

UGANDA / JUDGMENT

Law Development Centre v Nabulime Kayongo (Labour Dispute Miscellaneous Application 47 of 2023) [2025] UGIC 19 (31 January 2025)

[2025] UGIC 19

COURT

Industrial Court of Uganda

BEFORE

Tumusiime-Mugisha, J, Mugambwa, Panel Member,
Mubuuke, Panel Member, Ebyau, Panel Member

CASE / FILE NUMBER

Labour Dispute Miscellaneous Application 47 of
2023

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THE REPUBLIC OF UGANDA IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE MISC. APPLN. NO. 47 OF 2023 *(Arising from LDR No. 211 Of
2014)*

LAW DEVELOPMENT CENTRE :::::::::::APPLICANT

V

ANN NABULIME KAYONGO RESPONDENT

Before:

Hon. Head Judge, Linda Lillian Tumusiime Mugisha.

Panelists:

- 1. Hon. Harriet Mugambwa,
- 2. Hon. Frankie Xavier Mubuuke &
- 3. Hon. Ebyau Fidel.

Representations

- 1. Mr. Agaba Phillip Mugira of M/s. Kyagaba & Otatiina & Co. Advocates for the Applicant.

- 2. Ms. Sheba Tayabwe brief for Mr. Lukwago Borniface of M/s. Oculus Advocates for the Respondent.

RULING

Introduction

[1] This Application is brought by Notice of Motion under Articles 28 and 126 (2) (e) of the Constitution of Uganda as amended; Rules 2(2), 5, 42 (1), 43(1) and (2) and 44 of the Judicature (Court of Appeal) Rules S. ^I 13-10] and rules 23 (3) of the

Labour Disputes (Arbitration and Settlement) Industrial Court Procedure Rules) Rules, 2012] for orders that;

- a) The time within which to lodge a Notice of Appeal arising out of Labour Dispute Reference No. 211 of 2014 in this court be extended and or enlarged;
- b) The amended Notice of Appeal filed out of time on 21/03/2023 be validated and
- c) The costs in this Application be provided for

The grounds of the application are as follows:

- 1. That the Applicant being aggrieved by the award of this Court intends to appeal to the Court of Appeal and the Appeal raises serious questions or points of law with a high likelihood of success.
- 2. That there was sufficient cause for the delay in lodging the notice of appeal, because Counsel for the Applicant was not informed about the date of delivery of the Award nor was the Applicant informed, hence the delay.

The Applicant's Case

[2] The Applicant's case as stated in the Affidavit in support deponed by Lukyamuzi Hamia Ddungu, the Secretary to the Applicant, are summarized as follows:

That the Respondent filed a labour dispute against the Applicant via LDR No. 211 of 2014, which this court heard on 7/07/2022 and the award was set for delivery on 2/06/2022. However, on the 2/06/2022 in the presence of Mr. Tibaijuka Charles Counsel for the Applicant and in the absence of counsel for the Respondent, the award was not ready and was rescheduled for 1/7/2022. On 1/7/2022, court did not sit and the matter was rescheduled on 6/10/2022, in the presence of Mr. Tibaijuka Charles. On 6/10/2022, court was disposed and the delivery of the award was adjourned to 19/10/2022. According to him, the court record does not show that the file was called for mention on 19/10/2022 but only shows that the award was delivered on 4/11/2022, in the presence of Counsel for the Claimant and in the absence of the Respondent's counsel. On 11/01/2023, M/s. Tibaijuka & Co. Advocates forwarded to the Applicant a letter from the Respondent's Advocates dated 9/01/2023, demanding payment of Ugx. 415,141,824.88/= arising out of the Award and this

was the first time the Applicant got to learn about the substance of this Award.

[3] Upon perusal of the Award, the Applicant being dissatisfied with the court's declaration that the Claimant was entitled to Acting Allowance and an award of

Ugx. 40,000,000/= as general damages instructed M/s. Kyagaba & Otatiina Advocates, to take over the conduct of the case as evidenced in Annex "D". On 13/01/2023, the secretary requested the new Lawyers to ascertain whether the previous counsel had filed a Notice of Appeal pursuant to the delivery of the award and on 16/01/2023, the new counsel wrote to previous counsel requesting for the Notice of Appeal. The response received was in respect of the dates on which judgment was expected to be delivered, but there was nothing in respect to the Notice of Appeal. On 9/02/2023, the new lawyers requested typed proceedings which they served upon the Respondent on 13/02/2023 and filed a notice of appeal which was endorsed on 21/03/2022 and it was served upon the Respondent on 22/03/2023. He was aware that the notice ought to have been filed on 14 days after delivery of the award on 18/11/2023 but this was not possible because the new lawyers sought for a certified typed copy of the record of proceedings on 16/01/2023 and wrote another letter on 21/03/2023 and another letter of 17/03/2023 requesting that court furnishes certified typed Copies of the record of proceedings they could file the Notice of appeal.

That the appeal raises very important questions of law with a high likelihood of success, to wit, the Industrial Court applied wrong principles and thereby erred in law in assessing the quantum of general damages payable to the claimant /Respondent, and whether the industrial court had powers to rewrite a contract between parties. V

w X. J

That the Applicant having not been aware of the date the Judgment was delivered, court should grant the reliefs sought by the applicant and in the alternative the mistake and or negligence of the previous Counsel should not be visited on the Applicant.,

Therefore, in the interest of justice, time should be enlarged to lodge the Notice of Appeal and or the Notice of Appeal filed on 21/03/2023 be validated.

[4] In the Affidavit in reply, which was deposed by the Respondent herself, she vehemently opposed the application and objected to the Applicant's failure to serve her with this application because she was only made aware of it through her own follow up and she was only served on 6/06/2023 when her lawyers accessed it by photocopying the same. She admitted the applicant's narrative in respect of the trajectory of the date on which the award was supposed to be delivered and confirmed that indeed the award was to be delivered on 4/11/2022. In the absence of both Mr. Tibaijuka, Counsel for the Respondent and the Respondent, she stated

further that on 19/11 /2022, when the judgment was supposed to be delivered Court did not sit but she came to court and was informed of the new date 4/11/2022 and she is also aware that the clerk of this Court made a phone call to Mr. Tibaijuka and informed him about the same and the same was actually cause listed for 4/11/2022. She refuted the assertion that the delivery of an award

must indicate the attendance of parties at its delivery and contended that every Appeal shall be within 14 days from the date of award, and the Applicant being a legal training institution ought to diligently adhere to the laid down legal principles and processes, therefore it cannot be exempted for its failure to meet the notice period. She contended that, after coming to know about the delivery of the award on 11/01/2023, they only filed the impugned notice of appeal on 9/02/2023, 29 days later. She further contended that the record of proceedings was not relevant at this stage of filing a notice of appeal and they cannot be relied on as an excuse for the delay in filing the Notice of Appeal and in any case a party cannot file two (2) Notices of Appeal in the same matter and in the same court without amending or invalidating the former. That this application was only intended to delay justice because the Applicant got to know about the Award on 11/01/2023, they issued instructions to new counsel on the same date, filed a Notice of Appeal on 9/02/2023 and 21/03/2023 and sought extension to file out of time and validation of the Notice of Appeal on 14/04/2023 when they filed this application. In the circumstances, this application should be dismissed.

Submissions

[5] It was submitted for the Applicant that following the Constitutional Court decision in **Asaph Ruhinda Ntengye & Another v Attorney General**, Constitutional Petition No. 33 of 2016, this court was dressed with jurisdiction to determine this application in accordance with the rules. He restated the averments by Mr. Lukyamuzi as in the Affidavit in support. He stated that the court initially scheduled the 2/06/2022 for delivery of the award and did not do so, and 1/07/2022 and did not do so, and later 6/10/2022, and then 19/10/2022, and did not deliver the award until 4/11/2022². Still, there is no indication that the Applicant was notified for this date, which led to the lapse of time within which a notice of Appeal could have been filed. Counsel cited rule 5 of the Judicature (Court of Appeal rules) directions, which grants Court discretion to extend time within which an act required to be done by the rules, such as the time within which to file a notice of appeal. He insisted that the ignorance about the award culminated in the expiry of time within which the Applicant could

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have filed its Notice of Appeal, therefore this was sufficient reason for this court to grant this application. He relied on **Senyonjo Dick v Delta Petroleum (U) Ltd** CA Appln No. 325/2017. He refuted the assertion that Mr. Christohper Lwebuga called Mr. Tibaijuka Charles about 4/11/2022, because no evidence was adduced to prove this. It was his submission that Tibaijuka expressly stated that he was notified about the new date and in any case, the mistake or negligence of Counsel cannot be visited on the Applicant. He relied on **Sabiti Kachope & 3 Others V Margaret Kamuje** SCCA No. 31 of 1997, for the legal proposition that applications for extension of time could be granted notwithstanding the mistake, negligence or misunderstanding of counsel under the rules equivalent to rule 4 of this court, which was the rule under which that particular rule was brought before the Court. Counsel argued that there was no inordinate delay because having instructions the new Counsel promptly filed a Notice of Appeal and reached out to inquire form

previous counsel whether a Notice of Appeal had been filed and upon learning that none had been filed, they immediately requested for the record of proceedings, and filed this application on 13/04/2023, 3 months from the date of becoming aware of the award. He insisted that under the circumstances of this case, 3 months was not inordinate delay as was stated in **Sabiti Kachope & 3 Others Vs Margaret Kamuje (supra)**. He insisted that they were diligent in filing this application to extend time upon confirmation that there was no notice of appeal filed.

- [6] In reply, Counsel for the Respondent insisted that Mr. Tibaijuka for the Applicant and Ms. Julian Nkiriija for the Respondent were notified about the award being delivered on 4/11/2022, and this is confirmed by the Claimant's presence at court on the date of the award. On 9/01/2023, Lukwago & Co. Advocates wrote to the Applicant seeking payment of the decretal sum arising out of the award under LDR No. 211 of 2014 and on 11/09/2023, Mr. Tibaijuka by his letter ref/T. C 13/15. dated 11/01/2023 also notified the Applicant about the award, which was an indication that he was aware of the award. The fact that the Respondent and her lawyers were in court on that date was evidence that the court did notify the parties before the award was delivered. In the alternative, the Applicant was made aware of it on 11/01/2023, and under Rule 76(2) the Court of Appeal rules require any party dissatisfied with the decision of Court to Appeal within 14 days from the date of delivery of the decision. Therefore, the Applicant in accordance with this rule ought to have filed a Notice of Appeal on 24/01/2023.
- [7] Counsel insisted that the Applicant was made aware of the award on 11/01/2023, it instructed the new lawyers on the same date who filed a Notice of Appeal on 9/02/2023, 28 days later and another Notice of Appeal on 21/03/2023, 39 days after they were made aware of the award and filed this application on 13/04/2023. She contended that the applicant took 4 months to prepare a Notice of Appeal which ought to have been done in 14 days. She did not dispute the submission that rule 5 (supra) and section 37(1) (a) of the Judicature Act, gives a high court from which an appeal lies discretion to grant extension of time for good reason, but hastened to add that this discretion must be exercised judicially and for sufficient cause and the application must be made promptly. Therefore, exchanging correspondences between the Applicant and its lawyers, both new and previous counsel, for 3 months amounted to dilatory conduct and is evidence that they are not interested in pursuing the Appeal but only intended to delay Justice.

She further contested the assertion that there was a high likelihood of the alleged Appeal to succeed because the proposed grounds were never attached to enable a determination of whether there was indeed a high likelihood of success. She also refuted the argument that the Applicant would suffer substantial loss because all the respondent wants is to realise the fruits of her award which the Applicant only intends to delay. Therefore, the application should be dismissed with costs.

Decision of Court

[8] Rule 76 of the Judicature (Court of Appeal Rules) provides for the procedure and the timelines within which a party can commence an Appeal, by giving notice in writing.

Rule 5 of the Judicature (Court of Appeal Rules) Directions provides as follows: "5 Extension

The Court may for sufficient reason, extend the time limited by these Rules or by any decision of the court or of the High Court for the doing of any act authorized or required by these rules, whether before or after the expiration of that time and, whether before or after the doing of the act; and any reference in these Rules to any such time shall be construed as a reference to the time extended."

It is the Applicant's case that following the completion of the hearing of LDR No. 211 of 2014, this Court set down the matter for award on 6/06/2022, but adjourned its deliverance to 01/07 2022, in the Presence of Mr. Tibaijuka Charles, Counsel for the Applicant. It was not delivered on the 01/07/2022 and it was adjourned to

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6/10/2022, still on this date the award was not ready and was adjourned to 19/10/2022 in the presence of Mr. Tibaijuka. The Court was indisposed on 19/10/2022 and the record clearly shows that there was no sitting on that date. However, the Industrial Court adopted a practice which, until today, it believed would save litigants from traveling to court in vain by requiring the Clerk to communicate new dates to the parties by phone, which would then be followed by a cause list confirming the new dates.

It is indeed the correct position that there is no evidence of the phone calls that were made to Mr. Tibaijuka since the Clerk did not extract a phone log. However, his colleague Ms. Julian Nakirijja, Counsel for the Respondent, who was equally called on phone, appeared on the 4/11/2022 and received the award. It may be true that the Applicant was not made aware of the new date of 4/11/2022, since the communication was made to Mr. Tibaijuka and not the Applicant itself. However, the Applicant admits that it was made aware of the award On the 11/01/2023, when Mr. Tibaijuka notified it about the award and the demand to pay the decretal sum arising therefrom. The letter reads in part as follows:

v:'>.

"RE: LABOUR DISPUTE CLAIM NO.211OF 2014 ANNE NABULIME KAYONGO V LAW DEVELOPMENT CENTRE TRANSMISSION OF AWARD ■< X.

Through her Advocates, Anne Nabulime Kayongo has just forwarded to me a copy of the Award made by the Industrial Court in her favour on 4/11/2022, along with her own calculations of what she perceives to be due under the award and a demand letter for payment It is the first time ^I am seeing the award.

In case you decide riot to appeal (out of time), then make arrangements to settle the claim.. < r %
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TIBAJUKA KYOZAIRE ATEENYI -ADVOCATE For: M/S TINAIJUKA & CO ADVOCATES."

[10] It is also the Applicant's own evidence that it instructed new Counsel M/s. Kyagaba & Otatiina Advocates, 11/01/2023, the same date it was notified about the award, to file an Appeal as evidenced by annexure "D" on the Affidavit in support. When we scrutinized Mr. Tibaijuka's letter (supra), we established that indeed there is clear evidence to the effect that by 11/01/2023 no Notice of Appeal had been filed. It is therefore misleading for Mr. Lukyamuzi to state that the Applicant's new Lawyers had to first establish whether Mr. Tibaijuka had filed a Notice of Appeal or not, yet the Applicant had shared Mr. Tibaijuka's letter (supra) with them and in their response to the Applicant dated 13/01/2023, the new lawyers had noted that

[9]

the time within which to file an Appeal had since expired. The evidence on the record indicates that Mr. Lukyamuzi forwarded to the new Advocates, all the documents the \applicant received from Mr. Tibaijuka including his letter in which he transmitted the award to them, clearly indicating that he had not yet filed a notice of Appeal and the time within which to do so had expired. Even if it is an agreed legal position that time for an appeal does not begin to run against an intended Appellant until he or she receives a copy of the proceedings, rule 79 of the Judicature (Court of Appeal Rules) provides that a notice of appeal must be filed and served within 14 days after the date of the award. It is therefore not a requirement for the intending appellant to have a record of proceedings before filing a notice of Appeal as counsel for the Applicant would like this court to believe. It is therefore inexplicable why the new lawyers for the Applicant sought a record of proceedings before rectifying the failure to file in time. Even if:it an agreed principle that, the negligence, mistake or misunderstanding of Counsel should not be visited on the litigant, the Applicant in this case was made aware by its previous lawyers that, the time within which to lodge an appeal had expired and instead of seeking leave of court to extend time, the Applicant wasted time exchanging correspondences over matters which were already clarified by Mr. Tibaijuka in his letter of 11/01/2023.

[11] It is our considered view that the new advocates having acknowledged that the time within which to file a notice of appeal had since expired and it was not the Applicant's fault that it was notified about the award late, they ought to have promptly moved court to expand time within which to file the Notice of Appeal instead of further delaying the processes by exchanging unnecessary correspondences between them and the previous Advocate and requesting for a typed record of proceedings which was not mandatory when filing a notice of Appeal. This is because an Appeal can only be brought by way of Notice of Appeal. We strongly believe that the exchange of the correspondences on the record and the request for a typed record of proceedings instead of seeking leave to expand time within which to file

the Notice of Appeal was merely a delaying tactic. In any case the Notice of Appeal is only intended to notify the opposite party of whether the intended Appellant wishes to appeal against the whole or part of the award, the part of the award complained of, the address for service of the Appellant and all the names and addresses of all the parties intended to be served. In fact, the Applicant under paragraph 9 of the Affidavit in support stated that the part of the award it intended to appeal against, based on the perusal of the award. It was therefore not necessary at this point to rely on the record of proceedings, because the award was sufficient.

- [12] It is therefore not acceptable that, the Applicant's Advocates only had the notice of Appeal endorsed by the Registrar very late on 21/03/2023, on grounds that they had not received the certified record of proceedings, yet they were in possession of the award as far back as 11/01/2023 which was sufficient for them to prepare the Notice of Appeal, and they only filed this application for extension of time on the 13/04/2023, exactly 3 months after they were notified about the award. To accept this type of conduct would be condoning the dilatory on the part of counsel. The Applicant is equally culpable because it was made aware of the award on the 11/01/2023 and the fact that the time for lodging the notice of appeal had expired was also brought to their attention by the previous counsel on that very day, but did not take any steps to cause its Advocates to expedite the application for extension of time and instead facilitated the delay by engaging in the unnecessary exchange of correspondences with the new Advocates. We think that the Applicants actually slept on their job and were only using the application for record of proceeding as an excuse to try and exculpate them.

Even if the Applicants were made aware of the award issued in LDR No. 211 of 2014 late on the 11/01/2023, they ought to have diligently and promptly sought leave of court to file a Notice of Appeal out of time for this very reason but they slept on the job and woke up very late.

Respectfully **Sabiti Kachope & 3 Others* V *Margaret Kamuje** SCCA No. 31 of 1997, on which the Applicant relied on for the legal proposition that applications for extension of time could be granted notwithstanding the mistake, negligence or misunderstanding of counsel is distinguishable with this case because that case dealt with application in respect of rules equivalent to rule 4 of the Judicature (Court of Appeal) rules while the instant case is in respect of extensions in respect of rule 5 (ibid).

- [13] In the circumstance, the applicant having been made aware of the delivery of the award on 11/01/2023 and the endorsement of the Notice of Appeal on 21/03/2023, 3 months after they were notified cannot be accepted as sufficient reason to warrant the grant of extension of time within which to file the Notice of Appeal. In any case, this notice after endorsement was served on the Respondent without seeking leave of court to have it validated, which was erroneous. The Applicant, as already stated, slept on their job and instead of promptly invoking this court's discretion to extend time within which to file the Notice of Appeal and or validate

the notice filed on 21/03/2023 only woke up on 13/04/2023, which is way out of the time required and in our view this conduct is intended to delay the cause of justice and to deny the Respondent the fruits of her judgment.

We are not satisfied with the reasons given by the Applicant that they received the award late on the 11/01/2023, that they required to obtain the record of proceedings before filing the Notice of Appeal because the notice of appeal can only be filed based on an award and its not mandatory forthe record of proceedings for a Notice of Appeal to be filed in court.

In the circumstances, we find no merit in this application, the application for extension of time within which to file the Notice of appeal is denied with costs to the Respondent.

Signed in Chambers at Kampala this 31st day of January 2025.

Hon. Justice Linda Lillian Tumusiime Mugisha, **Head Judge The Panelists Agree:** ^F
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1. Hon. Harriet Mugambwa,
- * 2. Hon. Frankie Xavier Mubuuke &
3. Hon. Ebyau Fidel.

31st January 2025 12:00 pm

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Prepared on 13 October 2026 · Esheria