**THE REPUBLIC OF UGANDA**

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

**LABOUR DISPUTE APPEAL NO.001/2020**

**ARISING FROM MBARARA LABOUR DISPUTE NO.001 OF 2020**

**SHUHADA’ E ISLAMIC SECONDARY**

**SCHOOL …………….. APPELLANT**

**VERSUS**

 **KATONGOLE ALI BYARUHANGA …..………. RESPONDENT**

**BEFORE:**

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

**PANELISTS**

**1.MS. HARRIET MUGAMBWA NGANZI**

**2. MR. FX MUBUUKE**

**3. MR. FIDEL EBYAU**

**AWARD**

**BACKGROUND**

The Respondent was employed by the Appellant school on a 3-year contract from 23/09//2019 until his interdiction on 21/11/2021. He was subsequently terminated on 28/01/2020. On 17/03/2020, he lodged a complaint before the labour office in Mbarara. However, the labour officer who handled his case did retired before completing his complaint and handed it handed it over to a new labour officer. On 30/09/2020, the new labour officer made a ruling granting various declarations in the Respondent’s favour. The Appellant being dissatisfied with the ruling, filed this Appeal on the following grounds:

1. **The Labour Officer erred in law when she unfairly heard the complaint contrary to section 3(4) of the Labour Disputes (settlement and Arbitration) Act 2006 and Article 28 of the Constitution.**
2. **The Labour Officer erred in law when she unfairly heard a complaint without considering the covid 19 regulations on closure of schools and all activities.**
3. **The Labour officer erred in law when she held that the Respondent was unlawfully, unfairly and arbitrary dismissed.**
4. **The Labour Officer erred in law when she awarded arrears from the date of termination to the date of the award and beyond.**
5. **The Labour Officer erred in law when she awarded allowances and payment in lieu of three months’ notice.**

The Appellant prayed that the Labour officer’s award is set aside in its entirety, with costs.

**REPRESENTATION**

The Appellant was represented by Fatuma Arinaitwe of Geoffrey Nangumya &Co. Advocates and the Respondent was represented by Siragi Kakeeto of M/S ADIL Advocates & Solicitors.

**SUBMISSIONS**

1. **The Labour Officer erred in law when she unfairly heard the complaint contrary to section 3(4) of the Labour Disputes (settlement and Arbitration) Act 2006 and Article 28 of the Constitution.**

Citing Article 28 of the Constitution of Uganda, which provides for the right to a fair hearing, and **Ojangole Patricia and 4 others vs AG HCMC No. 303 of 2013 and Onyango Oloo Vs Ag [1986-1989] EA 456,** in which the principles of natural justice were emphasised to the effect that, a person should not be condemned unheard, and section 3(4) of the Labour Disputes (settlement and Arbitration) Act 2006(LADASA), which provides for a person making a report of a labour dispute to a labour officer to immediately send a copy of the report to the other party to the dispute, Counsel for the Appellant submitted that, the Labour officer in the instant case, did not notify the appellant about the Respondent’s complaint as provided under section 3(4) of the LADASA. According to her, on 22/09/2020, the labour officer left before concluding the matter and handed it over to another labour officer who made an award on 30/09/2020, without inviting the Appellant to defend itself. It was her submission that the Appellant tried to remedy the same by applying for review in vain.

She contended further that the matter was heard on 20/03/2020, during the Covid 19 lockdown, when all schools were closed, in accordance with the Public Health (control of Covid 19) Rules 2020 SI No. 52, therefore her decision should be set aside for breaching the covid provisions.

In reply to ground 1, Counsel for the Respondent submitted that, the record clearly indicates at page 9, that the head teacher received the notification of the complaint dated 17/03/2020 and that he appeared before the senior labour officer, Mr. Ben Ssempijja. He refuted the Appellants’ reliance on rule 14 of the Public Health (Control of Covid19) Rules SI No. 52 of 2020, on the grounds that it was cited out of context, because it was rule 9 which made reference to the control of public gatherings, and meetings among others and it was published on the 24/03//2020 and it did not include Courts of Judicature and Tribunals. Therefore, reliance on covid 19 lockdown is an after thought which should not be because the senior labour officer indicated that he had not completed a labour complaint because of the covid 19 pandemic.

**DECISION OF 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 the evidence in this appeal to ensure that there was no miscarriage of Justice, before we can arrive at our own conclusion. see (**Banco Arab Espanol versus Bank of Uganda, Supreme Court Civil Appeal No. 8 of 1998).**

The issue for resolution in this Appeal whereas the labour officer Mbarara, left before concluding the case and handed it to a new labour Officer, the new Labour Officer delivered an award without hearing the parties, therefore the award should be set aside.

After carefully perusing what was considered as the record of proceedings, we established that there was no record of proceedings save for a notification about the Claimant to the head teacher of the Appellant school dated 17/03/2020 at page 9 of the record of Appeal and a letter by Sempijja Ben, the outgoing senior labour Officer Mbarara, referring the matter to the incoming Labour Officer, Nakku Aminah, for further administration, at page 10 of the record of Appeal. We also found the incoming Labour Officer’s notification to the head teacher about complaint, dated 30/09/2020. The notification contained the facts of the complaint and declarations/awards in favour of the Respondent.

Section 13 of the Employment Act empowers a labour Officer to investigate and dispose of complaints by either conciliation, or arbitration or adjudication.

The section 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.”*

It is settled that, once a labour officer has chosen one of the 3 methods of settling a matter, he or she cannot shift to another method while resolving the same matter. It seems that, the labour officer in the instant appeal chose to arbitrate the matter because the record indicates that, the notification he issued required each party to state their case and his letter to the new labour officer was to the effect that the parties were heard. The letter stated in part as follows that:

*“… on the part of the head teacher, he said that the complainant had misbehaved by having intimacy relationship with girl students contrary to the schools regulations that culminated into interdiction and eventual termination after investigations… iam therefore hand in the matter to you for administering…”*

and he went further to make conclusions in the matter on the basis that the parties had each made submissions.

However, the record of submissions was not provided, nor was there any record of proceedings, as a basis for his conclusion that, that the Respondent had been unfairly terminated. In the same vain he informed the incoming labour officer that : *“As you could be aware that I have retired from service w.e.f from 31/08/2020, however before me there is a labour complainant which I have not concluded because of the covid 19 pandemic that led to lock down.*

Therefore, the expectation was that the, new labour officer, would take over the matter and dispose of it.

The record indicates that like her predecessor, she issued the head teacher with a notification about the complaint which elaborately stated the facts of the complaint and immediately after that, she made a ruling on the complaint without stating any reasons for the decisions she made. However we found nothing on the record to indicate that the decision was made after giving the head teacher an opportunity to respond to the complaint or that she considered any response from the Respondent or that she invited the parties to make representations about the complaint in accordance with section 13( c) (supra), before she wrote the ruling. .

We found it peculiar for her to state that: *“.. the complainant shall aver that the employer infringed on his rights under the Employment Act 2006 and contravened provisions of the said act for which the Employer should be found liable ...”*  and *yet* she was the arbiter in the matter. Having chosen to make a ruling, and given that her predecessor had not handed her any record of proceedings in the matter, she should have invited the parties for a hearing as required under the law, before making her ruling.

Therefore, in the absence of any record of proceedings to show that both parties adduced evidence in the matter as a basis for the ruling, and in the absence of any record of evidence which the Labour officer relied on to come to the conclusions she made in her ruling, we have no doubt in our mind that the Labour officer arrived at her decision in total disregard to the principles of natural justice as enshrined under Articles 28 and 44 of the Constitution of Uganda and Section 13 ( c) of the Employment Act 2006.

In the circumstances, the matter is prematurely before this Court, it is referred back to the Commissioner Labour Gender and Social Development, for further management.

No order as to costs is made.

signed and delivered by:

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

**PANELISTS**

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

**2.MR. FX MUBUUKE ……………….**

**3. MR. FIDEL EBYAU ……………….**

**DATE: 26/11/2021**