

**THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
MISC. APPL. NO. 023 OF 2019
[ARISING FROM LABOUR COMPLAINT NO. CB/33/09/2017]**

ORIENT BANK.....APPLICANT

VERSUS

BWOKINO SIRAJ.....RESPONDENT

BEFORE

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

PANELISTS

1. Mr. Rwomushana Reuben Jack
2. Ms. Rose Gidongo
3. Ms. Beatrice Aciro Okeny

RULING

This is an appeal against the decision of one Ms. Wabomba sidrah a labour officer sitting at Mbale.

The background of the appeal is that by appointment letter dated 14/6/2017, the appellant employed the respondent on contract for 1 year effective 15/6/2017. By letter dated 7/6/2018, the appellant informed the respondent that the contract would not be renewed once it expired on 20/6/2018.

On 28/6/2018, the respondent lodged a complaint to the labour officer for non-payment of wages and commission after demanding for the same from the appellant the previous day.

The labour officer on 07/07/2018 informed the appellant about the complainant stating “if you can settle this matter to the satisfaction of the complainant without

reference to me, do so otherwise I shall be glad if you will let me have your comments on the complaint on 12/07/2018 at 10.00am..."

On this date counsel for the appellant appeared at the labour office only to be informed that the labour officer was absent and the matter was adjourned to 27/08/2018.

On 27/08/2018 in the absence of the appellant the labour officer granted an Award to the respondent.

The appellant was dissatisfied and wrote to the labour officer imploring her to set aside her exparte Award which the labour officer rejected. The appellant filed an appeal basing on the following grounds: -

1. That the Labour officer erred in law when she erroneously delivered an exparte award in favor of the respondent without according the appellant an opportunity to be heard.
2. That the labour officer erred in law and in fact when she awarded the respondent salary arrears for the months of September 2017, December 2017, January to June 2018 a total of Ugx. 3,200,000/= (Uganda shillings three million two hundred thousand only).
3. That the labour officer erred in law and in fact when she awarded the respondent legal costs totaling Ugx. 7,000,000/= (Uganda shillings seven million only).
4. That the labour officer erred in law and in fact when she awarded the respondent commission of Ugx. 6,800,000/= (Uganda shillings six million eight hundred thousand shillings).
5. That the labour officer erred in law when she awarded the respondent damages of Ugx. 20,000,000/= (Twenty million shillings only).

REPRESENTATIONS

The appellant was represented by M/s. Nabale Shilla of Shonubi, Musoke & Co. Advocates while the respondent was expected to be represented by Mr. Ivan Kalema of M/s. Turinawe, Kamba & Co. Advocates.

When the matter came up for hearing on 15/2/2021 M/s. Nabale Shilla appeared for the appellant and none appeared for the respondent. Court set down the matter for written submissions, and gave directions as to the dates of filing submissions at the instance of counsel for the appellant.

By an affidavit of service filed in court on 3/5/2021 we are satisfied that Turinawe & Co. Advocates received the written submissions on 25/03/2021. By the time of writing this Award no submissions were on file from the respondent.

Counsel for the appellant on ground one argued strongly that the appellant was not accorded a fair hearing by the labour officer and that this was against the principles of natural justice. It was his contention that, his attempt to meet the labour officer on 19/7/2018 was to seek further details of the claim to enable him file a defense only to find the labour officer absent. According to counsel non-of the parties was aware that the matter would proceed by way of arbitration or mediation.

According to counsel the matter was expected to be coming up for the parties to report to the labour officer the progress in attempting to amicably resolve the matter, only for the labour officer to deliver an Award.

It was further argued that the proceedings of 27/08/2018 were in contravention of natural justice in so far as the initial directive was that should the parties fail to settle amicably, the labour officer would be forced to **“place the complaint in the hands of a magistrate...”**

We have considered the facts as they appear on the record and the submissions of counsel. Indeed, the record does not show any hearing of any of the parties. Whereas a labour officer may be entitled to consider documentary evidence on the court record and deliver his/her ruling with submissions from both counsel without calling oral evidence, this must be with the direct or implied consent of the parties.

Under **Article 28(1) of the constitution** parties are entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal. This means that parties are expected to be informed of the dates of the hearing i.e. the dates when each of them is expected to adduce evidence onto which the court or tribunal is to base its decision.

In the instant case, it is clear from the record that the 19th of July 2018 when the labour officer was absent, was a date for the respondent to “give comments” on the complaint or else the labour officer would refer the matter to a magistrate.

Nothing in this notification showed that the labour officer was to go ahead and determine the complaint by way of arbitration or adjudication. When the matter was adjourned to the 27th of August 2018, the record did not show either that the labour officer was to determine the complaint.

Indeed, in her letter dated 2/10/2018 in reply to a complaint about her having proceeded exparte by the appellant, the labour officer acknowledged her absence at the station on 19/07/2018 but blamed counsel for not appearing on 27/08/2018 which date he was aware of.

Whereas the appellant was aware of the 27/08/2018, the awareness was not about proceeding to adduce evidence or the labour officer determining the matter finally. From the original notification, the labour officer was expected refer the matter to the magistrate. Obviously this could not have been the right course of action to take by the labour officer since any reference under the Employment Act or the Labour Disputes Arbitration and Settlement Act must be to the Industrial Court.

It is our considered opinion that the constitutional right under **Article 28(1)** is only subject to a party being aware that should he/she not appear before the court or tribunal; the same court or tribunal will determine the matter in his/her absence. Although in the instant case the labour officer had intimated wrongly that she would refer the matter to a magistrate and although counsel for the appellant should have known how wrongful this was, we do not think that the exception under Article 28(1) of the Constitution as above mentioned was satisfied in order for the labour officer to proceed exparte.

Accordingly, we agree with counsel for the appellant that the appellant was not accorded a fair hearing and that this was not only contrary to Article 28(1) of the Constitution but also against principles of natural justice.

Consequently, ground one succeeds and since this ground alone resolves the appeal, we shall not indulge ourselves in the rest of the grounds.

The appeal succeeds with the consequence that all orders of the labour officer are set aside and since there was a travesty of justice an order of retrial before another labour office is hereby issued.

Delivered & signed by:

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

.....
.....

PANELISTS

1. Mr. Rwomushana Reuben Jack
2. Ms. Rose Gidongo
3. Ms. Beatrice Aciro Okeny

.....
.....
.....

Dated: 22/07/2021