**THE REPUBLIC OF UGANDA**

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

**LABOUR DISPUTE APPEAL NO. 34/2017**

**ARISING FROM LEI 96/232/01**

**ZTE UGANDA …………………………………….. APPELLANT**

**VERSUS**

**SSEYIGA HERMENEGILD &ORS ……………………………... RESPONDENTS**

**BEFORE:**

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

**PANELISTS**

**1. MR.BWIRE JOHN ABRAHAM**

**2. MR.SUSAN NABIRYE**

**3. MS. JULIAN NYACHWO**

**AWARD**

This appeal arises from the decision of Mr. Buyego Ismael Kalanda, Labour officer at the Ministry of Gender Labour and Social Development.

**BACKGROUND**

According to the Appellant the matter was set for hearing before the Labour Officer on the 18/09/2017, but it did not proceed because Counsel was out of the Country and not because it deliberately failed to appear. The matter was adjourned to the 21/09/2017 and according to record of proceedings filed in this Court on the 7/05/2018, the Labour Officer made his decision based on the documents attached to the complaint as evidence. The record also shows that the Appellants did not submit their documents as had been directed by 25/07/2017, as directed by the Labour Officer, although they submitted a summary of their case. When the matter came up again on 22/09/2017, the Appellants protested against the Labour Officers reliance on only submissions, mediation proceedings and documents filed by both parties as evidence without cross examining witnesses. They therefore contend that the procedure used by the Labour officer was too informal and therefore prejudiced their case.

**GROUNDS OF APPEAL**

1. **The Labour Officer erred in law when he proceeded to make a ruling on a matter where no evidence had been adduced before him by either party or thereby leading to a miscarriage of Justice.**
2. **The Labour Officer erred in law when he departed from his directive of referring the matter to the industrial Court and opted to make a ruling on the matter that was not fully heard.**
3. **The Labour Officer erred in law when he prematurely determined the matter and denied the Appellant the right to be heard.**
4. **The Labour Officer erred in law in covertly receiving evidence from the Respondent to which the Appellant had never been privy to and applying/using the same in his ruling.**
5. **The Labour Officer erred in law and fact when he made awards against the Appellants without the benefit of any evidence.**
6. **The Labour Officer erred in law in making a ruling on a matter where he was clearly functus officio.**
7. **The Labour Officer was patently biased.**

We believe that resolution of ground 1 of the Appeal will dispose of the whole appeal. We shall now consider ground 1**:**

**1.The Labour Officer erred in law when he proceeded to make a ruling on a matter where no evidence had been adduced before him by either party thereby leading to a miscarriage of Justice.**

**REPRESENTATION**

The Appellants were represented by Mr. Herbert Kiggundu Mugerwa of Kabayiza, Kavuma, Mugerwa &Ali Advocates, Plot 11, Bandali Close, Bugoloobi and the Respondents by Mr. Jason Kiggundu njeru and Mr. Francis Sebbowa of Kabali Sebbowa Advocates, BMK House, Wampewo Avenue, Kampala

**SUBMISSIONS**

It was submitted for the Appellants that in spite of the complex nature of the case, the Labour Officer made an award of Ugx. 2,400,000,000/- in favour of the Respondents without considering the Appellants protestations regarding the adhoc and laisefaire manner in which he conducted the proceedings. Counsel for cited the proceedings on page 14 of the supplementary record of proceedings in support of his contention. According to him the Labour Officer went ahead and made an award after stating that the Arbitration meeting failed. Counsel further contends that the Labour Officer made his decision in a matter where there were no pleadings and no evidence was adduced by either party. He was of the view that given the contentious and complex nature of the matter the labour officer should not have made an award without hearing the Oral evidence of both parties. He insisted that the Labour officer had no basis for making the award when there was no evidence to prove the Respondents claim. He therefore prayed that the Labour Officer’s award be set aside and the matter be heard de novo.

In reply Counsel for the Respondents submitted that the grounds of appeal had no merit and the appeal was only intended to delay the execution of the Labour Officers award and to enable the Appellant leave the jurisdiction of court before settling the award.

Counsel contends that the Appellant was granted a right to be heard and the matter was determined after hearing both parties. He cited the record of appeal filed on the 7/05/2018, to show that the appellant was given a hearing. He asserted that Counsel for the respondent was given an opportunity to report give details of his consultations on the matter with his clients and to cross examine the complainants which he declined to do. He cited the Kenyan case of **COTU (K) VS NZIOKA AND OTHERS [1990-1994] 1 EA 64 (CAK]** whose holding is to the effect that although the rule of natural justice obliges a judge or arbitrator to listen to both sides and give each equal opportunity to present their case before making a choice between 2 opposing stories, the Judge or Arbitrator was not obliged to hear them if one of the parties though given the opportunity either declines or by conduct chooses not to be heard. According to him the Appellant was notified about the complaint on the 13/7/2017 and directed to file a reply and submit documents relating to the Respondents employment by 25/7/2017. A reply was filed on the 17/07/2017 denying the claim but no documents relating to the case were submitted as directed by the Labour Officer, accordingly the Appellant is estopped from claiming there was no hearing. He argued that the Appellant was granted a right to be heard which it declined by refusing to submit documents and by conduct, by failing to cross examine the complainants when they were availed for cross examination.

**DECISION OF COURT**

**The gist of this Appeal in our considered view is whether the labour Officer erred in law when he made an Arbitration award without hearing Oral evidence from both parties?**

A record of Appeal was filed in this Court on the 14/03/2018. However, on the 10/04/2018 and 07/05/2018 the Appellants filed supplementary records of appeal on the grounds that the initial record did not provide the proceedings of what actually transpired before the Labour Officer. The Respondents did not object to the supplementary records therefore we shall consider them as part of the record of this Appeal.

Our perusal of the record reveals that when mediation that was conducted by Mr. Mr. Apollo Onzoma Principal Labour Officer failed, Mr. Buyego Ismael Kalanda, took over the matter on behalf of the Commissioner Labour, Industrial Relations and Productivity and decided to settle it by Arbitration by invoking regulation 8(2) of the Employment Regulations. The Labour Officer directed the parties to produce documents relating to the case as a basis for his award instead of hearing Oral evidence. He also asked both Counsel to make submissions which formed the basis of his award. The record also shows that the Appellants made their submissions under protestation.

It seems to us that by invoking Regulation 8(2) of the Employment regulations 2011, by requiring both parties to submit their respective documents relating to the case, the Labour officer considered that he had accorded both parties a hearing. Regulation 8(a) provides that:

***“1) …***

***‘1) …***

***2) Where the parties fail to come to a compromise, that labour officer shall summon witnesses or require the production of documents relating to the complaint and may propose solutions to the complaint.***

***3) Upon Completion of the hearing proceedings, the labour Officer shall, make an order binding on both parties and state the reasons for his or her decisions on the complaint ...”***

The Labour officer at page 206 (v) of the record of appeal stated that:

***“… In reference to Section 13(c) of the Employment Act, 2006 and regulation 8(2) of the Employment regulations, 2011, the Labour officer has gone ahead to receive submissions from parties and thereby rule on the matter.***

Section 13 (1) 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 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***
3. ***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***
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 the parties***
5. ***Presume the complaint settled if the complainant fails to appear within a specified period; or***
6. ***Adjourn the hearing to another date***

The drafting of Sections8(2) and 13 (1) (b) above create some ambiguity in that they seem to give the Labour Officer discretion to either call witnesses or in the alternative require the production of documents relating to the compliant as the basis for making an award. In the instant case however the Labour Officer chose to proceed via an Arbitration hearing.

Both Regulation 8(2) of the Employment Regulations and Section 13(1) (c) of the employment Act clearly show that the calling of witnesses and or procurement of documents relating to the complaint form part of a hearing proceeding.

In the instant case, the Labour Officer made his award without hearing oral evidence from both parties and only by relying on both Counsels submissions and the respective documents relating to the case and by so doing the Appellants contend that he denied them the right to be heard.

Article 28(1) of the Constitution of the Republic of Uganda 1995 (As Amended), on the right to fair hearing states that :-

***“In the determination of Civil rights and obligations or any criminal charge, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law.”***

Article 44 of the same Constitution makes this right, a fundamental right that is non derogable.

The 9th edition of the Black’s law dictionary defines Hearing as ***“proceeding of relative formality, generally public, with definite issues of fact or of law to be tried, in which parties proceeded against have right to be heard****(emphasis ours)* ***and is much the same as trial and may terminate in final order. … In equity practice. The trial of the case including introduction of evidence, argument of counsel and decree. …”***

In the instant case, the record clearly shows that the claimants filed a complaint with before the Ministry of Gender on the 29/06/2017, the Labour Officer notified the Appellants about the complaint and directed them to make a response within 14 days, he invited them for a hearing on the 18/9/2017 which did not take off due to the absence of the Appellants Counsel who was out of jurisdiction, the matter was re-scheduled for the 25/09/2017 which also failed. From the Labour officer’s letter to the Appellants dated 28/9/2017, it was clear that the Appellants insisted on cross examining the respondents as stated in their letter KMA/84/17/HKM to Counsel for the respondents and copy to Mr. Buyego Ismail Kalanda the labour officer at the Ministry of Gender, Labour and Social Development. It stated thus:

***“… This is to notify you that we intend to test the veracity of your clients claims in respect of the above captioned.***

***To that end we do notify you that we shall have them cross examined on the arbitration date…”***

In response to this letter the Labour officer stated in part that:

“… ***Following our failed arbitration meeting that sat on Monday 25/09/2017, I realise we shall not be able to conduct a process set in motion by pleadings as you requested in your letter, ref: KMA/84/17/HKM. This is partly due to your failure to act positively to my guidance on the best way to expeditiously manage and dispose of the case within the limited time frame available for the same. Section 5 of the Labour Disputes (Arbitration and Settlement) Act, 2006 guides us on the time lines.***

***As you indicated in the last meeting you were served with a detailed submission from the complainants. I request you to make and deliver to this office and complainants your response and your final submissions for a ruling on this matter. …”***

It is clear from this letter that the Labour officer opted to make decision on the matter without hearing oral evidence as a way of expediting the proceedings in spite of the Appellants demands. Although counsel for the Respondents argued that the Appellants had been given an opportunity to cross examine the Respondents and they did not. We found no evidence on the record to the effect that the Labour Officer granted the parties an opportunity to cross examine witnesses.

Was this the correct procedure, given that he opted to proceed by an arbitration hearing? Was it a fair hearing?

According to the Black’s law Dictionary a fair hearing is ***one in which authority is fairly exercised: that is, consistently with fundamental principles of justice embraced within the conception of due process of law. Contemplated in a fair hearing is the right to present evidence, to cross examine and to have findings supported by evidence.”*** Emphasis ours.

In view of this definition, the Labour Officers invocation of regulation 8(2), notwithstanding, given that he opted to hear the parties in an arbitration hearing, he had to follow the principles of a fair hearing which include; allowing the parties to present their evidence, to cross examine witnesses if any and to make his decision based on all the evidence presented.

From his letter to the Appellant’s it seems to us that in a bid to meet the time lines within which he was expected to conclude the matter, the Labour Officer made his ruling without an oral hearing and without considering any pleadings. By doing so he breached the principles of a fair hearing which are fundamental to the acquisition of justice. See **Bakaluba Peter Mukasa vs Betty Nambooze Bakireke Election Petition No. 04 of 2009.)**

When he stated that the arbitration hearing had failed, he had the option of invoking Section 5 of the Labour Disputes (Arbitration and Settlement) Act, 2006, to refer the matter for adjudication before the Industrial Court but he did not.

In the circumstances, the Labour officer erred in law when he made a ruling in an arbitration hearing, without following the fundamental principles of a fair hearing already stated above.

The Labour Officer’s decision in LEI 96/2017 is therefore set aside. The matter is referred back to the Ministry of Gender Labour and Social Development for re trial before another Labour Officer. It is so ordered.

**BEFORE:**

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

**PANELISTS**

**1. MR.BWIRE JOHN ABRAHAM …………………**

**2. MR.SUSAN NABIRYE ………………….**

**3. MS. JULIAN NYACHWO …………………..**

**DATE 16/NOVEMBER/2018.**