

**THE REPUBLIC OF UGANDA**  
**IN THE INDUSTRIAL COURT OF UGANDA AT JINJA**  
**MISC. APPL. NO. 066 OF 2019**  
**[ARISING FROM JINJA LABOUR COMPLAINT NO. LABI(CB. 050/04/2017)]**

**BETWEEN**

**AMONY**

**HARRIET.....CLAIMANT**

**VERSUS**

**MADHVANI GROUP LTD.....RESPONDENT**

**BEFORE**

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

**PANELISTS**

1. Mr. Bwire John Abraham
2. Mr. Mavunwa Edson Han
3. Ms. Julian Nyachwo

**RULING**

This is application arises from Jinja Labour Dispute No. **LABI.CB. 050** and is brought under **Section 94, Employment Act 2006, Rules 24 (1) and (2) of the Labour Disputes (Arbitration & Settlement) (Industrial Court Procedure) Rules 2012, Section 98 of Civil Procedure Act and Order 51 rule 6 of the Civil Procedure Rule 5**. The application mainly seeks this court's order granting leave to appeal out of time prescribed by law.

The applicant was represented by Mr. Esarait Robert of Esarait, Adikin & Co. Advocates while the respondent was represented by Mr. Gregory Byamukama of M/s. Okalang Law Chambers.

The application was supported by an affidavit generally to the effect that the appealable decision of the Labour Officer was given to the Secretary of counsel in personal conduct after the expiry of the time within which to lodge the appeal.

The affidavit also stated that the weaknesses in the administration of the chambers of the Advocates however negligent should not be visited on the applicant.

No affidavit in reply was filed by the respondent who only filed submissions in reply to the submissions by the applicant.

### **Submissions**

According to counsel for the applicant there was sufficient cause shown for this court to grant leave to file the appeal out of time. Counsel relied on **Section 98 of the Civil Procedure Act, Order 51 rule 6 of the CPR and Section 79(1) of CPA** as giving power to this court to enlarge time. Counsel submitted strongly that failure of the Secretary to bring the appealable decision to attention of counsel constituted sufficient cause.

Counsel for the respondent argued strongly that this court has no power to extend time that is stipulated by statute. According to counsel **Regulation 45(1) of the Employment Regulations** is mandatory when it talks of 30 days with which to appeal the decision of the Labour Officer. He relied on the case of **Makula International Vs Cardinal Nsubuga 1982 HCB**, which according to counsel held that a court has no residue or inherent jurisdiction to enlarge time laid down by statute. Counsel argued further that **Section 94 of Employment Act and rule 24 (1)(2) of the Labour (Arbitration & Settlement) (Industrial Court Procedure) rules** relied upon by the applicant did not provide for extension of the 30 days' statutory period.

Relying on **Osilo Jackson Vs Industrial Security Services Ltd., LDC No. 210/2015**, counsel contended strongly that time limits set by statute are not mere technicalities but are of substantive law and must be strictly complied with and any matter filed outside these limits must be struck out in spite of their merits.

In the alternative counsel argued that in the absence of evidence of the date when the applicant delivered the decision of the labour officer to his lawyers, which evidence could have taken the shape of an affidavit by the applicant, and in the absence of evidence from the Secretary as to whether she received the said documents and if she did when she actually received them, the application can only be taken to have been an afterthought to seek court's sympathy.

It was the contention of counsel that the applicant was attempting to hide under mistake of counsel yet she did not show any attempt to follow her own case for sixty-seven days since she did not swear an affidavit to the effect that she had delivered the documents to counsel. According to counsel, the applicant having not been vigilant, court cannot extend time. Relying on **Mohammed**

**B. Kasasa Vs Jasper Ruyonga Silasi Bwogi Civil Appeal No. 42/2008 (C.A)**, counsel insisted that no respondent is allowed to flout the strict law of limitation on the ground that his counsel was negligent since the respondent has an option to sue for professional negligence.

### **Decision of Court**

We have carefully perused the application together with the affidavit in its support. We have carefully perused the submissions of both counsel together with authorities relied upon. We will deal first with the question of jurisdiction of the court to extend time limited by the statute.

Relying on various authorities, counsel for the respondent strongly submitted that this court has no jurisdiction to extend time that is limited by statute. Counsel also argued strongly that the provisions of the Civil Procedure Act and Civil Procedure Rules do not apply to this court.

Although this court operates under the guidance of the **Labour (Arbitration & Settlement (Industrial Court procedure) Rules 2012**, where there is a lacuna, nothing prevents it from applying the Civil Procedure Rules.

Rule 6 of the Labour (Arbitration & Settlement (Industrial Court procedure) Rules 2012 states

#### **“6. Extension of time**

- (1) A party to a dispute who fails to file documents within the prescribed time, may apply to the court for extension of time.**
- (2) The court may determine the application as it deems fit.**

Both the Supreme Court and Court of Appeal have in various cases including **Civil Application No. 09/2017, James Bwogi & Sons Enterprises Ltd. Vs Kampala City Council and Kampala District Land Board**, and **Honondi Daniel Vs Yolamu Egondi Civil Appeal 67/2003** respectively, held that for sufficient reason, court has power to extend time within which to do certain things though time prescribed by statute has been overtaken.

Consequently, we hereby overrule the submission of counsel for the respondent that this court is devoid of power to extend the period of lodging an appeal in the instant application. The only question for this court as was put in the above cited Supreme and Court of Appeal cases is whether the applicant has shown this court sufficient cause to warrant extension of the period.

The reason that the applicant did not file the requisite appeal within the prescribed time is simply that she served the papers to the Secretary of her lawyers who did not hand them over in time to the lawyers to be able to file the appeal.

According to the case of *Hondondi Daniel Vs Yolamu* , Justice Mulenge JSC (as he then was) in **Capt. Phillip Ongom Vs Catherine Nyero Owota, SCCA 14/2001** in his lead judgment stated

**“It is an elementary principal in our legal system that the acts and omissions of the advocates in the course of the representation bind a litigant who is represented by an advocate.**

**However, this court must exercise care to avoid abuse of the system and/or unjust or ridiculous results. To our mind a proper guide in applying the principle is in its premise, namely, that the advocate’s conduct is the pursuit of and within the scope of what the advocate was engaged to do:**

The submission of the respondent is that nothing suggests the date when the secretary received the decision of the Labour Officer and the date when the advocate received the same from the secretary.

On perusal of the application and the affidavit in support, we find that this is the true position and we agree with the respondent that this impacts negatively on the genuineness of the application. The absence of evidence from the applicant herself that she delivered the decision personally to the offices of the advocates in time raises doubt in our mind that she played her part to instruct her lawyers who let her down, although her lawyers seem to admit that they let her down.

Before exercising the discretion to extend time within which to appeal, we feel strongly that court must rule out completely the dilatory conduct of the applicant. We are not satisfied in the instant case, without evidence from the applicant herself, that she did not play a part in the delay to lodge the necessary papers in time for appeal purposes. Neither are we convinced that failure of a secretary to an advocate to deliver documents in time to her boss would constitute sufficient reason for this court to exercise its discretion, otherwise every other advocate and every other litigant would take advantage and make this routine before the courts of law. There must be more than a secretary’s mere failure to deliver documents to her boss in time before court exercises its discretion. Time and date of receipt of the documents as well as circumstances leading to late delivery of the documents should have been part of the evidence in the instant application.

The inability or failure to take a necessary step towards filing the appeal in time in the instant case was caused by what we consider not a sufficient cause which results in the dismissal of the application. No order as to costs is made.

**Delivered & signed by:**

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

**PANELISTS**

1. Mr. Bwire John Abraham .....
2. Mr. Mavunwa Edson Han .....
3. Ms. Julian Nyachwo .....

Dated: 05/02/2021