**THE REPUBLIC OF UGANDA**

**IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA**

**LABOUR DISPUTE APPEAL No.24 OF 2015**

**ARISING FROM LABOUR DISPUTE NO 02/12015**

**DAISY OWOMUGASHO,**

**THE COUNTRY DIRECTOR,**

**THE HUNGER PROJECT UGANDA …………….. APPELLANT**

**VERSUS**

**BALABA BILL ………..……RESPONDENT**

**BEFORE:**

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

**PANELISTS**

**1.MS. ROSE GIDONGO**

**2.MS. BEATRICE ACIRO**

**3. MR. JACK RWOMUSHANA**

**AWARD**

This Appeal arises out of the decision of the Labour Officer Iganga which was delivered on 19/11/2015. It was brought under Section 94(1) of the Employment Act, 2006, and the Labour Disputes (Arbitration and Settlement) Act 2006.

**BACKGROUND**

The Respondent was employed by the Appellant Company. He filed Labour Complaint No.02 of 2015 against Daisy Owomugasho, the Country Director of the Hunger Project for breach of contract of employment. On 19/11/2015, the Labour officer heard and determined the matter in favour of the Respondent. The Appellant being dissatisfied with the decision of the labour officer filed this Appeal on the following grounds:

1. **The District Labour Officer erred in law when he entertained a complaint that was barred by limitation.**
2. **That the District Labour Officer erred in law when he, without the complainant specifically and particularly pleading fraud or forgery held that the Appellant’s contract of employment dated 1/02/2014 was a forgery.**
3. **That the District Labour Officer erred in law and in fact when he in the absence of the primary contract, held that the complainant had a valid contract running for 2 years from 24/02/2014 to 31/01/2016.**
4. **That the District Labour Officer erred in law and in fact when he held that the termination of the Respondent’s contract of employment was unlawful and unfair.**
5. **That the District Labour Officer erred in law and fact when he held the Appellant was a proper party to the suit by way of vicarious liability.**
6. **That the District Labour Officer erred in law when he awarded excessive damages.**
7. **That the District Labour Officer erred in law in taking into consideration matters that were not canvassed or proven in evidence.**
8. **That the District Labour Officer erred in law and in fact when he failed to properly evaluate the evidence on record and came to the wrong conclusion.**

The Appellant prayed that, the orders of the Labour officer are set aside and the costs in this court and the court below are awarded the him.

**SUBMISSIONS**

Citing **Kifamunte Henry vs Uganda, SCCA No. 10 of 1997,** it Counsel submitted for the Appellant that, this being a first Appellate Court, it was required to review the evidence of the case and make its own inferences in favour of the Appellant. He went further to state that, he would address only grounds 1-6 because grounds 6 and 7 are intertwined with these grounds.

Section 94 of the Employment Act provides that:

*“… (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 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 3, 4 and 5 as set out above, offend Section 94(3) having been framed on issues of law and fact, without seeking leave of this court to do so. Therefore, we are inclined to strike out these grounds and proceed to determine grounds 1, 2 and 8 which notwithstanding its omnibus drafting, raises some points law.

**Ground 1.** **The District Labour Officer erred in law when he entertained a complaint that was barred by limitation.**

It was the submission of Counsel that, although the Appellant raised a matter of law to the effect that, the Respondent had filed his complaint out of time, contrary to Section 71 of the Employment Act, the labour officer at page 6 of his Judgement chose to ignore the application. He also relied on **Eng. John Eric Mugyenyi vs Uganda Electricity Generation Company Ltd. CA No. 167 of 2018, Apollo Twesigye Vs Aids Support Organisation LDC No. 292/2015,** which are to the effect that, where a complainant brings a complaint to the labour officer outside the prescribed time, he or she must apply to be allowed to file the complaint and the labour officer should have considered whether the complainant has shown sufficient cause to be allowed to be heard. He also cited John Eric Mugyenyi (supra) for the holding that;

*“… limitation of time under section 71 of the Employment Act not being absolute and being subject to the exclusive discretion of the labour officer* *to admit the complaint out of time, and having found that such discretion was exercised, we hold that the complaint was filed out of time.”*

According to Counsel for the Appellant, the Labour Officers decision in the instant case suffers the same fate as Eric Mugenyi(supra), because he erred in law when he ignored the Appellant’s application under section 71, to entertain the matter out of time, hence coming to a wrong decision.

The Respondent did not file any submissions on this ground.

**DECISION OF COURT**

We have carefully perused the record of proceedings which Counsel for the Appellant referred to at page 6 and 22 and we found nothing to indicate that the Appellant actually made any application regarding the complaint being barred by time. This notwithstanding, we shall resolve this matter to set the record straight.

The Court of Appeal in **Eng. John Eric Mugyenyi vs Uganda Electricity Generation Company Ltd. CA No. 167 of 2018,** which the Appellant relied on to discredit the Labour officer’s decision to proceed notwithstanding the Appellant’s application to bar the Respondent’s complaint from proceeding on grounds that it was time barred, stated as follows:

*“ … we conclude without contradiction to the above (decisions in* ***Makula International Ltd vs His Eminence Cardinal Nsubuga and Another [1982] HCB and Sitenda Sebalu Vs Sam Njuba and another Election Petition Appeal No. 26/2006)(inclusion ours),*** *that a limitation period is a bar to an action but section 71 of the Employment Act just prescribes the period within which to lodge a complaint with the Labour officer with the rights of the Labour officer to allow the complaint outside the period of three months. It does not limit the powers of the labour office as to when to allow the application(emphasis ours). It only requires the complainant to justify the filing of the complaint outside the period of three months. In this case the labour officer without making notes allowed the complaint to be filed. In any case he had the power to abridge the time within which to allow the complaint to be filed. …”*

According to this holding, Section 71 of the Employment Act, empowers the labour officer to “… *to allow the complaint outside the period of three months .It does not limit the powers of the labour office as to when to allow the application(emphasis ours).*

Therefore, the fact that the Labour Officer in the instant Appeal handled the matter out of time is not an issue because he had power/discretion to do so and Section71(2) does not make it mandatory for the labour officer to give any reasons for this decision, although it is a best practice to give reasons for his or her decision.

In the circumstances, we have no reason to fault the labour officer for proceeding outside the prescribed time. This ground therefore fails.

**Ground 2. That the District Labour Officer erred in law when he, without the complainant specifically and particularly pleading fraud or forgery held that the Appellant’s contract of employment dated 1/02/2014 was a forgery.**

Counsel for the Appellant contended that, the labour officer erred when he made a decision that the Respondent’s contract of 1/2/2014, was a forgery yet it was not part of his pleadings, contrary to Order 6 rule 3 of the Civil Procedure Rules. Counsel contended that, the decision as to whether the letter was a forgery or not should have been preceded by particularizing the forgery alleged. Therefore, the Labour Officer misdirected himself when he ignored the provisions of order 6 rule 3 hence coming to a wrong conclusion that the contract of 1/2/2014 was a forgery.

**DECISION OF COURT**

Order 6 rule 3 of the Civil Procedure Rules provides that;

*“In all cases in which the party pleading, relies on any misrepresentation, fraud, breach of trust, willful default or undue influence and in all other cases in which particulars may be necessary, the particulars with dates shall be stated in the pleadings…”*

Indeed, Order 6 rule 3 makes it mandatory for a plaintiff or Claimant relying on fraud, misrepresentation, breach of trust, willful default or undue influence to state the particulars of the same, in his or her pleadings.

After carefully perusing the complaint which the Respondent filed before the labour Officer on 28/07/2015, at page 39-41 of the record of Appeal, we established that, the Respondent’s contention was that, his 2-year contract commencing 1/02/2014 was prematurely terminated by a letter dated 17/7/2014. The letter indicated that his contract would not be renewed with effect from 30/08/2014. However when he contested this, the Appellant apologized and offered him a 3 month’s contract from 15/08/2014 to 15/11/2014. It was Counsel’s submission that, the Appellant forced the Respondent, to hand over his office on 12/09/2014.

A careful analysis of the Labour officer’s, decision at page 11 of his judgement, indicates that, he had to analyze the contract which the Appellant issued to the Respondent on 1/2/2014, and the 3 months contract which was issued from 15/08/2014 to 15/11/2014, before determining the issue whether the Claimant had a valid contract of employment with the Respondent and the Hunger Project between 2014 and 2016. According to the labour officer,

*“…Whether the contracts of employment were forged was a bone of contention between the parties. The Respondent insisted that the original copies be produced by the complainant. The complainant said he signed his copy and returned to the employer who until the date of termination had not returned a copy to the complainant as the procedure was. … looking at the two contracts alleged to have been entered by Complainant and Respondent gross mismanagement of the contract’s formulation can be observed. One is made on 1/2/2014 ending 30/04/2014. Renewal is made on 18/08/2014 to end November 2014. The renewal comes 31/2 months with different wording from earlier one. I concur with the complainant who wondered why someone who is given a 3 months contract is entitled to annual leave of 22 days and entitled to a gross salary of 14, 942,352/- and a close of termination giving 60 days’ notice. This contract of 1/2/2014 I fi d it very irregular and in contradiction with employment laws existing in Uganda….”*

In her analysis of the different contracts which were adduced in evidence by both parties, the labour officer compared the Respondent’s handwriting on the contract presented by the Respondent dated 24/2/2014 and the one presented by the Appellant, dated the same date and found that, although the handwriting on both contracts was the same, the contract dated 15/08/2014, was not executed by the parties and in her view, this raised an issue of forgery.

We have carefully perused the said contracts as an Appellate Court and established that, indeed there were 2 contracts one commencing on 1/02/2014 to 31/01 2016 which was not executed by the Respondent alone. The 3 months contract dated 15/04/2014 to 15/11/2014, was only signed by Owomugasho Daisy, the Director of the Appellant, but it did not clearly explain why the Contract duration was reduced to 3 months. We also found it peculiar that, a 3 months contract running from 15/08/2014 to 15/11/2014 contained terms which would ordinarily be in a 12 month contract such as; entitlement to annual salary, contribution to NSSF sick leave and 30 days annual leave. We also found that, on 17/07/2014, the Appellant wrote to the Respondent about non- renewal of his contract, but it retracted the same on 15/08/2014 on grounds that it was issued in error. Given the glaring ambiguities in the different contracts which were issued to the Respondent and given that they were not properly executed by the parties, we associate ourselves with the observation of the labour Officer, that the Appellant had some issues regarding the management of its Human Resources function. There was also nothing on the record to explain the circumstances that led to the changes which were made in the terms of the same contracts.

It is also our considered view that, given that the labour officer is not a judicial officer, the discrepancies in the contracts which she referred to as a forgery, was not construed as a Judicial officer would under criminal law because she felt that the analysis of the documents, did not require a hand writing expert to determine that they were manipulated. In the circumstances, we cannot fault the labour officer who is not a judicial officer, for determining the matter the way she for stating that the contracts were forged, because, given that she is not a Judicial officer, she could not invoke Order 6 rule 3 of the Civil Procedure rules to enable her examine the authenticity of the various contracts which were purported to be the basis of the employment relationship between the Appellant and the Respondent. In any case she was expected to resolve this issue by analysing the evidence placed before her in order to make a decision, which she did. We therefore find no error on her part regarding this ground. It is therefore disallowed.

**9.That the District Labour Officer erred in law and in fact when he failed to properly evaluate the evidence on record and came to the wrong conclusion.**

1. **finding that the Claimant had a valid contract for 2 years from 24/02/2014 to 31/01/2016, in the absence of the primary contract.**

A perusal of the Labour Officer’s award at page 13, on the issue whether Balaba had a valid contract of employment she stated as follow:

*“… If the Hunger project had changed from the 2-year contracting period to 3 months period, the organisation did not provide any convincing reason as to the change of their employee in this case the complainant. this is argued by the complainant who said 3 months contract was a forgery. I looked at both the contracts one for 3 months properly signed by the complainant alone and alleged to have been sent to the Headquarters for endorsement. The date and signature and wording on the two contracts are the same. Iam suspicious that, the Hunger project plucked off the paper signed for the two years and placed on the 3 months contract. The complainant actually denied signing on the contract of 3 months’ and I find his argument correct.*

*I reject the contract 1st February, 2014 ending 30th April, 2014 because in crafting it there are major inconsistencies .*

*(i)In subsection 3 it is mentioned that “your total annual compensation including salary and benefits is SHs. 14, 942, 352/=. It raises a question as to why someone employed for 3 months should be given such an annual compensation.*

*(ii) section 4 mentions entitlement to 22 consecutive working days as annual leave*

*(iii) Section 5 provided 30 days sick leave per year. it is not possible for the contract running for 90 days to have a privilege.*

*(iV) section 10 mentions termination by either party giving 60 days’ notice in writing….”*

It was therefore, her decision that, the Respondent in this Appeal had a valid contract because the 3 months contract dated 15/08/2014 was altered to suit the employer and to show that, the Respondent did not sign it and it was issued 3 and 1/2 months after the previous one was issued. She also stated that the Respondent was not given any opportunity to explain his refusal to sign the said contract which she considered and illegality.

As already discussed above, when we re-evaluated the evidence on the record, we established that, the contracts relied on by the parties at the hearing before the Labour officer,g had a lot of ambiguities some of which were correctly pointed out by the labour officer as stated above. We also established that, the terms stipulated in the contracts commencing 1/02/2014, to 30/04/2014 had contradictions especially regarding its duration and the contract commencing 15/08/2014 to 15/11/2014 was not signed by the Respondent, while the one commencing 1/02/2014 to 1/01/2016 was not executed by either party. This court in **Akonye David vs Libya Oil LDC 082/2014,** heldthat:

*“…The burden of preparing a contract is placed on the employer because it is the employer who sets the terms and conditions of the employment. The burden of proving the provisions of any allegations regarding the terms of the employment contract therefore remain on the shoulder of the employer…* *The employer is expected to keep written records of all employees employed by him or her, even for a number of years after they have been terminated.*

It was therefore the responsibility of the Employer to provide the correct terms of employment and not the employee. It was the evidence of the Appellant that, she did not issue the contract of 1/2/2014 to 1/01/2016, but she did not provide the Labour officer with the correct contract that was issued for that period and as already seen, the two 3 months contracts which were purportedly issued by the Appellant, were not valid having not been properly executed by the parties.

In light of the holding in **Akonye**(supra), the Appellant had the responsibility to prepare and give the Respondents clear terms of employment and therefore, the ambiguities identified by the labour officer in the different Contracts, cannot be visited on the Respondent. We are also persuaded by the holding in the Kenyan case in **Mwangi Ngumo vs Kenya Institute of Management Ind. cause No. 851/2009,** in which it was stated that, “*If a contract of employment is drawn by the employer and even if it is not drawn by the employer, it cannot be shown that the employer entered into it by duress or coercion, any ambiguities in the contract should be construed against the party who drew the contract ( contra. proferntuem. rule)*.

Therefore, given the ambiguous in the contracts which the parties relied on as evidence before the Labour officer and having also established the same contracts were not properly executed by the parties, therefore they were invalid. This notwithstanding, the Claimant continued orking until he was asked to hand over office on 8/09/2014.

However, we do not associate ourselves with the Labour Officer decision about the validity of the Respondent’s contract on ther belief that the contracts were a forgery by the Appellants. We have already established that, none of the contracts admitted in evidence before her was valid. However, there was no evidence to dispute that the Claimant continued in the employ of the Appellant until he was asked to hand over office in September 2014,therefore by implication he was still employed. This Court in **Ochuru Henry vs ACE Global Ltd LDR No. 164/2017,** held that:

*“Where the contract has expired and it is not renewed within 7 days as provided under Section 65(1)(b)( supra) and the employee continues in the service of the employer, the contract is presumed to have been automatically renewed.”*

Section 94(3) provides that:

“*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.”*

In the circumstances, the labour officers finding on the validity of the contract is modified to state that, the Respondent’s contract was automatically renewed when he was allowed to continue working without clear terms of employment, after the expiry of his 2013 contract. With the modifications made by this court, the labour officer was correct to decide that, by the time the Claimant was asked to hand over office he had a valid contract with the same terms as the ones set in the 2013 contract.

**Finding on the termination of employment.**

We have carefully re-evaluated the evidence on the record and found an email dated 8/9/2014, from Daisy Owomugasho to the Respondent, directing him to hand over his office by 22/08/2014 because he refused to sign the offer of employment dated 15/08/2014. As already stated, we found nothing on the record regarding the genesis of this particular contract or its validity. We therefore, found no justification for his termination given the ambiguity of the terms of his employment. Even if the Appellant considered the refusal to sign such a fundamental issue, the Respondent was still entitled to a hearing as provided under section 66(4). This was not the case, in the circumstances, the labour officer was correct to find that the Respondent’s contract was unlawfully terminated.

**6.That the District Labour Officer erred in law when he awarded excessive damages.**

Counsel submitted that, the labour officer made excessive awards when he ordered the following:

*“ The hunger project should pay:*

1. *salary for the month of August amounting to shs. 1,245,000/=*
2. *salaries worth she. 24,903, 920 as monies for 16 months remaining on the contract*
3. *2 months salary in lieu of notice shs 1,290, 392,*
4. *2 months payment in lieu of ungone leave of 2, 490, 292/=*
5. *general damages in form of compensation for lost earnigs being 20% of the complainant’s gross pay for a period of 14 years worked amounting to 3,486,000/- and*
6. *All orders should earn interest of 12% per year until finaicial settlements made.”*

Counsel contended that, this decision was a departure from the principles well established under section 93 and 78 of the employment Act. It was his submission that the Respondent was lawfully terminated therefore, he was not entitled to an award of any form of damages or payment in lieu of notice. He also argued that he was not entitled to payment in lieu of un gone leave because he did not demonstrate that he had any interest in taking leave. He relied on **Lamunu Faith vs Krotchet Employees SACCO and Krotchet Kids Uganda LD No. 0006/2016**  for the legal proposition that, where the employee did not show interest in taking leave when he or she is aware of this entitlement, he or she is taken to have willingly forfeited his or her entitlement to leave. He contended further that, special damages had to be pleaded and proved and the Respondent having not done so, he cannot claim them. He also relied on **Steven Ochwo vs Veterinaires San Frontieres Belgium, LD No.2019 of 2014,** for the same proposition. He insisted that, the Labour officer in the instant case lacked the Jurisdiction to award damages and future earnings as he did when he ordered the payment of *salaries worth shs. 24,903, 920 as monies for 16 months remaining on the contract.* He also relied on **Equity Bank Vs Mugisha Musimenta Rogers (Labour Dispute Appeal No. 26/2017,** to the effect that such an award is speculative and an award of general damages is sufficient rather that a claim for salary for a period not worked for by the employee.His prayer was that this particular decision is set aside and the Appeal is allowed with costs.

**DECISION OF COURT**

Section 13 of the Employment Act is the basis of the Labour officer’s power to handle labour complaints. It provides as follows:

***“13. Labour Officer’s power to investigate and dispose of complaints***

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

1. *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; and*
2. *Require the attendance of any person as a witness or require the production of any document relating to the complaint after reasonable notice has been given;*
3. *Hold hearings in order to establish whether a complaint is or is not well founded in accordance with this Act or any other law applicable and the labour officer shall, while conducting the hearing employ the most suitable means he or she considers best able to clarify the issues between the parties.*
4. *Presume the complaint settled if the complainant fails to appear within a specified period; or*
5. *Adjourn the hearing to another date.*
   1. *The labour Officer shall, while exercising the powers under paragraph(a) state the reasons for his or her decision on a complaint.”*

Section 77 of the Employment Act provides that; where the labour officer decides that an employee’s complaint of unfair 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 in section 78.

Section 78 provides as follows:

*Compensatory order*

1. *An order of compensation to an employee who has been unfairly terminated shall, in all cases, include a basic compensatory order for four weeks wages*
2. *An order of compensation to an employee whose services have been unfairly terminated may include additional compensation at the discretion of the labour officer, which shall be calculated taking into consideration the following-*
3. *the employee’s length of service with the employer*
4. *the reasonable expectation of the employee as to the length of time for which his or her employment with that employer might have continued for the termination;*
5. *the opportunities available to the employee for securing comparable or suitable employment with another employer,*
6. *the value of any severance allowance to which an employee is entitled under part ix*
7. *the right to press claims for any unpaid wages, expenses or other claims owing to the employee*
8. *any expenses reasonably incurred by the employees as a consequence of the termination*
9. *the conduct of the employee towhich ans extent caused or contributed to termination.*
10. *any failure by the employee to reasonably mitigate the losses attributable to unjustified termination*
11. *any compensation, including ex gratia payments in respect to termination of employment paid by the employer and received by the employee*
12. *the maximum amount of additional amount compensation which may be awarded under subsection (2) shall be three month’s wages of the dismissed employee and the minimum shall be one month’s wages*

This Court in **Netis vs Walakira Labour Appeal No.022/2016,** and subsequent cases, held that a Labour officer has no jurisdiction to award any form of damages except what has been provided for under section 78 (1) and (3) (supra). The labour officer may give compensation which is capped to a maximum of 4 months wages of the employee in issue.

We are therefore, inclined to agree with Counsel for the Appellant that some of the awards the labour officer made were excessive, given Section 78 of the Employment Act and in accordance with section 94(3) this court shall confirm or modify or set aside those awards as follows:

1. **Salary for August amounting to Ugx. 1,245,000/-.**

The Respondent was directed to hand over office on 8/9/2014, there is no evidence on the record to indicate that he was paid for the month of August. In the circumstanced this award is confirmed.

1. **Salaries worth shs. 24,903,920/- as monies for 16 months remaining on the contract.**

Salary arrears refer to payment overdue for work completed from a previous pay periods. It is trite that, once an Employment contract has been terminated, unlike an ordinary contract, Courts cannot make an order for specific performance of an employment contract and the only remedy to an employee in issue is the award of General damages in addition to other remedies prayed for under the Employment Act. We are fortified by the Supreme Court’s holding in **Stanbic Bank Vs Kiyimba Mutale SCCA No. 2/2010,** which stated thus:

“… *it is trite law that normally an employer cannot be forced to keep an employee against his will. There can be no order for specific performance in contracts of employment.(emphasis ours) However, the employer must be prepared to pay damages for wrongful dismissal….”*

This court in **Richard Kigozi vs Equity Bank Uganda Limited, LDC No. 115 of 2014,** held that, the claim for earning after termination of employment is speculative therefore, it cannot stand. In the circumstances, the labour officer erred when he made an award for salaries worth Ugx. 24, 903, 920/- for the remaining 16 months. It is therefore set aside in accordance with section 94(3) (supra).

***c)2 months’ salary in lieu of notice worth shs. 1,290, 392.***

We established that the Respondent’s contract was automatically renewed after the expiry of the 2013, 1 year contract and he was terminated after serving 8 months of the 1 year contract. Section 58 entitled him to notice before termination. He was therefore entitled to 1 month’s salary or payment in lieu therefore amounting to Ugx. 1,245,000/-as provided under section 58(3)

***d) 2 months payment in lieu of ungone leave of 2, 490, 292/=***

There was no evidence on the record to indicate that, the Respondent applied for and was denied leave. As stated by Counsel for the Appellant, where the employee has not demonstrated interest in taking leave, he or she will be taken to have willfully forfeited the leave.

***e) General damages in form of compensation for lost earnings being 20% of the complainant’s gross pay for a period of 14 years worked, amounting to 3,486,000/- and***

As already discussed, the labour officer has no jurisdiction to award damages save for what is provided for under section 78(3), that is *the maximum amount of additional compensation which may be awarded under subsection (2)* that is three month’s wages of the dismissed employee and a minimum of one month’s wages. This award is therefore set aside in accordance with section 94(3) of the Employment Act.

1. ***All orders should earn interest of 12% per year until financial settlements made.***

The labour officer not being a judicial officer has no jurisdiction to award interest on pecuniary awards made. (see **Eric Mugenyi**(supra)). Therefore, this award is set aside.

In conclusion this Appeal partially succeeds. No order as to costs is made.

delivered and signed by:

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

**PANELISTS**

**1.MS. ROSE GIDONGO …………….**

**2.MS. BEATRICE ACIRO ……………**

**3. MR. JACK RWOMUSHANA ……………**

**DATE…………………….**