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**THE REPUBLIC OF UGANDA**

**IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA**

**LABOUR DISPUTE: MISCELLANEOUS APPLICATION No.016 OF 2022**

**ARISING FROM MA 120/2021 AND LDC 315/2019**

**SMART CHOICE HEALTH SERVICES ..... APPLICANT**

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**VERSUS**

**BUZZU DENNIS ..... RESPONDENT**

**BEFORE:**

**THE HON. JUDGE, LINDA LILLIAN TUMUSHIME MUGISHA**

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**PANELISTS**

**1. MS. ROSE GIDONGO**

**2. MS. BEATRICE ACIRO OKENY**

**3. MR. ROMUSHANA REUBEN JACK**

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**RULING**

This application is brought under Section 94 of the Employment Act 2006, Regulation 45 of the Employment Regulations 2011, Section 98 of the Civil procedure Act and Order 51

Rule 6 , Order 52 rule 1,2,3, Order 22 rule 23 of the Civil Procedure Rules and Sections 14, 33, 38 and 39 of the Judicature Act, seeking orders that:

- 25 (a) The Applicant is granted leave to file a Notice of Appeal against the award of Hilda Nakagga, the Labour Officer of Kampala vide Labour Complaint No. 315 of 2019, out of time.
- (b) The Respondent's application for execution vide MA No. 120/2021 file in this Court against the Applicant be stayed and set aside pending the final disposal of the Applicants  
30 intended Appeal.
- (c) Costs for and incidental to this application be awarded to the Applicant.

**The Applicant's case:**

The Applicant's case, as contained in the notice of motion and supporting Affidavit deponed by Kasajja Abudallah, the Operational Manager, of the Applicant's company, is  
35 that, whereas the Respondent initially lodged a Labour complaint with the Labour Office in Kaliro District and the complaint was heard and completed and Order made thereto, instead of filing an appeal against the award the Respondent chose to lodge another Labour complaint vide Labour Complaint No. 315 of 2019 containing the same particulars and facts before the Labour Officer of Kampala. The complaint was also entertained and  
40 completed contrary to the principle of res judicata. This was therefore an abuse of court process. Being dissatisfied by the Kampala Labour Officer's award vide Labour Complaint No. 315 of 2019, the Applicant intends to file a notice of Appeal as well as a Memorandum of Appeal out of time. This is because of among other reasons the misleading advice of the Commissioner Labour.

45 That immediately after the meeting of 24/02/2021, the Managing Director approached the  
Commissioner Labour at the Ministry of Labour, Gender and Social Development  
Kampala who advised him to write a letter addressed to the office of Director Labour,  
Employment Occupational Health and Safety, Ministry of Labour, Gender and Social  
Development Kampala, seeking his intervention to enable both parties resolve their  
50 grievances instead of proceeding to Court on Appeal. In compliance with the directive, a  
letter was written and served onto the Office of the Director and inspite of the Applicant's  
diligence in following up the Director's response, to date there has been none. She was  
therefore, surprised to receive the Respondent's application for execution and a notice to  
show cause thereto instead. It was the Applicant's 's case that, the delay to lodge her notice  
55 of appeal her General Secretary's absence from office because he left the office locked and  
to date she has not established the said secretary's new address. This further delayed the  
appointment of a legal firm to handle her case and to lodge the notice of appeal. According  
to her this was further because all documents relevant to the Appeal and other properties  
belonging to her were in the Secretary's possession and no other person could access them.  
60 She further stated that her Managing Director was suffering from heart and pressure  
complications, which disenabled him from being in which contributed to the delay to lodge  
a notice Appeal within prescribed period of time. That she has good and valid grounds of  
Appeal which raise several matters of law as follows:

- 65 1) That the respondent sued the applicant in its name Smart Choice Health Services a  
registered community-based group with no legal capacity to be sue and or be sued.

2) That the Respondent's Labour complaint No. 315 of 2019 at the Kampala proceeded against the Applicant in error because the same complaint was initially lodged, heard and completed before the Labour officer Kaliro district.

70 3) That the whole hearing at Kampala was totally unjust and unfair because the Applicant's evidence and submissions were not considered by the principle Labour officer who was continuously interrupted by the Respondent's Relative, a one Apollo Onzoma an officer at the Ministry of Gender.

75 4) That the decree, the application for execution and notice to show cause were drafted and filed with figures higher than those awarded by the Labour officer Kaliro and the Labour Officer at Kampala.

5) That the decree passed against the Applicant is not enforceable as he sued unregistered entity with no legal capacity to be sue and therefore null and void.

80 6) That it is the applicant's legal right to be heard failure of which renders the whole exparte proceedings thereon null and void

Therefore, in the interest of justice the application for leave to file the notice and memorandum of appeal out of time should be granted and the execution vide M.A No. 120 of 2021 should be stayed pending the final determination of the intended appeal.

### **The Respondent's Case**

85 The Respondent's case as set out in the Affidavit in reply deponed by Buzzu Dennis, the Respondent, is that, That the matter came up for arbitration at the office of the Commissioner Labour Industrial Relations and productivity vide Labour Complaint No: **MGLSD/LC/315/2019.**

That the matter was heard by the Labour Office a one Hilda Nakagga, who on 18/02/2021,  
90 found in his favour. He then applied for execution in this Court on the 9/09/2021.

That the Applicant did not lodge any Appeal against the decision within the stipulated time nor did she show any intention to do so. Further when the application for execution came up for hearing, the Applicant did not show up or give any reasonable explanation for not showing up despite being dully served. It was only after the matter was set down for a final  
95 execution hearing, that he was served with this application, moreover 1 year after the decision of the Labour Officer's Arbitration. Therefore in the interest of justice this application be dismissed with costs.

### REPRESENTATION

The Applicant is represented by Tukachungura Ronald of M/s Kodooli & Co. Advocates,  
100 Kampala and the Respondent by Erina Kawalya of M/s Platform for Labour Action, Kampala.

### DECISION OF COURT

We have carefully perused the Notice of Motion, the Affidavits in support and against and the submissions of both Counsel and found as follows:

105 **Section 94 of the Employment Act** provides that;

“(1) *A party who is dissatisfied with the decision of a labour officer on a complaint made under this Act may Appeal to the Industrial court in accordance with this section.*

*(2) An appeal under this section shall lie on a question of law and with leave of the Industrial court, on a question of fact forming part of the decision of the labour officer.*

110 (3) ....”

**Regulation 45 of the Employment Regulations 201** provides as follows:

“45 Appeal

(1) A person aggrieved by the decision of the labour officer may within thirty days give a notice of appeal to the Industrial court in the form prescribed in the  
115 seventeenth schedule.

(2) Upon receipt of notice of appeal with the registrar within fourteen (14) days, the labour officer shall furnish the Industrial court with information concerning the complaint, the parties involved, the hearing proceedings, the decision of the labour officer and the matter of appeal.... “

120 It is trite law that, an Appellant who seeks extension of time to file an Appeal out of time must show good and sufficient reason for the delay. The Appellant must therefore, prove that, he or she was precluded from taking the necessary steps to prosecute the Appeal as a basis for Court exercising its discretion to extend time during which these steps ought to have been taken. Otherwise, it would be an injustice to give an open door to an appellant  
125 to delay and or prevent the Respondent from enjoying the fruits of his or her Judgement/award.

We are not convinced that, the disappearance of the Secretary General with the Keys to the Applicant’s premises, because there is no evidence that, his disappearance was reported to police for us to be convinced that he is still missing. We also found no nexus between the  
130 absence of the Secretary General and the instruction of Counsel, who in our considered

opinion would have been instrumental on taking the necessary steps to access the Office which was Purported to be inaccessible to any other person.

135 We respectfully do not agree with the assertion that, the Managing Director's sickness could prevent him from delegating this matter to another officer given that, medical evidence adduced does not clearly show that, his sickness was so severe. We strongly believe that, he could have instructed an officer to appoint lawyers to follow up the matter and ensure that the Appeal is filed in time. The assertion that he was misled by the Commissioner Labour not to report the matter to the Director instead of Appealing is unfortunately not believable, because as stated in **Hadondi Daniel Vs Yolam Egondi CA**  
140 **No. 67/ 2003:**

*"It is trite law that time can only be extended if sufficient cause is shown. The sufficient cause must relate to the inability or failure to take necessary step within the prescribed time. It does not relate to taking a wrong decision. If the applicant is found to be guilty of dilatory conduct, the time will not be extended."*

145 It would be an absurdity to exonerate the Applicant for his failure to take the necessary steps to file his appeal on account of a wrong step. We are not satisfied that the Applicant had any intentions of taking any steps to file an appeal. It seems to us that, she only woke up when she was served with notice to show cause why execution should not issue. This is because the Labour officer made her decision on 18/02/2021 and this application was only  
150 filed on 9/2/2022 almost a year later. This is dilatory conduct on the part of the Applicant. Even if we were to believe the assertion that, the Director was unwell, as already stated he

had the option to delegate to another Officer to take the necessary steps within the time prescribed by law. But this was not the case.

155 In the Circumstances, the Applicant has not shown sufficient cause to entitle her to an extension of time within which to file her Appeal. The Application is therefore dismissed.

The execution of MA No. 120/2021 filed in this Court against the Applicant should proceed. No Order as to costs is made.


Delivered and signed by:

THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA .....



160 **PANELISTS**

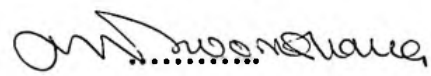
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DATE:30/08/2022

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