules 1 and 2 CPR for this proposition. First, Order 51 r 1CPR defines month to mean a calendar month. In the matter before us, we are concerned not with a calendar month but a provision for filing an appeal within 30 days. In our view, it would not be helpful to venture into the definition of a calendar month to resolve the preliminary point.

[20] In his other argument, Counsel Emiru argued that between the 17th of May 2022*(when the Labour Officer issued the award)* and the 22nd of June 2022 *(when Counsel filed the notice of appeal),* there were five Sundays and two public holidays, which should be excluded from the computation of time. We think this is not an accurate reading of Order 51 r 2 CPR, on which Counsel sought to anchor his argument. To have a full appreciation of the effect of the rule, we have employed the full text of Order 51 r 2 CPR, which reads as follows;

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[3] Maria Onyango Ochola and others v. J. Hannington Wasswa [1996] HCB 43; Loi Kageni Kiryapawo v. Gole Nicholas Davis, S. C. Miscellaneous Civil Application No.15 of 2007 and Hajj Mohammed Nyanzi v. Ali Sseggane [1992 – 1993] HCB 218) all cited in Geofrey Nagumya T/A Nagumya & Co Advocates v. Security Plus Uganda Ltd

" Where any limited time less than six days from or after any date or event is appointed or allowed for doing any act or taking any proceedings, Sunday, Christmas Day, Good Friday, and any other day appointed as a public holiday shall not be reckoned in the computation of the limited time."

[21] Our reading of this provision is that it relates to a fixture of less than six days for doing any act. In other words, the rule applies to instances where a party is directed either by a rule or the Court to do an act within a time less than six days. In such cases, public holidays and Sundays are excluded from the computation of time. In the matter before us, Regulation 45 ER sets a time of thirty days for filing an appeal, which is not less than six days by any arithmetic computation. We think that the provision would be inapplicable to this matter in the manner that Mr. Emiru thought it might apply. As an illustration of the point, in **Uganda Bureau of Standards v Dan Wagidoso**[4] Ntengye H.J was considering an application where the Applicant had received a ruling on 1st February 2021. By Regulation 45 ER, it was expected that a notice of appeal would be filed by 1st March 2021, which was thirty days after the decision. The Court noted a Notice of Appeal filed on 9th March 2021 was eight days late. In **Tool Fasteners(**supra), which Counsel for the Appellant relied on, Anglin J. computed time for applying for leave to appear and defend by excluding the date of service, weekends(Saturdays and Sundays) and public holidays. However, in **Farid Meghani v. Uganda Revenue Authority**[5] Mubiru J. observed that where a period of limitation is stated in days or a unit of time, the day of the event that triggers the period is excluded. Every day after that is counted, including intermediate Saturdays, Sundays, and legal holidays, and the last day of the period is included. But if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day, which is not a Saturday, Sunday or legal holiday.

[22] The approach in **Meghani**(Ibid) was anchored on Section 34 of the Interpretation Act, Cap.3. For effect, we think it is necessary to reproduce the full text of Section 34(1) of the Act, verbatim. It reads;

"34. Computation of time, etc.

(1)In computing time for the purpose of any Act—

(a)a period of days from the happening of an event or the doing of any act or thing shall be deemed to be exclusive of the day in which the event happens or the act or thing is done;

(b)if the last day of the period is a Sunday or a public holiday (which days are in this section referred to as "excluded days"), the period shall include the next following day, not being an excluded day;

(c)where any act or proceeding is directed or allowed to be done or taken on a certain day, then if that day happens to be an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being an excluded day; or

[4] LDMA 47 of 2021
[5] H.C.Civ. Appeal No. 0006 of 2021

(d)where any act or proceeding is directed or allowed to be done or taken within any time not exceeding six days, excluded days shall not be reckoned in the computation of time"

[23] The sum effect of this provision is that the first day is excluded, and if the last day is a Sunday or public holiday, it is excluded, and the next day is taken as the last. Where the period is less than six days, excluded days are not part of the computation of days. Thus, in **China Railway No. 3 Engineering Group Co.Ltd v Segken Services Ltd**[6], the Honourable Lady Justice V.N. Nkwanga Katamba was considering the computation of time under Order 36 rules 3 and 4 CPR. Turning on Order 51 rule 2 CPR, Her Lordship found the rule to apply to where an act or proceeding is directed or allowed to be done or taken within any time **not exceedings six days.** Her Lordship opined that when the time is less than six days, weekdays and public holidays would be excluded, and time would only run during official working days. This decision is consistent with **Meghani (supra),** and we agree with this reading of Order 51 Rule 2 CPR. In **Tool Fasteners (supra),** there was no emphasis on the provision of six days or less in the rule. It is only applicable when the time is less than six days.

[24] Therefore, and following the **Meghani (supra)** approach to the computation of time, a plain and straightforward reading of Regulation 45(1) ER is that the time provided therein is not to be read according to Order 51 Rule 2CPR or Section 34(1)(d) of the Interpretation Act. It is not less than six days that we should add excluded days. It is couched with a precise wording of thirty days within which a notice of appeal should be filed. The decision of ACIR was entered on the 17th of May, 2022. We would, therefore, exclude the 17th as the trigger date and start our computation on the 18th of May 2022—thirty clear days lapsed on the 16th of June 2022, the last day. According to the Gregorian calendar, it fell on a weekday, Thursday, which was not a public holiday, weekend or Sunday, so we should exclude the day and consider the following working day as the last day. By this, the appeal was out of time because the notice of appeal was filed on the 22nd day of June 2022, five days after the statutory time had lapsed. In this case, we agree with the Respondent that the appeal is incompetent. It was filed out of time and stands dismissed.

[25] We note that this Court has validated appeals out of time[7]. That is, when an appeal is out of time, the Appellant may seek leave of Court to file the appeal out of time, and such leave will be granted if good or sufficient cause is shown. No such application was placed before us to consider.

[26] Given our finding of the incompetence of the appeal, it is unnecessary to consider the other grounds of appeal.

Costs

[27] The Respondent asked for the costs of the appeal. In **Aporo Goldie v Mercy Corps Uganda**[8] we ruled that a litigant appearing *pro se* (self-representing) would not be entitled to costs but only disbursements. Therefore, there shall be no order as to costs,

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[6] H.C.M.A No. 161 of 2020

[7] See AutoTune Engineering Limited v Barozi and 2 Others (Miscellaneous Application No. 92 of 2022) [2022] UGIC 7 (13 December 2022), Bugisu Cooperative Union Limited v Sabakaki (Miscellaneous Application No. 129 of 2022) [2022] UGIC 17 (9 November 2022)Kampala Capital City Authority v Buwunga (Miscellaneous Application 95 of 2023) [2023] UGIC 53 (20 November 2023)

[8] LDR No. 109/2020(Unreported)

but the Respondent shall be entitled to his disbursements under a certificate from the Registrar of this Court.

Signed in Chambers at Kampala this 24th day of May 2024

Anthony Wabwire Musana,
Judge, Industrial Court

THE PANELISTS AGREE:

1. Hon. Jimmy Musimbi,
2. Hon. Emmanuel Bigirimana &
3. Hon. Michael Matovu.

24th May 2024
10:14 a.m.

Appearances

1. For the Appellant: Mr. Moris Emesu holding brief for Mr. Diminic Emiru
2. For the Respondent: Appear pro se.

No representative in Court.

Court Clerk: **Mr. Samuel Mukiza.**

Mr. : Matter is for the award, and we are ready to receive it.

Mr. : That is the position.

Court: Award delivered in open Court in the presence of

Anthony Wabwire Musana,
Judge, Industrial Court