

- [3] The Respondent did not file an affidavit in reply. This would mean that the application is unopposed. It would also mean that our invitation to the parties to address the Court through written submissions was limited to the Applicant's submissions. For completeness, we shall consider the merits of the application without reference to the Respondent's submissions on matters of fact. We shall consider the Respondent's arguments on points of law.

The Preliminary Point

- [5] The Respondent raised a preliminary objection that this application was frivolous, vexatious and time-barred as there is nothing for interpretation and no new fact(s) has been introduced. It was submitted that the application for extension of time, was out of time. Counsel cited the case of **Uganda Revenue Authority v Uganda Consolidated Properties Limited**¹ in support of the proposition that timelines set by statute are matters of substantive law and not mere technicalities and must be strictly complied with. It was also submitted that time could not be extended except for sufficient cause² and that it had not been demonstrated how the Applicant's erstwhile lawyers failed to file the application for review within the prescribed time.
- [6] It was submitted for the Applicant that the Respondent's preliminary objection that the application for extension of time, was out of time was misconceived.

Consideration of the preliminary point.

- [7] We understand the Respondent's objection to the application for extension of time to be that it is frivolous, vexatious, and time-barred. Counsel for the Respondent cites **Section 17 of the Labour Disputes (Arbitration and Settlement) Act, 2006 (LADASA)** which concerns a substantive application for interpretation and review of an award of this Court. The section requires that such an application for review be brought within 21 days from the effective date of the award. It was deposed in the Applicant's affidavit in support that the date of the award was the 1st day of April 2019.
- [8] It was a common position of the parties that the award was announced on the 1st day of April 2019. It would follow from this that the 21 days would lapse on the 22nd day of April 2022. Under **Section 14(4) Labour Disputes (Arbitration and Settlement) (Amendment) Act 2020**, the effective date of

¹ C.A.C.A No. 31 of 2000

² H.C.M.A No. 853 of 2019

an award is the date on which the award is announced. The present application was filed on the 4th of July 2022, over 70 days after the time to file the application for review had lapsed. In this regard, any application for review would be out of time hence the instant application for extension of time to file the application for review. It is not a substantive application for review as the Respondent would have this court believe. The application was brought under Rule 6(1) of the Labour Disputes (Arbitration and Settlement) (Industrial Court Procedure) Rules, 2012(LADASA Rules) which permits parties who have failed to file their documents in time, to seek orders for extension of time. The applicant did not file her application within 21 days from the date on which the Award was announced. She would therefore be well within her rights to file an application for an extension of time. We do not think that the Respondent makes a sustainable objection because an application for an extension of time is not bound by a time limit. It has also not been demonstrated to us as to the frivolity and vexatious nature of the application. We agree with the Applicant's contention that the objection is misconceived and it is hereby overruled.

Submissions of the Applicant on the merits of the application.

- [9] In respect of the merits of the application, it was submitted that Rule 6 of the LADASA Rules permitted a party who fails to file documents in time to apply to the court for an extension of time. The Applicant also relied on Section 98 of the Civil Procedure Act Cap. 71.
- [10] The main thrust of the Applicant's case is that the award in Labour Dispute Reference No. 226/2019 was made in the presence of the parties and their Counsel on 1st April 2022. The Applicant deposes in her affidavit in support to have instructed her then lawyers Messrs. Nsereko, Mukalazi & Co. Advocates to apply for a review of the award. The lawyers did not receive a copy of the award until the 29th of April 2022. The Applicant constantly reminded her lawyers to make the application for review, but they did not. Subsequently, the Applicant instructed Messrs. Pinnacle Advocates who filed the preset application on 1st July 2022. Relying on the cases of **Florence Nabatanzi v Naome Binsobodde**³ and **Bishop Jacinto Kibuuka v The Uganda Catholic Lawyers Society & 2 Other**⁴, Counsel for the Applicant submitted that the inexcusable conduct of the Applicant's former counsel was just and fair ground to allow the application.

³ S.C.C.A No. 6 of 1987

⁴ H.C.M.A 696 of 2018

Submissions of the Respondent

- [11] Citing **Section 17 of the LADASA**, Counsel for the Respondent contended that an application for review is to be made within 21 days from the effective date of the award. It was contended that the application had been filed almost 92 days after the date of the award. Counsel cited the Uganda Revenue Authority case (Supra) in support of the proposition on strict adherence to timelines. Counsel advanced the view that an applicant for an extension of time had a duty to prove sufficient cause and cited **George Mulindwa vs Kisubika Joseph**⁵.
- [12] Counsel also contended that Section 17 was couched in mandatory terms. He submitted that there being no new or relevant facts to cause review, the Applicant ought to have pursued an appeal instead of a review. He added that on the basis of the decision of the High Court in **Farid Mechani v Uganda Revenue Authority**, a motion to extend time must set forth with particularity, the facts said to constitute reasonable cause for the requested extension; mere conclusory allegations lacking in factual detail are not sufficient. Counsel concluded that the Applicant had not discharged the burden to justify the allegation.
- [13] In respect of whether the application for review of the Award that was filed out of time can be validated, Counsel suggested that **Section 87 of the Employment Act 2006** had been subject to sufficient jurisprudence and the meaning was plain and clear. Relying on **Donna Kamuli v DFCU Bank Ltd**⁶ Counsel submitted that severance pay was at the discretion of the employer and that following a clear ruling of this Court, there was nothing unambiguous for interpretation. Counsel prayed that this Court dismisses the application.

Applicant's Rejoinder

- [14] In rejoinder, the Applicant reiterated that her erstwhile lawyers had been negligent and referred this Court to the WhatsApp conversations between her and the lawyers.

Issues for determination

- [15] In our view, the narrow question for determination in this application is whether time should be extended for the applicant to file the application for review. We suggest a narrow question because, in its submissions, the

⁵ S.C.C.A No. 12 of 2014

⁶ LDC No. 002 of 2015

Respondent tended to argue the main application for review as opposed to the application for extension of time.

Analysis and Decision of the Court

- [16] Rule 6(2) of the LADASA Rules, provides that this court may determine the application as it deems fit. There has been expansive jurisprudence on the principle considerations for a grant of extension or enlargement of time. It is also a very well-settled area of law in our jurisdiction. The primary test before time can be enlarged is whether the applicant was prevented by **sufficient cause** from taking a particular step within the time prescribed.⁷ The Supreme Court of Uganda has held that the omission or mistake of counsel ought not to be visited onto the litigant and that a mistake or error or misunderstanding of the applicant's legal advisor, even though negligent, is acceptable as a ground for allowing an application for extension of time.⁸
- [17] The common position in the application before us is that the award of the Court was made on the 1st of April 2022. It is the Applicant's case that her former counsel did not file the relevant pleadings as instructed. On learning of this anomaly, the applicant instructed alternative Counsel who have filed the present application for an extension of time. The applicant attached to the affidavit, copies of WhatsApp messages suggesting communication between her erstwhile lawyer, one Sauda. An analysis of this affidavit in support of the application contains a series of voice notes for 26th April 2022, 20th May 2022, 30th May 2022, and 31st May 2022 to one Counsel Faruk. There are also voice notes to one Sauda dated 26th April 2022 and 30th May 2022. On 8th June 2022, there is a review document that appears to have been forwarded by Sauda to the Applicant. The Applicant then responds as follows:

*"Counsel Sauda, Good evening, thanks for that application and affidavit, orders 1 and 2 r k for me but my third concern is to narify the decision of my illegal termination by the illegally constituted committee."*⁹

The Applicant's version of events is that her erstwhile Counsel were negligent in that they did not act promptly in filing the application for

⁷ James Bwogi vs KCCA and KDLB. S.C.C.A No 09/2017 Cited in MTN(U)LTD vs Anthony Katamba LDMA No.004/2021

⁸ Crane Finance Co. Ltd Vs Makerere Properties, Supreme Court Civil Appeal No. of 2001. See also Banco Arabe Espanol Vs

Bank of Uganda S.C.C.A No 8 of 1998 and Nicholas Roussos Vs Gulamhussein Habib Virani & Anor, Civil Appeal No. 9 of 1993

⁹ The underlined text appears to be short hand.

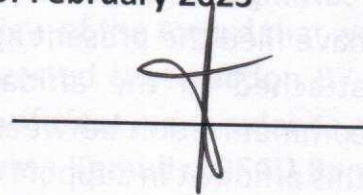
review. The applicant pleads that the mistake of their erstwhile lawyer ought not to be visited on them. While we did not benefit from listening to the voice notes, we are persuaded that the applicant's proposition is both consistent and forthright. The applicant's conduct would not be classified as dilatory. The Respondent did not take the opportunity to challenge the applicant's affidavit by any reply thereto. The law¹⁰ suggests that such averments would be unchallenged. We, therefore, find that the applicant was prevented from filing her application for review by sufficient cause.

[18] Accordingly, we are satisfied that the Applicant was prevented by sufficient cause from filing the application for a review and we are also satisfied that the mistakes of her former counsel ought not to be visited on her.

[19] In the result, this application succeeds. Time is extended for the filing of the application for review. As Labour Dispute Miscellaneous Application 103 of 2022 is already on record, it is hereby validated. As the Respondent did not file an affidavit in reply, there shall be no order as to costs.

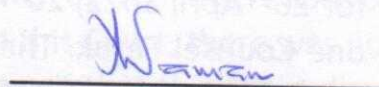
Dated at Kampala this 6th day of February 2023

ANTHONY WABWIRE MUSANA, Judge



THE PANELISTS AGREE;


1. Ms. ADRINE NAMARA,



2. Ms. SUSAN NABIRYE &



3. Mr. MICHAEL MATOVU.



Ruling delivered in open Court in the presence of:

1.

2.

Court Clerk: Mr. Samuel Mukiza.

¹⁰ See *Kabwoyi and 4 Ors v Kyabashaija and Anor* (HCT Misc App 1106 of 2020) [2020] UGHCLD 41 and *Madhvani Group Ltd v Simbwa & 2 Ors* (Miscellaneous Application 1160 of 2012) [2013] UGHCLD 5