



THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
MISCELLANEOUS APPLICATION NO.181 of 2023
(Arising out of Labour Dispute Reference No. 285 Of 2022)

GEMS LOW-COST SCHOOLS UGANDA LTD.....APPLICANT
T/A DREAM AFRICA SCHOOLS

VERSUS

NATUKUNDA RACHEAL MUTABAZI..... RESPONDENT

Before:

The Hon. Mr. Justice Anthony Wabwire Musana

Panelists:

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

Representation:

1. Mr. Peterson Mwesiga of M/S Meritas Advocates for the Applicant
2. Mr. Bright Natumanya of M/S TARA Advocates for the Respondent

RULING

Introduction

- [1] By motion under Section 33 of the Judicature Act Cap.13(*from now JA*), Section 98 of the Civil Procedure Act Cap.71 (*from now CPA*) Order 9 Rule 21 and 52 rules 1, 2 and 3 of the Civil Procedure Rules S.I 71-1(*from now CPR*) the Applicant sought a setting aside of this Court's *ex parte* order of the 11th of October 2023, that the Applicant be permitted to enter appearance and defend the primary reference and provision of costs.
- [2] The applicant's supporting affidavits, deposed by Mr. Peterson Mwesiga Esq, were to the effect that Counsel, having travelled to Tanzania on 16th September 2023 to attend to a family emergency and being involved in an accident while abroad and thereby being prevented from attending Court on 11th October 2023. The Applicant was, therefore, prevented by good cause from attending Court.

[3] The Respondent opposed the application. In reply, Mr. Bright Natumanya Esq averred that the application was without merit and that by the time of Mr. Mwesiga's travel, the Respondent was in contempt of the Court directives to file pre-trial documents by 22nd September 2023 and that Counsel only started receiving treatment on the 29th of September 2023. Mr. Natumanya averred that the application did not disclose good or sufficient reasons to have the exparte order set aside.

[4] When the application was called for hearing on the 22nd of November 2023, we invited the parties to address us through written submissions.

The Applicant's submissions

[5] It was submitted for the Applicant that the failure to appear in court was for good or sufficient cause owing to Mr. Peterson Mwesigwa's accident. It was submitted that the failure by Counsel to appear in court amounted to good cause, and alternatively, if nonappearance was negligent, that too amounted to sufficient cause.

Submissions of the Respondent

[6] It was submitted for the Respondent that the order of the Court was for the matter to proceed with the Respondent's evidence and not exparte as suggested by the Applicant. As such there was a non-existent exparte order. It was suggested that the Court's order was hinged on Order 17 Rule 4 CPR.

[7] It was also submitted that Mr. Mwesigwa was discharged on 1st October 2023 and had time to comply by 11th October 2023. It was the Respondent's position that the Applicant was in contempt of court, having failed to comply with the Court's orders. It was also submitted that the Applicant had failed to file witness statements, suggesting that there was an undue advantage in having read the Respondent's witness statement. We were asked to dismiss the application.

Analysis and Decision of the Court

[8] There are two broad questions for determination:

- (i) The first relates to the nature of the order of the Court and;
- (ii) The second would be whether the applicant has shown good or sufficient cause for setting aside the court's order.

[9] On the first question, the procedural history of LDR 285 of 2022 demonstrates that on the 22nd of August 2023, when the case was called before this Court, Mr. Peter Mwesigwa, acting for the Applicant (*the Respondent in the main cause*), sought for time to file pretrial documents as he was freshly instructed. He also suggested the possibility of a negotiated settlement. We directed Counsel to meet within 14 days and discuss the joint scheduling memorandum(JSM). The matter was set for scheduling on the 11th of October 2023. On that day, the Respondent(*the Claimant in the main cause*) appeared in Court, and the Respondent was absent. Mr. Natumanya reported that he had sent a draft JSM to Mr. Mwesigwa on the 15th of August 2023 and followed up with an email on the 4th of October

documents as directed by the Court. For this reason, the Respondent shall have taxed the costs of this application. This application could have been otherwise avoided.

[14] In the final analysis, we make the following orders:

- (i) The application is dismissed with costs to the Respondent.
- (ii) The Applicant is directed to file all pre-trial documents in LDR 285 of 2022 within seven days from this order.

It is so ordered.

Signed in Chambers at Kampala this 30th day of January 2024


Anthony Wabwire Musana,
Judge, Industrial Court

The Panelists agree.

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





30th January 2024

3:07 pm

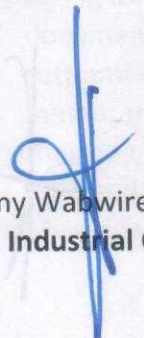
Appearances:

1. Ms. Lauryn Ninsiima holding brief for Mr. Peterson Mwesiga for the Applicant .
2. Ms. Joanita Nanteza holding brief for Mr. Bright Natumanya for the Respondent:

Court Clerk: Mr. Samuel Mukiza.

Ms. Ninsiima: Matter for ruling, and we are ready to receive it.

Court: Ruling delivered in open Court.


Anthony Wabwire Musana,
Judge, Industrial Court **3:12 pm**