THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
MISCELLANEOUS APPLICATION NO. 139 OF 2023
ARISING FROM LABOUR DISPUTE MISCELLANEOUS APPLICATION NO. 138 OF 2023, EMA NO 114 of 2023 and LABOUR DISPUTE APPEAL NO. 013 of 2022
(All arising from KCCA.CEN/LC/0107/2021)

KIBOKO ENTERPRISES LTD::APPLICANT

VERSUS

ABDALLAH KIMBUGWE:::RESPONDENT

Before:
The Hon. Mr. Justice Anthony Wabwire Musana

Panelists:
1. Hon. Adrine Namara,
2. Hon. Susan Nabirye &
3. Hon. Michael Matovu.

RULING

Introduction

[1] By motion under Section 33 of the Judicature Act Cap. 18(*from now JA*) and Section 98 of the Civil Procedure Act Cap. 71-1(*from now CPA*) and Order 52 Rules 1 & 3 of the Civil Procedure Rules S.I 71-1(*from now CPR*), the Applicant sought an interim order of stay of execution of the award and decree of this Court vide Labour Appeal No. 13 of 2023 until the determination of the main application. The application was supported by the affidavit of Immaculate Tugume deponing to having filed a main application, an imminent threat of execution, the filing of the application without delay and the danger of the main application being rendered nugatory.

[2] The Respondent opposed the application, raising preliminary points on the competence of the appeal and the main application, the failure to provide appropriate security for due performance, the delay in filing the application and the attempts to frustrate his realization of the fruits of litigation. We were asked to dismiss the application.

[3] In rejoinder, it was averred that the affidavit in reply was riddled with falsehoods, that the appeal was competent with a high possibility of success, that execution was imminent, that a deposit of a cheque was sufficient, and that the application had been filed within a reasonable time.

[4] When the application was called before this Court on the 10th of November 2023, we directed the parties to file their submissions for and against the application, including the points of law, to optimally utilize time and dispose of the points of law and application on

its merits, should we overrule the points of law. This ruling disposes of the application in that manner.

Analysis and Decision of the Court

[5] We will first resolve the preliminary points of law.

Late filing of the notice of appeal

[6] It was submitted for the Respondent that there is no appeal pending before the Court of Appeal because the notice of appeal was filed and served out of time contrary to Rules 76 and 78 of the Judicature(Court of Appeal)(Rules) Directions S.I 13-10*(from now COA Rules)*. It was also submitted that the memorandum of appeal offends Section 22 of the Labour Disputes(Arbitration and Settlement) Act 2006 *(from now LADASA),* which provides that appeals from the Industrial Court to the Court of Appeal shall only be on points of law or to determine whether the Industrial Court had jurisdiction over the matter.

[7] It was submitted for the Applicant that the jurisdiction to determine the propriety of the appeal is vested with the Court of Appeal and not the Industrial Court. Our attention was drawn to the provisions of Rule 82 of the COA Rules, which empowers the Court of Appeal to strike out a notice or memorandum of appeal. Similarly, it was argued that Rule 5 of the COA rules permitted an extension of time within which a notice of appeal may be served.

[8] Reiterating their submissions in the main, Counsel for the Respondent contended that the COA rules applied to this Court in determining the validity of the notice of appeal. It was their view that this Court must be satisfied with the validity of the notice before granting any application for stay of execution of its award.

Determination

[9] The law governing appeals from this Court to the Court of Appeal is the COA Rules as correctly submitted by Counsel for the Respondent. Expressly, and for the avoidance of doubt, under Part VI, Rule 23(3) of the Labour Disputes (Arbitration and Settlement) (Industrial Court Procedure) Rules, 2012, it is provided that appeals from the decisions of the Industrial Court are made under the Judicature (Court of Appeal Rules) Directions S.I 13-10. Under Rule 76(1) and (2) thereof, an appeal is commenced by way of a notice of appeal filed within fourteen days after the date of the decision against which it is desired to appeal and Under Rule 78, it is served on persons directly affected by the appeal before or within seven days after lodging the notice of appeal.

[10] It is common to both parties that an award in Labour Appeal No. 013 of 2021 was rendered on the 22nd day of December 2022. It was also common to both parties that a notice of appeal against that decision was filed on the 23rd day of January 2023, endorsed by the Registrar of the Court on the same day and served on the Respondent's Counsel on the 31st of January 2023. Going by these commonalities, the notice of appeal was filed thirty-one calendar days after the award. The question is whether this notice of appeal was out of time, as suggested by Counsel for the Respondent.

[11] In answering this question, this Court is very much alive to the view that it does not have jurisdiction to extend time. In the case of **Royal Mabati Ltd v Mandela Sulaiman**[1] we cited **In the Matter of Ranch on the Lake Limited (In Receivership),**[2] where the Honourable Justice F. Egonda Ntende J.A, while considering an application for leave to appeal out of time, observes that for appeals governed under Section 80 CPA, it is for the appellate Court to grant an extension of time for filing the appeal. Following this dictum, as the lower court, our only duty would be to establish whether there is a pending appeal because Counsel for the Respondent suggests that there is none on account of late filing, while the Applicant asserts otherwise. It is, therefore, a determination of time, in our view.

[12] This Court's rules of procedure do not make provision for time reckoning. It is established that this Court may apply the CPR where its own rules are silent[3]. We observed in paragraph [10] above that the notice of appeal was filed thirty-one calendar days after the decision of this Court in Labour Appeal No. 013 of 2021 and the lodging of the notice of appeal. This period invariably includes a court vacation, as the decision was rendered in late December 2022, and the notice of appeal was filed in late January 2023. Under Order 51 Rule 4 CPR, it is provided that the period between the 24th day of December in any year and the 15th day of January in the year following, both days inclusive, shall not be reckoned in the computation of time appointed or allowed in the CPR for amending delivering or filing any pleading or for doing any other act. In the case of **Herman Semakula v Ivan Assimwe**[4] the Supreme Court of Uganda adopted the Court of Appeal's decision in **Byeitima and 2 Others Vs Asaba**[5] which, in reckoning time under Rule 4 COA Rules, excluded the Christmas vacation. The Court of Appeal adopted the provision of Order 51 Rule 4 CPR, which defines Christmas vacation as the period from 24th December to 15th January in the year following. We agree with and are bound by these decisions.

[13] In the matter before us, the decision in Labour Appeal No. 13 of 2022 was rendered on 22nd December 2022. Excluding the 24th of December to the 15th of January 2023 implies that the 14 days within which the notice of appeal ought to have been lodged would be reckoned from the 15th of January 2023 and include the 23rd of December 2022. Therefore, the last day for filing the notice of appeal would be the 28th of January 2023. By this, the notice of appeal lodged on 23rd January 2023 would be within time. As a result, the objection to the notice of appeal as having been filed out of time would be unsustainable and is accordingly overruled.

The memorandum of appeal offends Rule 23(2)

[14] It is trite that appeals are a creature of statute. Rule 23(2) of the IC Rules provides that an appeal shall lie from a decision of the Court to the Court of Appeal only on a point of law or to determine whether the Court had jurisdiction over the matter. But we must ask whether the propriety of the appeal is not a matter for the Appellate Court. We think the

---

[1] LDMA No. 122 of 2023
[2] H.C.M.A 0537 of 2005
[3] See Autotune Limited v Barozi Swaldo & Ors LDMA 029 of 2022
[4] S.C.Civ. Ref No 04 of 2023
[5] C.A.C.A No. 264 of 2013 [2015] UGCA 86

answer to this question is in the affirmative. This Court does not sit in an appellate jurisdiction of its own decisions. Counsel for the Applicant directed our attention to Rule 82 of the COA Rules. This rule provides that a person on whom a notice of appeal has been served may at any time, either before or after the institution of the appeal, apply to the court to strike out the notice or the appeal, as the case may be, on the ground that no appeal lies or that some essential step in the proceedings has not been taken or has not been taken within the prescribed time. We think that Rule 86 of the COA Rules applies to the grounds of appeal, and determining the propriety of these grounds would not be within the ambit of this Court's jurisdiction. Any such determination would, in our view, be an assumption of a jurisdiction we do not have. Any decision rendered without jurisdiction is a nullity,[6] and we would refrain from an exercise in futility.

Want of instructions

[15] It was submitted that the law firm of KMT Advocates did not have instructions to institute this application and file the affidavit in rejoinder. In reply, it was submitted that KMT Advocates had metamorphosed into Maldes Advocates. Therefore, any reference to KMT Advocates was a regrettable typographical error that the Court was implored to ignore. In rejoinder, Counsel for the Respondent suggested that the contention of a typographical error was a lazy argument.

[16] The question is whether KMT Advocates or Maldes Advocates are instructed. The motion filed on 29th August 2023 was drawn by M/S Maldes Advocates. Ms. Tugume's affidavit in support, sworn on the 28th day of August 2023, was drawn by Maldes Advocates of Plot 2 Kyaggwe Road, Nakasero P.O. Box 401, Kampala. The affidavit in rejoinder indicates that it was drawn by KMT Advocates of Plot 2 Kyaggwe Road, Nakasero P.O. Box 401, Kampala. The Respondent suggests that KMT Advocates acted without instructions. Counsel for the Applicant submits that KMT Advocates changed names to Maldes Advocates and that the reference to KMT Advocates in the affidavit in rejoinder is but a typographical mistake.

[17] Counsel for the Respondent suggested that this Court summons the Applicant's directors to confirm whether instructions were given to the Advocates.

[18] Regulation 2(1) of the Advocates (Professional Conduct) Regulations provides that no advocate shall act for any person unless he/she has received instructions from that person or his/her authorized agent. However, the regulations do not require an Advocate to furnish the Court with proof of instructions as submitted by Counsel for the Respondent. Indeed, Regulation 21 provides that an Advocate may act for a client of another advocate in which he or she knows or has reason to believe that another advocate is acting for that client only with the consent of that other advocate.

[19] The facts are that the law firm of Maldes Advocates drew the motion papers. MS KMT Advocates filed the affidavit in rejoinder. Counsel for the Applicant attributed this variance to a typographical error between the names KMT Advocates and Maldes Advocates following the law firm's name change from KMT Advocates to Maldes Advocates. In our view, such an error is plausible and distinguishable from the facts in

[6] See Owners of Motor Vessel Lillian "s" v Caltex Oil Kenya Limited [1989] KLR 1

Okodoi George and Another V Okello Opaire Sam HCMA No. 70 of 2015 as cited by Counsel for the Respondent. In the Okodoi case, the contest followed a filing of a bill of costs by a law firm that was not on record. In the present case, the law firm of Maldes Advocates filed the motion papers and owns the mistake arising from KMT Advocates preparing the affidavit in rejoinder. In our view, the error has been explained. In any event, in **Mugisa M Abraham & 4 Others V Rwambuka & Co. Advocates (Miscellaneous Application No. 733 of 2018),** it was held that a party to litigation has a right to decide which lawyers to represent them in court.[7] In the present case, the Applicant would be at liberty to instruct a law firm of its choice. It is our view, and for the reasons above, that this limb of the objection is not sustainable and is accordingly overruled.

Absence of power of attorney

[20] Counsel for the Respondent contended that the deponent, Ms. Immaculate Tugume, did not furnish the Court with an instrument authorizing her to institute the application and depone affidavits. As such, the application ought to be dismissed. In reply, it was argued that the Applicant's deponent had stated her position as Legal and Compliance Manager and discharged her burden. Counsel for the Applicant asked this Court to overrule the objections as *de minimis*. In rejoinder, Counsel for the Respondent distinguished the case of **MHK Engineering Service(U) Ltd v Macdowell Limited H.C.M.A No. 825 of 2018** cited by the Respondent as being in respect of absolving a company from liability after the company had held out a person to be in a senior managerial position.

Determination

[21] The short question on this objection is whether the deponent must furnish the Court with a power of attorney or documentary proof that she represents the Applicant. While Counsel for the Respondent did not point us to any specific legislation on the point, there is ample and clear jurisprudence. In the case of **Electro-Maxx Uganda Ltd v Oryxx Oil Uganda Ltd[8] Wamala J.,** considering an objection to a deposition by a lawyer without proof of authority, observes that Order 3 of the CPR provides for appearances and actions by recognised agents and advocates and that deponing to an affidavit is one of the acts authorized by law that can be done either by the party themselves or by a recognised agent or by an advocate. Just like a party appearing for themselves, there is no requirement for a recognised agent or an advocate to furnish proof of authority to plead on behalf of their principal. The advocate only must prove the fact of instructions by the named client. His Lordship further observes that the requirement to furnish proof of authority to appear or plead on behalf of another is based on the provision under Order 1 Rule 12 of the CPR.

[22] In the Electro-Maxx case, it had been suggested that the Advocate was deponing to contentious matters. The Court held that where an Advocate is not personally representing a party, the Advocate would be permitted to be deposed to contentious matters. In the present case, Ms. Immaculate Tugume is not in personal conduct of the

---

7 See Nareeba Dan & 5 Others vs Joseph Bamwebeheire & 4 Others HCMA No 45 of 2009 as cited in Mugisa M Abraham & 4 Others V Rwambuka & Co. Advocates (Miscellaneous Application No. 733 of 2018) [2019] UGHCCD 138 (12 July 2019)

8 HCMA No. 251 of 2020

matter before the Court. Therefore, she would be permitted to make the depositions she has made. And since an advocate not personally representing the party is not required to furnish such authorization, the Respondent's objection would not be sustainable. It is accordingly overruled.

Determination on the merits of the Application

[23] In our filing directions issued on the 10th of November 2023, we required Counsel to file arguments on both the preliminary points of law and the application for interim injunctive relief. From our reading of the submissions, Counsel for the Applicant did not file any arguments. Counsel for the Respondent made two brief points:

[24] First, it was contended that paragraphs 6 to 20 of the Respondent's affidavit in reply clearly explained the individuals seeking to frustrate the realization of the fruits of litigation. In Counsel for the Respondent's view, the application should fail.

[25] The second argument was that security for due performance had not been furnished and that the security by way of cheque was inadequate. As such, it was submitted that the application should fail.

Decision of the Court.

[26] The law regarding a grant of an interim order of stay of execution is set out under Order 50 CPR. This Order provides for the Powers of Registrars, and it is so titled. The reference to Registrar under the CPR is to Registrars of the High Court. Under Section 12(5) of the LADASA, as amended, it is provided that the functions of the Registrar of the Industrial Court shall be like those of a Registrar of the High Court. In the circumstances, this application would ideally be heard and determined by the Registrar of this Court. However, in the circumstances that the application has been brought before a panel of the Court, the optimal use of scarce judicial resources and pursuant to Section8(2a)(d) of the LADASA as amended, this Court has the powers to make orders as to costs and other reliefs as the Industrial Court may deem fit. It would be damaging to the course of justice to leave this matter unattended now. Therefore, under Order 50 r 3A(2)(d) CPR S.I 33-2019, it is provided that;

> *"The court shall only consider the hearing of an application for interim relief where there is a pending substantive application with a likelihood of success."*

[27] From the above rule, the first consideration for a grant of injunctive relief is whether there is a pending substantive application with a likelihood of success.

[28] Further, in the case of **Lang Wanxi v China Complant and Another**[9], we considered precedent, which establishes the purpose of injunctive relief to be to preserve the status quo pending the final determination of the dispute[10] and to keep parties in an action in

[9] LDMA 025 of 2023
[10] Kiyimba Kaggwa v Hajj Abdul Noor Katende [1985] HCB 43

status quo in which they were before the judgment, or the act complained of. [11] We also observed authorities suggest that the threshold for a grant of interim relief to be the same as those for a grant of substantive injunctive relief and include the following:

(i) The Applicant should demonstrate that the Court has jurisdiction to grant the order,

(ii) The Applicant should demonstrate that their case discloses triable issues and is not frivolous or vexatious,

(iii) That the failure to grant the application would render the matter nugatory in a manner that cannot be addressed through an award of damages.[12]

(iv) The Applicant must demonstrate that there is a status quo to be preserved[13].

[29] Therefore, the threshold for a grant of interim relief is a pending substantive application with a likelihood of success. While Counsel did not address us on any of these considerations, from a perusal of the affidavit in support of the motion and following our perusal of the main file, we would find that there is a pending application, Miscellaneous Application No. 138 of 2023, registered before this Court. The prevailing status quo is that the Respondent sought to execute the award and decree of this Court in EMA No. 114 of 2023. Following this application for execution, the Applicant filed LDMA Nos. 138 and 139 of 2023 seeking a stay and interim stay of execution. It follows, therefore, that the status quo is that there is a pending award and decree of this Court that has not been executed, and the Applicant is preparing an appeal. In the circumstances, we are satisfied that a status quo is sought to be preserved.

[30] We have also reviewed the chamber summons in LDMA 38 of 2023. In that application, it is suggested that there was a failure to evaluate the evidence in the main cause, an excessive award of damages, and a need to preserve the right to a fair hearing. Prima facie, there are arguable grounds for a stay of execution in that application. In the Gashumba v Amanya case *(supra)*, the Honourable Mr. Justice Musa Ssekaana adds that the applicant has unfettered duty to satisfy the court that it is an equitable remedy which is at the discretion of the court to grant. The award of an injunctive order is discretionary.

[31] Considering the facts in the present application, the law, and the authorities, we determine that there is a status quo to be preserved pending the hearing of a main application before this Court. That status quo is an award of this Court, and the Respondent has applied for execution. There is also a pending main application for stay of execution with arguable grounds, not necessarily frivolous or vexatious. In the exercise of our discretion, we hereby grant the order of interim stay of execution, which shall remain in force until the hearing of Labour Dispute Miscellaneous Application No. 138 of 2023. In the interest of speedy disposal of these matters and to avoid unnecessary delay, we direct that LDMA 138 of 2023 be fixed for hearing within 14 days of this order. There shall be no order for costs per our dicta in Joseph Kalule v GIZ[14].

---

[11] H.C.M.A No. 37 Of 2021 Frank Malingumu Gashumba V Deborah Amanya
[12] C.C.M.A No. 18 of 2007 Hon. Jim Muhwezi v A.G & Another.
[13] H.C.M.A No. 241 of 2020 Absa Bank Uganda Ltd & 2 Ors v Electro-Maxx(U) Ltd & Anor.
[14] LDR 109 of 2020.

It is so ordered.

Dated at Kampala this 29th day of January 2024.

Anthony Wabwire Musana,
Judge, Industrial Court of Uganda

THE PANELISTS AGREE:

1. Hon. Adrine Namara,
2. Hon. Susan Nabirye &
3. Hon. Michael Matovu.

29th January 2024
9:40 am

Appearances

1.	**For the Applicant:**	None
2.	**For the Respondent:**	Mr. Derrick Lutalo
	Court Clerk:	Mr. Samuel Mukiza.

Mr. Lutalo: I appear for the Respondent. The Applicant is absent. Matter for ruling, and we are ready to receive it.

Court: Ruling delivered in open Court.

Anthony Wabwire Musana,
Judge, Industrial Court.