



THE REPUBLIC OF UGANDA  
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA  
MISCELLANEOUS APPLICATION NO. 003 OF 2023  
(Arising from Labour Dispute Complaint No. MGLSD/LC/448/2020)

MUZOORA IVAN .....:APPLICANT

VERSUS

FRIENDSHIP BUS COMPANY LTD.....:RESPONDENT

**Before:**

Anthony Wabwire Musana J.

**Panelists:** Hon. Adrine Namara, Hon. Susan Nabirye & Hon. Michael Matovu.

*Representation:*

1. Mr. Tonny Kalungi of Kayongo Jackson & Co Advocates for the Applicant.
2. Ms. Owoyesigire, Muhereza & Co. Advocates for the Respondent.

*Case summary*

*Industrial Court Procedure-Leave to Appeal on questions of fact-Extension of time-This was an application to file an appeal out of time and to appeal on factual matters from a decision delivered by the Assistant Commissioner of Industrial Relations on June 14, 2022. The Applicant, who won an earlier case, sought to appeal but missed the deadline due to illness. He provided medical evidence and requested an extension of time and leave to appeal on specific factual issues related to evidence not considered by the labour officer. The Respondent did not oppose the late filing but objected to the appeal on facts, arguing that the Applicant had not specified these sufficiently. The Respondent also intended to file a cross-appeal. The Court found the Applicant's illness to be a valid reason for the delay and allowed the extension of time to file the appeal. The Court also granted leave to appeal on factual grounds, concluding that the Applicant had raised specific factual issues. Both parties were instructed to file appeals within 14 days, and no party was awarded costs.*

**RULING**

**Introduction**

[1] This ruling concerns an application seeking leave to institute an appeal out of time and to appeal on matters of fact forming part of the ruling by Mr. Apollo Onzoma, Assistant Commissioner of Industrial Relations(**from now ACIR**), delivered on 14<sup>th</sup> June 2022. It was brought under Section 98 of the Civil Procedure Act Cap 282 ( **the CPA**), Section 94 (1) and (2) of the Employment Act Cap. 226 (**the EA**)<sup>1</sup>, Rule 24(1) and (2) of the Labour Disputes(Arbitration and Settlement)(Industrial Court Procedure) Rules, 2012(**the Rules**) and Order 52 r1 and 3 of the Civil Procedure Rules S.I 71-1(**the CPR**).

<sup>1</sup> Under the Revised Edition, 2023, of the Laws of Uganda, Section 94 EA provides for criminal liability.

### **The supporting affidavit**

- [2] In his supporting affidavit, the Applicant was deposed to having instituted MGLSD/LC/448 of 2020, which was determined in his favour on the 14<sup>th</sup> of June 2020. He lodged a notice of appeal and sought a record of proceedings to file a memorandum of appeal. Shortly after, he fell ill and the notice of appeal was not served on the Respondent. He averred his intention to appeal the entire decision, which had a likelihood of success and asked to file an appeal on questions of fact.

### **The affidavit in reply**

- [3] In reply, Mr. Moses Mwanje, a director of the Respondent, was deposed that it wished to cross-appeal the ACIR's decision and that it did not object to the application to appeal out of time but objected to an appeal on questions of fact because the Applicant had not specified the same.

### **Rejoinder**

- [4] In rejoinder, the Applicant averred that the appeal on facts concerned a request for documents that the Assistant Commissioner had not permitted.

### **Summary of submissions.**

- [5] It was submitted for the Applicant that he had sufficient cause for leave to appeal out of time. He cited *The Registered Trustees of the Archdiocese of Dar es Salaam v The Chairman Bunju Village Government & Others*<sup>2</sup> for a definition of sufficient cause, arguing that his illness constituted sufficient cause. We did not benefit from the Respondent's submissions. However, the Court's do not make decisions based on submissions; instead, the submissions are an essential opportunity for litigants to articulate their respective cases. The case cited by the Applicant is relevant as it provides a legal precedent for the argument of sufficient cause due to illness.<sup>3</sup>

### **Analysis and Decision of the Court**

- [6] The decision of the Court is required on two questions: the first relates to whether time should be extended for the applicant to file his appeal, and the second is whether leave should be granted to appeal on questions of mixed law and fact.

### **Appeal out of time**

- [7] Under Regulation 45(1) of the Employment Regulations, 2011, a person aggrieved by a decision of the labour officer may, within thirty days, give notice of appeal to the Industrial Court in the form prescribed in the Seventeenth Schedule. Unlike other appeals, a notice of appeal is sufficient to commence an appeal to this Court for the decision of a labour officer because it provides for the grounds of appeal. But this must be lodged within thirty days.

<sup>2</sup> Civil Appeal No. 147 of 2006 Court of Appeal.

<sup>3</sup> See *Beyanala v Kasumba* [2012] UGHC 229



- [8] In the present case, on the 29<sup>th</sup> day of June 2022, the Applicant lodged a notice of appeal against the decision of the labour officer with the Ministry of Gender, Labour and Social Development. He copied the notice to the Commissioner of Labour- Industrial Relations and Productivity and on Counsel for the Respondent. He did not lodge the notice of appeal with the Registrar of this Court, and he attributes it to illness. Does this Court have the power to extend time?
- [9] In a recent decision of the Civil Division of the High Court, vide *Kakeeto Siraje v Semuwemba Swaibu Muhammadu & Anor*<sup>4</sup> the Learned Justices Ssekaana, Nambayo and Wamala, sitting in panel, held that no right of appeal exists save as is conferred by statute. A right of appeal is always conferred by statute, and when the statute conferring the right lays down conditions precedent of that right to a litigant, those conditions must be strictly performed; otherwise, the right does not become vested. In that case, the Court found that the Advocates Act Cap. imposed a limitation on filing a notice of appeal within fourteen days and a memorandum within thirty days after filing the notice of appeal and that the Act did not grant the Court any discretion to extend time.
- [10] In the present case, the right to appeal a decision of a labour officer is conferred by Section 93(1) EA. Under Section 93(2) EA, an intending appellant has a right of appeal on a question of law by right and on a question of fact with leave. And under sub-section (4), the Minister may make regulations for the form the appeal shall take. Under Regulation 45 of the Employment Regulations, 2011, an intending appellant must file a notice of appeal within thirty days. After that, the Registrar shall require the labour officer to furnish the lower record within fourteen days. That record should be furnished within twenty-one days. Under subsection (5), the rules of procedure for the Industrial Court apply. And under Rule 6(1) and (2) of the Labour Disputes(Arbitration and Settlement) (Industrial Court Procedure)Rules, 2012, a party who fails to file documents within the prescribed time may apply to the court for an extension of time and the court may determine the application as it deems fit. We think the Rule 6 gives this Court a discretion to extend time.
- [11] The threshold for application for an extension of time to file an appeal has been held to be if the applicant can demonstrate that he or she has been prevented from taking a particular step by sufficient or good cause.<sup>5</sup> Sufficient cause has been defined in a broad range of authorities. In one such expansive treatment of 'sufficient cause,' Mubiru J. in *Oywelo v Onying*<sup>6</sup> observes that it must relate to the inability or failure to take a particular step in time and includes a mistake by an advocate, though negligent, ignorance of procedure by an unrepresented defendant or illness by a party. A similar view is expressed in *Standard Chartered Bank (U) Limited v Amin Rizwan*<sup>7</sup> where Wamala J. suggests that the court will generally consider whether the delay is one that is explainable to the court's satisfaction.

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<sup>4</sup> H.C.C.A No. 89 of 2022

<sup>5</sup> See *Uganda Civil Aviation Authority v Ojiambo* [2022] UGIC 18).

<sup>6</sup> [2020] UGHC 154

<sup>7</sup> [2024] UGHCCD 21

- [12] In the matter before us, the Applicant pleads illness. He presented a medical report from Kawempe Home Care, which he had attended on 27th June 2022, presenting with blurred vision, polyuria, polydipsia and other symptoms. Dr. Bertha A. Kinyatta diagnosed poorly managed type 2 Diabetes Mellitus and hypertension, prescribing various drugs and bed rest. The Applicant also presented an earlier report from Mulago Hospital bearing conclusions similar to Dr. Kinyatta's. He explained that on account of illness, he was unable to present his notice of appeal to this Court. We are satisfied that the Applicant was prevented by his illness from taking the necessary steps to further his appeal in time. His health condition significantly affected his inability to file the appeal in time.
- [13] In the circumstances of his illness, we would grant him an extension to file his appeal.

#### **Appeal on question of fact**

- [14] Under Section 93(2)EA, an appeal shall lie on a question of law and, with leave of the Industrial Court, on a question of fact forming part of the decision of the labour officer.<sup>8</sup> The import of these provisions is that an intending appellant must seek leave to appeal on a question of fact forming part of the decision, as the Applicant has now done.
- [15] What are the critical considerations for a grant of leave to appeal on a question of fact? In *Action Aid Uganda v Mbarekye*<sup>9</sup> (11 January 2019), the Industrial Court observed that in an application for leave to appeal on questions of fact, the applicant must include reasons why they seek to argue points of fact. In the present case, the Applicant suggests that the labour officer did not consider evidence of the routes that the Applicant was assigned. In their affidavit in reply, the Respondent indicates that the questions of fact are not spelt out. We disagree with this proposition because the Applicant was specific in the concerns on routes he was assigned to. It is this question that the Applicant seeks to be reevaluated in his appeal. In *Aids Support Organisation Uganda Limited v Dr. Mugisha* (16 January 2023)<sup>10</sup> we cited the *Attorney General of Burundi and the Secretary-General EAC, and Hon. Fred Mukasa Mbidde*<sup>11</sup> where in our reading of an error on the point of law as distinct from a question of fact, we observed that issues or points of law relate to the interpretation and application of the law to the facts, while a question of fact relates to the findings because of the evaluation of evidence. Therefore, we are satisfied that the questions of fact upon which the Applicant intends to anchor his appeal formed part of the decision of the labour officer.
- [16] In the result, and as the Respondent intends to file a cross-appeal, this application is allowed with the following orders:
- (i) The Applicant shall file his appeal within fourteen days of the date of this order.
  - (ii) The Respondent shall file its cross-appeal within fourteen days after service of the Applicant's appeal.

<sup>8</sup> Rule 24 of the Labour Disputes (Arbitration and Settlement (Industrial Court Procedure) Rules 2012 is similarly worded.

<sup>9</sup> [2019] UGIC 12

<sup>10</sup> [2023] UGIC 1

<sup>11</sup> [2015-2017] EACJR 509



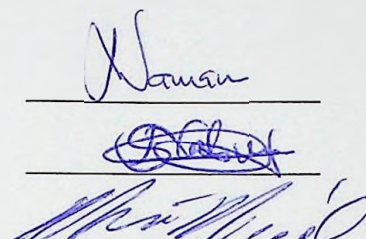
(iii) Neither party shall be burdened with the other party's costs.

**Dated, delivered and signed at Kampala this 30<sup>th</sup> day of September 2024**

Anthony Wabwire Musana,  
**Judge, Industrial Court**

**THE PANELISTS AGREE:**

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



**30<sup>th</sup> September 2024**

**12:17 pm**

Appearances

1. **For the Applicant:** **Moses Mugabi**

Parties absent.

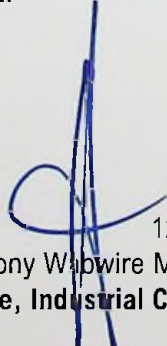
Court Clerk: Mr. Samuel Mukiza.

**Mr. Mugabi:**

I am the Applicant's brother. He was involved in an accident, and I have a police report. He sent me to inform the Court.

**Court:**

Mr. Mugabi informs the Court that he is the Applicant's brother, and the Applicant had an accident and was unable to come to court. A Police Form No. 3 indicating an accident on 26<sup>th</sup> September 2024 has been presented to the Court. Ruling delivered in open Court.



12:19 p.m.  
Anthony Wabwire Musana,  
**Judge, Industrial Court**