

**THE REPUBLIC OF UGANDA**

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

**LABOUR DISPUTE APPEAL No.29 OF 2016**

**ARISING FROM LD No 2/2006**

**STANBIC BANK (U) LTD ..... CLAIMANT**

**VERSUS**

**CHRISTINE KARUNGI ..... RESPONDENT**

**BEFORE**

- 1. THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE**
- 2. THE HON. JUDGE, LINDA LILLIAN TUMUSHIIME MUGISHA**

**PANELISTS**

**1. MS. ROSE GIDONGO**

**2. MR. ANTHONY WANYAMA**

**3. MR. JACK RWOMUSHANA**

**RULING**

**BACKGROUND**

This appeal was brought under Section 94 of the Employment Act, 2006, and Employment Regulations 2011 against the decision and orders taken by the Labour Officer of Kibaale, Mr. Steven Mutyaba dated 25/10/2016 in Labour Claim No.2 - CB/01/015/2016, on the grounds that:

1. The Labour Officer erred in law and fact when he held that there was wrongful termination of the Claimant/Respondent.
2. The Labour Officer erred in law and fact when he held that the termination was unfair within the meaning of Section 71 of the employment Act 2006.

3. The Labour Officer erred in law and fact when he held that the claimant was not accorded a hearing.
4. The Labour Officer erred in law and fact when he failed to accord the appellant a hearing by exhibiting bias throughout the proceedings in the Labour office.
5. The Labour Officer erred in law and fact when he ordered the re-instatement of the claimant.
6. The Labour Officer erred in law when he awarded the claimant salary arrears from the date of her termination up to the date of the award.
7. The Labour Officer erred in law and fact when he awarded severance allowance of one month's wages for every year worked without agreement between the appellant and the respondent as required by law.
8. The Labour Officer erred in law and fact when he awarded the claimant payment in lieu of a disciplinary hearing, a basic compensatory award an additional compensatory award and costs.
9. The Appellant was not given a fair opportunity to present its case at the arbitration hearing.
10. The Labour Officer erred in law when he awarded the complainant/respondent costs without jurisdiction.

They prayed that the appeals allowed, the award /ruling of the Labour Officer Inspectorate be set aside, the respondent's claim be dismissed, costs be provided for.

The Appellants were represented by Mr. Patson Arinaitwe of Sebalu and Lule Advocates and the Respondents by Mr. Martin Mututa of Kawooya Junju & Co. Advocates. Both counsel sought for and were granted leave to make written submissions which they did.

### **BRIEF FACTS OF THE APPEAL**

The Respondent was employed by the Appellants as a Bank teller on the 2/11/2012. On the 17/12/2015 she was terminated on the grounds that she had concealed information contrary to the Appellants incident management procedure leading to financial loss to the Appellant Bank of Ugx. 1,850,000/-.

According to the Appellants, having investigated the allegations against her, she was lawfully subjected to a disciplinary hearing, entertained her appeal of the decision of the disciplinary committee and subsequently terminated her contract of service.

On 10/05/2016 the Respondent filed a claim before the Labour officer of Kibaale District. She amended her claim on the 13/05/2016. Her claim was that the appellants had unlawfully terminated her employment because of substantive and procedural impropriety by the disciplinary committee which dismissed her. According to the Appellants the labour officer heard the matter *ex parte* and consequently found in favour of the Respondent. The appellant being dissatisfied with the entire decision of the labour officer brought this appeal.

In reply to the Appellants submissions the respondents raised 4 preliminary points of law as follows:

1. The Appellants had never been a party to the labour claim No. 2 of 2006 in which this appeal arises. Therefore this appeal is untenable and the same should be dismissed with costs.
2. The appeal is premature as the award *vide* labour officer of Kibaale *vide* claim No. 2 of 2016 was made *ex parte* and the same can only be set aside but not by appeal.
3. The appellant did not serve the record of the appeal on the respondent as required by law
4. The appellant is in violation of the law and the court order made on the 19/7/2017, directing the parties in this appeal on how to file written submissions.

After considering both submissions we concluded that the resolution of point of law no. 2 would resolve the preliminary points of law, we shall therefore proceed to consider it.

**2) This appeal is premature as the award by the Labour Officer Kibaale District *vide* Claim No. 2 of 2016 was made *ex parte* and the same can only be set aside but not by way of appeal.**

It was submitted for the Respondents that according to the record of proceedings dated 19/8/2016, the Labour Officer Kibaale District proceeded to hear labour claim no. 2 /2016, in the absence of the Appellants and consequently decided in their favour. He asserted that the Appellants had not controverted this fact. According to him Order 9 rule 20 of the Civil Procedure Rules SI 71-1 permitted a party to proceed *ex parte* where the defendant does not

appear on the date of the hearing. It was his submission that a person aggrieved by an ex parte hearing or award had to apply before the Court that made the decision to set aside the hearing or award, if the court is satisfied that summons were not duly served or that the person did not give sufficient cause for not appearing.

He argued that in the instant case the Appellant had admitted that the matter had been heard ex parte and therefore in accordance with section 57 of the evidence Act and Pan **AFRICAN INSURANCE CO. VERSUS UGANDA AIRLINES [1985] HCB 53-4**, the respondent did not have to prove the admitted fact. He also cited **PARAMBOT BREWERIES VS KINENE BERNARD LD. No. 12 /2014**. He insisted that the Appellant had not adduced any evidence to show that they had applied to the Labour officer or this court to set aside the ex parte decision therefore the appeal was premature and it should be dismissed with costs.

In reply Counsel for the Appellants argued that the appeal was not premature because ex parte awards made by the labour officer can be determined by the Industrial court on appeal. According to him the labour officer is not a court of Judicature governed by the Civil Procedure rules and their powers are defined by the Employment Act.

He cited Section 94(1) of the Employment Act which provides that:

***“ 94. Appeals***

***(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.”***

According to him it is an established principle of law that an appeal, just like jurisdiction, is a creature of statute and where the law permits an appeal for an aggrieved party, the party would be entitled to exercise the right to appeal unless the law specifically excludes the right of appeal (***Onzia v Shaban Fadul (CA No. 0019 of 2013) [2017] UGHCLD 82***).

The Employment Act does not confer on the Labour Officer the same powers to set aside ex parte judgements which civil Procedure rules grant courts of judicature as argued by the respondent. Instead, section 94(1) creates a right of appeal to arise out of all decisions of the labour officer whether made out of exparte or inter parties' proceedings.

Furthermore Rule 24(1) of labour Disputes (Arbitration and settlement) (Industrial Court Procedure) Rules, 2012 provides that:

***“A party who is dissatisfied with a decision of a labour officer on a complaint made under Section 13 of the employment Act 2006, or sections 4 and 5 of the Act may appeal to the Court.”***

He therefore prayed that we find that the appeal is tenable before this honorable Court.

## **DECISION OF COURT**

The Civil Procedure Rules provides under Order 9 rule 27 that:

***“In any case in which a decree is passed ex parte against a defendant, he or she may apply to the court by which the decree was passed for an order to set it aside; and if he or she satisfies the court that summons was not duly served, or that he or she was prevented by any sufficient cause from appearing when the suit was called on for hearing, the court shall make an order setting aside the decree as against him or her upon such terms as to costs, payment into court or otherwise as it thinks fit and shall appoint a day for proceeding with the suit, except that where the decree is of such a nature that it cannot be set aside as against such defendant only, it may be set aside as against all or any of the other defendants also.***

Although the Employment Act does not confer upon the Labour officer the same powers of a Court of Judicature with regard to setting aside ex parte decisions, it is our considered opinion that in the spirit of Order 9 rule 27, the appropriate remedy for an aggrieved party in such a case, would be first to apply to the Labour Officer to have the matter set aside, after satisfying him or her that there was good cause for not appearing in the first place. It is only when the Labour Officer denies or refuses to set aside the decision that the aggrieved party can then apply to the Industrial Court to have it set aside and not bring it as an appeal. The lacuna in the employment Act notwithstanding, we do not think that the framers of the Act intended to clog the Industrial Court with appeals arising out of dissatisfaction with ex parte decisions made by Labour Officers.

In the instant case it was not disputed that the Labour Officer heard the matter ex parte and he made an ex parte decision. In the premises this appeal is premature and incompetent before this court. It is therefore struck out.

It is so ordered.

Delivered and signed by:

3. **THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE**
4. **THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA**

**PANELISTS**

1. **MS. ROSE GIDONGO**
2. **MR. ANTHONY WANYAMA**
3. **MR. JACK RWOMUSHANA**

**DATE: 19/JAN/2018**