

THE REPUBLIC OF UGANDA**IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA**

MISCELLANEOUS APPLICATION NUMBER 014 OF 2022
(Arising from Labour Dispute Reference No. 134 of 2017)

MAKERERE UNIVERSITY BUSINESS SCHOOL :::::::::::::::::::::::::::::::::::APPLICANT

VERSUS

AMOLO BEATRICE AND 19 OTHERS :::::::::::::::::::::::::::::::::::RESPONDENTS

BEFORE:

THE HON. JUSTICE ANTHONY WABWIRE MUSANA

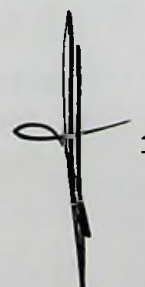
PANELISTS:

1. Ms. ADRINE NAMARA
2. Ms. SUZAN NABIRYE &
3. Mr. MICHAEL MATOVU

RULING.

Introduction

- 1.0 This ruling is in respect of an application seeking to set aside the order issued by this Court directing the Respondents to proceed ex parte in Labour Dispute Reference No. 134 of 2017, that the matter be heard interparty and costs of the application be provided for. It was brought under Order 9 rules 12, Order 52 Rules 1 and 2 of the Civil Procedure Rules S.I 71-1(CPR), and Section 98 of the Civil Procedure Act Cap.71(CPA)
- 2.0 Mr. Mathew Kiwunda, an Advocate practicing law in the name and style of M/s Muwema & Co. Advocates, filed affidavits in support and rejoinder. The gist of these affidavits is that the Applicant's Counsel, Mr. Charles Nsubuga was prevented from attending Court on the 13th January 2022 due to the untimely death of his guardian.



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3.0 The Respondents opposed the application. In her affidavit in reply, the 1st Respondent deposed to the Applicant's dilatory conduct, delay and disinterest in defending the main reference.

Submissions of the Applicant

4.0 Counsel submitted that having lost his guardian, he was prevented by sufficient cause from attending Court on the 13th day of January 2022 when the Respondent was permitted to proceed ex parte. He cited the cases of **Henry Kawalya vs J. Kinyakwazi(1975) HCB 386, Rosette Kizito vs Adminstrator Genral & Ors(SCCA No.9 of 1986) and Fred Kyewalabye vs Richard Ssevume & 2 Others Civil Appeal No. 01 of 2004** in support of the propositions that;

- (i) the ex parte order could be set aside,
- (ii) sufficient reason must relate to an inability to take a particular step in time and
- (iii) mistake of Counsel ought not to be visited on the Litigant.

Submissions of the Respondents

5.0 We have not found on record any written submissions by Counsel for the Respondents. Save that by a letter dated 21st November 2022, the Counsel for the Respondents addressed the Court on the persistent failure of the Applicant to observe court directions. Counsel asked Court to decide the suit immediately under Order 17 Rule 4 of the Civil Procedure Rules.

Issues

6.0 From the motion and affidavits in support of and against the motion, the primary question for determination is whether the order passed ex parte against the Applicant should be set aside.


Determination

7.0 Under Order 9 rule 27 of the CPR, it is provided that in any case in which an order is passed ex parte against a defendant, he or she may apply to the court by which the order was passed for an order to set aside and if he or she satisfies the court that the summons were not duly served or that he or she was prevented by sufficient cause from appearing when the suit was called on for hearing, the court shall make an order setting aside the decree as against him or her upon such terms as to costs, payment in court, or

otherwise as it thinks fit, and shall appoint a day for proceeding with the suit. Precedent is to the effect that good or sufficient cause relates to mistakes by an advocate, ignorance of procedure, illness of a party, lapses or dilatory conduct of counsel or the party.¹

- 9.0** The Applicant attributed failure to attend Court on the 13th day of January 2022 to loss of Counsel's guardian. It was deposed that the Applicant's Counsel had requested the Respondent's Counsel to seek an adjournment on that date. Counsel for the Applicant was therefore surprised that the matter had proceeded ex-parte and quickly filed the present application seeking to set aside the ex-parte order. It was the Applicant's case that its Counsel was prevented from attending Court by sufficient cause and in any event, mistake of Counsel should not be attributed to the litigant.
- 10.0** A perusal of the record reflects that when the matter came up for hearing on 18th October 2021, it was adjourned to 13th January 2022 in the presence of Mr. Charles Nsubuga, for the Applicant who was directed and undertook to file trial documents by the 30th of November 2022. When the matter came up on the 13th January 2022, there was no representative of the Applicant in Court. No reason was ascribed for their absence. The Court directed that the hearing proceeds. Two witnesses testified. Thereafter the Court set timelines for submissions and a date for the award. The award was to be delivered on 29th April 2022.
- 11.0** On the 7th day of February 2022, the Applicant filed this application seeking to set aside the order directing the Respondents to proceed exparte.
- 12.0** While we have no reason to doubt the sincerity of the reason attributed for Mr. Nsubuga's absence from Court on the 13th of January 2022 (*being compassionate grounds*) the practice of the Court has been to brief a colleague to attend Court to seek an adjournment or proceed with the matter. Indeed, the record reflects that on 18th October 2021, Counsel Jane Nabirye held brief for Mr. Nsubuga who was reported to be before the High Court in the matter of Gregory Baliddawo vs Nile Breweries Ltd. 1 hour into the proceedings, Mr. Nsubuga attended Court assisted by Ms. Bekunda Pearl Maria. From these proceedings, it was customary for Mr. Nsubuga to brief a colleague It would be expected that Counsel would brief a colleague on the

¹ Per Mubiru J in HCMA No. 0009 OF 2017 Eriga Jos Perino vs. Vuzzi Azza Victor & 2 Ors



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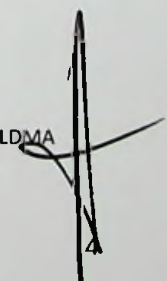
13th of January 2022, but he did not. Perhaps, the circumstances relating to the loss of a guardian would explain Counsel's frame of mind.

- 13.0** Being that loss of one's guardian invites a compassionate disposition of all concerned, we would be inclined to find that the Applicant's Counsel was prevented from attending Court by sufficient reason. In that sense, the failure to brief an Advocate on his behalf would be a negligent act which ought not to be visited on the litigant. For these reasons, we would grant the application with a cavil arising out of our concerns about the Applicant's general conduct in the matter before the Court.
- 14.0** It is fairly discernible that the Applicant has not complied with Court directives. The procedural history demonstrates that on 17th December 2019, Counsel for the Applicant asked for 1 month to file trial documents. On 25th March 2020, the Applicant's Counsel was given a last adjournment to file necessary documents. On the 2nd of March 2021, the Applicant had not filed the trial documents. On the 18th October 2021, prompted by the Court, Mr. Charles Nsubuga undertook to file trial documents by the 30th of November 2022. On 13th March 2022 when the matter came up for hearing, the said trial documents had not been filed. This does not reflect a commitment to a timely disposition of the dispute on the part of the Applicant. Orders and directives of Court are not issued in vain. The Applicant's conduct would ordinarily invite sanctions.
- 15.0** Be that as it may, our present constitutional dispensation under the 1995 Constitution enjoins the Court to administer substantive justice without undue regard to technicalities.² The Courts are called to investigate the substance of disputes in the administration of justice and decide the cases on the merits and that error and lapses should not necessarily debar a litigant from pursuit of his rights.³ Coupled therewith are the provisions of Article 28 of the Constitution which guarantee the right to a fair hearing. Indeed, the Court of Appeal has held that denying a subject a hearing should be the last resort of court.⁴

² Article 126(2)(e)

³ Banco Arabe Espanol v. Bank of Uganda [1999] 2 EA 22, Tiberio Okeny & Anor v. The A.G C.A.C.A No. 51 of 2001 and LDMA No.145/2017 The Registered Trustees of Kasese Diocese vs Benuza Jane

⁴ National Enterprises Corporation v. Mukisa Foods, C.A. Civil Appeal No. 42 of 1997



For the reasons above, and following the precepts of the constitution, the application to set aside the order to proceed ex parte in Labour Dispute Reference No. 134 of 2017 is granted.


Orders and Directions

11.0 It is therefore our order that the application succeeds. However, the Court is still of the persuasion that there must be some finality in this matter. Counsel for the Respondent had sought that the Court decide the matter immediately. It is a 2017 matter and has been in the Court for about 5 years now. They therefore can be no further delays in the matter. The parties would be entitled to timely resolution of the dispute. In that regard, the Court issues the following directions:

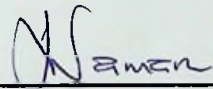
- (i) The Application to set aside the order is allowed.
- (ii) Labour Dispute Reference is set down for hearing on the 25th of January 2023 at 11:30 a:m
- (iii) There are to be no further adjournments in this matter.
- (iv) Costs of the application shall abide by the outcome of LDR No. 134 of 2017.

Dated at Kampala this 16th day of January 2023

ANTHONY WABWIRE MUSANA, Judge
PANELISTS



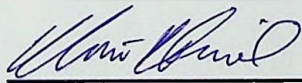
1. Ms. ADRINE NAMARA



2. Ms. SUZAN NABIRYE



3. Mr. MICHAEL MATOVU



Ruling delivered in open Court in the presence of:

- 1. Mr. Charles Opio for the Respondents
Seven of the Respondents are in Court.

Court Clerk. Mr. Samuel Mukiza.