THE REPUBLIC OF UGANDA

IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA

LABOUR DISPUTE APPEAL. NO. 31 OF 2019

[ARISING FROM LABOUR DISPUTE COMPLAINT NO. SLO/2019/06/003 MASINDI]

BETWEEN

BYAKAGABA ADRINAN……..APPELLANT

VERSUS

ENCOT MICROFINANCE ……..RESPONDENT

BEFORE

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

PANELISTS

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

AWARD

This is an appeal from the decision of a Labour Officer, one Busingye Clare Wamara, sitting at Masindi labour office. The appeal is brought under Section 94 of the Employment Act 2006.

REPRESENTATION

The appellant was represented by M/s. Nabukera Judith of M/s. Lule Godfrey & Mulumba Co. Advocates while the respondent was represented by Mr. Bijik George of the legal department of the respondent.

Background of the Appeal

By an employment contract dated 10/4/2018 the respondent employed the appellant as a credit Officer and by letter dated 5/3/2019 the appellant was confirmed in the service effective 28/2/2019. In April 2019, the appellant was put on a performance improvement plan which according to the respondent did not help performance of the appellant. By letter dated 7/5/2019 the appellant was terminated on grounds of:

(a) Incompetence and negligence of duty
(b) Deliberate failure to obey work related instructions issued by supervisor.

The appellant filed a complaint of unfair termination before the labour officer who decided in his favor by granting him 500,000/= as severance allowance. He was aggrieved and filed this appeal citing the following grounds:

(1) The labour officer erred in law when she pronounced judgement based on her conviction rather than evidence adduced thereby arriving at a wrong conclusion.
(2) The labour officer erred in law when she made a biased decision based on her own conviction.

SUBMISSION

It was submitted for the appellant that the evidence on the record did not reveal any disciplinary hearing and that therefore the labour officer's decision had no basis. According to counsel the appellant's termination was based on a performance review which did not constitute a hearing. Counsel argued that the labour officer having stated that there was misunderstanding in communication between the parties about the alleged misconduct, occasioned a miscarriage of justice when basing on her own conviction she ordered that the respondent just pays half of his wages as severance allowance to enable him settle elsewhere.

The appellant argued that the labour officer showed elements of bias when she handled the matter without giving it a number despite being advised to do so. According to counsel handling the matter to its conclusion without giving it a number and only giving it a number after the pronouncement of an Award upon being compelled constituted a likelihood of bias.

In reply to the above submissions, counsel for the respondent argued that evidence was on the record to show that the appellant absented himself from work on various dates and yet his contract had been extended highlighting his shortfalls and setting new targets. According to counsel the appellant's failure to explain his absenteeism was sufficient for dismissal since it would amount to admission as held in Kabojja International School Vs Oyesigye, LDA No. 3/2015.

It was contended for the respondent that due to his poor performance, the appellant was invited to a performance hearing that resulted into a performance improvement plan, which was signed on 11/4/2019. According to counsel the appellant was invited to another hearing on 6/5/2019 to review his PIP and the review showed he had failed to meet the quality management and clientele growth targets though he met the target of growth from Shs. 270,654,114/= to Shs. 325,920,625/= . The respondent argued strongly that nothing on the record showed that the labour officer was biased and that since the appellant did not ask the labour officer for recusal he was not entitled to bring the issues of bias at this time of proceedings.

Decision of court

We have carefully perused the record of the labour officer. We have also perused the submissions of both counsel. The complaint of the appellant is that there was no evidence of hearing on the record and this being the case the decision of the labour officer had no bias.

According to counsel the decision should be quashed and a retrial ordered before a different labour officer.

The Award of the labour officer is found at page 17-22 of the record of Appeal. At page 21 of the record of Appeal, the labour officer in her Award stated:

> "Whereas the labour officer has no reason to doubt the documentation presented by the respondent to prove hearing given to the complainant, this was never brought to the attention of the complainant as a disciplinary action against him during the discussion of these documents."

She went on to state just before she considered remedies

> "The office having concluded that the complainant was not given adequate hearing I will now consider the following remedies sought."

The labour officer went ahead to consider what the appellant had prayed for and at the end of it all (among others) said

> "In line with Section 87(a) and 89 of the Employment Act no. 6, the complainant was awarded 50% of his monthly basic pay worth Five hundred thousand shillings as severance allowance bearing in mind his area of residence and length of period served at the company."

Given the above central statements in the decision of the labour officer, it is inevitable to conclude that the labour officer appreciated that the appellant was not given a hearing in accordance with the law and for this reason he granted the appellant a remedy of 500,000/= as severance.

The complaint of the appellant is not that the remedy was insufficient but that the decision was baseless since the record showed no evidence of hearing. With due respect to counsel this is not true. The decision of the labour officer as already stated was based on the fact that the hearing was not **"adequate."**

Contrary to the insinuation of the appellant, the labour officer appreciated the inadequacy of the hearing and granted the remedies she thought were worth.

Consequently, all arguments of counsel for the appellant relating to lack of a disciplinary hearing have no bearing to this appeal. In the same way, we find arguments of counsel for the respondent emphasizing the fact that there was a disciplinary hearing, irrelevant. This is because the respondent did not reject the finding of the labour officer that the hearing was **"inadequate"** the documents relating to performance having not been brought to the attention of the appellant. Ordinarily a court orders a retrial when it occurs to the court

that there was a miscarriage of justice in the proceedings of a lower court. Examples of a miscarriage of justice that may lead to an order of retrial include: irregularity in the court proceedings, significant evidence not considered by the lower court, improper identification, a significant error in law and any other factor considered by the court to have resulted in a miscarriage of justice warranting a retrial. An order of retrial is in our considered view, an order that is exceptional and rarely resorted to by the courts since it results in accumulation of backlog.

In the instant case, the appellant argued that the labour officer was biased given that she did not give the case a registration number. Whereas we agree that impartiality of an adjudicator may cause a miscarriage of justice warranting a retrial, we are not convinced that the omission to assign a registration number to a case would constitute a miscarriage of justices in the determination of issues in the same case. Nothing on the record suggests that this had any influence on the mind of the labour officer as she determined the case.

In the final analysis it is our finding that the decision of the labour officer was based on the fact there was no disciplinary hearing and the remedies granted thereby were based on this fact. It is also our finding that the none issuance of a registration number of the case did not constitute partiality on the part of the labour officer.

Accordingly, since there was no contestation as to the sufficiency of the remedies granted by the labour officer, the Appeal is hereby dismissed and the decision of the labour officer is sustained. No order as to costs is made.

BEFORE

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

PANELISTS

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Dated: 06/08/2021