

**THE REPUBLIC OF UGANDA
THE INDUSTRIAL COURT OF UGANDA HOLDEN AT KAMPALA
LABOUR DISPUTE APPEAL NO. 07/2016
(Arising from EOC/CR/124/2016)**

BETWEEN

PRESIDENTIAL INITIATIVE ON BANANA INDUSTRIAL DEV'T.....CLAIMANT

AND

M/S. NTEGE IDA & 11 OTHERS.....RESPONDENT

BEFORE

1. The Hon. Chief Judge, Asaph Ruhinda Ntengye
2. The Hon. Judge, Linda Lillian Tumusiime Mugisha

Panelists

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

AWARD

This is an appeal against the award of a Labour Officer sitting at the Ministry of Gender, Labour & Social Development.

Briefly the background of the appeal is that initially the respondent filed a complaint at the Equal Opportunities Commission which referred the same to the Ministry of Gender, Labour & Social Development.

The Labour Officer initiated mediation meetings which it appears did not yield much since only one of the parties was able to attend. Eventually another mediation meeting was scheduled for 13/2/2017 which the appellant failed to attend and after listening to the complainants, the labour officer made a decision with certain orders against which the appellant lodged this appeal.

One of the grounds of appeal is that the Labour Officer erred in law by proceeding *ex parte* against the government contrary to **rule 6 of the government proceedings (Civil Procedure) Rules**.

This court has held in the cases of **Busoga University Vs Kiiza Moses L.D.A 03/2018**, and **Stanbic Bank Vs Karungi Christine L.D.A 29/2016** and more recently in **Post Bank Vs David Bosa L.D.A 001/2018** that where the labour officer proceeds *ex parte* and the aggrieved party is desirous of setting aside the award on account of having been offered no opportunity to be heard, such application has to be filed before and entertained by the labour office who made the *ex parte* decision. The decision in the above cases discouraged the attempts of aggrieved parties to file appeals against such *ex parte* proceedings without exhausting the process of setting aside the said *ex parte* awards.

Consequently we are still of the opinion that the respondent ought to have applied to set aside the exparte orders and if the labour officer refused to set it aside, then the appeal would be properly before this court.

One of the other grounds was that the labour officer erred in law when she adjudicated and made a decision in a mediation meeting contrary to the Employment Act. In reply to this ground, the respondent stated at page 15 of the submissions

“The labour officer held a hearing session of the complaints and technically not a mediation session as had been intended because it requires two or more disputing parties to be present to be able to conduct a mediation process. The appellants failed to show up so no mediation could be conducted....”

The labour officer in a letter addressed to the solicitor General (which letter constitutes the disputed decision and orders), she stated categorically that a mediation was **“rescheduled to Monday 13th February 2017.....the complainants were present.....the meeting went on with one party present.....The various complainants raised their issues.....it was found that the employer had overstepped on the labour rights of the complainants as below”**.

There is no doubt in our minds that the whole decision and orders were issued during a mediation session which in our considered opinion cannot stand as a result of our decision in **Sure Telcom Vs Brian Azemchap** that a labour officer cannot handle both mediation and adjudication at the same time in respect of the same complaint.

After several attempts at mediation which failed, the labour officer was expected to either refer the matter to this court for adjudication or even ask another labour officer to adjudicate or arbitrate the matter.

In the circumstances, the justice of this case can only be done by referring the matter back to the labour office for adjudication or arbitration whatever will be convenient to the labour officer. It is only fair that a different labour officer handles this matter. No order as to costs.

Signed by:

1. The Hon. Chief Judge, Asaph Ruhinda Ntengye
2. The Hon. Judge, Linda Lillian Tumusiime Mugisha

Panelists

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

Dated: 23/11/2018