

THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE APPEAL No. 33 OF 2019
ARISING FROM L.C. NO. MGLSD/LC/101/2018

MAKAWA DAVID

..... CLAIMANT

VERSUS

SUGAR CORPORATION OF UGANDA LTD

..... RESPONDENT

BEFORE:

- 1. THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE**
- 2. THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA**

PANELISTS

1.MS. ADRINE NAMARA

2.MS. SUSAN NABIRYE

3. MR. MICHEAL MATOVU

AWARD

BRIEF BACKGROUND.

The Appellant was employed by the Respondent on 27/01/2015, the until 31/08/2018 when his contract was terminated on grounds of absconding from duty. By the time he was terminated, he was earning Ugx 492,396/- per month. On 20/06/2016, he was involved in an accident at work, in which a heavy tractor ran over him and caused him major injuries. He was assessed at 45% permanent incapacity and as a result the Company Doctor recommended him for lighter work. He was the assigned to operate a forklift as a light machine, however he

was unable to operate it on account of his Injuries. On 14/08/2018, he was transferred to operate a hydro offload operator but because it required several movements, he was also not able to handle because of his incapacity. He complained about it and on 24/08/2018, he was transferred to the Boiler section but he also appealed against it , on the grounds that, it involved a lot of climbing which was rendered difficult by his incapacity. Instead of responding to his complaint about the position in the boiler section, he was terminated for absconding from duty. He filed a complaint for unlawful termination before the Labour Officer at the Ministry of Gender Labour and Social Development. The Labour Officer heard and determined the matter in his favour. He was however dissatisfied with the Labour Officer's decision, hence this appeal on the following grounds:

GROUND OF APPEAL

When the matter was called on the 4/03/2020, both parties agreed to settle the Appeal partially and only argue the issue of damages as follows:

1.The Labour Officer erred in law when he refused to refer the issue of General damages to the Industrial Court.

REPRESENTATION

SUBMISSIONS

Counsel for the Appellant contended that whereas Section 78 of the Employment Act provides for the scope of awards which can be issued by a Labour Officer, **RULE 3(1) of the Labour Disputes (Arbitration and Settlement) (Industrial Court Procedure) Rules, 2012, provides** that,

“Where a Labour officer is requested by a party to a dispute to refer the dispute to the court under Section 5 of the Act, the labour officer shall refer the dispute in the form specified in the First Schedule.”

According to her, the Labour Officer delivered the award on the 4th day of September 2019, in the presence of the Appellant and the Appellant asked him to refer his claim for damages to the Industrial Court, but the Labour Officer declined to make the reference to the Industrial Court, when he delivered his award. The record however indicates that, he made the reference, after he issuing his award, but by then, this appeal had already been lodged.

He cited, ***Netis Uganda vs Charles Walaki Labour Dispute Appeal No. 022 of 2016***, for the legal proposition that, Section 78 of the Employment Act, is intended to limit the power of the Labour Officer in the award of compensation in respect to complaints which they handle and that the Labour officer does not have the privilege of going beyond what is provided for under Section 78.

It was his submission that the Court in ***Netis Uganda vs Charles Walaki (Supra)*** stated that, where the Labour officer considers that, the compensation deserved by the dismissed employee is beyond what the labour officer is empowered to give under Section 78, the labour officer had the option of referring the issue to this court for determination. He further submitted that the Court went further to opine that, Section 94 (2) which empowers this Court to “... to confirm, modify or overturn any decisions from which an appeal is taken and the decision of the Industrial court is final...” is intended for court to provide changes in the decision of the Labour officer where it believes that such changes meet the justice of the case, given the limited powers of the Labour officer under Section 78 (supra).

He argued that, the limited powers of the Labour Officer did not meet justice to the Appellant's case because having found that the Appellant's termination was unfair leading to orders that, the Respondent should pay the Appellant severance pay of Ugx 1,477,188/-, one month's pay in lieu of notice of Ugx 492,396/-, basic compensatory order of 3 months Ugx 1,477,188, repatriation

at 500,000/-and Ugx 492,396/- for failure to give notice, the Labour Officer should have gone further to find that, the Appellant was entitled to general damages for unfair termination. He relied on **Livingstone v Ronoyard Coal Co. (1880) 4 APP Cases 259**, for the legal proposition that, the measure of damages is said to be that sum of money which will put the party who has been injured, or who has suffered, in the same position as he would have been if he had not sustained the wrong from which he is now getting the compensation or reparation. He also relied on **URA v Wanume David Katamirike Civil Appeal No. 43 of 2010**, which was to the same effect.

He further submitted that, the Court of Appeal stated that, *“The common law principle that damages are not awardable for injury to feelings or reputations by reason of unlawful dismissal or termination of contract of employment (Addis v Gramophone Co. 1909) A.C.488) or for Causing the plaintiff to have more difficulty in obtaining new employment (Maw v Jones (1890)25 QBD107) have over time been interpreted so as to make employment law keep pace with economic and other social developments in modern society.”*It was his contention that, the Appellant was subjected to financial stress and suffering as a result of losing his job which was his means of livelihood moreover without being subjected to a fair hearing and in spite of his poor medical condition. Therefore, he is entitled to sufficient award of general damages to put him in a position he had been in before he was unfairly terminated.

In reply, Counsel for the Respondent stated that, whereas it is true that, the Respondent was on record, as stating that, it was ready and willing to settle a sum of Ugx. 4,439,168/=, as awarded by the Labour Officer, the settlement was conditional upon the Appellant’s withdrawal of this Appeal. It was his submission that, since the Appellant insisted on pursuing the Appeal, the Respondent would only comply after the determination of the Appeal.

He raised a preliminary point of law, to the effect that, this Honourable Court lacks jurisdiction to dispose of this appeal on the grounds that it is misconceived, barred in law and constitutes an abuse of court process in as far as it relates to the appellant seeking to be awarded general damages. According to him this was because the award of general damages involved facts related to loss and breach by the Respondent, which were matters of fact. He contended that, the issue of general damages, can only be raised as an appeal in this court, if it is grounded only as a matter of law, especially where the labour officer acts without jurisdiction to award general damages contrary to the provisions of the law. However this is not the case in this appeal and it would still not amount to an appeal where a request is made to a labour Officer to refer the issue of general damages to the Industrial Court for assessment and he or she declines to do so. In his view this would not be construed as a matter of law only.

He submitted that this appeal is a matter of fact and or of mixed law and fact, which cannot arise on appeal before this Court, except with leave of court and there is no evidence that such leave was sought for or granted by this Court. Therefore, the appeal is improperly filed before this court.

He relied on **Karahukayo David and 04 others v Continental Tobacco Uganda Ltd, Industrial Court Labour Dispute Appeal No. 0015OF 2015, Arising from HCCSNO: 168/1/2775**, in which this Court emphasised that, section 94(2) Supra was the basis of appeals in this court. According to him, by framing grounds of appeal of a mixture law and of fact, the appellant pressed upon this court a duty to distinguish between matters of fact and matters of law which was contrary to the provision under Section 94(2) (supra). He insisted that the Labour Officer did not make any decision/ pronouncement on general damages, therefore there was no basis for this appeal, because an appeal cannot lie to this Court without any decision.

DECISION OF COURT

The contention in this Appeal as we understand it, is that, after finding that the Appellant's termination was unfair and awarding him severance pay, payment in lieu of notice, compensatory order and additional compensatory order, the labour officer should have gone further to find that that he was entitled to an award of damages for unfair termination and refer the issue to this court for determination.

Section 77 of the Employment Act provides that:

“ where a labour officer decides that an employee's complaint of fair termination under section 71 is well founded, the labour officer shall subject to subsection (2) and (3) give the employee an award or awards of compensation specified in section 78.

Section 78 of the Act provides that, the labour officer can make a compensatory order which shall include a basic compensatory order for four weeks wages and at his or her discretion, a maximum additional compensation of 3 months' salary/wages and or minimum of 1 month's wages or salary. The section does not provide for the award of damages. Therefore, the Labour officer's jurisdiction to award compensation is limited to the provisions under section 78. Given this limitation any award made outside the limits set under section 78 (supra), would be considered an illegality. Black's Law Dictionary 8th edition, defines an illegality as an act not authorised by law or state of not being legally authorised. In **Ojangole Patricia & 4 others Vs Attorney General HCMC No. 303 of 2013**, Court identified, *“...Acting without jurisdiction or ultra vires contrary to the provisions of the law or its principles are instances of illegality...”*

Therefore, the labour officer in the instant case, was correct not to make any decision on the issue of damages, because he did not have jurisdiction to do so.

However, this Court's holding in, **Netis Uganda Vs Charles Walakira LDA No.022 of 2016**, is to the effect that, where the labour officer was of the view that, the dismissed employee deserved more compensation than what he or she was empowered to award under section 78, he or she had the option to refer the issue to this court for determination. In the alternative, as submitted by both counsel, a Complainant can invoke **Rule 3(1) of the Labour Disputes (Arbitration and Settlement) (Industrial Court Procedure) Rules, 2012**, to request the labour officer to refer the issue of damages to this court for determination.

Rule 3(1) provides that: *"Where a Labour officer is requested by a party to a dispute to refer the dispute to the court under Section 5 of the Act, the labour officer shall refer the dispute in the form specified in the First Schedule."* This implies that once a labour officer is requested to refer the issue of damages to this Court for determination, the labour officer is expected to make the reference and it would be unreasonable for him or her not to do so, given that he or she has no jurisdiction to make such an award.

In conclusion, it is trite that, an appeal would only arise where a decision has been made and, in this case, where the labour officer made a decision which he was not authorised to make under the law. The Labour officer in the instant case, was therefore correct not to make any finding on the issue of damages because he lacked jurisdiction to do so.

The next question is whether he can be faulted for refusing to refer the issue of damages to the Industrial court for determination?

Counsel for the Respondent insisted that, during the hearing, neither the Appellant or his lawyers made any prayer for the labour Officer to refer the issue of damages to the Industrial Court. Counsel for the Respondent further submitted that, the Appellant did not request for the reference to be made in his pleadings, therefore the labour officer cannot be blamed for not referring

the matter to this court. He refuted the Appellant's reliance on Rule 3(1) of the **Labour Disputes (Arbitration and Settlement) (Industrial Court Procedure) Rules, 2012(supra)** on the grounds that the Rule provides that, the labour officer must be requested by a party to a dispute and according to him the definition of request in the legal sense, by Farlex Free Dictionary 1981- 2005 is *"a way of saying that a party to a lawsuit (or usually attorney) is asking or demanding a Judge to act(such as issuing a writ) or demanding something from the other party(such production of documents) , the asking or demanding"* He further argued that, the Appellant and his Counsel should have requested for the matter to be referred to the Court for assessment of general damages, but he did not do so. In his view, the onus was on the Appellant to move the Labour officer to refer the matter which was not done. In any case equity aids the vigilant but the Appellant sat on his rights, when he failed to move the labour Officer to refer the matter of damages to this Court. He also relied on **James Semusambwa vs Rebecca Mulira CA No. 1/1999**, for the same legal proposition. According to him, even if the Appellant relied on Section 94(2) for the legal proposition that, this court had powers to alter the decision of the labour Officer, these powers are not absolute and must be exercised within the precepts of the law. He insisted that given that, the labour officer made no decision about damages there was no basis for a ground of appeal in this regard.

According to him the Appellant did not suffer any damages because the Respondent paid for his treatment and even if he was declared 45% incapacitated, he retained his job and was transferred to various alternative tasks /positions bearing in mind his medical condition. He was given opportunity to choose his own deployment and he chose the role of pool car driver which he failed to carry out. Therefore, the Appellant's termination was lawful and he was not entitled to any damages because the Respondent acted within the law in terminating him and there was no material breach on its part. He cited **Ewandra**

Emmanuel Vs Spencon Services Ltd, Arua, HCCS No.002 of 2015, and Waiglobe (U) Ltd Vs SAI Beverages Ltd, Arua HCCS 0016 of 2017, for the proposition that damages are awarded at the discretion of court in respect of what is presumed the natural and probable consequence of the defendants acts or omissions and are not a gratuitous benefit to the aggrieved party. They are awarded where loss to the plaintiff is established and not to punish the Defendant. He prayed that Court finds that the Claimant has not proved the case on appeal.

In rejoinder counsel for the Appellant insisted that the labour Officer was requested to refer the issue of damages to this court but he did not include it in his award, although he later made the reference after delivering his the award as evidenced by the record of proceedings.

She contended that, the Appellant suffered loss due to the breach by the Respondent Company because he got 45% permanent incapacitation while working for the Respondent and shortly after that, he was unfairly terminated. He refuted the assertion by Counsel for the Respondent that, the Appellant would be paid if he withdrew this Appeal and on 4/03/2020, Counsel for the respondent on court record stating that, the Respondent agreed with the Labour Officer's decision and that it would pay the award. Therefore, Court should award the Appellants prayer for General Damages, in the interest of Justice.

DECISION OF COURT

It is a settled matter that, a labour officer has no jurisdiction to make an award on damages given the wording of section 78 of the Employment Act(supra). We have already established that in the instant case, the Labour officer rightly, did not make any decision on the issue of damages and instead he referred the Appellant to this Court for the claim for damages. The reference was made after he delivered his award. The record at page 4 states in part as follows:

“...26/08/2019: Makawa David, Complainant in Court.

Court: *Award delivered before the Complainant. The complainant is referred to the Industrial Court to claim damages...”.*

It is therefore not correct for the Appellant to assert that the Labour officer did not refer the issue of damages to this court for determination. In our considered opinion, the Labour officer having referred the claim for damages to Court, onus was on the Appellant to ensure that he filed the reference in this court as a Reference and not as an Appeal. In any case, the Labour officer did not make any decision on damages to form a basis of appeal because he lacked jurisdiction to do so. In the circumstances, having referred the claim for damages to this court for determination, the ground that, he erred in law when refused to refer the matter to the industrial Court for determination is baseless, therefore it is disallowed.

Before we take leave of the appeal however, it is our considered view that for completion and to avoid multiplicity of claims, Section 94(3) empowers this Court to confirm, modify or overturn the Labour Officer’s decision. The Section provides that:

“ (3) The Industrial Court shall have power to confirm, modify or overturn the decision from which an appeal is taken and the decision of the Industrial Court shall be final.”

Therefore, we shall exercise our discretion under this provision resolve the issue of damages in the instant appeal.

It is trite that damages are intended to return the claimant to as near as possible in money terms to the position he or she was in before the injury suffered because of the Respondent. It is also a settled matter that where a finding is

made that an employer unlawfully terminated or dismissed an employee, such an employee would be entitled to compensation in form of general damages.

Chief Justice Emeritus, Bart Katurebe, in **Stanbic Bank Vs Kiyimba Mutale SCCA No. 2/2010**, had this to say on award of Damages in employment disputes:

“... Having found that the appellant was wrongfully terminated, the Court should have proceeded to make an award of general damages which are always in the discretion of the court to determine.

...

In my view, that adequate compensation would have been a payment in lieu of notice, a measure of general damages for wrongful dismissal(emphasis ours) and payment of accrued pension rights. ... I think that the respondent could have been awarded substantial general damages for wrongful termination of his employment, taking into account his status, the manner of termination ...” (Emphasis ours).

The award of damages as stated in Kitamirike(supra) is at the discretion of Court and is based on the merits of each case. The pleading on record of proceedings in this case, indicates that, the Appellant prayed that, the Labour officer awards him general damages of Ugx. 80,000,000/-. It was the Labour Officer’s finding that, the Respondent having failed to place the Appellant in a role suitable for his poor health following his accident at the workplace, she should have retired him on medical grounds instead of terminating him without giving him a hearing, as provided under Section 66 of the Employment Act, because the termination was against *“the principle of fairness and natural justice for the employer to take a decision without giving the defendant an opportunity to defend himself...”* and on that basis he declared the termination unfair.

Our evaluation of the record of proceedings showed that, following the Appellant's accident on 20/06/2016, his incapacity was assessed at 45%, rendering him unable to handle heavy machinery, which he had been handling prior to the accident. His incapacity made it difficult for him to handle the various positions to which he was subsequently transferred to. The Respondent alleged that, he later stopped reporting for work and after 10 days he was declared a deserter. We did not find anything on the record to indicate that the Appellant was notified about the reason for his termination nor did we find any evidence that he was given an opportunity to respond to the reason as provided under section 66(supra). It is also not in dispute that, after the accident, the Respondent paid for all his medical expenses and compensated him for the injuries suffered. Even if she had difficulties finding for him an alternative position that was suitable for him, given his incapacity, he was still an employee who was entitled to be given a reason and an opportunity to respond to the reason, before terminating him, which was not the case. By the time of his termination, he had served the Respondent for about 3 years.

In the circumstances we think that an award of Ugx. 1,700,000/- is sufficient as general damages for terminating him without a hearing.

In conclusion, the Appeal fails, however the labour officer's awards to the Appellant are upheld. In addition, the Respondent is ordered to pay him Ugx. 1,700,000/- as general damages. No order as to costs is made.

Signed and delivered by:

1.THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE

2.THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA

PANELISTS

1.MS. ADRINE NAMARA

2.MS. SUSAN NABIRYE

.....

3. MR. MICHEAL MATOVU

.....

DATE:17/09/2021