

**THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE MISC. APPL. NO. 0014 OF 2019
(FROM LD APPEAL. NO. 001 OF 2019)
(ARISING FROM BUNDIBUGYO LABOUR DISPUTE NO. 16/04/2018)**

BUNDIBUGYO ENERGY COOPERATIVE SOCIETY LTD.....CLAIMANT

VERSUS

KISEMBO DAVID BAKASIMA.....RESPONDENT

BEFORE

1. Hon. Chief Judge Ruhinda Asaph Ntengye
2. Hon. Lady Justice Linda Tumusiime Mugisha

PANELISTS

1. Mr. Rwomushana Reuben Jack
2. Ms. Rose Gidongo
3. Mr. Anthony Wanyama

RULING

This is an application seeking orders of court that:

- 1) Leave be granted to expand/enlarge the time for filing a notice of appeal against labour complaint No. 16/04/2018.
- 2) The Notice of Appeal, Memorandum of Appeal and other pleadings filed out of time be validated.
- 3) The costs of this application abide the results of the Appeal.

The applicant was represented by M/s. Enid Akampurira of M/s. Soita & Co. Advocates while the respondent was represented by Mr. Aguma Robert of Aguma and co. Advocates who handled the matter with the firm of Buyi & Co. Advocates.

The application was filed under **Section 94 of the Employment Act, 2006** rule 45 of **Employment regulations 2001, Section 98 of the CPA and Order 52 of the CPR.**

The application was supported by an affidavit sworn by one Nyakayarwa Justice, the Board Chairperson of the applicant society, and an affidavit in reply was sworn by Mr. Kitembo David Bakasiima, the respondent. The affidavit supporting this application is to the effect that after getting the award of the labour officer the applicant sought for a meeting with the labour officer for a way forward but which was not possible and thereafter the Board of the applicant also had to convene a meeting to chart a way forward. According to the affidavit in support of the application all this in addition to the Christmas Season caused a delay in filing the appeal.

An affidavit in reply was to the effect that the dispute before the labour officer was heard inter-parties and the applicant formally received a copy of the Award on 28/11/2018 and that the appeal filed on 16/1/2019 was only an afterthought after the applicant notified the respondent of his intention to resume duty as directed by the labour officer in his decree. Both counsel addressed this court in support and in opposition of the application respectively. We have listened carefully to their submissions and we have carefully perused the notice of motion, the affidavit in support as well as the affidavit in reply.

In an application for extension of time, the applicant is always given the legal burden to show court that his failure to take a particular step within the prescribed time was for sufficient cause (**see: Rosette Kizitovs Administrator General & others (1993) 5K. A.L.R.4**). The same case is authority for the legal proposition that the applicant must show that he/she was not guilty of any dilatory conduct resulting in an inordinate delay in lodging the appeal. Relying on the authority of **Afayo Luigi & AnotherVsEnzama, H .M.A 0073/2017** (ARUA) and **paragraphs 3,4,5 of the affidavit in support of the application**, counsel of the applicant submitted that there was sufficient cause since the applicant were not able to access the labour officer. She argued that the applicant had to hold a Board meeting to decide whether to appeal or not and that this took time as the festive season set in. She contended that there was no dilatory conduct on the part of the applicant since after the Board meeting an appeal was filed 16th January.

In reply counsel for the respondent contended strongly that the application was incompetent since it arises from an incompetent appeal, filed out of time, seeking for extension of time and at the same time seeking for validation of the appeal. Counsel argued strongly that there was inexcusable delay in filing the appeal since the applicant was all along aware of the decree and had no excuse not to file the appeal within the time prescribed. He submitted that the festive season was not a good reason since it did not begin in November when the decree was availed to the applicant.

The heading of this application suggests that it arises from Civil Appeal No. 001/2019. We do not think that an application can arise from an appeal that is yet to be validated. To this extent we agree with the submission of the respondent that the application irregularly stated that it arose from the yet to be validated Appeal. The practice has always been for the applicant to attach a draft memorandum of Appeal in an attempt to show the court that there are important questions of law that if not determined an injustice would be occasioned. This is in view of the authority of **Molly Kyalikunda Turinawe & 4 Others Vs Engineer Ephraim Turinawe & Another, Civil Application No. 27/2010 (Supreme Court)** which held that there were 3 questions to be answered before granting an application for extension of time and those were said to be:

- 1) Whether the applicant has established sufficient reason for the court to extend time in which to lodge the appeal.
- 2) Whether the applicant is guilty of dilatory conduct.
- 3) Whether any injustice will be caused if the application is not granted.

Without attaching any draft of memorandum of appeal, the applicant through one Nyakayarwa Justus swore in paragraph 6 of the affidavit in support of the application that the applicant had a good and valid appeal that raises matters of law and fact which ought to be heard and resolved on merits. There is no reference to those matters of law that relate to the appeal so that this court may decide whether they are questions of law that merit the court to allow the application. We do not think that a mere mention in the affidavit or the application that there are good and valid questions of law without specifically mentioning these

questions and relating them to how they affect the application is sufficient. We agree with the submission of counsel for the respondent that the applicant having been in possession of the Award of the labour office on 28/11/2018, the Christmas season was not sufficient reason to preclude her from filing the appeal. Neither do we consider the time taken by the applicant to decide whether to appeal or not sufficient to preclude her from filing an appeal. As counsel for the respondent submitted, the respondent was represented at the labour office and the applicant having lost the case before the labour office, should have been prudent to lodge a notice of appeal within the prescribed time.

Taking time to organize the Board or make consultation on whether to appeal or not in our view constitutes dilatory conduct especially when the applicant was aware that between 28/11/2018 and 24th December she could file a notice Appeal. We agree with the respondent that filing this application and the belated appeal was an afterthought conceived after the claimant threatened to execute the Award of the labour officer. We are not convinced that sufficient cause has been shown for this court to exercise its discretion to enlarge time. Neither are we convinced that any serious questions of law have been raised just like they were raised in the case of **Baryaija Julius Vs KikwesireZaveriyo and Another, Civil Application No. 324/2016 (Court of Appeal)**. Accordingly we decline to grant the application which is hereby dismissed with no orders as to costs. Appeal No. 001/2019 has no legal effect and so it is hereby struck out.

Signed by:

1. Hon. Chief Judge Ruhinda Asaph Ntengye
2. Hon. Lady Justice Linda Tumusiime Mugisha

Panelists:

1. Mr. Rwomushana Reuben Jack
2. Ms. Rose Gidongo
3. Mr. Anthony Wanyama

Dated 19/07/2019

