



THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE MISCELLANEOUS APPLICATION NO.122 OF 2023
(Arising from Labour Dispute Reference No. 161 of 2021 and
LDC/KCCA/NDC/LC/040/2021)

ROYAL MABATI LTD:.....APPLICANT

VERSUS

MANDELA SULAIMAN:.....RESPONDENT

Before:

The Hon. Justice Anthony Wabwire Musana.

Panelists:

1. Hon. Jimmy Musimbi,
2. Hon. Robinah Kagoye &
3. Hon. Can Amos Lapenga.

Representation:

1. *Mr. Nicholas Atuhairwe of M/s. Atuhairwe Nicholas & Co Advocates for the Applicant.*
2. *Mr. Joseph Amanyanya of M/s. Moriah Advocates for the Respondent.*

RULING

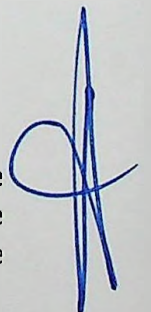
- [1] On the 3rd of May 2023, this Court declared that the Respondent was unfairly terminated from the Applicant's service. The Respondent was awarded UGX 13,849,587/= Dissatisfied with the award, M/s. KM Advocates and Associates, ostensibly on the Applicant's instructions, filed a notice of appeal on the 16th day of May 2023. It was accompanied by a letter seeking a certified copy of the proceedings. On the 19th of July 2023, M/s. Atuhairwe Nicholas & Co. Advocates filed another notice of appeal, accompanied by a letter seeking a certified copy of the proceedings.
- [2] By an omnibus motion under Section 33 of the Judicature Act Cap. 13, Section 98 Civil Procedure Act Cap.71 (*from now CPA*), and Orders 52(1) and (3) of the Civil Procedure Rules S.I 71-1(*from now CPR*), the Applicant seeks an order for stay of execution of the award in Labour Dispute Reference No. 161 of 2021 pending the hearing and determination of the appeal, time to appeal be extended, the notice of appeal be validated and costs of the application be in the cause.

- [3] The grounds in support of the motion were elaborated in the affidavit of Ms. Esther Kangarua. She deposed to the Applicant's former lawyers, filing a notice of appeal, requesting certified copies of proceedings, and not serving the Respondent with the statutory time. That a substantive application for stay has been filed, she was deposed to the existence of an application for execution in Miscellaneous Application No. 079 of 2023. She averred that the Applicant would suffer irreparable loss and that the appeal would be nugatory if a stay was not granted, that it would be just and equitable if the application were granted, and that the application was filed without unreasonable delay. Finally, she averred to the enlargement of time and validation of the notice of appeal filed out of time.
- [4] In his affidavit in reply, the Respondent was deposed to a preliminary objection on the propriety of the application. On the advice of Counsel, he averred that there was neither an appeal nor a notice of appeal at the Court of Appeal, nor did the Applicant have a right of appeal. He was advised that there are specific provisions for a stay of execution. Substantively, he was deposed to service of Court process on the Respondent's former lawyers, M/s. Alliance Advocates. He averred that the inadvertence of the Respondent's former lawyers was not established and that it was a habit of the Applicant to blame Counsel. He adverted to the Record of Proceedings being ready, but the Applicant had not moved to obtain the same. He also suggested no threat of execution save for taxation proceedings. He also averred to the application being speculative and a fishing expedition and asked that it be dismissed.
- [5] In rejoinder, Ms. Kangarua deposed, on the advice of Counsel, to a notice of appeal being filed in the trial Court and that any negligence of former Counsel ought not to be visited on the Applicant. She also deposed to the new Counsel, filing a notice and memorandum of appeal and withdrawal of Miscellaneous Application No. 101 of 2023. It was deposed that there was an omnibus application to enlarge the time to appeal and validate the notice of appeal. She also deposed to taxation being an initial stage of execution, the grounds of stay of execution being well known, and a willingness to deposit the decretal sum once advised by the Court.
- [6] Counsel filed written submissions, which we have considered in rendering this ruling. The Court expresses gratitude for the succinct submissions and authorities supporting the respective arguments.

Analysis and decision of the Court

Preliminary points

- [7] The Respondent filed his written submission on the 1st of September 2023, before the matter was called for hearing. By these submissions, Counsel for the Respondent raised several preliminary points of law, which we propose to resolve in the manner they were presented.



Jurisdiction.

- [8] It was submitted for the Respondent that this Court did not have jurisdiction to issue orders of extension of time and validation of notice of appeal out of time. Counsel cited Section 79 CPA, where the High Court can, for good cause, admit an appeal after the limitation period has elapsed, and under rule 5 of the Judicature (Court of Appeal) Rules Direction S.I 13-10, the Court of Appeal may for sufficient reason extend the time limited by the rules or by any decision of the Court or of the High Court for doing any act authorized or required by the rules. On the authority of **Kasimbazi James v Tumwebaze Olivia**,¹ it was contended that only the Court of Appeal could expand time.
- [9] For the Applicant, it was submitted that this Court could extend time under Sections 33 of the Judicature Act Cap. 13 and Section 98 CPA. In rejoinder, Counsel for the Respondent cited the case of **NSSF v Alcon International Limited**² for the proposition that the Court's inherent powers under the general provisions are not applicable where there is a specific law.

Resolution on jurisdiction

- [10] The first difficulty that the Applicant finds itself in is that the Applicant expressly disavows itself from the Notice of Appeal filed by M/S KM Advocates on the 16th day of May 2023. The Registrar endorsed it on the same day. In paragraph 4 of her affidavit supporting the present application, Ms. Esther Kangarua avers that the notice of appeal needed to be served. In paragraph 5, she avers that her former lawyers were negligent in not serving the notice of appeal in time. She, therefore, instructed her new lawyers to file a fresh notice of appeal, which was filed on the 14th of July 2023. In effect, the Applicant concedes that the Notice of Appeal filed on 16th May 2023, which was 13 days after the award, is not properly before this Court, hence the omnibus application to extend the time to file the notice of appeal, validate the notice of appeal filed on 14th July 2023 and the appeal itself and stay execution to the Award and decree of this Court.
- [11] It is against this background that Mr. Amanyā objects to the jurisdiction of this Court to extend time and validate the notice of appeal.
- [12] It is trite that the jurisdiction of the Court can only be granted by law, and if the Court conducts proceedings without jurisdiction, they are a nullity.³ In the case of **Baku Raphaël Obudra and Another v Attorney General**,⁴ it was held that jurisdiction is a creature of statute. Jurisdiction cannot be assumed even with the

¹ C.A. Civ Appeal No 265 of 2016

² S.C.C.A No. 15 of 2009

³ Desai Vs Warsaw, 1967, E.A 351.

⁴ S.C.C.A No. 1 of 2005

consent of parties. Proceedings made by a Court lacking competent jurisdiction are illegal and amount to a nullity.⁵

- [13] Appeals from the Industrial Court to the Court of Appeal are provided for under Rule 23(2) of the Labour Disputes (Arbitration and Settlement) (Industrial Court Procedure) Rules, 2012. The rule provides that appeals from the decisions of the Industrial Court are governed under the Judicature (Court of Appeal) Directions⁶ S.I 12-10. 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. The award of this Court against which it is desired to appeal was entered on the 3rd day of May 2023. An initial notice of appeal was lodged on the 16th day of May 2023 and endorsed by the Registrar of this Court on the same day. It was not served, and the Applicant has distanced itself from this notice, preferring to rely on the notice of appeal filed by M/s. Atuhairwe Nicholas & Co. Advocates on the 19th day of July 2023, some 76 days after the Award from which the appeal is desired.
- [14] Clearly, under Rule 23(2) of the Industrial Court Rules, the law applicable to appeals to the Court of Appeal is the Judicature (Court of Appeal) Directions⁷ S.I 12-10. Under Rule 78(1), the notice of appeal shall be served on the persons directly affected by the appeal within seven days from the filing date. In the present case, the notice of appeal filed on 16th May 2023 was not served on the Respondent.
- [15] Citing the case of **Kasimbazi James v Tumwebaze Olivia**⁸ which involved an application for extension of time, Mr. Amanyia suggested that extension of time could only be under Rule 79(i)(b) of the CPA. In that case, the Applicant had filed an omnibus application before the Court of Appeal for leave to file an appeal out of time and or validate a motion filed out of time. The Applicant premised the application on negligence of Counsel. Sitting as a single Justice of Appeal, the Honourable Mr. Justice S.B.K Kavuma DCJ (*as he then was*) observed that applications for extension of time within which to appeal to the Court of Appeal are governed by Rule 5 of the Court of Appeal Rules, which provides:

"5. Extension of Time

The Court may, for sufficient reason, extend the time limited by these Rules or by any decisions of the Court or the High Court for the doing of any act authorized or required by these Rules, whether before or after the expiration of that time and whether before or

⁵ The term jurisdiction is defined in *Owners of Motor Vessel Lillian "s" v Caltex Oil Kenya Limited* [1989] KLR 1, which was cited in the case of

Ozoo Brothers vs Ayikoru Milka H.C.C.R 006 of 2016

⁶ Under Rule 23, reference is made to "Rules" while the citation is for "Directions".

⁷ Under Rule 23, reference is made to "Rules" while the citation is for "Directions".

⁸ C.A. Civ Application No. 256 of 2016

after the doing of the act: and any reference in these Rules to any such time shall be construed as a reference to the time as extended"

- [16] In our view and from a plain and ordinary reading of the above rule, the Court of Appeal exercises jurisdiction over the extension of time in matters of an appeal before it. This Court has the singular duty of receiving a notice of appeal and transmitting the appeal papers. Any other reading of the rule would be stretching the interpretation of the rule. The governing rules do not grant jurisdiction to this Court to do that which Counsel for the Applicant would have us do. This is the juridical structure and hierarchy of our Court system. Indeed, His Lordship, the Honourable Mr. Justice FMS Egonda Ntende J. A in a panel of three Justices of Appeal in **Elizabeth Kobusinguye v Zimbiha**⁹ repeats the observation and effect of Rule 5.
- [17] In a most instructive decision on the point, **In the Matter of Ranch on the Lake Limited (In Receivership)**,¹⁰ the Honourable Mr. Justice Egonda Ntende, while considering an application for leave to appeal out of time, observes that for appeals governed under Section 80CPA, it is for the appellate Court to grant an extension of time for filing the appeal. It is not for the Court of first instance.
- [18] We agree with the particularly apt dicta expressed in the authorities cited above. Indeed, the wording of Section 79(1) (b) CPA reflects the thesis expressed in the above cases. It vests jurisdiction to extend time in the appellate Court. The precise wording is that the appellate Court may, for a good cause, admit an appeal though the period of limitation prescribed by the section has elapsed. In the present case, the Industrial Court is not sitting as an appellate Court. Considering the law cited, we must conclude that the Industrial Court does not have the jurisdiction to entertain the application for extension of time to file a notice of appeal or validate the notice of appeal. Such power is vested in the appellate Court, the Court of Appeal.¹¹
- [19] For the above reasons, it would not be within our remit to consider the application for a stay of execution because there is no proof of lodgment of a notice of appeal or an appeal to enable the preservation of the status quo and the right of appeal. We are fortified in this view by the dicta of the Honourable Mr. Justice Henry I. Kawesa in **Lawrence Ben Mberganya v Kakande Aloysious and Another**,¹² where his Lordship observes that one of the aims of any application for stay of execution is the desire to maintain the status quo so that the intended appeal is not rendered nugatory and for the Court to preserve the status quo, the applicant must have satisfied the Court that he or she has lodged an appeal in accordance with the Rules. The Applicant disassociates itself with the notice of appeal filed on the 16th of May 2023, and the subsequent notice of appeal filed on the 19th of July 2023 is

⁹ Civil Misc Application 245 of 2019

¹⁰ H.C.M.A 0537 of 2005


¹¹ See also Section 79(1)(b) CPA.

¹² H.C.M.A 1181 of 2017

out of time. We have also established that it is neither within the province nor remit of this Court to extend time.

[20] Therefore, considering the basis on which this application was brought, we cannot entertain the application to preserve any status quo pending appeal. The application is dismissed with no order as to costs in keeping with the dicta of this Court in employment disputes. Costs are awardable in exceptional cases, including misconduct by the losing party. Having found no such misconduct on the Applicant's part, the Respondent shall not have costs of the application.

Signed in Chambers at Kampala this 10th day of November, 2023.

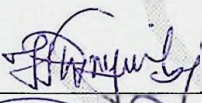

Anthony Wabwire Musana,
Judge, Industrial Court

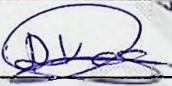
The Panelists Agree:

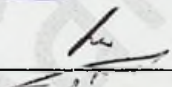
1. Hon. Jimmy Musimbi,

2. Hon. Robina Kagoye &

3. Hon. Can Amos Lapenga.







10th November 2023
10.37 a.m.

Appearances

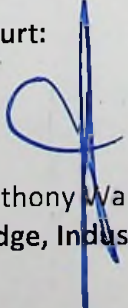
1. For the Applicant: Ms. Elizabeth Zahumumpa holding brief for
Mr. Nicholas Atuhairwe

2. For the Respondent: Mr. Joseph Amanyanya
Parties absent.

Court Clerk: Mr. Samuel Mukiza.

Mr. Joseph Amanyanya: Matter for ruling, and we are ready to receive it.

Court: Ruling delivered in open Court.


Anthony Wabwire Musana,
Judge, Industrial Court.