

UGANDA / JUDGMENT

Okello and 91 Others v Mayuge Sugar Industries Limited (Labour Dispute Miscellaneous Application No. 008 of 2023) [2023] UGIC 128 (21 December 2023)

[2023] UGIC 128

COURT

Industrial Court of Uganda

BEFORE

Tumusiime-Mugisha, J, Bwire, Panel Member,
Mwamula Juma - Panel Member, Nyachwo panel
member

CASE / FILE NUMBER

Labour Dispute Miscellaneous Application No. 008
of 2023

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**THE REPUBLIC OF UGANDA IN THE INDUSTRIAL COURT OF UGANDA AT JINJA
LABOUR DISPUTE MISCELLANEOUS APPLICATION No. 008 OF 2023 *(ARISING
FROM LABOUR DISPUTE REFERENCE NO. 046 OF 2020)***

JAMES FRED OKELLO & 91 OTHERS APPLICANTS

v

MAYUGE SUGAR INDUSTRIES LTD RESPONDENT

Before:

The Hon. Ag Head Judge, Linda Lillian Tumusiime Mugisha

Panelists:

- 1. Hon. Bwire John Abraham,
- 2. Hon. Mwamula Juma &
- 3. Hon. Julian Nyachwo.

Representation:

- 1. The Applicants are represented by Kasajja Brian, Lawful Agent of Fraternity of the Vulnerable.
- 2. The Respondent Counsel was not in court but was represented by Arcadia Advocates.

RULING**Introduction**

- [1] This application is brought under Article 126(2) (e) of the 1995 Constitution of the Republic of Uganda, Section 98 of the CPA, Order 52 and Order 9 Rule 18 and 29 of the Civil Procedure Rules SI-71-1, for orders that:

- (a) The Order of dismissal of Labour Dispute Reference No. 046 of 2020 be set aside and the matter be reinstated.

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- (b) No Order as to costs.

Background

- [2] The Applicants/Claimants filed Labour Dispute Reference No. 046 of 2020 against the Respondent seeking among others, damages for unlawful termination of their employment contracts. The matter came up for pre-session hearing on 26/05/2023, where the parties were given strict timelines by the Registrar to file Witness statements, trial bundles, and a joint scheduling memorandum by 6/06/2023 and serve the Respondents by 7/06/23. It was cause listed for hearing on 14/06/23. On that day, however, the Claimants and their Agent Mr. Kasajja Brain did not appear in Court, and they had also not complied with courts directives to file their pre-trial documents. Given that they had not rendered an explanation for their absence, court dismissed the Claim for want of prosecution in accordance with order 17 rule 4.

The Applicant's case

- [3] The Applicant's case, as contained in the notice of motion and supporting Affidavit deposed by Kasajja Brian, the Lawful Agent of the Claimants, is: That, on 14/06/2023, he was unable to appear due to ill health which occurred from the 5/06/2023, for a period of three weeks (as per attached medical reports). He contends that all the witness statements, trial bundles, and scheduling notes of the 2nd to 90th Claimants were ready for filing but due to his ill health he was unable to file them, and yet the Claimants are still interested in having their dispute heard and determined to its logical conclusion. He asserted it is in the interest of

substantive Labour justice that this application is granted.

The Respondent's Case

- [4] The Respondent's case as stated in the Affidavit in reply deposed by Emuk Jerome, a legal officer of the Respondent Company, vehemently opposed the application for the reinstatement of Labour Dispute Reference 046 of 2020 on the grounds that; it was fixed for mention on 26/05/23 and prior to that date court directed the Lawful Agent to file the Claimants Witness statements, Trial bundle and Scheduling notes but the Applicant did not comply as directed. He contended that the Lawful Agent had to file and serve the pretrial documents by 7/06/23 and the Respondent would file its reply by 13/06/23, but the Applicants didn't comply. He further contended that on the advice of M/s Arcadia Advocates, the suit is incompetent for lack of authorization from the Applicants and ought to be dismissed. He insisted that there is no evidence and or explanation for the Applicants and their representative's failure to enter appearance on 14/06/23 and that the medical form attached does not explain the same.

In Rejoinder

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- [5] Mr. Kasajja Brian contended that the Affidavit in Reply was defective as the Deponent is not an employee or staff of the Applicant because no work identity card or appointment letter was attached. He contended that there was no notice of instructions to M/s Arcadia Advocates both in the Main claim as well as this application which makes it devoid of merit and ought to be struck off the court record. He insisted that he was sick and physically incapacitated from 5/06/23 for 14 days and so could not comply with the directions of the court.

Decision of Court

- [6] After carefully considering the Notice of Motion, Affidavits in support and opposition of the Application, and the submissions of Counsel for the Respondent and the Claimants Agent, we found as follows:
- *1. Whether the Applicant has demonstrated sufficient cause to warrant the setting aside of the dismissal of Labour Dispute Reference No. 046/2020?*

Before we resolve this issue we shall first address the Preliminary objections raised by both parties as follows:

a) Authorization to swear an Affidavit.

[7] As stated in **Dr. Bunoti James Wokwera* v *Aar Health Care Uganda Ltd and Anor LD** Misc. Appln. No. 140/2022, in which **Banone Lts* v *Simbamanyo Estates HCMA No. 645 of 2020**, it was held that *"...it is now established that an affidavit in support is**

evidence and does not require authorization but rather knowledge of the deponent. Therefore, this objection has no merit and is overruled.

b) Lack of instruments of instructions.

[8] Whereas Order 3 rule 2 of the CPR recognizes any person appointed to represent another in court such as persons holding powers of attorney, a person carrying out business on behalf of a party to a suit, or an Advocate, section 20 of the Labour Disputes (Arbitration and Settlement) Act 2006, provides for a party to appear by himself or herself or by an Agent, including a Labour Union or an employer's organization or may be represented by an Advocate. The LADASA is however silent on whether a person appointed as an Agent must possess instruments of instruction. This notwithstanding Mr. Kasajja having appeared for and on behalf of the Applicants in the main suit on 26/05/2023, moreover in the presence of some of them, we have no reason to doubt his appointment to represent them in LDR No. 046 of 2020 in this court. An Advocate on the other is an officer of the court who is expected to assist the court to render justice and would be required to present an instrument of instruction upon their appearance in court on behalf of his or her client. On 21/11/2023, when this matter was called on for mention, Ms. Cleopatra Naohereza, the Respondent's legal officer was in Court, and she did not dispute that the Respondent was represented by M/s Arcadia Advocates. These objections therefore have no merit, they are overruled.

c) Whether the Applicant has shown sufficient cause.

- [9] According to the record of proceedings, this matter came up for pre-session hearing on 23/05/2023 and the learned Registrar of this court gave directions to the parties to file a Joint Scheduling Memorandum and for the Respondents to file their pre-trial documents by 7/06/2023 and for the Applicants to file by 7/06/2023. The matter was fixed for hearing on 14/06/2023. On 14/06/2023 the Claimants and their Agent did not enter appearance. They had also not complied with court directions to file their trial bundle and witness statements as directed by court.
- [10] It is trite law that in order for an application to set aside to succeed, the Applicant must show sufficient cause. The phrase "sufficient cause" was defined **to relate to the failure by the Applicant to take the necessary step at the right time (see NJAGI v MUNYIRA (1975) EA 179-180)**. According to Mr. Kasajja, he was unable to attend court on 14/06/2023 because of sudden illness on 5/06/2023, In **Hadondi Daniel v Yolam Egondi** CA CAno. 67 of 2003, it was held that;

"... *sufficient cause must relate to the inability or failure to take necessary steps within the prescribed time. It does not relate to making a wrong decision. If the applicant is found to be guilty of dilatory conduct, the time will not be extended."*

[11] The power to order for reinstatement of a case dismissed is a discretion of the Court. However, such discretion should be exercised sparingly and only in deserving circumstances. As stated *in Crown Beverages Limited v Stanbic Bank Uganda Limited,* HCCS No. 0710/2003, cited in *Monaco Cosmetics Ltd and 2 Others v Old Stanley Hotel Ltd HCCs* (Commercial) Misc. Appln. No 593 of 2016, that;

> "... *that an application for restoration of a dismissed suit requires the applicant to satisfy the court that there was sufficient cause for nonappearance i.e. that he had an honest intention to attend the hearing and he did his best to do so. Authorities abound for the legal proposition that sufficient cause and good cause have been held to relate to the inability or failure to take a particular step in time, where a party has been guilty of dilatory conduct or where there has been a delay in filing an application for reinstatement, the court should be reluctant to grant such a reinstatement. (See; Mwanguhya Fenehansi v King Oyo Nyimba Kabamba Iguru,* HCMA No. 033 of 2023).

- [13] The discretion flows from the inherent powers of the Court under Section 33 of the Judicature Act and Section 98 of the Civil Procedure Act. As already discussed, such discretion should be exercised judiciously depending on the particular circumstances of each case. Twinomujuni JA (RIP) *in Tiberio Okeny & Anor v The Attorney General and 2 others* CA 51 of 2001, gave the spectrum within which such discretion is to be exercised as follows:
- /. *"First and foremost, the application must show sufficient reason related to the liability or failure to take some particular step within the prescribed time. The general requirement notwithstanding each case must be decided on its own facts.*
- *ii. The administration of justice normally requires that substance of all disputes should be investigated and decided on the merits and that error and lapses should not necessarily debar a litigant from the pursuit of his rights.*
- *Hi. Whilst mistakes of counsel sometimes may amount to sufficient reason this is only if they amount to an error of judgment but not inordinate delay or negligence to observe or ascertain plain requirements of the law.*

- *iv. Unless the Applicant was guilty of dilatory conduct in the instructions of his lawyer, errors or omissions on the part of counsel should not be visited on the litigant.*
- *v. Where an Applicant instructed a lawyer in time, his rights should not be blocked on the grounds of his lawyer's negligence or omission to comply with the requirements of the law..."*

- [14] The Hon. Justice Twinomujuni further held that: *. it is only after "sufficient reason" has been advanced that a court considers, before exercising its discretion whether or not to grant the extension, the question of prejudice, or the possibility of success and such other factors*
- [15] Mr. Kasajja in his affidavit in support stated that he attended court on 26/05/2023, where he received directions from the court to file the Applicants' trial bundles and witness statements together with a joint scheduling memorandum. He also stated that on 5/6/2023, he fell ill and was subsequently placed on treatment for 3 weeks. As a result, he was unable to comply with the court's directives. He cited several authorities for the legal proposition that the illness of a party is one of the acceptable grounds that is considered sufficient cause for the inability or failure to take a particular step in time. We had an opportunity to peruse the main file and established that the suit was filed by over 90 Applicants/Claimants, some of whom attended court with their Agent Mr. Kasajja on 26/05/2023. It was therefore peculiar that when the matter came up for hearing, none of them entered appearance to confirm their Agent's ill health, especially given that by the hearing date, they had not complied with the court's directives to file their pre-trial documents by 6/6/2023. Even if the Agent furnished evidence in the form of medical reports, we found no plausible reason on the record why the Applicants themselves did not come to court on 14/06/2023, to render an explanation about the absence of their Agent due to ill health, moreover when the matter was fixed for hearing in the presence of some of them. In any case, it is their case and not that of the Agent. The Court having issued directions and adjourned the matter for hearing in the presence of some of the Applicants and their Agent, the Applicants had an obligation to inform the Court about the impasse that had befallen their Agent rather than absent themselves. This is further compounded by the fact that by the hearing date, they had not complied with the directives to file their pre-trial documents, because none was on the record.
- [18] Whereas Kasajja stated in his evidence in support that the pre-trial documents and witness statement were ready for filing save for his illness, nothing on the record indicate that the Claimants took any steps to cause the documents to be filed on the record. In *Monaco Cosmetics Ltd and 2 Others v Old Stanley Hotel Ltd HCCs (Commercial) Misc. Appln. No. 593 of 2016,* on which Kasajja relies for the argument that malaria was a serious condition and therefore good cause, is distinguishable because, unlike the instant case, the medical evidence attached to the Counsel's Affidavit in support indicated that he was required to take bed rest for 2 days, while the medical evidence attached to Mr. Kasajja's Affidavit on the other hand, states that he had general body weakness and there was a prescription for medication. There is nothing on the medical report to demonstrate that he was so seriously ill that he could not send the Pre-trial documents for filing at court or send a message through one of the Applicants to notify court about his ill health. We are not convinced that the Applicants have shown sufficient cause for them to succeed based on the legal proposition that the mistake of their Agent should not be visited on them as innocent litigants seeking justice because they were aware of the hearing date but they did not take

any steps to notify the court about their Agent's illness.

- [20] Justice Mpagi-Bahigeine JSC (as she then was) in *Captain Phillip Ongom v Catherine Nyero Owota* SCCA No. 14 of 2001, in agreement with Justice Mulenga (RIP) stated thus:

"It would be absurd or ridiculous that every time an advocate takes a wrong step, thereby losing a case, his client would seek to be exonerated. This is not what litigation is all about. Counsel applied a wrong strategy....no sufficient cause has been shown to entitle the applicant relief sought."

- [21] We reiterate that the Applicants in the instant application have not shown sufficient cause to entitle them to reinstatement of their claim even though the application was filed in court about 2 weeks after dismissal.
- [22] In conclusion, we find no merit in the Application, it is accordingly dismissed with no order as to costs.

Signed in Chambers at Jinja this 21st day of **December 2023**.

Hon. Justice Linda Lillian Tumusiime Mugisha, Ag. **Head Judge**

The Panelists Agree:

- 1. Hon. Bwire John Abraham,
- 2. Hon. Mwamula Juma &
- 3. Hon. Julian Nyachwo.

21st December 2023 9:30 am

Appearances

- 1. For the Applicant:
- 2. For the Respondent:
- 3. Court Clerk:
- Mr. Kasajja Brain.
- Ms. Clepatra Naohereza
- Mr. Christopher Lwebuga.

Delivered and signed by:

Hon. Justice Linda Lillian Tumusiime Mugisha, Ag. Head Judge, Industrial Court

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