**THE REPUBLIC OF UGANDA**

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

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

**ARISING FROM LABOUR DISPUTE NO.1/4/02/2008**

**KASESE COBOLT CO. LTD ………………………….. APPELLANT**

**VERSUS**

 **DAVID KABAGAMBE …………………………... RESPONDENT**

**BEFORE:**

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

**PANELISTS**

**1.MS. HARRIET NGANZI MUGAMBWA**

**2.MR. EBYAU FIDEL**

**3. MR. FX MUBUUKE**

**AWARD**

**BACKGROUND**

On 2/02/1998, the Respondent was employed by the Appellant, as an Assistant Maintenance Planner, until 8/2/2008 when he was dismissed for alleged gross misconduct. According to the Appellant, his dismissal was subsequent to an investigation into allegations of theft of fuel, which established that the Respondent together with a one Uwimana Samson, transported stolen fuel in the Appellant’s car under the Respondent’s care. He was issued a dismissal letter on 8/02/2008.

The Respondent appealed to the Appellant’s Appeal Disciplinary committee who upheld the decision to dismiss him. He subsequently lodged a complaint against the Appellant, before the Kasese District labour officer. On 20/9/2008, the labour Officer, in the absence of the Appellant entered an award of Ugx. 56,005,323/- in favour of the Respondent.

The Appellant being dissatisfied with the Labour officer’s award, applied to the industrial court for extension of time within which to appeal and leave was granted to appeal on both law and facts on the following grounds:

**GROUNDS OF APPEAL**

1. **The Labour Officer erred in law and fact when he concluded that there was no evidence to support the allegations of theft against the Respondent.**
2. **That the labour officer erred in fact when he held that the actions of the Respondent warrant warning but not dismissal and thus arriving at an erroneous decision.**
3. **That the Labour officer erred in law and fact when he made an order for salary which would have been earned for the period from January 2008 t0 September 2008 of Ugx, 10,350,000/=**
4. **The Labour Officer erred when he awarded terminal benefits from the months of February 1998-2008 of Ugx. 34,405,423/-**
5. **That the Labour Officer erred in law and in fact when he awarded housing allowance from January 2008 to September 2008 of Ugx. 1,530,000/=**
6. **That the labour Officer erred in law and in fact when he awarded payment for annual leave for 2 years from February 2006 to February 2008 and transport of Ugx. 2,540,000/=**
7. **That the labour Officer erred in law and fact when he awarded payment of NSSF contribution pf 10% of Salary of Ugx.1.035,000/-**
8. **The labour officer erred in law and in fact when he awarded NSSF profits being 14% of the contribution of Ugx. 144,000/-**
9. **That he labour officer erred in law and in fact when he awarded payment of medical claim of Ugx. 5,000,000/=**
10. **That he labour Officer erred in law and in fact when he arrived at a decision without according the parties a right to a fair hearing.**
11. **That the labour office erred in law and in fact when he awarded reliefs from a mediation session.**
12. **That the Labour officer erred in law and in fact when he failed to properly evaluate evidence before him and thus arriving at an erroneous decision that the respondent was wrongfully dismissed.**

**REPRESENTATIONS**

The Appellant was represented by Mr. Edmund Agaba of Shonubi, Musoke & Co Advocates and the Respondent was represented by Mr. Richard Bwiruka of Kahwa,Rwakafuzi,Bwiruka &Co Advocates.

**SUBMISSIONS**

After perusing the grounds of Appeal, we believe that then resolution of Ground 11 will resolve the whole Appeal. We shall therefore consider only the submissions on the ground 11.

**Ground 11**. **That the Labour Officer erred in law and in fact when he awarded reliefs from a mediation session.**

It was submitted for the Appellant that, the Labour officer invited the Appellant for mediation meetings on 14/02/2008, and the Appellant responded to the invitation, by way of letter dated 20/02/2008, stating that she was unable to attend the meeting. She requested for the meeting to be rescheduled to another date in March 2008. That the labour officer in the absence of the Appellant went ahead and proceeded to hear the matter and made an erroneous award of Ugx.56,005,323/- and the Appellant were only made aware of the award in 2013, when the Respondent filed Civil Suit No.23 of 2013, in the High Court of Fort Portal seeking to enforce the award of the Labour Officer.

It was Counsels submission that the Award clearly states that it was out of mediation proceedings conducted between the parties. He asserted that the labour officer having mediated the matter between the parties proceeded to arbitrate it and came up with a decision contrary to this court’s holding in **Sure Telecom vs Brain Azemchap, Labour Appeal No. 008/2015,**  that; **“***it was a travesty of justice for a labour officer having initially attempted to settle the dispute by mediation, to turn to adjudication after failure of mediation. We are in agreement with counsel for the Appellant that the ends of justice could only be met by the transfer of the dispute to another competent arbiter who could be any labour Officer or even the Industrial Court… A labour officer is constrained from handling both mediation and adjudication at the same time in respect of the same Complaint.”*

It was his prayer that Court upholds this ground and sets aside the labour officer’s award in its entirety.

In reply, Counsel for the Respondent cited Regulation No. 8 of the Employment Regulations which gives power to the Labour Officer to summon parties for reconciliation , to facilitate discussions in a bid to settle matters before him or her in accordance with Section 13 (1) of the Act, and the definition of **“Conciliation”** as defined by Black’s Law dictionary 8th edition.

He admitted that award indicated that, the Senior labour officer mediated between the parties. He also cited the definition of mediation as defined in Black’s law dictionary(supra) as a method of non- binding dispute resolution, involving a neutral third party who tries to help the disputing parties, to reach a mutually agreeable solution.

He argued that given that the hearing conducted by a labour officer needn’t be strictly the same as that in Courts of law, if each party presents their evidence before a neutral officer, then the provisions that govern mediation are satisfied. In his opinion the labour officer heard from both sides hence the award.

**DECISION OF COURT**

Section 13 of the Employment Act mandates a labour officer to settle labour disputes filed before him or her. Section 13(1) (a) lays down the different methods that a labour officer can apply, when settling these disputes. 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 power to-***

***a) investigate the complaint and any defence 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 …”***

Although the drafting of section 13(1)(a) is ambiguous, we believe that it was not the intention of the legislators that, all the methods as stated therein should be applied at the same time, in respect of the same proceedings, because this would be a travesty of Justice.

It is now settled that, when a labour officer chooses to proceed with one of the 3 methods stated under Section 13(1) (a), he or she must settle the matter with the method chosen and refer it to another arbiter, where he or she fails to resolve it. See **Sure Telecom vs Brain Azemchap, Labour Appeal No. 008/2015. (supra).**

It is not disputed that the Labour officer’s Award at page 56 of the record states that, he made the award after conducting a mediation meeting between the parties. The Award states in part as follows:

***“… Having heard from both sides in the mediation meeting and having internalized both versions together with the complaint filed by Mr.Kabagambe David, I was categorically clear that the dismissal of Mr. Kabagambe was unjustified on the following ground:- …***

The rationale for mediation is that it should result in consensus between the parties in dispute and not in an order or award. As defined by Black’s Law Dictionary cited by Counsel for the Respondent, mediation involves a neutral third person who tries to help the disputing parties reach a mutually agreeable solution, as opposed to adjudication or arbitration, which are fact finding hearings, in which the disputing parties must take oath before testifying about the issue in dispute and an adjudicator/judge must make determination or order. The holding in **Sure Telecom vs Brain Azemchap, Labour Appeal No. 008/2015**(supra), laid emphasis on the principle that; **the application of both mediation and adjudication at the same time in respect of the same Complaint, by a labour Officer, is a travesty of justice.”**

In the instant case, the Labour officer’s award, clearly indicated that he did not sit as an adjudicator, but as a mediator who should have helped the parties reach a mutual agreement. Therefore, the award he made, arising out of mediation, violated the principles of mediation. The parties were not given the opportunity to adduce evidence on oath and besides the Labour officer ceased to be a neutral person after the mediation therefore, he could not adjudicate the matter. He should have referred it to another labour officer for adjudication, instead.

In the circumstances this Appeal succeeds on this ground. The Labour Officer’s award is set aside in its entirety and a retrial before another labour officer is ordered. No order as to costs is made.

Signed and delivered by:

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

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

**PANELISTS**

**1.MS. HARRIET NGANZI MUGAMBWA …………**

**2.MR. EBYAU FIDEL ………….**

**3. MR. FX MUBUUKE ………….**

**DATE. 5/JUNE/2020**