**THE REPUBLIC OF UGANDA**

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

**LABOUR DISPUTE APPEAL NO.009/2019**

**ARISING FROM CB/04/09/2018**

**MT. ELGON HOTEL ………….. APPELLANT**

**VERSUS**

**CHEMUTAI LUCY &**

**5 OTHERS …….……… 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**

According to the Appellants the Respondents filed a complaint before the Labour officer Mbale. The Labour Dispute proceeded in the absence of the Appellant and the Labour Officer made the following awards: 1st Respondent- Ugx. 201,000,000/- ,2nd Respondent -Ugx.62,000,000/- ,3rd Respondent -Ugx. 33,400,000/=, 4th Respondent- Ugx.15,800,000/-, 5th Respondent -Ugx.32,000,000/- and the 6th Respondent- Ugx. 32,000,000/=. The Appellant being dissatisfied with the Labour office’s award filed this appeal orders that:

1. The labour officer’s award is set aside and or quashed.
2. That the Appellant be granted an opportunity to defend itself against the claim on merit.
3. Cost of the Appeal and at the lower court be granted.

**GROUNDS OF APPEAL**

The grounds of Appeal are as follows:

1. The Labour Officer erred in law when she held that the Respondent’s were unfairly terminated both procedurally and substantially.
2. The Labour Officer erred in law when she proceeded to hear the matter exparte, and denied the Respondent’s an opportunity to be part of the proceedings.
3. The Labour officer erred in law and fact when she proceeded to make an award without properly evaluating the evidence on record thereby arriving at a wrong decision.

We shall resolve the above grounds in consolidated manner as follows:

1. The Labour officer erred in law when she failed to properly evaluate the evidence on record thus arriving at a wrong decision that the respondents were unfairly terminated both procedurally and substantially.
2. That the labour officer erred in law when she proceeded to hear the matter ex-parte without granting the appellant an opportunity to be part of the proceedings.

The appellants cited Section 94 of the Employment Act provides that:

1) A party who is dissatisfied with the decision of the 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.

**SUBMISSIONS**

**Ground 1. The Labour officer erred in law when she failed to properly evaluate the evidence on record thus arriving at a wrong decision that the Respondent’s were unfairly terminated both procedurally and substantially.**

Counsel for the Appellant submitted that the Appellant’s Company Secretary requested for time to enable the appellant to file an appropriate reply to the claim, but the labour officer denied. He referred to pages 9,10 and 11 of the record of Appeal.

It was his submission that the labour officer wrongly held that the Respondents were unfairly terminated, yet the 2nd and 5th Respondent’s contracts had already expired. In his view the fact that the matter was heard exparte, disenabled the labour officer from considering relevant documents. He stated that the audit report which formed part of the record showed that some of the Respondents committed acts of gross misconduct which called for summary dismissal.

He also contended that the labour officer who mediated the complaint is the same person who heard it. It was his submission that the appellant felt this was wrong.

In reply Counsel for the Respondent made reference to the mediation proceedings before the labour officer, between Mount Elgon Hotel and Spa Ltd held on September 2018, which showed that the labour officer took evidence from each of the Respondents showing how each respondent was employed by the appellant, paid his /her salary, what entitlements each was receiving and how the summary termination was conducted by M/S Sekandi & Co. Advocates.

The parties made submissions and according to Counsel the Respondents made submissions in support of their claim of unlawful summary termination. the Appellant also made submissions in support of the summary termination.

It is clear from the submission of both Counsel that the Labour officer took evidence from the Respondents during mediation proceedings.

We perused the record of appeal on page 18 and established that indeed on 13/09/2018, the Labour Officer Mbale Local Government, conducted mediation proceedings albeit in the absence of the Respondent. She summarised each claimants complaint and undertook to hold another. She proceeded to make a mediation award in favour of the Respondents.

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 25 of the record states that, she made the award after conducting a mediation meeting between the parties. The Award states in part as follows:

*“… mediation meetings were arranged between the parties but for one reason or other, they were frustrated by the Respondents.*

*The most disturbing perhaps is when the respondent came for a second mediation on 21st/9/2018, he made sure by 9.00am was at the office signed the visitors’ book and took off immediately by the time the labour officer and the claimants plus their advocates arrived, the respondents had already left.*

*The respondent set a condition that we meet on Monday 24/9/2018. We hardened and the respondent said it was ok to meet at midday, unfortunately the respondent came at 2.30pm when the mediation had been closed...”*

However as already discussed on 13/09/2018, the labour officer summarised the evidence of each of the respondents in this Appeal and on the basis of that summary made an award.

This Court in **Kasese Cobolt Co. Ltd vs David Kabagambe LDA No.13/2020** held that,

*“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.”*

A perusal of the mediation proceedings of 13/09/2018, indicated that the labour officer took evidence from the Respondents without them being put on oath. Therefore the meeting was indeed a mediation meeting and not a hearing, even if she asked the parties to make submissions, the submissions were being made on the basis of information that arose in mediation proceedings and not in a hearing. Even if the appellant did not participate in the meetings, as she stated in the award, she did not conduct the proceedings as an adjudicator but as a mediator.

Therefore, the award he made, arising out of mediation, violated the principles of mediation. Even if the Appellant did not appear for th mediation meetings , having summarised the Respondents evidence during the mediation meeting on 13/09/2020, the Labour officer ceased to be a neutral person after that. There was also nothing on the record to show that she had tested the veracity of the evidence she collected from the Respondents before she made her award. Having held mediation proceedings, and they failed she should have referred the disputed to another labour officer for adjudication, instead.

In the circumstances this Appeal is prematurely before this Court. The Labour Officer’s award is set aside in its entirety and a retrial before the Commissioner labour the Ministry of Labour Gender and Social Development 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: 17/12/2020**