**THE REPUBLIC OF UGANDA**

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

**LABOUR DISPUTE APPEAL No.13/2020**

**ARISING FROM NJERU NO.41/2019**

**INSIGHT MANAGEMENT LTD …………….. CLAIMANT**

**VERSUS**

 **ANGUYO RONALD …………….RESPONDENT**

**BEFORE:**

**1. THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE**

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

**PANELISTS**

**1. MR. ABRAHAM BWIRE**

**2. MS. JULAIN NYACHWO**

**3. MR. MAVUNWA EDSON**

This is an appeal arising out of the decision of the Labour officer of Njeru Mr. Geofrey Mpata in Labour Complaint **NO. 47/2019.**

**BACKGROUND**

On 05/06/2014, the Respondent was employed by the Appellant Company, as house keeper and he served for 5 years. According to the Appellant, on 24/06/2019, he resigned from employment. The Appellant advised him about his entitlements, following which, on 29/07/2019, he went to the labour office and lodged a complaint about the computation of these entitlements. The labour officer heard the matter exparte and entered Judgement for the Respondent.

The appellant being aggrieved with this decision decided filed a notice of appeal on 30th July 2020 and the memorandum and record of Appeal on the same date.

**REPRESENTATION**

Grace Nabakooza of Federation of Uganda Employment of ……. Kampala was for the Appellant and Hategeka Humprey of Tuyingire and Co. Advocates Jinja was for the Respondent.

**GROUNDS OF APPEAL**

1. ***The Labour Officer erred in law when he wrongly evaluated the evidence on the record thereby reaching a wrong decision that the Respondent was unfairly and unlawfully terminated by the Appellant?***
2. ***The Labour Officer erred in law and fact when he failed to appropriately apply the evidence on record thereby awarding overtime to the respondent amounting to Ugx. 12, 883,299 contrary to the requirements of section53 of the Employment Act, 2006.***
3. ***The Labour Officer erred in law when he awarded the Respondent remedies for unfair termination amounting to Ugx. 1,350,000.***
4. Ground 1: ***The Labour Officer erred in law when he wrongly evaluated the evidence on the record thereby reaching a wrong decision that the Respondent was unfairly and unlawfully terminated by the Appellant?***

It was submitted by Grace Nabakooza, Counsel for the Appellant, that the record of appeal indicates that the Respondent terminated his own employment when he resigned via letter dated 24/06/2019. She contended that there was no evidence to show that it was the Appellant who terminated him and in fact her letter to the Labour officer dated 29/07/2019 stated that he resigned. Therefore, the labour officer erred to hold that the Appellant should have given him a hearing. She relied on **Etuket Simon vs Kampala Pharmaceutical Industries (1996) LDC No.272/2014,** which was to the effect that resignation is a method of terminating employment at the instance of the employee and an employee has the freedom to terminate his or her employment by resignation. However, resignation could amount to constructive dismissal if it is prompted by the unreasonable conduct of the employer towards the employee as provided under section 65(1)(c) of the Employment Act, 2006.

According to Counsel, the record of proceedings in the matter before the labour officer merely mentioned that the Respondent was forced to resign in order to qualify for terminal benefits, without demonstrating how and who forced him to do so. She contended that the labour officer ought to have examined how the Respondent was forced out before making his decision.

Therefore, the Labour officer’s focus on the allegation that the Appellant did not grant the Respondent a fair hearing yet it was not necessary for the Respondent to be given a hearing because he had resigned was wrong. She insisted that the issue of unfairness and unlawfulness of termination of employment did not arise in this case because the Respondent freely resigned. Therefore, this ground should succeed.

In reply Counsel for the Appellant states that, the Respondent was cajoled to write his resignation letter if he was to get his benefits from the Respondent. However in the end, he was only given Ugx. 30,000/-, which he refused to acknowledge on the ground that Management did not explain how they had arrived at that computation. On the basis that the evidence was not rebutted by the Appellant, the Labour officer found it credible and believable and made an award in the Respondent’s favour. Counsel relied on **Vyas industries vs Diocese of Meru (1976-1985) EA 596, 598** in support of the legal proposition that

*“…it is settled law that a trial courts apportionment of liability by attributing degrees of blame or two to more tortfeasors involves individual choice or discretion and will not be interfered with on appeal save in exceptional circumstances, as where there is error of principle or where the apportionment is manifestly erroneous as to require interference by the Appeal Court, in this case the apportionment was based on wrong principles and the decision was manifestly wrong, and the appeal court interfered to give the correct ratios of negligence.”*

According to her, the labour officer properly apportioned blame to the Appellant on the strength of the evidence on record, and given that he had the benefit of hearing the Respondent and observing his demeanor, he should not be faulted for believing that he was forced into writing the resignation letter in the absence of evidence to the contrary.

**DECISION OF COURT**

Although the correct procedure under the Civil Procedure Rules SI71-1(CPR) under Order 9 rule 27 of the Civil Procedure Rules, is to the effect that a person aggrieved by an exparte judgement should apply to the Court that made the decree/award to have it set aside, the recent Court of the Appeal holding in **Eng. Eric Mugenyi Vs Uganda Electricity Generation Company Limited CA No. 157/2018,** stated that that a labour officer is not a judicial officer and therefore he or she is not governed by CPR. In our considered opinion therefore, to avoid a miscarriage of Justice, given that the law is silent on what remedy is available to a party who is aggrieved by the exparte award of a labour officer, following **Mugyenyi**(supra), the only remedy available to such a party would be to appeal against the decision of the labour officer before the Industrial Court.

Section 94(3) of the Employment Act, 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.”*

This court is therefore, duty bound to re-evaluate evidence in this appeal to avoid a miscarriage of Justice as it arrives at its own conclusion. Also see (**Banco Arab Espanol versus Bank of Uganda, Supreme Court Civil Appeal No. 8 of 1998).**

**RESOLUTION OF THE APPEAL**

Resolution of ground 1. ***The Labour Officer erred in law when he wrongly evaluated the evidence on the record thereby reaching a wrong decision that the Respondent was unfairly and unlawfully terminated by the Appellant?***

In his decision at page 4, the Labour officer took cognizance of the fact that employment can only be terminated in accordance with the contract or the law and held that the Respondent’s termination was unlawful because he was not accorded a fair hearing.

However, a re- evaluation of the evidence on the record of Appeal indicated that the Respondent in a letter dated 24/06/2019, stated that he was resigning from his duties as House Keeper. The letter stated in part as follows:

 *“I kindly write to inform the office that with effect with 1st July 2019, I will*

*Resign off my duties as house keeper. In Ecolab/Insight management Uganda limited. There are a number of factors which have not been indicated in this document for the reason of my resignation.*

*However, I would like to thank the management of such for sustaining my life for the last 5 years. I also do appreciate and thank the entire management for availing me support and opportunities which have helped me attain skills that has developed me socially, economically and mentally.*

*During my last 5 years of work, I have been so proud and committed to work; I have played all my necessary roles to the company, but it’s painful and heart full. It will remain in both my heart and brain doe someone to come and demolishes, depreciates, diminishes and in addition to mind shading a persons future in less than a minute.*

*With God, I know God cannot forget where I began with ecolab 5 years ago, the lord bearing my witness; he knows what is on ground that I have tried to inform the insight management.*

*Before I rest my pen, I have realized that the workers (housekeepers), are used like hens, no rights on site, for hens can be slaughtered at any time and forgotten after slaughter,*

*It’s on record, to try to something right, at the right time, in a right place and right day. I have resigned at the right time where, am still so energetic, with high potential and capacity to exercise opportunities in another field.*

*….”*

It is settled that resignation is a method of terminating employment at the instance of the employee and an employee has the freedom to terminate his or her employment by resignation. However, resignation could amount to constructive dismissal if it is prompted by the unreasonable conduct of the employer towards the employee as provided under section 65(1)(c) of the Employment Act, 2006.

However, even if an employee resigns in accordance with section 65(1)(c), there would still be no requirement for him or her to be given a hearing, because he or she would have terminated his or her employment. The only claim available to an employee in this case would be a claim for constructive dismissal which is unlawful termination on account of being forced to resign as a result of the unreasonable conduct of the employer. This court’s holding in **Nyakabwa Abwooli vs Security 2000 Limited LC No. 108/2014,** is to the effect that, the unreasonable conduct of an employer within the meaning of section65(1) (c ) of the Employment Act, must be illegal, injurious to the employee and must make it impossible for the employee to continue working. Therefore, an employee claiming constructive dismissal or forceful resignation must demonstrate that the conduct of the employer was illegal, injurious and rendered it impossible for him or her to continue working.

In the instant case, apart from the letter of resignation already cited above, we found no other evidence on the record to show that the Respondent was terminated by the Appellant nor did he demonstrate that the Appellant’s conduct was illegal, injurious and it rendered it impossible for the Respondent to continue working and caused him to resign. The resignation letter in our considered view was voluntary. As stated by Counsel for the Appellant, having voluntarily tendered his resignation to the Appellants, he terminated his own employment. As already discussed above, there is no requirement for a person who has terminated his or her own employment trough resignation to be accorded a hearing. Had the Labour officer carefully evaluated the evidence on the record, he would have established as we have, that the Respondent having not demonstrated any unreasonable conduct on the part of the Appellant, his resignation amounted to terminating his own employment, which did not require a hearing. Therefore, his holding that the Respondent’s termination was unfair and unlawful on grounds that he was not given a fair hearing was done in error. It is therefore set aside. Ground 1 succeeds.

Ground 2 ***The Labour Officer erred in law and fact when he failed to appropriately apply the evidence on record thereby awarding overtime to the Respondent amounting to Ugx. 12, 883,299/-, contrary to the requirements of section53 of the Employment Act, 2006.***

It was submitted for the Appellant that there was no documentary evidence to indicate that the Respondent worked overtime and she did not take into account that the Respondent took his annual leave and rest days which he was entitled to and this was not challenged, therefore the respondent did not work overtime. He relied on **OKiidi Ronald vs Delaru Construction Ltd (LDA No.156 of 2015).**

She insisted that the Respondent’s employment contracts dated between 01/12/2016 and 05/06/2014 stated that the Appellant Company operates in shifts of 7 days a week, therefore the labour officer should have relied on section 53(5) of the Employment Act 2006 before deciding that the Respondent should have worked 8 hours and therefore that he worked in excess.

According to her, given that the labour office did not reckon annual leave and rest days in the computation of leave days, overtime should be ignored and he did not plead it. Inin any case,, section 53(5) of the Employment Act is to the effect that, where employees work in shifts, it was permissible to work in excess of 10 hours, in any one day or 48 hours in any one week, where the average number of hours over a period of three weeks exceeds neither 10 hours nor 56 hours per week. She prayed that the labour officers award in the circumstances, should be struck off.

In reply, Counsel for the Respondent argued that given that the Labour office is not bound by rules of procedure he was not limited in making awards on claims not pleaded. Therefore, he was correct to make awards on overtime based on the evidence led on it and not controverted by the Appellant. Counsel asserted that the Labour officer relied on the Claimant’s testimony that he ended work at 7.00pm for 6 days a week for 5 years, working as house keeper from June 2014.

According to him, the labour officer properly applied the law under Section 53(8) of the Employment Act 2006, when he found that the Respondent worked for 12 hours a day, less 1 hour for lunch therefore, he was entitled to overtime pay.

He contended that Counsel’s submissions were from the bar and the only uncontroverted evidence was the Respondent’s evidence on the record, which indicated that the Respondent worked for 1839 days overtime which was never compensated.

**DECISION OF COURT:**

In **Kalyango Emmanuel vs Abacus Parenteral Drugs Ltd LDC No. 31 of 2018,** this Court held that: *“….the computation of overtime pay must be based on a record of the hours worked and a record of hours worked in excess of the hours agreed in the contract of service. The computation of overtime could also be agreed between the parties from time to time and where it is provided for under a contract of employment but no formula for calculating it is provided, Section 53(8) of the Employment Act(supra) would then apply.* The employee must provide evidence that he worked overtime.

Section 53(8) provides that:

***“(8) where in excess of hours of eight hours per day or forty-eight hours per week are worked, they shall, in the absence of a written agreement to the contrary, be remunerated at the minimum of one and a half times of the normal hourly rate if the overtime is on normal working days and two times of the normal hourly rate if the overtime is worked on gazetted public holidays.”***

Our re-evaluation of the evidence on the record revealed that, the Respondent’s last contract of 1/12/2016, provides under clause 4 that the

*“the employee acknowledges that our operations may operate seven days a week on different shifts.*

The previous one of 9/06/2014 provided that;

*“a. The employee acknowledges that our operations may operate seven days a week on different shifts, b. the working hours will be regulated by the employer…”*

We found nothing else on the record to prove that the Respondent worked from 7.00am and ended at 7.00 pm or that he worked on every gazetted holiday, for him to claim for overtime pay. Even if section 53 provides for overtime pay as already stated above, there must be a basis for its computation as provided under section 53(8).

The labour officer on page 5 of his award stated that he found no written agreement which was contrary to section 53(8) and on the basis of the evidence adduced by the Respondent, that believed that the Respondent worked from 7.00am to 7.00 pm and without testing the veracity of this claim, he made an award for overtime in the Respondent’s favour. Even if the Respondent’s evidence was not controverted by the Appellants, it is our considered opinion that, the labour officer should have verified the claim before making his award. In the absence of evidence to show what the Respondent worked in excess of the hours of work agreed in his contract of service and in the absences of a clear basis of the computation of overtime pay, we are inclined to agree with Counsel for the Appellants that the Labour Officer’s computation of over time pay had no basis and therefore the award of Ugx. 12, 883,299/- was done in error. It is therefore set aside. Ground 2 succeeds.

***3. The Labour Officer erred in law when he awarded the Respondent remedies for unfair termination amounting to Ugx. 1,350,000.***

The resolution of ground 1 resolves this ground. Having resigned his position voluntarily, the Respondent terminated his own employment, therefore he is not entitled to remedies for unlawful termination. The decision to award him Ugx. 1, 350,000/ as a remedy for unfair termination is therefore set aside. This ground succeeds.

The Appeal succeeds, the labour officers award is set aside in its entirety. No order as to costs is made.

Delivered and signed by:

**1. THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE .…………..**

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

**PANELISTS**

**1. MR. BWIRE JOHN ABRAHAM .…………...**

**2. MS. JULIAN NYACHWO ……………..**

**3. MR. EDSON MAVUNWA .…………….**

**DATE: 23/12/2020**