THE REPUBLIC OF UGANDA

IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA

LABOUR DISPUTE APPEAL NO. 11 OF 2018

[ARISING FROM LABOUR DISPUTE KCCA/CENT/LC/138/2017]

BETWEEN

AUTO TUNE ENGINEERING ……..……..APPELLANT

VERSUS

BAROZI SWALDO & 2 OTHERS…….....……..RESPONDENTS

BEFORE

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

PANELISTS

1. Ms. Adrine Namara
2. Mr. Micheal Matovu
3. Ms. Susan Nabirye

AWARD

This is an appeal from the decision of the labour officer sitting at Kampala City Council Authority in KCCA/CENT/LC/138/2017.

The appellant was represented by Ms shilla Ndomeirwe of M/S Kagwa & Kagwa Advocates while the respondent was represented by Mr. John Burungu of Abno Advocates.

The background is that the 3 respondents were employees of the appellant. Under the contracts of service of the respective respondents, a termination of employment could be without cause at any time in which case a termination notice

or payment in lieu of would be provided. At the same time a termination of service due to any cause recognized by law as sufficient would waive the notice period.

According to the termination letters on the record and communication from the respondents' legal counsel addressed to the labour office, the termination was due to harsh and economic conditions that were being faced by the respondents.

On being terminated the appellants proceeded to the labour officer and lodged a complaint on 23/11/2017 and on 24/11/2017 the labour officer notified the respondent of this complaint.

On 13/12/2017 the labour officer wrote to the respondent a reminder that he had not received a defense and warned that the matter would be forwarded to the industrial court by 15/12/2017 if not settled.

On the same date 13/12/2017 in response to the complaint the respondents' counsel admitted terminating the appellants for harsh and economic conditions which could disable the respondent from paying wages to the appellants. According to counsel for the respondent, the termination having been in accordance with the contract of service was lawful and the appellants were not entitled to repatriation or any damages since they were paid all their dues.

On 15/01/2018, the labour officer wrote both to the respondent and to the claimant asking them to attend adjudication proceedings on 21/12/2017 at 9.00a.m. On 20/12/2017 the appellant's advocates wrote to the labour officer saying they would not be able to attend adjudication proceedings since this was at a short notice having received the same on 18/12/2017. They proposed 15/01/2018 to be the adjudication hearing date.

On 21/12/2018 at the application of counsel for the respondent and in the absence of the appellant and counsel, the labour officer allowed proceeding to go on exparte and ordered that parties file witness statements by 3/1/2018 and that 5/1/2018 would be for hearing. On 5/1/2018 counsel for the respondents having filed witness statements asked the labour officer whether there would be need for any further evidence to prove the case for the claimants or if the witness statements would suffice. The labour officer adjournment to 25/1/2018 for a ruling

but the ruling (which turned out to be the final award) was delivered on 19/2/2018 with orders that the appellant pays to the respondents various sums of money each as severance pay, accrued leave, basic compensatory/month's salary pay, additional compensation of 3 months' pay, fines for failure to pay severance, repatriation allowance and failure to give the respondents a hearing.

The appellant was not satisfied with the above Award and orders and filed an appeal to this court on the following grounds:

(a) The labour officer erred in law when the denied the appellant an opportunity to be heard before he made the Award.
(b) The labour officer erred in law when he awarded the respondents reliefs which were not prayed for in the complaint.
(c) The labour officer erred in law when he made Awards which were not supported by evidence.

Before proceeding to argue the merits of the appeal, the respondent's counsel raised a preliminary objection that the appeal was premature and that based on the authority of **Stanbic Bank Vs Christine Kalungi L.D. Appeal 29/2016**, the appellant should have applied before the labour officer to set aside the exparte Award instead of lodging an appeal.

The above decision of this court was based on **Order 9 rule 27 of the CPR** but the authority of **Engineer John Eric Mugyenyi Vs Uganda Electricity Generation Co. Ltd. Civil Appeal 167/2018(Court Of Appeal)** held that a labour officer being not a court of judicature is not bound by the CPR and CPR are not applicable to the proceedings before the labour officer. Consequently we agree with the submission of counsel for the respondent that the appeal was not premature and that the procedure followed to lodge the appeal was proper. The objection is overruled.

On the first ground of appeal, it was the contention of the appellant that after replying to the complaint, and the labour officer having fixed the date for adjudication, the same labour officer should have taken note of the letter written to him explaining why the appellant could not attend the adjudication proceedings and therefore it was wrong for him to proceed exparte when the appellant proposed another date for adjudication.

In reply to this submission, it was the submission of the respondent that the appellant did not show any interest in the proceedings and did not turn up for hearing after being informed of the date and gave no reasons for non-attendance.

As the record of proceedings clearly show, the adjudication hearing was fixed for 21/12/2017 and by letter dated 20/12/2017 the appellants advocates informed the labour officer that they received the notification of the adjudication date on 18/12/2017 and that this was short notice which could not enable them prepare and proposed 15/1/2018 for adjudication.

We appreciate the fact that proceedings before the labour officer are expected to be as expeditious as possible. We also appreciate that the labour officer in this case was following the demands of both the **Employment Act** and the **Labour Dispute (Arbitration & Settlement) Act** which provide for a certain period within which the labour officer should have completed a matter before him. We also appreciate the fact that it is not advocates or parties who fix dates for hearing at their convenience, but that the court or the labour officer fixes the dates at its own or his/her convenience.

However, given the right to be heard guaranteed by **Article 28 of the Constitution**, and given that a party is expected to have sufficient time to prepare for defending allegations contained in a complaint, it is our opinion that since the appellant received the notification on 18/12/2017 for a hearing date of 21/12/2017, the labour officer should have taken note of the letter seeking adjournment for insufficient time to prepare and for the witness having gone out of jurisdiction. It is clear on the record that the respondent had replied to the complaint by letter dated 13/12/2017 after being reminded of the complaint by letter of the labour officer of the same date and in the reply the appellant stated they were ready to defend the termination.

Both the labour officer in his Award and counsel for the respondent in his submission do not refer to the letter of the appellant applying for an adjournment to the 15/1/2018 for the reasons mentioned in the letter.

Given the above scenario it is hard for this court to believe the respondent's submission that the appellant was not interested in the proceedings and therefore by implication locked itself out of the same proceedings. In the circumstances we accept the submission of the appellant that there was such a short time for preparation of the defense of the claim and the labour officer should have considered the plea of adjournment.

Although both the letter of termination and the reply to the complaint expressly stated that the respondents were terminated solely on the basis and for the reason that the appellant was undergoing harsh economic conditions and was not able to pay them, which was not justifiable under the Employment Act which provides for a procedure in case of laying down employees, the right to be heard being sacrosanct should have been availed to the appellants. The principle of non-condemnation before hearing is a principle of natural justice which overrides any merits in any case. Accordingly the first ground succeeds.

We shall not consider the rest of the grounds since they concern reliefs given by the labour officer against the appellant who was illegally denied a right to defend the claim against which the same reliefs were ordered. The appeal succeeds with orders that there be a retrial of the claim before another labour officer. Order accordingly. No order as to costs is made.

BEFORE

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

PANELISTS

1. Ms. Adrine Namara …….
2. Mr. Micheal Matovu …….
3. Ms. Susan Nabirye …….
4. Dated: 14/02/2020