

THE REPUBLIC OF UGANDA

IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA

LABOUR DISPUTE: MISCELLANEOUS APPLICATION No.21 OF 2022

ARISING FROM LABOUR DISPUTE APPEAL NO. 24 OF 2019

5 **ARISING FROM LABOUR DISPUTE NO. MGLSD/LC/002/2019**

SSEYIGA HERMENEGILD & 6 OTHERS APPLICANTS

VERSUS

ZTE UGANDA LIMITED

..... RESPONDENT

10 **BEFORE:**

THE HON.AG. HEAD JUDGE, LINDA LILLIAN TUMUSHIIME MUGISHA

PANELISTS

1. MS. HARRIET MUGAMBWA NGANZI

2. MR. FX MUBUKE

15 **3. MR. FIDEL EBYAU**

RULING

20 This application is brought under Order 46 rule 1,2,3, Order 50 rule 1 & 3 of the Civil Procedure Rules and Sections 17(1) and Section 9 of the Labour Disputes(Arbitration and settlement) Amendment Act 2020, Section 82& 98 of the Civil Procedure Act, Article 126 of the 1995 constitution , seeking orders that:

(a)This Honourable Court extends time within which to file the application for review.

(b) This Honourable court reviews the decree and award delivered on the 10th day of August 2021.

25 (c) Costs be provided for.

The Applicant's case:

The Applicant's case, as contained in the notice of motion and supporting Affidavit deponed by Emmanuel Omoding, one of the Applicants, is summarized as follows:

30 a) That this Court delivered the Award on the 10/08/2021, allowed the appeal and set aside the award of the Labour Officer. (A copy of the award and decree are attached marked "A" & "B" respectively).

b) That this Court set aside the entire award of the Labour Officer on grounds that the termination was lawful under collective termination.

35 c) That they instructed their former Counsel M/s Sebbowa & Company Advocates to file an application for review within time but the same was never filed.

d) That they instructed Jason & Company Advocates to file an application for review but time set by law had already expired thus necessitating application for extension of time.

40 e) That the application has merit worth consideration by court and thus the mistake of former counsel should not be visited on the litigants, that this application has been made without any inordinate delay and substantive justice dictates extension of time to enable the applicants be heard.

45 f) That the Learned Trial Judges erroneously held in the award on page 13, paragraph 3 that payment in lieu of notice was equivalent to the 4 weeks' notice contemplated under Section 81 of the employment Act 2006.

g) That the Learned Trial Judges erroneously held in the award on page 13 and 14 that redundancy/collective termination under Section 81 of the employment Act 2006 and can be applied to less than the statutory number.

50 h) The Award was delivered ignoring material facts and statutory limits and procedure laid down by the law on collective termination and thus arrived at a wrong decision which is an error apparent on the face of record that collective termination can be applied to less than ten people and without issuing notices as required by the law.

55 i) That it was an error apparent on the face of the record to hold that the Applicants termination was lawful despite the failure by the Respondent to comply with the law and regulations on collective termination which is a statutory offence.

j) That it was an error apparent on the record to hold that the Respondent complied with the law on redundancy and collective termination yet failure to issue the requisite notices is a statutory offence which is punishable by fine and imprisonment term.

60 k) That it was an error to apply collective termination to less than the statutory set limits and thus the setting aside of the entire award of the labour officer was an error apparent on the face of the record. A copy of the record of appeal is attached marked "C".

l) That it is in the interest of Justice that this Court extends time, hears the application, reviews its decree and award and corrects the errors on the face of the record.

65 m) That in the circumstances, the dictates and interest of natural and substantive justice would be best served if the orders so sought by the Applicant are granted.

The Respondent's Case

The Respondent's case as set out in the Affidavit in reply deposed by Daniel Balaba, the Human Resource Manager of the Respondent, is summarized as follows:

70 a) That he can confirm that Jason Kiggundu, the Lawyer representing the applicants is the same lawyer who handled the Labour Dispute Appeal No. 24 of 2019 and that there was no change of Advocates.

b) That there has been inordinate delay by the Applicants of Over six (6) months in bringing the present Application since 1st September 2021 when this court allowed the Respondent's Appeal and Dismissed the Applicants Cross appeal.

c) That it is apparent that this is an appeal disguised as an application to review the Award and Decree issued in Labour Dispute Appeal NO. 24 of 2019 which is untenable in law.

d) That the application does not disclose any grounds for review of the award and decree in Labour Dispute Appeal no. 24 of 2019 as set out in Section 17 of the Labour Disputes (Arbitration and Settlement) Act 8 of 2006.

e) That he has been advised by his lawyers that the application seeks to re-open on appeal a case which has already been disposed of by this court.

f) That he has further been advised by his lawyers that the application is aimed at compelling this court to sit as an appellate court and revise its decision in LDA no. 24 of 2019 since the law does not give the Applicants a right of appeal.

REPRESENTATION

The Applicants were represented by Jason Njeru Kiggundu of M/s Jason & Co. Advocates, Kampala and the Respondent by Ramathan Shafi, holding brief for Hamber Kiggungu of M/s Kabayiza, Kavuma, Mugerwa & Ali Advocates, Kampala.

SUBMISSIONS

We have carefully perused the Notice of Motion, the affidavits in support and opposition and the submissions and found as follows:

DECISION OF COURT

Section 17 of the Labour Disputes (Arbitration and Settlement) Act 2006 as amended provides that ;

100 *"Where any question arises as to the interpretation of any Award of the Industrial Court within twenty-one days from the effective date of the Award or where new and relevant facts concerning the dispute materialize, a party to the Award may apply to the Industrial Court to review its decision on a question of Interpretation or in the light of the new facts."*

Order 46 rule 1 of the Civil Procedure Rules provides that, any person considering himself or herself aggrieved

105 a) By a decree or order for which an appeal is allowed but from which no appeal has been preferred or

b) By decree or order from which no appeal is allowed and who from discovery of new and important matter or evidence which after the exercise of due diligence was not within his or her knowledge or could not be produced by him /her at the time when the decree was passed or order made, or on account of some mistake or error apparent on
110 the face of the record, or for any other sufficient reason, desires to obtain a review of the judgement may apply to the court which passed the decree or order for review.

It is the law that after court has passed a judgement it becomes functus officio and it cannot sit to revisit its decision. However in exceptional circumstances a court may be moved to review its decree or order. In such circumstances the Applicant must prove
115 that:

a) He or she had discovered new and important matter of evidence which in spite of the exercise of due diligence was not within his or her knowledge at the time the judgment or decree was entered

b) There is an error on the face of the record, the error must be manifest and clear and
120 no court would remit such an error to remain on the record such as a wrong application of the law or failure to apply the appropriate law.

c) That there is sufficient cause to warrant the review of the decree similar to discovery of new evidence or an error apparent on the record.

After carefully perusing the application, the affidavits in support and in opposition and
125 both Counsels submissions, we find that whereas the Applicant seeks Court to review
its decision in LDA No. 024/2019, on the ground that there are errors apparent on the
record, which is if not addressed will occasion gross miscarriage of justice to it, the
grounds for review as framed and the submissions on the Affidavit in support of the
application((See Paragraph 8,9,19,11,12,13 of the Affidavit in Support of the
130 Application)), do not show what the error apparent on the record is, in fact as rightly
stated by Counsel for the Respondent, the Grounds as framed are grounds of Appeal
because they point to Courts purported misapplication of the law to the facts rather than
indicating what the actual error apparent on the record is. Consideration of these
grounds would thus require Court to sit as an appellant Court to reappraise or re-evaluate
135 the evidence on record as a whole, which could result in overturning its decision and
this is not what the is intended in a review as provided under Order 46 rule (1)(1)(supra).
In **Lalwak Alex vs Opio Mark Misc. Appl. No 0058/2016,**

*"... if the court reached a wrong conclusion of law, in circumstances of that
nature, it could be a good ground of appeal but not for review otherwise court
140 would be sitting in appeal on its own judgement which is not permissible in
law..."*

A review is therefore an exception, intended to correct apparent errors and not to change
the decision of the court.

As already discussed the grounds as framed by the Applicant are asking court to sit as
145 an appellate Court to re-evaluate evidence and not to correct the errors or omissions
apparent on the face of the record, which is not acceptable in law.

Having not complied with the grounds for review, the errors as stated do not meet the criteria for review, and as stated in **Lalwak** (supra) they could stand as grounds of appeal but not review.

150 Having rendered its decision, this Court is functus officio and the only remedy for the Applicants would have been to Appeal, which is not possible because it is the law that, the Industrial Court is the last Court of Appeal in matters arising out of the decisions of a Labour Officer (See Section 94(3) of the Employment Act).

155 Respectfully, the Applicant has not convinced this Court that there are any errors apparent on the record that would warrant it to award in review LDA No. 024/2019. and we do not find any error apparent on the face of the record.

This application lacks merit, it is accordingly dismissed with no orders as to costs.

Delivered and signed by:

THE HON. HEAD JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA

160 **PANELISTS**

1. 1. MS. HARRIET MUGAMBWA NGANZI

2. MR. FX MUBUKE

3. MR. FIDEL EBYAU

DATE:.....29/8/2022

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