

THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE APPEAL NO. 015 OF 2019
(ARISING FROM BUSHENYI LABOUR DISPUTE COMPLAINT No. 168/010/2018)

BETWEEN

KAMPALA INTERNATIONAL UNIVERSITY.....APPELLANT

AND

KARANZI NAFUTARIRESPONDENT

BEFORE

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

PANELISTS

1. Mr. Ebyau Fidel
2. Ms. Harriet Mugambwa
3. Mr. F.X Mubuke

AWARD

This is an appeal against the decision and orders of a Labour Officer of Bushenyi District.

The Respondent was employed by the Appellant as an Assistant Lecturer in the Department of Humanities, Faculty of Education effective 15/11/2016 for 3 years via an appointment letter dated 15/11/2016. By letter dated 9/11/2018, he was dismissed for unprofessional and gross misconduct. By letter dated 28/11/2018 he filed a complaint of unfair termination to the Labour Officer at Bushenyi who later on decided in his favor. The Appellant was aggrieved with the Labour Officer's decision and filed this Appeal. The appeal was based on 9 grounds as follows:

1. **THAT** the Honorable Labour Officer erred in law and fact, when having mediated the dispute between the Appellant and the Respondent proceeded to adjudicate over the same, thereby illegally and or erroneously exercising jurisdiction.
2. **THAT** the Honorable Labour Officer erred in law and fact, when she made a decision and orders against the Appellant without judiciously hearing the Appellant in defence to the claims and premising her orders on the Claimant's pleadings alone.
3. **THAT** the Honorable Labour Officer exhibited bias throughout the proceedings and actively participated on the part of the claimant to the extent of personally effecting service of documents in the matter on the Appellant on behalf of the Respondent.
4. **THAT** the Honorable Labour Officer erred in law and fact, when she failed to take into consideration the evidence adduced by the Appellant in arriving at her decision thereby occasioning a miscarriage of justice.
5. **THAT** the Honorable Labour Officer erred in law, when she held that the Respondent was unfairly dismissed and awarded him UGX. 18,000,000/= as salary for the remainder of his contract, thereby occasioning a miscarriage of justice.
6. **THAT** the Honorable Labour Officer erred in law, when she misconstrued the provisions of the Employment Act relating to dismissal of employees and terminal benefits and arrived at wrong decisions and made erroneous orders against the Appellant.
7. **THAT** the Honorable Labour Officer erred in law, when she awarded UGX. 3,000,000/= as unpaid salaries during the suspension period, thereby occasioning a miscarriage of Justice.
8. **THAT** the Honorable Labour Officer erred in law, when she awarded the respondent additional monies amounting to UGX. 4,500,000/= without any basis, thereby occasioning a miscarriage of justice.

9. **THAT** the Honorable Labour Officer erred in law and fact, when she executed a decree with awards which were not the subject of determination in her ruling, and which had no legal or factual basis.

Before deriving into the merits of the Appeal we would like to point out the provisions of the law regarding appeals to this court. **Section 94** of the **Employment Act** provides:

- 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
- 2) An appeal under this section shall lie on a question of law, and with leave of the Industrial Court, on a question of fact forming part of the decision of the Labour Officer.
- 3) The Industrial Court shall have power to confirm, modify or overturn any decision from which an appeal is taken and the decision of the Industrial Court shall be final.
- 4) The Minister may, by regulations, make provision for, the form which the appeal shall take.

It is imperative to emphasize that unless an Appellant applies for and is granted leave to argue points of fact in an appeal, grounds reflecting dissatisfaction on points of fact or on points of fact mixed with points of law by the Appellant are not acceptable. Thus in the case of **NETIS UGANDA LTD VS CHARLES WALAKIRA LDA 22/2016** Court held that grounds based on question of fact be struck out.

In the instant case the 1st, 2nd, 4th and 9th grounds are based on questions of law and fact which offends Section 94 of the Employment Act.

However, on perusal of the submission of the respondent, counsel contended that ***“Mediation was conducted on 28th March 2019, yet court sessions were held on the day of 17th January 2019, 8th February 2019 and on 27th February 2019. The appellant having unsuccessfully settled the matter the Labour Officer issued the judgment/ Award. Therefore, the position of the Labour Officer was not prejudiced at all while making a judgment/Award.”***

Counsel for the respondent went on to argue:

“The matter at hand is different from the matter in the case cited by Appellant; Sure Telecom Vs Brian Azemchap Civil Appeal No 008/2015, in our case the matter was adjudicated first and mediation took place subsequently. Therefore the Labour Officer was not in any contravention with the law.”

It is clear from the above submission of the respondent that the decision/ award was issued after failure of the mediation. The Appellant’s submission is that the Labour Officer was actively involved as a mediator which is not denied by the respondent. In the case of **Sure Telecom Vs Brian Azemcamp (Supra)** this court held

“It was a travesty of Justice for the Labour Officer having initially attempted to settle the dispute by mediation to turn to adjudication after failure of mediation. We are in agreement with counsel to the appellant that ends of Justice could only be met by the transfer of the dispute to another competent Labour Arbiter who could be any other Labour Officer or even the Industrial Court.....Even if the record did not indicate that the Labour Officer used disclosures and findings in mediation to determine the complaint in adjudication, the fact that mediation proceedings commenced before her and she attempted to settle the dispute through the mediation method, in our view presupposed that she had all the information about the complaint before adjudication and she was therefore likely to have used it to adjudicate. Consequently the adjudication proceedings were of no legal effect and neither were the orders arising there from.....”

Although the first ground is based on points of law and fact contrary to **Section 94 of the Employment Act**, it is illegal for a labour officer to both mediate and adjudicate at the same time and the fact that the labour officer did both is conceded to by the respondent as discussed above. It would not make a difference if the labour officer wrote the Award and participated in mediation before delivering the Award. As was held in **Makula International Vs His Eminence Cardinal Nsubuga and another SCCA 04/1981**, once an illegality is brought to the attention of Court it overrides any pleadings before such court. Accordingly, we find as we found in the **Sure Telecom Vs Brian Azemcamp (Supra)** that the adjudication proceedings before the Labour Officer in the instant Appeal were of no legal effect and the orders arising

therefore are hereby set a side with orders that a retrial of the complaint be before another Labour Officer. Since this disposes of the appeal we shall not discuss the rest of the grounds. No order as to costs is made.

DELIVERED & SIGNED BY:

BEFORE

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

PANELISTS

1. Mr. Ebyau Fidel
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DATED 28/05/2021