**THE REPUBLIC OF UGANDA**

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

**LABOUR DISPUTE APPEAL NO.09/2018**

**ARISING FROM LEI 94/232/03**

**MOTA –ENGIL ENGEN HARIA**

**E-CONSTRUCAO AFRICA SA ………………………APPELLANT**

**VERSUS**

 **NYARUHUMA PATRICK …………………. RESPONDENT**

**BEFORE:**

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

**PANELISTS**

**1. MR. RAUBEN JACK RWOMUSHANA**

**2. MS. ROSE GIDONGO**

**3. MR. ANTHONY WANYAMA**

**AWARD**

This Appeal was brought against the decision of Ms. Nabwire Rebecca Labour officer in the Ministry of Gender Labour and Social Development in Labour Complaint LEI 94/232/03 for non-renewal of the Respondent’s employment contract with the Appellant. It was brought under Section 94 of the Employment Act, 2006, rule 24 of the Labour Disputes (Arbitration and Settlement) (Industrial Court Procedure) Rule, 2012.

**BACKGROUND**

According to Counsel for the Appellant, the Respondent was employed by the Appellant as a Machine Operator on a 1 year contract, the 23/11/2015. The contract was subsequently renewed for another year on the 7/11/2016. On the 22/10/2017 the Appellant notified him of their intention not to renew the contract and paid him 1 month’s salary in lieu of 1 months’ notice.

The Respondent lodged a complaint with the labour officer who on the 10/11/2017 informed the Appellant in writing that the Respondent had been verbally terminated without following the proper procedure as laid down in the Employment Act 2006. After a number of meetings with the parties on the 9/12/2017, the Labour Officer directed the Appellant to pay to the Respondent remuneration while on treatment as required under the workman’s compensation Act, 2000. The Appellant in its letters dated 13/11/2017 and 12/01/2018 informed the Labour officer that the Claimant only made the allegations about having an occupational disease after he was given notice that his contract would not be renewed. The Appellant contended that the labour officer arrived at her decision in disregard to section 13 of the Employment Act and the principles of natural Justice, hence this Appeal.

On the other hand the Respondents contended that on 2 occasions, February 2018 and 18/08/2017, the Respondent made health complaints to the Appellant regarding aggravated spinal injury, general body weakness and muscle pain and on 21/10/2017 he was verbally terminated and on the 22/10/2017 he was formally notified about the non-renewal of his contract. He then filed a complaint with the labour officer for unlawful termination and occupational illness to ensure he obtained the recommended treatment at the expense of the Appellant and compensation while on treatment.

**GROUNDS OF APPEAL**

1. **The Labour Officer erred in law when she directed the Appellant to pay the Respondent’s salary without determining the legality of non-renewal of the Respondent’s employment contract.**
2. **The labour officer erred in law in ordering the Appellant to pay the respondent salary following non-renewal of the employment contract without any basis.**
3. **The labour officer erred in ordering the Appellant to pay the Respondent salary when he had already been paid salary in lieu of notice before termination.**

The Appellant was represented by Mr. Isaac Newton Kyagaba of Kampala Associated Advocates, KAA House, Plot 41 Nakasero Road and the Respondent by Nankya Lillian of Kiwuwa &Co. Advocates,Plot 4, Kimathi Avenue, Kampala. Both Counsel filed written submissions for which Court is grateful.

**SUBMISSIONS**

**Ground 1:**

**The Labour Officer erred in law when she directed the Appellant to pay the Respondent’s salary without determining the legality of non-renewal of the Respondent’s employment contract.**

Before submitting on the grounds of Appeal, Mr. Kyagaba Counsel for the Appellant, enunciated the law and authorities applicable and stated that Section 94(2) provides that an appeal shall lie on a question of law forming part of the decision of labour officer. He cited the Canadian case of **Canadian National Railways Company and Bell Telephone Company of Canada and the Montreal light, Heat and Power Consolidated (1939)** to define a question of **law** as *“questions touching the scope effect or application of a rule of law which the courts apply in determining the rights of parties” and* **Lubanga Jamada vs Dr. Ddumba Edward, Civil Appeal No. 10/2011,** in which it was held that: “*an appeal on a point of law arises when the Court, whose decision is being appealed against, made a finding on the case before it, but got the relevant law wrong or applied it wrongly in arriving at the finding. The Court reaches a conclusion on the facts, which is outside the range that the said court would have arrived at, had that Court properly directed itself as to the applicable law.”*

He argued that the error must be as a result of misapplication or misapprehension of the law and whereas a manifest disregard of the law is an error of law, a question of law is about what the correct legal test is, as contrasted with a question of fact. According to him a question of fact is concerned with what actually took place between the parties to the dispute. When the issue is whether the facts satisfy the legal test, then the question of mixed law and fact arises.” Citing **Eng. John Mugyenyi vs Uganda Electricity Generation Company Ltd. LDR No. 096/2015** he asserted that points of law could be raised at any time during the court proceedings.

It was his submission on ground 1 that, the Labour officer decided the matter without addressing the issue of non- renewal of the Respondents employment contract. He asserted that the non- renewal of a contract automatically terminates the contract and discontinues future payments. He further stated that Section 65(1) (c) of the Employment Act is to the effect that a fixed term or fixed task contract of employment terminates when the duration of the term or task expires and it is not renewed within a period of 7 days from the date of expiry under the same terms or terms not less favourable to the employee. Therefore once the contract terminates, one cannot claim under it. He cited **Doreen Rugunda vs International Law Institute (2007) 2 EA 444.** He contended that the Labour officer’s conclusions in her letter dated 10/11/2017 and 9/02/2018 were in complete disregard of the provisions of Section 13 of the Employment Act, especially given that the Appellant by its letter dated 22/10/2017, notified the Respondent about its intention not to renew his contract of service.

He further contended that after concluding that the Respondent had been verbally terminated in 2017, the labour officer ordered the Appellant to pay him remuneration as provided under the Workers Compensation Act, yet Section 14(4) of the Workers Compensation Act only provides for an employer to pay costs of medical care during the period of temporary total incapacity and not for an injured worker. It was his submission that labour officer made the order without giving any reasons as was required under Section 13(2) (supra). He further argued that the labour officer was not dressed with the jurisdiction to make compensation awards given that the mandate of the Magistrates court under Sections 1(a) and 25 of the Workers Compensations Act. Even then he argued that the provisions of the Act have nothing to do with remunerating the employee while he or she was on treatment. He argued that Section 25 in particular makes reference to a Court, which the Labour officer is not.

**GROUND 2**

**The labour officer erred in law in ordering the Appellant to pay the respondent salary following non-renewal of the employment contract without any basis.**

Mr. Kyagaba contended that in the instant case the labour officer did not give reasons why the Appellant was required to pay remuneration to the Respondent, contrary to Section 93(8) of the Employment Act, which provides that a labour officer shall state the reasons for any decision taken on a Complaint. He also cited **Afayo Luigi & Kudrass Enterprises v Inzio Enzama Akueso CA No.0023 of 2017,** which relied on Re Poyser and Mills Arbitration [1963] 1 ALLER 612 and stated that “*Although there may be situations where the reasons for a judicial decision are obvious and do not require a detailed answer to every argument, the judicial officers invariably do have a duty to give reasons for their decisions. As a rule of law, all judicial officers must act fairly and rationally which means that they must not make decisions without reasons. The reasons must be adequate to show how the decision was reached, they must be reasons which are not only intelligible, but which deal with substantial points that have been raised. …*

*The duty to give reasons is a function of the rule of law and therefore of justice. Its rationale has two principal aspects. The first is that fairness surely requires that the parties, especially the losing party, should be left in no doubt why they have won or lost. This is especially so since without reasons the losing party will not know whether the court has misdirected itself and thus whether he or she may have an available appeal on the substance of the case. Where no reasons are given it is impossible to tell whether the court has gone wrong on the law or the facts, the losing party would be altogether deprived of his or her chance of an appeal unless the Appellate court entertains the appeal based on the lack of reasons itself”*

It was his submission that although the above decision referred only to judicial officers, it was applicable to Labour officers who perform a quasi-judicial role. He further cited Radio **Pacis Limited vs the Commissioner General Uganda Revenue authority CS No. 0008/2013 and Kauma Kagere Rose vs Namutamba District Local Government Council (Misc. Appl. No.433 of 2008)** on the same issue**.**

He reiterated that given the provision under Section 93(8) of the Act and **Afayo** (supra), the Labour Officer misunderstood and misapplied the law and therefore erred in law when she ordered the Appellant to pay remuneration to the Respondent.

In reply Counsel for the Respondent submitted on grounds 1 and 2 concurrently and stated that according to Section 65(1) (b) the termination of a fixed term contract is deemed to take place at the expiry of the fixed term, and when it is not renewed within a period of 1 week from the date of expiry. The date of expiry according to subsection 2(b) is therefore the date of termination. It was her Submission that given his last letter of renewal dated 7/11//2016, the Respondent’s contract had not expired when it was terminated and therefore the termination was unfair. She insisted that the Appellant had a duty to give a reason for the termination in accordance with Section 68(1) and (2) of the Employment Act, which imposes on the employer a duty to give reasons and to prove that the same reasons genuinely existed at the termination. According to her, Section 58 does not give an employer a right to automatically dismiss. She cited **Florence Mufumbo vs Uganda Development Bank LDC No.138/2014.** She contended that prior to receiving the letter of termination, the Respondent had notified the Appellant of his grave pain in the lower back. He was however terminated verbally, without any reason.

She further argued that the Respondent had a legitimate expectation of renewal, although the Employment Act 2006, does not provide for this principle. It was her submission that other common law countries such as Kenya and South Africa, provide for this principle. She cited the Kenyan case of **Margaret Ochieng** **vs National Water Pipeline Corporation [2014] EKLR** whose holding was to the effect that whereas an employer retains prerogative on renewal of a fixed term contract, the decision not to renew it can be challenged on limited grounds and the South African case of **United nations Appeals Tribunal[UNAT]. Case number 2010-125** between **Frenchon vs The Secretary General of the United Nations,** to support the principle of “reasonable expectation of renewal of employment upon the expiry of fixed term contract term contracts in certain circumstances. She stated that this principle is premised on section 186(b) (i) of the South African Labour Relations Act No. 66 of 1995 which includes dismissal to mean: *“that the employee reasonably expected the employer to renew a fixed term contract of employment on the same terms or similar terms but the employer offered to renew it on less favorable ones or did not renew it.”*

According to her this section was given judicial consideration in **Andreas Dierks v University of South Africa South Africa Labour Court Case No. J399 of 1998** and **Glenn Duncan v Minister of Environment Affairs and Tourism and Another SCA No.2 of 2009.**

Counsel contended that the Appellant’s decision not to renew the Respondent’s contract, based on the Frenchon case, was informed by improper motive, and “non- renewal was separation initiated by the Appellant. Therefore the decision not to renew the contract was informed by the respondent’s injuries which consequently amounted to unfair termination of employment, within the meaning of sections 73(1) (a) and 75(i) of the Employment Act. She argued that Non- renewal by the Appellant, in the circumstances was intended to avoid its legal obligations to the Respondent, therefore ground 1 and 2 should fail.

**DECISION OF COURT ON GROUND 1 AND 2**

It is trite law that all appeals from the decisions of labour officer lie to the Industrial Court on points of law only and with leave of court on points of fact or mixed law and fact. See section 94 of the Employment Act, 2006. Section 65 (1) (b) provides that:

***“(1) Termination shall be deemed to take place in the …***

***(b) Where the contract of service being a contract for a fixed term or task, ends with the expiry of the specified term or task and is not renewed within a period of one week from the date of expiry on the same terms or terms less favourable to the employee…”***

Our interpretation of this provision is that there is no obligation on the part of the employer to give reasons to an employee why a fixed term or task contract of employment should not be renewed. Although this Court in Mufumbo(supra) made it a requirement for an employer to give reasons for terminating an employee’s contract of service, the expiry of a fixed term contract ends the contract or terminates it. Once the duration of the contract expires being a fixed duration, this is a consensual termination. The terms of the contract were intended to lapses on the expiry of its duration. Therefore to require an employer to give reasons would be stepping beyond the terms of the contract which has come to an end. However if the fixed term contract is terminated before its expiry or prematurely, the procedural requirements as provided under section 66 and 68 of the Employment Act 2006 must be complied with notwithstanding that it is a fixed term contract.

Where the employer prematurely terminates a fixed term contract but pays the employee for the remaining period of the contract, according to the terms set therein the employer is not obliged to give any reasons for the termination.

This Appeal however as we understand it is not brought in relation to unfair or fair termination of a fixed term contract, but on the Grounds that in making a decision about the complaint by the Respondent against unfair termination, the labour officer did not give reasons for making the orders she made, contrary to Sections 13 and 93 of the Employment Act 2006.

We believe that the resolution of Groundn1 and 2 shall dispose of the appeal and we shall resolve them concurrently.

1. **The Labour Officer erred in law when she directed the Appellant to pay the Respondent’s salary without determining the legality of non-renewal of the Respondent’s employment contract.**
2. **The labour officer erred in law in ordering the Appellant to pay the respondent salary following non-renewal of the employment contract without any basis.**

Our perusal of the record, we established that the Labour officer’s order referred to on page 18 of the record, was a letter to the Managing Director, dated 9/2/2018, notifying him or her about the Respondent’s spinal disease resulting from the nature of his work and recommending the necessary treatment and payment of his remuneration while on treatment as provided under the workers compensation 2000. The letter stated in part as follows:

 “…

*These have to be completed before the permanent incapacity, if any is decided upon.*

*This letter therefore is to inform you and require you to ensure the worker gets the recommended treatment at the expense of the Company. Also ensure payment of his remuneration while on treatment as per requirement under the workers compensation 2000.*

*Nabwire Rebecca*

*For Commissioner Labour”*

Although the letter made directives, in our considered opinion it did not amount to an order that was executable against the Appellant. We also established that the Labour officer by her letter dated 10/11/2017, called the Appellant’s Managing Director, for a meeting on 16/11/2017, “*for an amicable settlement.”* The record of proceedings submitted by the Labour officer on 17/07/2018 indicates that she conducted a hearing on 28/11/2017, and another one 16/01/2018. Whereas she recorded recommendations for action in the meeting of the 28/11/2017, in meeting of 16/01/2018, she stated that a “*letter was sent to the respondent to ensure the workers gets recommended treatment, payment of remuneration as per requirement under workers compensation Act 2000.”* The record of proceedings does not state how she arrived at the decision to send the Managing Director the said letter or how she applied the Workers Compensation Act to the facts of the case. Section 13 of the Employment Act provides that:

1. ***A labour Officer to whom a complaint has been made under this act shall have power to –***
2. ***Investigate the complaint and any defence put to such a compliant and to settle or attempt to settle any compliant 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.***
3. ***Require the attendance as a witness or require the production of any documents relating to the complaint after reasonable notice has been given***
4. ***Hold hearings in order to establish whether a complaint is or is not well founded in accordance with the 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 parties;***
5. ***Presume the complaint settled if the complainant fails to appear within specified period***
6. ***Adjourn to another date***

***(2)The labour Officer shall, while exercising the Powers under paragraph (a) state the reasons for his or her decision on a complaint.***

Section 93(8) of the Employment Act Provides that:

(8)  ***A labour Officer shall state the reasons for any decision taken on a complaint.***

It is clear from Section 13 and 93 (8) (supra) that indeed the labour officer must state the reasons for any decision taken on a complaint. As already seen the labour officer in the instant case did not state the reasons for her directives in the letter to the Managing Director.

 Although there is no specific format for the labour Officers Awards or Orders, it is our considered opinion that the order would be the conclusion derived from an analysis of evidence adduced at a hearing and application of the law applicable to resolve issues in a matter. The judicial or quasi-Judicial officer should therefore state the reason for his or her decision to ensure that the parties understand why they lost or won. See **Afayo** (supra).

In the instant case, the issues the labour Officer was supposed to resolve as we understand them, were whether the Respondent’s termination was verbal; whether he had a claim for medical injury arising out of his nature of work and whether the Appellant was liable to compensate him for the injuries claimed? Section 13 and 93(8) are worded in mandatory terms and there is no exception. The directives in her letter and the record of proceedings did not state the reasons she based herself on to make the decision save for Doctor Naddumba’s letter. She did not state how she had arrived at the conclusion that the Appellant should pay for the medical expenses for treating the Respondent in accordance with the workers compensation Act and her failure to state the reasons made her decision baseless and it is therefore an error of law. We associate ourselves with the holding in **Afayo**(supra), Section 13 and 93(8) Supra, that as a quasi-Judicial officer, the labour officer has a duty to state the reasons for his or her decision and it is a function of the rule of law and therefore of justice. A reasoned decision as stated in **Agayo**(supra) enables the party to be left with no doubt why they have won or lost and the reasons enable a losing party to know whether they can appeal or not.

In the circumstances, given the labour Officer’s failure to state the reasons for the directives/orders she made, the directive/order cannot stand.

The appeal therefore succeeds. The labour officer erred in law when she made directive/orders of the Labour officer without stating the reasons for the directives. The orders or directives are hereby set aside. 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. RAUBEN JACK RWOMUSHANA ………………………**

**2. MS. ROSE GIDONGO ………………………**

**3. MR. ANTHONY WANYAMA ………………………**

**DATE: 21ST JUNE 2019**