

5 **AMOS DAIRIES LTD** ..... **APPELLANT**

## 1. SAMUEL ANGURA

**2. BWIRE EDWARD ..... RESPONDENT**

**101. THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA**

## 1. MS. ROSE GIDONGO

## 2. MS. BEATRICE ACIRO OKENY

### 3. MR. JACK RWOMUSHANA

15 **AWARD**

## BACKGROUND

This Appeal is brought under section 94 (1) and (2) of the Employment Act, 2006, Rle 45 of the Employment Regulations, 2011 against the decision of Mr. Akanyijuka John, District Labour Officer Kiruhura on the following grounds:

## 20      **GROUND'S OF APPEAL**

1. The Labour officer erred in fact when he failed to frame and resolve issues in the case thereby making an adjudicatory and binding decision on the parties.

- 25           2. The Labour officer erred in fact when he went ahead to deliver a ruling  
without notice in the absence of any representation of the Appellant on  
the day that was fixed for the Appellant to produce and furnish relevant  
documents that was evidence to the Appellant's case.
- 30           3. The Labour officer erred in law both law and fact when he failed to conduct  
second a purported arbitration hearing that was scheduled for 13<sup>th</sup>  
January 2020 in a manner that encouraged natural Justice thereby  
making a wrong decision.
4. The Labour officer erred in fact when he held that the Appellant unfairly  
terminated the respondents without giving them a fair hearing.
- 35           5. The Labour officer erred in law when he ignored and failed to properly  
evaluate the evidence on whether the Respondents were given a fair  
hearing.
6. The Labour officer erred in law and fact when he failed to properly  
evaluate evidence on the record thereby occasioning miscarriage of  
Justice.

40   **PRAYERS:**

The Appellant prayed that the Appeal is allowed, the decision of the labour officer is set aside in its entirety. In the alternative the decision is set aside and sent to another labour officer and heard denovo. Costs of the Application are provided for.

45   **REPRESENTATION**

The Appellant, was represented by Counsel Eliphaz Amooti of.... and the Respondent's by Counsel Naima Bukenya of Platform for Labour Action, Kampala.

Section 94 of the Employment Act provides that:

50 “... (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  
55 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. ...”

Grounds 1,2, 3, 4, 5,6and 7 as set out above offend section 94(3) having been  
60 framed on issues of fact and both law and fact, without seeking leave of this  
court. However, when the matter was mentioned on 24/05/2021, Counsel  
Bukenyi informed Court that the Respondent Conceded to proceed on grounds  
of both law and fact, although by that time the Appellant had not yet served them  
with the memorandum of Appeal. We found it peculiar that, the parties could  
65 consent on the grounds yet the Respondents had not been yet considered the  
grounds, having not been served at the time.

The Law is clear that, (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.*

70 We of the very strong opinion that leave to proceed on fact or fact and law must  
be at the discretion of Court and not by consent of the Parties.

In any case in this case, although counsel for the Respondent said she  
conceded to proceed on fact or both Law and Fact, by the time of this alleged  
consent she was not privy to the grounds having not been served yet. Parties  
75 are expected to be aware of the facts and issues of a matter before a consent

can be arrived at. As already stated we believe that to condone such a consent would defeat the purpose of the seeking the leave of Court.

Leave to proceed on fact or both law and fact as a must is the discretion of Court that is hearing the matter and not by consent of parties. The Court of Appeal in

80 ***Attorney General Vs Florence Baliraine CA No. 79 of 2003***, held that:  
“...grounds of Appeal must concisely specify the points of objection which are  
alleged to have been wrongly denied.” The holding was further to the effect that  
the practice of Advocates setting out general grounds “...that allow them to go  
on a fishing expedition at the hearing of the appeal hoping to get something  
85 they themselves do not know, must end...”

As already stated above, all the grounds of this Appeal, offend section 94(3). In  
the circumstances inclined to strike out all the grounds of appeal for offending  
section 94(3) supra. There is no evidence of an application to seek leave to  
proceed on grounds of fact or mixed law and fact. We do not condone a  
90 consents between of parties on a matters where the statute clearly states that  
the decision must be made by Court moreover where the other party was not  
aware of the basis of the consent.

The Appeal is therefore dismissed for being based on defective grounds. With  
no order as to costs.

95 Delivered and signed

**1. THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA** .....

**PANELISTS**

**1. MS. ROSE GIDONGO** .....

**2. MS. BEATRICE ACIRO OKENY** .....

100 **3. MR. JACK RWOMUSHANA** .....

**DATE: 4/03/2022**