**THE REPUBLIC OF UGANDA**

**IN THE INDUSTRIAL COURT OF UGANDA HOLDEN AT JINJA**

**LABOUR DISPUTE APPEAL NO. OO3/2018**

**ARISING FROM LD. NO. 220/2017**

**BUSOGA UNIVERSITY & ANOR …………………………………….APPELLANT VERSUS**

 **KIIZA MOSES …………………………... RESPONDENT**

**BEFORE**

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

**PANELISTS**

**1. ADRINE NAMARA**

**2. MATOVU MICHEAL**

**3. SUSAN NABIRYE**

**RULING**

This appeal lies from the decision of Mr. Batuuka Samuel, the Labour Officer, Iganga District, on the 18/12/2017 in Labour Claim No 220 of 2017. The grounds of the appeal are that:

1. The labour officer erred in law in making an award against the appellant who was not afforded a fair hearing to be part of the proceedings and never given adequate opportunity to file a response.
2. The Labour Officer erred in law and fact when he made an award exparte without affording a fair opportunity to the appellant to present their case.
3. The Labour officer erred in law when he concluded that the appellant was aware of the nature of the claim without sufficient disclosure.
4. The Labour Officer acted illegally with bias and closed the appellant out of the hearing illegally and in collusion with the respondent.
5. The Labour Officer erred in law and fact when he made an award against the appellant without evaluating on record thereby arriving at a wrong decision.

The Appellants prayed that court allows the appeal and that the Labour Officer’s decision is quashed and or set aside.

That the appellant be served with all documents and also be given an opportunity to defend herself against the claim on merit and for Costs of the appeal.

Both parties filed submissions.

**BREIF FACTS OF THE APPEAL**

On the 5/10/2017, the respondents filed a labour complaint against the Appellants before the labour Officer Iganga. On the 16/10/2017 the respondents replied to the complaint seeking for disclosure of further documents in support of the claim. Instead of furnishing the documents the labour officer fixed the matter for hearing on the 14/11/2017.

The appellants nor their counsel appeared for the hearing and the Labour Officer proceeded to hear the matter exparte hence this appeal.

Before we consider the submissions of counsel we think that this appeal is premature before this Court for the following reasons.

Section 94(1) of the Employment Act provides that:

***“ 94. Appeals***

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.”***

Rule 24(1) of labour Disputes (Arbitration and settlement) (Industrial Court Procedure) Rules, 2012 provides that:

1. ***“A party who is dissatisfied with a decision of a labour officer on a complaint made under Section 13 of the employment Act 2006, or sections 4 and 5 of the Act may appeal to the Court.”***

These provisions are however silent on what should happen in cases where a Labour Officer hears a matter exparte. This court in STANBIC BANK VS KARUNGI CHREISTINE LABOUR DISPUTE APPEAL No. 29/2016 reasoned that the correct procedure to address this lacuna was by proceeding under Order 9 rule 27 of the Civil Procedure Rules which provides that:

***“In any case in which a decree is passed ex parte against a defendant, he or she may apply to the court by which the decree was passed for an order to set it aside; and if he or she satisfies the court that summons was not duly served, or that he or she was prevented by any sufficient cause from appearing when the suit was called on for hearing, the court shall make an order setting aside the decree as against him or her upon such terms as to costs, payment into court or otherwise as it thinks fit and shall appoint a day for proceeding with the suit, except that where the decree is of such a nature that it cannot be set aside as against such defendant only, it may be set aside as against all or any of the other defendants also.***

In that case the court reasoned that, ***“although the Employment Act does not confer upon the Labour officer the same powers of a Court of Judicature with regard to setting aside ex parte decisions, it is our considered opinion that in the spirit of Order 9 rule 27, the appropriate remedy for an aggrieved party in such a case, would be first to apply to the Labour Officer to have the matter set aside, after satisfying him or her that there was good cause for not appearing in the first place. It is only when the Labour Officer denies or refuses to set aside the decision that the aggrieved party can then apply to the Industrial Court to have it set aside and not bring it as an appeal. The lacuna in the employment Act notwithstanding, we do not think that the framers of the Act intended to clog the Industrial Court with appeals arising out of dissatisfaction with ex parte decisions made by Labour Officers.”***

We think that a party should not take strategic advantage not to attend the proceedings before a Labour Officer on the supposition that the Labour officer has no powers to compel their attendance and the belief that by not attending the decision arising from the exparte proceedings will not be binding.

The Industrial Court is a Court of reference and matters brought before it, must be filed before the Labour Officer first or be brought under any other law, as a matter of Law.(see ***(Section 8 of the Labour Disputes(Arbitration and Settlement) Act, 2006)***. We lay emphasis on our belief that the framers of the Employment Act (supra) notwithstanding the lacuna pointed out above did not intend to clog the Industrial Court system with such appeals.

In the premises this appeal is premature and incompetent before this court. It is therefore struck out.

Delivered and signed by;

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

**PANELISTS**

**1. MS. ADRINE NAMARA …………….**

**2. MR. MATOVU MICHEAL …………….**

**3. MS. SUSAN NABIRYE …………….**

**DATE: 29/03/2018**