

**THE REPUBLIC OF UGANDA**  
**IN THE INDUSTRIAL COURT OF UGANDA SITTING AT JINJA**  
**LABOUR DISPUTE REFERENCE No. 276 of 2019**  
**ARISING FROM SOROTI MUNICIPALITY LAB/168/2/2019**

**ORIOKOT FRANCIS** ..... **CLAIMANT**

**VERSUS**

**TESO ANTI CORRUPTION**

**COALITION** ..... **RESPONDENT**

**BEFORE:**

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

**PANELISTS**

**1.MS. ROSE GIDONGO**

**2.MS. BEATRICE ACIRO**

**3. MR. JACK RWOMUSHANA**

**RULING**

**BRIEF BACKGROUND**

The Claimant brought this claim against the Respondent Organisation for various awards as stated in his memorandum of claim filed in this court on 2/10/2019. According to him he was employed by the Respondent as a programme Accountant from 2008 on fixed term renewable contracts. On 17/04/2017 his contract was renewed 3 years but on 21/01/2019, he was served with a notice to attend a disciplinary hearing on grounds of

incompetence, neglect of duties and insubordination. he attended the hearing on 23/01/2019. On 24/01/2019, he was issued a correspondence titled “amendment of contract of employment”, which he refused to accept. On 28/03/2019, he was issued with a notice of termination which was to take effect on 17/04/2018. According to the Claimant he filed a complaint before the labour officer who failed to make a decision on it so he decided to refer the complaint to this court himself vide LDR 276/2019. The claim was cause listed for the circuit at the High Court of Jinja which was scheduled to take place between 14 -25 March 2022.

When the matter was called for pre- hearing on 15/03/2022, the Claimant and his Lawyer were absent but Counsel Horace Nuwasasira, for the Respondent was present. Mr. Nuwasasira then prayed to be allowed argue the preliminary objection which the Respondent raised in its reply to the Memorandum of claim, in the absence of Counsel for the Claimant, because he believed it would dispose of the matter. He also prayed that the case is dismissed with costs because the Claimant’s absence was indication that, he had lost interest in prosecuting his case. He also invited Court to take exception with the manner in which this claim was filed in this court and award costs to the Respondent.

### **THE PRELIMINARY OBJECTION**

It was Counsel’s submission that, claims in this Court are brought by way of reference or on Appeal as provided under section 94 of the Employment Act and Rule 24 of the **Labour Disputes (Arbitration and Settlement) (Industrial Court Procedure) Rules of 2012**. In his view this claim was neither an Appeal or a reference.

He contended that, the claim was referred to this court by the Claimant himself (as per reference at page 66 of the Claimant's trial bundle), regardless of the fact that Mr. Apuret, the Labour officer before whom it was filed, dismissed it on 13/05/2019. According to him, when the Claimant learned of the Respondent's intention to raise this preliminary objection, he obtained another reference dated 6/12/2019, signed by another Labour Officer, Mr. Apuret having passed away. However, the reference was later withdrawn by the new labour officer by letter, to the Registrar of this court, dated 20/12/2019, on grounds that the matter had been concluded and determined by the late Apuret.

Counsel further contended that, under rule 3 of the **Labour Disputes (Arbitration and Settlement) (Industrial Court Procedure) Rules of 2012**, once a matter is adjudicated and decided by a labour officer, the dissatisfied party would be required to file an Appeal against the decision but not by reference to the Industrial Court. In his view the matter in the instant case having already been determined, it is neither an Appeal nor a Reference. Therefore, it should be dismissed for being improperly before this court. He insisted by filing this claim the way it was, the Respondent had been put through unnecessary litigation and costs of engaging Counsel, to defend it, therefore the Respondent should be awarded costs of this application.

#### **DECISION OF COURT.**

After carefully perusing the pleadings of both parties on the record, we established that when the Claimant filed his claim before the labour officer, the Labour officer notified the Respondent about it through its Executive Director in a letter dated on 2/05/2019. The notification also summoned

the Executive Director to appear before him, to settle the matter on 3/05/2019 at 10.00am. The Executive Director responded to this letter on the same date, requesting for the meeting to be rescheduled to 7/05/2019 at 10.00am, because the Respondent was undergoing an External Audit process at the time.

On 5/06/2019, the Claimant wrote to the Labour officer expressing his availability to continue with mediation and in the same vein protesting the delay which was caused by the Executive Director request to reschedule the meeting to another date. He also suggested that the Labour officer, schedules a conciliation meeting with the Board of Directors and Management of the Respondent instead. There is nothing on the record, to indicate that the labour officer took further action on the matter, after he received the Executive Director's request to reschedule the conciliation meeting and the Claimant's letter requesting him to engage the BOD and Management, save for the labour Officers letter to the Claimant dated 13/05/2019, which Counsel for the Respondents and the new labour officer interpreted to be Mr. Apuret's decision of the Claimant's complaint.

After carefully analysing the Chronology of the events before the labour officer, we established that his mode of communication to the parties was by written correspondences. This is evidenced by the correspondences between him and the Executive Director dated 3/5/2019 which were also copied to the Claimant and the letter dated 13/05/2019, to the effect that, on 7/5/2019, the Claimant was invited to attend a meeting with the BOD and management and in the meeting, it was agreed that he should return to Respondent and meet with all its Organs and report back to the Labour Officer, on 10/05/2019. It further states that:

*“... Nevertheless, it was confirmed that you were not dismissed but re-allocated to another office which is equivalent to your qualification-finance Officer GIZ GOAL project, by exercise of fairness by the BOD of TAC after receiving donors directives requiring your immediate removal from DGF funded project.*

*unfortunately, you declined to take this three times before the organs in TAC.*

*Finally, this office finds no fault with the said defendant and is here by cleared.”*

However, we did not find any correspondences regarding the communication/invitation referred to by the labour Officer, regarding the invitation to the Claimant to attend a meeting with the BOD and Management and report back to him on 10/05/2019. We also found no record of the said meeting as proof that, the Labour Officer actually met with the BOD and Management in the absence of the Claimant or any correspondence from the Claimant indicating that he was not willing to attend the said meeting. In fact, we did not believe that, the Claimant who had earlier written to the same labour officer requesting him to cause a meeting with the BOD and Management instead of the Executive Director would turn down an opportunity to meet with them, when called upon to do so.

Given that the Claimant was not in Court to defend this Preliminary Objective, and given the absence of evidence to prove that the conciliation meeting referred to in the Labour officer's letter of 13/05/2019, actually took place and the Claimant locked himself out of the conciliation process, we are not convinced that the meeting took place and even if it did, there is no

evidence to indicate that the Claimant was aware of it or that he refused to attend it.

We are therefore inclined to agree with Counsel for the Respondent that, this matter has no basis upon which it can be considered as a reference to because the labour office did not furnish any record or report of the action he took when handling it, to enable this court to determine how it was resolved, in light of the provisions under Section 13(1)(a) of the Employment Act. This sub section empowers a labour officer to resolve a matter by applying either of 3 methods stated therein, nor does it meet the requirements to be considered an Appeal as provided under section 94 of the Employment Act and Rule 24 of the **Labour Disputes (Arbitration and Settlement) (Industrial Court Procedure) Rules of 2012**, because there is no record of proceedings on which the purported labour officers decision is based to enable the parties to the complaint and the Claimant in particular, to file an Appeal in accordance with the law applicable.

We however, noted that the in his initial communication to the Executive Director dated 3/05/2019, the labour officer invited the ED for a meeting to settle the matter, which in our view was an indication that he had opted to use conciliation. The purported decision dated 13/05/2019(supra) also states that, the Claimant was expected to meet with the BOD and Management and report back to him.

Although as already discussed we are not convinced that the meeting took place, we strongly believe that, the Labour officer undertook to resolve this matter by conciliation, therefore the decision of the labour officer in the letter of 13/05/2019, moreover without any record of any proceedings or

minutes of the purported meeting between the BOD and Management is untenable.

We have no doubt in our minds that this matter is indeed improperly before this court not because it was properly and completely determined by the labour officer as claimed by the Respondent, but because the labour officer made a decision based on a conciliation process which is illegal. Section 13(1)(a) which provides that:

*(1) A labour officer to whom a complaint has been made under this Act shall have the power to;*

*(a) Investigate the complaint and any defense put forward to such a complaint and to settle or attempt to settle any complaint made by way of conciliation, arbitration, adjudication or such procedure as he or she thinks appropriate and acceptable to the parties to the complaint with the involvement of any Labour Union present at the place of work of the complainant;*

This court's holding in an preliminary objection raised in **Sure Telecom Uganda Limited vs Brain Azemchap LDA No. 005 of 2017** resolved the ambiguity in the poor drafting of by providing that a labour Officer in exercising the powers to resolve a complaint filed before him or her as provided under section 13(1) he or she will be expected to apply only one of the three methods, that is either conciliation or Arbitration or Adjudication. Therefore, where the labour officer is not able to resolve the matter with the method chosen her or she cannot invoke another method because it would cause a conflict of interest and an injustice to the parties. In such circumstances the labour officer is expected to either refer the matter to

another labour officer for the new labour officer to apply another method to resolve the complaint or to the Industrial Court.

Having established that the Labour Officer in this case made a decision based on a conciliation process and given the lack of evidence that the purported conciliation actually took place, this matter is referred to the Commissioner labour to appoint another labour officer to handle it.

No order as to costs is made.

Delivered and signed at Jinja by

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

**PANELISTS**

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

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

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

**DATE: 16/03/2022**