

THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE APPEAL No.005 OF 2019
[ARISING FROM KCCA/CEN/LC/146/2017]

BETWEEN

STEEL & TUBE INDUSTRIES LTD.....APPELLANT

VERSUS

AWUBWA IBRAHIM & 36 OTHERSRESPONDENT

BEFORE

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

PANELISTS

1. MR. Ebyau Fidel
2. Mr. Fx. Mubuuke
3. Ms. Harriet Mugambwa

AWARD

This is an appeal against the decision of a Labour Officer sitting at Kampala Capital City Authority (Central), one Mukiza Emmanuel Rubasha.

The Respondents instituted a Labour Complaint before the Kampala Capital City Authority Labour officer and the appellant replied to the complaint. After some time the matter was fixed for adjudication on 17/11/2017 and in the absence of the appellant, the Labour Officer proceeded to hear the matter and thereafter delivered an Award against which this appeal arises.

According to the Memorandum of the Appeal at **Page 99 of the record of Appeal**, the Appeal is based on one ground:

The Labour Officer erred in law when he delivered an Award in KCCA/CEN/LC/146/2017 without according the appellant an opportunity to be heard causing a miscarriage of Justice.

After a prayer from counsel for the claimants that the matter proceeds exparte on 17/11/2017 the labour officer is recorded to have stated:

“Given that the respondent was reliably served notices of adjudication and has on this occasions failed/ declined to appear without giving reason, we hereby grant your prayer to proceed exparte”.

Counsel for the appellant argued strongly that his client did not receive the hearing notices for the 17/11/2017 and therefore he faulted the labour officer for proceeding with the hearing before he ascertained whether or not the appellant had been served.

He submitted that the affidavit of service filed for purposes of the hearing on 17/11/2017 did not satisfy the requirements of **Order 5 Rule 7, 10, 14 of the Civil Procedure Rules** and was tainted with falsehoods and therefore it should not have been relied on by the labour officer. He contended that one Kia Stella, an administrator at Rwambuka & Co. Advocates was not one of those persons authorised to effect service under **Order 5 Rule 7 of the Civil Procedure Rules**. Counsel contended that the respondent company did not have **“the office of the legal representative”** which the said Kia Stella was alleged to have served with the hearing notice. According to counsel the affidavit of service was short of several particulars including the name of the person who was served.

It was his submission that failure to hear the appellant contravened **Article 28 and Article 44 constitution**. Relying on the case of **Auto Tune Engineering Vs Barozi Swaldo & others Labour Dispute Appeal No. 11/2018** he reiterated that the principle of non - condemnation before hearing was a principle of natural Justice which overrides any merits of the case.

In response to the above submissions, counsel for the respondent argued strongly that the appeal was premature the option of the appellant having been to apply to the Labour officer to set aside his own Award under **09 Rule 27 Civil Procedure Rules**.

Counsel also argued that the appellant had been aware of the different hearing dates but failed to attend the proceedings.

Decision of Court

Article 28 (5) provides

“Except with his or her consent, the trial of any person shall not take place in the absence of that person unless the person conducts himself or herself as to render continuance of the proceedings in the presence of that person impracticable and the court makes an order for that person to be removed and the trial to proceed in the absence of that person”

The import of the above Section is to allow a person to be heard before being condemned and to allow the victim to proceed in the absence of the offender where the offender seems to hold the court at ransom by avoiding or otherwise making it difficult for a hearing to proceed in his/her presence.

Indeed the service of court process in the instant case was effected by an administrator in the chambers of counsel for the respondent. Although such administrator may not have been technically authorised to serve court process, it is our considered opinion that such technical failure may not invalidate the service of the court process. We feel strongly that as long as a party to the claim is informed of the date of hearing, and the court is satisfied that this is the case, proceedings cannot be set aside only on ground that the one who served the court process was technically not authorised. We are not therefore convinced by the submission of counsel for the appellant that it was irregular for the labour officer to rely on an affidavit of service deposed by a person not technically authorised to serve court process. What was significant was whether the hearing date was made known to the respondent and not whether the person who made it known to such respondent was authorised to do so.

However, Order 5 Rule 10 of the Civil Procedure Rules provides:

“Where ever it is practicable, service shall be made on the defendant in person unless he or she has an agent empowered to accept service, in which case service on the agent shall be sufficient.”

On perusal of the affidavit of service, the process server was advised to go to the office of the legal representative of the respondent whose particulars were not mentioned. Even when the process server served the said legal representative, she did not disclose the name of the person served. With the evidence on the record that the General Manager personally

responded to the complaint in a letter addressed to the Labour Officer dated 10/9/2017 at **page 20 of record of Appeal**, it is hard to resist the submission of counsel for the appellant that no office of a legal representative existed in the respondent company, especially when the affidavit of service failed to fix a name to the same person.

We do not accept the contention of the respondent that the appellant having been served several times without appearing, the Labour officer was right in proceeding without the respondent on 17/11/2017. The relevant court Process date is the date when the hearing in fact take place and not any other dates when a party fails to turn up. The respondent submitted that the only option available to the appellant was to appear before the labour officer for an application to set aside the exparte Award and not to lodge an Appeal which according to counsel was premature. This argument was rejected by this court in the case of **Auto Tune Engineering Vs Barozi & others** on the basis of the authority of **Engineer John Eric Mugenyi Vs Uganda Electricity Generation Co. Ltd Civil Appeal 167/2018**, Court of Appeal, which held that a labour officer being not a court of law was not bound by the Civil Procedure Rules and the same rules could not apply to proceedings before such a Labour officer.

Considering the fundamental and constitutional provision in **Article 28 of the constitution** mentioned earlier in this Award, and considering that the affidavit of service did not disclose sufficiently the particulars of who was served making it doubtful whether respondent was served for the hearing that took place on 17/11/2021, we find that it was a miscarriage of Justice for the Labour Officer to proceed without giving an opportunity to the appellant to be heard. The only ground of appeal succeeds and the appeal is allowed with orders of a retrial before another labour officer. No order as to costs is made.

Delivered and signed by:

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

PANELISTS

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

Dated: 26/02/2021