

THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA HOLDEN AT KAMPALA
MISCELLANEOUS APPLICATION NO.129 OF 2022
(Arising from Labour Dispute Complaint No. 106 of 2029)

BUGISU COOPERATIVE UNION LTD:.....APPLICANT

VERSUS

SABAKAKI BERNARD SILVESTER:.....RESPONDENT

BEFORE:

1. THE HON. JUSTICE ANTHONY WABWIRE MUSANA,

PANELISTS:

1. Mr. JIMMY MUSIMBI,
2. Ms. ROBINAH KAGOYE &
3. Mr. CAN AMOS LAPENGA

RULING

Introduction

1.0 The applicants brought this application under the provisions of Section 79(1), 96 and 98 of the Civil Procedure Act Cap. 71, Section 94 of the Employment Act, 2006 and Order 51 Rules 1 and 3 of the Civil Procedure Rules S.I 71-1("CPR") seeking the following orders:

- (i) an order of extension of time to file a notice and memorandum of appeal against the award of the Mbale District Labour Officer delivered on the 27th day of September 2019 in Labour Dispute Complaint No. 106 of 2019,
- (ii) an order that the appellant be allowed to appeal on matters of fact,
- (iii) an order validating the notice and memorandum of appeal and
- (iv) an order for provision of costs of the application.

2.0 The Hon. Nathan Nandala Mafabi and Mr. Charles Nandaah Wamukoota *Esq*, filed affidavits in support and rejoinder. The gist of these affidavits is that the applicant was prevented from filing the appeal in time due to ineffective service of proceedings at the labour office. The Labour Officer was faulted for entering

a decision without considering the applicant's defence on record and without a joint scheduling memorandum. The applicant contended that the Labour Officer heard the matter when it had been fixed for mention. The applicant averred that there was no dilatory conduct but rather a lack of knowledge of the proceedings and award until the 30th August 2022 when the applicant was served with a Notice To Show Cause why execution should not issue.

- 3.0** In the affidavits in opposition, the respondent deposed to the applicant's dilatory conduct in neglecting to file documents and failing to attend the proceedings before the Labour Officer. It was the respondent's case that the applicant only woke up upon being served with a Notice To Show Cause on the 30th August 2022. The respondent contends that there has been inordinate delay in filing this application.

Analysis

4.0 We have perused the affidavits in support, reply and rejoinder and the submissions of the respective Counsel. The chronology leading to the application is instrumental in determining the question before this court. The procedural history of this matter is as follows:

- i. On 16th August 2019, the respondent filed a complaint before the labour officer in Mbale.
- i. On 11th June 2019, the Labour Officer issued a notification of complaint.
- ii. On 20th June 2019, the respondent attended before the Labour Officer. The applicant was absent.
- iii. On 12th July 2019, the applicant was summoned for the 19th July 2019 but did not attend. Fresh summons issued for 16th August 2019.
- iv. On 16th of August 2019, the applicant appeared before the Labour Officer. On that day, the applicant sought an adjournment to file a response to the claim. The matter was adjourned to the 13th of September 2019.
- v. On 13th September 2019, the applicant did not appear and the Labour Officer proceeded exparte.
- vi. On 27th September 2019, a decision was rendered in favour of the respondent.

- vii. On the 25th of August 2022, the Registrar of this Court issued a Notice To Show Cause why execution should not issue and the same was set for the 22nd of September 2022.
- viii. The applicant filed this application on the 9th of September 2022.

5.0 The primary questions for determination are whether the applicant should be granted leave to appeal and whether time to file the appeal should be extended. We propose to resolve with the issues as below.

Whether the applicant should be granted leave to appeal

6.0 Under Regulation 45 of the Employment Regulations, 2011, a notice of appeal from a decision of a Labour Officer is to be filed within 30 days. The statutes do not make similar provisions for an application for leave to appeal. To address the lacuna, this Court has adopted the standard under Section 79(1) (b) of the Civil Procedure Act read together with Order 43 Rules 1 and 2 and Order 51 Rule 6 of the Civil Procedure Rules.¹ In terms, an appellate Court may enlarge time within which to file an appeal or an application for leave to appeal, for “good cause”. 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.²

7.0 The applicant attributed the delay in filing the appeal to lack of knowledge of the proceedings before the Labour Officer and lack of effective service. The record of the lower court reflects several attempts at serving the applicant. Interestingly, on 16th August 2019, the applicant’s Counsel appeared before the Labour Officer and sought time to file a response to the claim. There is no indication and explanation as to what the applicant did from the 16th day of August 2019 until the 9th of September 2022. We therefore have considerable difficulty in accepting the applicant’s argument in light of an easily readable procedural history as set out in paragraph 34 above. The account rendered by the applicant is not credible. The applicant sat back until August of 2022 when the respondent sought to execute the award. The applicant cannot, in good conscience, now suggest that it was ignorant of proceedings. There is not even a courtesy letter to the labour office inquiring as to the stage of the proceedings before the Labour Officer for a period of 2 years. We do not believe the

¹ See LDMA No.125/2020 Guaranty Trust Bank(U) Ltd vs. Susan Dembe, LD No.271/2016 Kasese Cobalt Co. Ltd Vs. David Kabagambe, LDMA No. 18/2021 Kampala Playhouse Ltd vs. Oligo James

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

applicant's propositions and we would agree with the respondent's submission that the applicant has been guilty of dilatory conduct. For this reason, the reliefs sought would be denied and the application dismissed with costs.

Whether time to file the appeal should be extended

- 8.0 On the basis of the finding and conclusion in paragraph 7.0, it is unnecessary to consider and resolve the issue of extension of time to file the appeal.
- 9.0 However, in the course of perusing the arbitration award, we found that the manner in which the labour officer reached the decision could not be easily ascertained. It may well be because the matter proceeded *ex parte*. That, notwithstanding, while the Labour Officer would not be expected to conduct a trial in a manner akin to a court, we expect some standards in the conduct of proceedings. If the labour officer has opted to carry out an adjudicatory or arbitration function then there must be adherence to some basic principles of a trial. Under the 3rd Schedule to the Magistrates Courts Act Cap. 16, the Civil Procedure Rules for Magistrates Grade II Courts provide the basic rules for recording of evidence, the examination of the witness or witnesses, evaluation of evidence and stated reasons for the decision. Evidence is required to be taken under oath. In the case before us and for purposes of illustration, the Labour Officer found that *"from the evidence adduced by the claimant, there was no doubt that he had been employed by the Respondent as a General Manager for a period of five years with some breakages in between."* The Labour Officer did not state what the evidence was. If the labour officer was conducting an inquiry, the final ruling does not reflect an inquiry into the truthfulness of the Respondent's claim. It is also not demonstrated that the witness was put on oath. We find that the Labour Officer did not conduct this matter in conformity with basic principles of trial. And we are fortified in this view by the decision of this Court in the case of **Kasese Cobalt Co. Ltd Vs David Kabagambe LDA No. 13 of 2020**, where it was held that in adjudication or arbitration which are fact finding hearings, in which the disputing parties must take oath before testifying about the issue in dispute and an adjudicator/judge must make a determination or order.
- 10.0 The final award of the labour officer of UGX 268,189,000/= included unpaid salary for 51 months in the sum of UGX 107,436,000/=, loss of expectation of UGX 15,900,000/=, loss of opportunities of UGX 15,900,000/= and unlawful

deductions of UGX 59,353,000/=. These awards did not have a very firm foundation. In finding that the respondent (claimant) was unlawfully terminated and awarding as he did, there was a danger of the awards being premised on imagination and speculation. We are not satisfied that the Labour Officer conducted labour complaint No. 106 of 2019 fairly and properly. There are material irregularities with the process by which the evidence was taken, how the findings were arrived at and the basis of the awards. These irregularities have the capacity to cause a miscarriage of justice. We cannot permit an award premised on irregularities, to stand.

11.0 It follows therefore that the decision of the Labour Officer in Labour Complaint No. 106 of 2019 cannot be permitted to stand. In the case of **Tembo Steels (U) Ltd Vs Wamala Collins**³ this Court observed that it sits as a court of equity. One dictum of equity is "*Ubi Jus Ibi Remedium*". Equity shall not suffer a wrong to be without a remedy. Further in the case of **Odongo Kresenyio & Anor Vs Ojera Cpriano Civil Appeal No.0053 of 2017**⁴, it was held that an appellate court will only set aside a judgment of the court below or order a new trial on grounds of misdirection or improper admission or rejection of evidence, or for any errors as to any matter of pleading or for any error as to any matter of procedure unless the court is of the opinion that the error complained of has resulted in a miscarriage of justice.

Decision of the court

12.0 In view of our findings in paragraphs 9.0 and 10.0 above, it is our decision that the arbitral award of the Labour Officer in Labour Complaint No. 106 of 2019 occasioned a miscarriage of justice and is hereby set aside. For purposes of ensuring adherence to the principles of natural justice and preserving the right to a fair hearing as enshrined in Articles 28 and 44 of the 1995 Constitution, this matter is sent to the Commissioner Labour, Gender and Social Development with directions to hear the matter inter-parties and dispose of the same as expeditiously as practicable.

³ LDMA NO.261 of 2019

⁴ Cited in H.C.C.A No.119/2018 Odongo Ochama Hussein vs Abdul Rajabi. See also H.C.C.A No 0032/2016 Onek Manacy & Anor Vs Omona Michael.

13.0 Ordinarily, costs follow the event. However, in special circumstances, costs may not follow the event. In the present circumstances, the applicant has been found to be guilty of dilatory conduct and it is only fair that the Respondent shall have costs of this application.

Delivered at Kampala this 9th day of November 2022

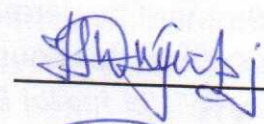
SIGNED BY:

1. ANTHONY WABWIRE MUSANA, Judge

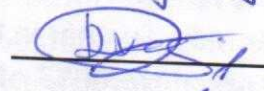


PANELISTS

1. Mr. JIMMY MUSIMBI,



2. Ms. ROBINAH KAGOYE &



3. Mr. CAN AMOS LAPENGA



Delivered in open Court in the presence of:

Court Clerk. Mr. Samuel Mukiza.