**THE REPUBLIC OF UGANDA**

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

**LABOUR DISPUTE APPEAL. 040 OF 2019**

**(ARISING FROM KCCA/MAK/LC/098/2019)**

**BETWEEN**

**UGANDA BANKERS ASSOCIATION………………………………………….………..APPLICANT**

**AND**

**MUSA MAYANJA LWANGA..………………………………………………....…….RESPONDENT**

**BEFORE**

1. Hon. Judge Ruhinda Asaph Ntengye
2. Hon. Judge Linda Lillian Tumusiime Mugisha

**PANELISTS**

1. Ms. Adrine Namara
2. Mr. Michael Matovu
3. Ms. Susan Nabirye

**AWARD**

This is an appeal against the decision of a Labour Officer sitting at Makindye. The grounds of appeal were originally formulated as

1. The Labour officer erred in law when he initiated mediation proceedings and later went ahead to decide and determine the dispute without according the parties a hearing contrary to the principles of natural justice.
2. The Labour Officer erred in law in failing to conduct a hearing in respect of the Labour dispute between the respondent and the Appellant after the mediation of the said dispute had failed.
3. The Labour officer erred in law in making an award on the labour dispute between the respondent and the Appellant without conducting any hearing.
4. In the alternative and without prejudice to a foregoing, the Labour Officer erred in law in: -
	1. Awarding the respondent an excessive award of additional compensation amounting to his two months’ salaries; and
	2. Awarding the respondent severance pay;
5. In the alternative to Ground 4b) the Labour Officer erred in law in awarding the respondent severance allowance equivalent to his 2 months’ salaries.

**REPRESENTATIONS:**

The appellant was represented by Mr. Richard Tumwebaze of Kateera & Kagumire Advocates while the respondent was represented by Mr. Wlbroad Owor of Okecha Baranyanga & co Advocates.

As a way of background, the respondent was an employee of the appellant by virtue of a service contract dated 20/2/2018 which provided for a renewable term ending 20/2/2021.

On 9/9/2019 the respondent was terminated from his employment for **falling short in performance and failure to meet UBA’s expectations” …..**

On the same date M/s. Okecha Baryanyanga & Co. Advocates on behalf of the respondent wrote to the appellant demanding his reinstatement and giving them a notice of intended suit.

On 12/9/2019 M/s. Kateera & Kagumire on behalf of the appellant replied M/s. Okecha Baryanyanga & Co. Advocates by informing them that the respondent was terminated after being heard and with a justifiable reason.

On 16/9/2019, the same advocates of the respondent filed a complaint to the Labour Officer at Makindye and on being notified of this complaint, the appellant in a letter dated 27/9/2019 explained to the labour officer the circumstances that led to termination of the respondent.

Looking at the grounds of Appeal, it is our considered opinion that the totality of the appeal is **whether or not the labour officer afforded an opportunity to the appellant to present its case in defence of the complaint before him**. We shall therefore decide the appeal by answering this question.

Although it is the submission of the respondent that both parties attended the labour officer on 30/09/2019 and presented their evidence, the record does not itself provide attendance of both parties on this date and presentation of their evidence. Instead the record shows that on 27/09/2019 the appellant wrote to the labour officer detailing circumstances leading to termination of the respondent.

In his Award the labour officer wrote.

**“On 27/09/2019, we had the 1st meeting attended by myself, Musa Mayanja Lwanga (complaint) and his lawyer Harriet Tumuheirwe and Wilbert H. Owor respondent’s representative and his lawyers John P. Kanyemebwa and Rachael Sheila Tumwebaze. Having heard submissions from both parties I advised them to settle the matter amicably and revert to me before the 25/09/2019. Again on the 31/09/2019 we had another hearing/meeting where both parties and their counsel were present. After the parties failed to agree on whether there was unfair or unlawful termination or not and to whether the complainant was entitled to his claims, the matter was referred to me for determination. Although the respondent had made an offer for compensation equivalent to one month’s pay to the complainant, the complainant rejected the offer demanding that all his claims be addressed which the respondent rejected.”**

The Labour Officer in this Awards lists findings arising out of hearings, but as noted earlier the record does not suggest that there was any hearing. We suspect that the Labour Officer used the documents on the record to make conclusions which he eventually crafted into an Award.

In the submissions counsel for the respondent asserts that “**the Labour Officer relied on evidence adduced at the hearing on 30/09/2019 wherein the parties were present with their counsel. The Labour officers Award was based on the parties evidence at the hearing and not on the mediation proceedings.”**

As already indicated the record does not reflect any proceedings of 30/09/2019.

It is clear to us on perusal of the record that the labour officer participated in the mediation which was against the spirit of **Sure Telecom Vs Brian Azemchamp Civil Appeal 008/2015.**

It is also clear that the appellant contrary to principals of natural justice was not given opportunity to call evidence in defence of allegations which was also contrary **to Article28 of constitution**. We find that the whole process before the labour officer was a travesty of justice and therefore we order a retrial before another competent Labour Officer. No orders as to costs.

**Delivered and signed by:**

1. Hon. Judge Ruhinda Asaph Ntengye ……………………
2. Hon. Judge Linda Lillian Tumusiime Mugisha ……………………

**PANELISTS**

1. Ms. Adrine Namara ……………………
2. Mr. Michael Matovu ……………………
3. Ms. Susan Nabirye ……………………

Dated:11/06/2021