THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA,
LABOUR DISPUTE APPEAL NO. 008 OF 2022
(Arising from Labour Complaint No. KCCA/KWP/LC/133/2021)

THE AIDS SUPPORT ORGANISATION (TASO):::APPELLANT

VERSUS

DR. KENNETH MUGISHA:::RESPONDENT

Before:
1. The Hon. Mr. Justice Anthony Wabwire Musana

The Panelists:
1. Hon. Adrine Namara,
2. Hon. Suzan Nabirye &
3. Hon. Michael Matovu.

Representation:

1. Ms. Florence Nalukwago M/s. Nagawa Associated Advocates, for the Appellant.
2. Mr. Karoli Semwogerere, for the Respondent.

AWARD

Introduction

[1] This is an appeal against the decision of Ms. Namaarwa Ruth Kulabako, Labour Officer at the Kampala Capital City Authority, who found for the Respondent on the question of constructive dismissal and granted a compensatory order, additional compensation, payment in lieu of notice, and five months' severance pay.

The Respondent's case at the Labour Office

[2] In a letter dated the 14th day of December 2021, the Respondent sought to declare that he had been constructively dismissed from the Appellant. The Respondent had been employed as a Project Director on the USAID LPS-Ankole Project for twelve months, beginning August 12th, 2020. He raised complaints of bullying, intimidation, and harassment. Following these complaints, he was asked not to communicate with the USAID Agreement Officer Representative, yet he had been the Chief Liaison between the Appellant and USAID. He tendered his resignation on the 15th of October 2021, seeking various remedies and suggesting termination without notice, unfair dismissal on a protected ground, retaliatory conduct of the Appellant, sexual harassment at the direction of the management of the Appellant and failure to remit severance pay.

The Appellant's case at the labour office

[3] By letter dated the 3rd of January 2022, M/S Nagawa Associated Advocates opposed the claim, suggesting that the Respondent's contract expired on 30th September 2021 and on 15th October 2021, he resigned. He was paid outstanding leave and accrued gratuity. The complaints of bullying and intimidation were never reported to the Appellant, and the Respondent resigned before the hearing of the sexual harassment complaint. The Appellant denied terminating the Respondent, denied instigating sexual harassment against the Respondent, and suggested that severance pay was not payable.

The Labour Officer's award

[4] In her decision on the 21st of March 2022, the Labour Officer observed that the parties were given dates for written submissions and appeared for a conciliation. She noted that evidence adduced in the submission and during the conciliatory hearings were evaluated, from which she made a decision. In deciding the complaint, the Labour Officer framed the question for a determination as to whether the Respondent constructively dismissed the complainant(Respondent) and if there was a contract of employment between the parties upon the expiry of the initial contract. The Labour Officer then evaluated the submissions regarding the issue raised. She also stated the legal position on constructive dismissal, notice periods, variation, or exclusion of provisions of the Act (Employment Act 2006), termination of fixed-term contracts, summary termination and the worker's right to move away from a dangerous situation.

[5] In her discussion of the complaint, she found the Appellant's claim that the Respondent was invited for a disciplinary hearing was *"false, meant to obscure and falsely imply that the right procedure was followed whereas not"*. She also concluded that the suggestion that the Respondent had hurriedly resigned before the disciplinary hearing was false, meant to obscure and falsely imply that the correct procedure was followed, while it was not. She found the Appellant's contention *"malicious, wrongful and unfounded"*. She found the constitution of a disciplinary committee by junior offices intended to embarrass the Respondent. She also found the Respondent's argument on the Respondent's usurpation of roles *"ironical"* and the complaints of bullying and intimidation *"ridiculous"*. Considering the documentation regarding the contract renewal, she found that the Appellant should have informed the Respondent of his failure to submit his forms. She noted that the Appellant's contention that appraisal forms were confidential was a false and illicit submission under **Sections 13(1)(**b), **11(1)(ii)** and **15(b) of the Employment Act 2006.** She observed that the Appellant's processes were not well streamlined and doubted the authenticity of the Appellant's emails. In her view, despite asking the Appellant to make submissions, it had concealed appropriate evidence. It failed to dispose of the burden of proving its argument that the complaint did not submit its appraisal. Thus, she found the assertion that there was no contract between the Appellant and Respondent unfounded, false, and illegal. She nullified the Appellant's attempts to clarify the absence of a contract. She found that the Appellant had only given the respondent two days' notice after he resigned. She found that the Respondent was summarily dismissed, and the Appellant's demand for the Respondent to attend work while sick was unrealistic and proof of hostility in work relations, further justifying constructive dismissal of the Respondent. The Appellant's failure to take action concerning the Respondent's

complaints and grievances was unreasonable conduct towards the Respondent, illegal and injurious to the Respondent, making the work environment hostile.

[6] The Labour Officer found for the Respondent and granted a compensatory order of four weeks' pay under **Section 78(1)EA,** additional compensation of three months' pay under **Section 78(2)EA**, three months' salary in lieu of notice, severance pay of five months, and issuance of a certificate of service. The total monetary award was **UGX 411,089,388/=.** She referred the sexual harassment claim to this Court and directed the Appellant to pay the Respondent within 14 days. She also advised the parties of their right of appeal under **Section 94EA**.

The grounds of appeal

[7] Dissatisfied with the decision of the Labour Officer, the Appellant filed this appeal on twelve grounds, hereafter following:

a) The Labour Officer erred in law when she failed and/or declined to refer the matter to the Industrial Court for adjudication pursuant to Section 5 of the Labour Dispute (Arbitration and Settlement) Act 2006, which creates a mandatory obligation on the Labour Officer to refer disputes to the Industrial Court at the request of either party to the dispute that has not been resolved within four weeks of its receipt.

b) The Labour Officer erred in law when she entertained the complaint for eight weeks contrary to the four weeks under Section 5(1) and Setion5(2) of the Labour Dispute(Arbitration and Settlement) Act 2006.

c) The Labour Officer erred in law when she invited the parties for a Conciliatory meeting or session and thereafter made a ruling, award, and orders contrary to Section 4 of the Labour Dispute (Arbitration and Settlement) Act 2006.

d) The Labour Officer erred in law when she invited the parties for a Conciliatory session and instead adjudicated the matter without giving the Appellant the right to a fair hearing through which she eventually delivered a ruling, awards, and orders, thereby occasioning a miscarriage of justice.

e) The Labour Officer misdirected herself and erred in law when she granted the Respondent additional Compensatory orders of three(3) months without reasonable justification and without due regard to the Severance Allowance already awarded, including the conduct of the Respondent, thereby occasioning a miscarriage of Justice contrary to **Section 78(2)** and **(3) of the Employment Act, 2006**.

f) The Labour Officer erred in law when she awarded the Respondent three (3) months payment in lieu of notice having been in employment for five years as against two months contrary to **Section 58(2)(c) of the Employment Act 2006**, thereby occasioning a miscarriage of justice.

g) The Labour Officer erred in law when she failed to properly evaluate the evidence on record and came to a wrong conclusion that the Respondent's employment contract was impliedly renewed, unfairly terminated, and there was constructive dismissal from employment.

h) The Labour Officer misdirected herself and erred in law when she relied on **Section 65(1)(b) of the Employment Act 2006** to come to a conclusion that the Appellant, having not executed and or renewed the Respondent's employment contract within seven days from the date of expiry of the fixed term contract, impliedly renewed the Respondent's contract for another 12 months, thereby occasioning a miscarriage of justice.

i) The Labour Officer misdirected herself and erred in law when she placed the burden of proof on the Appellant to prove its defence and/or arguments that the Respondent did not submit his appraisal and request for a contract renewal, which led to his non-renewal of his employment contract thereby coming to a wrong conclusion that the Respondent's employment contract was impliedly renewed.

j) The Labour Officer erred in law when she awarded the Complainant Compensatory Order for unfair termination of the employment contract, which was never executed and/or renewed between the parties.

k) The Labour Officer erred in law when she awarded the Complainant Severance Allowance on the grounds of unfair dismissal by the Appellant of the Respondent's employment contract, which was never renewed and/or executed between the parties contrary to **Section 88 of the Employment Act, 2006.**

l) The Labour Officer exhibited bias through the whole proceedings when she was notified to recuse herself and/or refer the matter to the Industrial Court, and she declined, favoured the Complainant throughout the session, acted as judge, lawyer and witness for the Complainant contrary to the Principles of fair hearing enshrined under Article 28 of the Constitution of the Republic of Uganda thereby occasioning a miscarriage of justice.

[8] When the appeal came up for mention on the 21st day of November 2023, we directed the parties to file their written arguments. This was so because the previous filings, including the Respondent's Memorandum, filed on 12th April 2022 under **Section 94(1)EA**, Section 40(LADASA) and Rule 5(4) of Labour Disputes(Arbitration and Settlement)Rules, 2012, did not entirely address the grounds of appeal. The Court is grateful for the arguments, authorities cited and attached, and the industry of respective Counsel.

Analysis and decision of the Court

The duties of a First Appellate Court

[9] The first appellate Court must re-evaluate or reappraise the evidence adduced before the Labour Officer in full and arrive at its conclusions. [1] We are to consider the merits of the Labour Officer's decision.

[10] Counsel for the Appellant chose to argue grounds **c** and **d** together. The Respondent submitted in like manner. We will put in a summary form the grounds and the complaint that encompasses them.

Ground c and d: Inviting parties to a conciliatory meeting and then proceeding to adjudicate the dispute and issue a ruling, award, and orders, thereby occasioning a miscarriage of justice.

The Appellant's submissions

[11] It was submitted for the Appellant that upon receipt of the labour complaint, the Labour Officer invited the parties for a conciliatory meeting on the 25th of January 2022. Counsel cited Section 4 LADASA and the case of **Sure Telecom v Brain Azemchap**[2] in support of the proposition that a Labour Officer must choose between adjudication, mediation/conciliation as a method of resolving a labour dispute and not to apply two or more methods while resolving a complaint. It was submitted that the Labour Officer opted for two dispute resolution methods.

The Respondent's submissions

[12] In reply, it was submitted for the Respondent that **Section 93(1) EA** gives the Labour Officer jurisdiction to hear complaints on infringements of rights under the EA and that there being no conciliation in this matter, the Labour Officer adjudicated the dispute under **Section 13(1) (c)EA**. If we understood the Respondent correctly, it was argued that the Appellant filed a series of.objections that left the Labour Officer with no option but to adjudicate the matter. In other words, by the Appellant's disruptive conduct, there was no room for conciliation. Counsel cited **AIG Uganda v James Maguru**[3] for the proposition that **Section 93(7)EA** provided for 90 days within which a dispute should be resolved to prevent forum shopping and stifling of fact-finding.

Rejoinder

[13] In rejoinder, the Appellant denied objecting to conciliation and pointed us to pages 28 and 220 of the lower record, which showed that the parties had attended conciliatory meetings on the 28th of January 2022 and the 13th of February 2022. Counsel cited **Amuron Dorthy v LDC**[4] for the proposition that a fair hearing involves prior notice, cross-

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[1] See Father Nanensio Begumisa and 3 Ors v. Eric Tiberaga [2004] KALR 236 and Kifamunte Henry V Uganda, S.C Criminal Appeal No. 10 of 1997
[2] LDA No. 008 of 2015
[3] LDA No. 29 of 2017
[4] HCMC NO. 042 of 2016

examination, legal representation, and disclosure of information. The Appellant's case was that it was not given prior notice that the dispute was no longer under conciliation but had shifted to adjudication. They were not allowed to call witnesses and, therefore, denied a fair hearing.

Decision of the Court

[14] The complaint on this ground of appeal concerns the Labour Officer's dispute resolution methods. The Appellant asserts that the Labour Officer commenced a resolution by conciliation and then resorted to adjudication by evaluating the submissions and rendering a decision. The Respondent contends that the Appellant disrupted the conciliation, and the Labour Officer was justified in adjudication.

[15] **Section 13 EA** allows the Labour Officers to investigate and dispose of complaints. It is helpful to employ the full text of the provision to appreciate its utility. It reads 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—*
>
> *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 is 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*
>
> *b) 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;*

[16] Therefore, when a complaint is made to a Labour Officer, the officer elects to resolve the dispute through either conciliation, arbitration, adjudication, or such procedure as he or she thinks fit. The Labour Officer has the discretion to decide the method and procedure for disposal of the complaint. Can this Court interfere with the Labour Officer's discretion? In the case of **Mbogo v Shah and Anor (1968) EA 93**[5], it was held that in an appeal against the exercise of discretion, the appellate court should not interfere with the exercise of discretion unless satisfied that the lower court misdirected itself on some matter and thereby arrived at a wrong decision or it is manifest from the case as a whole that the lower court made a wrong decision.

[5] Cited in High Court Civil Appeal No. 51 of 2013 Obululu Martin & 2 Ors v Ogaram John Chrisostom

[17] The procedural history before the Labour Officer is as follows:

(i) The Respondent filed his complaint on the 14th of December 2021.
(ii) The Labour Officer, by letter dated 17th December 2021, invited the Appellant to respond to the complaint.
(iii) By letter dated the 3rd of January 2022, the Appellant replied suggesting that the Respondent's contract expired, was not renewed, and he resigned. The Appellant denied terminating the Respondent's employment contract.
(iv) On 12th January 2022, the Respondent filed his rejoinder.
(v) By notice dated the 18th day of January 2022, the Labour Officer invited the parties for a conciliatory meeting. And we shall return to this notice in some detail later.
(vi) By letter dated 20th January 2022, Counsel for the Appellant substantiated its response to the complaint before the conciliatory meeting.
(vii) By letter dated 27th January 2022, the Respondent suggested that the Appellant's letter of 20th January 2022 was argumentative and prolix.
(viii) A conciliation meeting was held on 27th January 2022, where one party indicated it was not ready to proceed.
(ix) By minutes dated 28th January 2022, a conciliation meeting attended by the Respondent and Appellant, in the presence of their respective Counsel, was held. At this meeting, the Respondent laid out his complaint. The Appellant's Human Resources Officer then laid out the Respondent's facts.
(x) By letter dated 4th February 2022, the Appellant responded to the Respondent's letter dated 27th January 2022 and clarified further the issues raised at the conciliatory meeting of the 28th of January 2022.
(xi) By letter dated 10th February 2022, the Respondent suggested that the appellant had failed to make any substantive response and failed to provide evidence as guided in the conciliation meeting of the 28th of January 2022.
(xii) A second conciliatory hearing was held on the 13th of February 2022. The parties attended with their respective Counsel. Each party made certain representations to the Labour Officer.
(xiii) By letter dated 18th February 2022, the Appellant requested the Labour Officer refer the matter to the Industrial Court as she did not appear impartial.
(xiv) This was followed by a letter dated 21st February 2022, by which the Appellant made certain remarks regarding a conflict of interest in an earlier disciplinary hearing.
(xv) By letter dated 28th February 2022, the Respondent made some argument and asked that he be paid his terminal benefits.
(xvi) Counsel requested that the matter be decided.
(xvii) By an undated letter, the Supervisor at the Directorate of Gender, Community Services and Production, Labour Section, advised the parties that the reading or issuance of a decision had been rescheduled from 17th March 2022 to 21st March 2022 as the Labour Officer was indisposed.
(xviii) On the 21st day of March 2022, the Labour Officer delivered her decision.

[18] From the preceding procedural history, it is beyond dispute that when the complaint was filed, the Labour Officer invited the parties to a conciliatory meeting. Indeed, the

notification letter dated 18th January 2022, which we promised to return to, bore the heading CONCILIATORY HEARING NOTICE and notified the parties that the matter had been scheduled for conciliation and the conciliatory session was fixed for the 25th of January 2022 at 10:30 am. The letter also required parties with powers of attorney to be available for conciliation. The minutes of the 28th of January 2022 and the 13 of February 2022 do not appear to have taken any evidence except that the parties presented their versions of events. The Labour Officer's decision referred to evidence adduced in the submissions when parties appeared for conciliation. From the procedural history and the record of proceedings, we find that the Labour Officer opted or elected to resolve the labour dispute by conciliation.

[19] The Industrial Court has settled the position on the procedural approach to labour dispute resolutions by Labour Officers. There is a wealth and weight of authorities on the point. In **Kasese Cobalt Ltd v David Kabagambe**[6], the Industrial Court held that *"It is now settled that, when a Labour Officer chooses to proceed with one of the three 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"*. In this case, the Industrial Court lent on its decision in the Sure Telecom case (supra), cited by the Appellant, where the Court believed such an approach would amount to a travesty of justice. A similar conclusion was reached in **Presidential Initiative for Banana Development v M/S Ntege Ida and 11 Others**[7] and **The Aids Support Organisation v Nandala Betty**[8]**.** In the latter case, Ms. Nalukwago, acting for the Appellant (as she has in the present case), raised an objection in *pari materia* to the present objection. The Industrial Court agreed with Counsel holding the position in **Sure Telecom**. In short, a Labour Officer is not permitted to try mediation or conciliation and, where it fails, to turn to adjudication. That is not justiciable.

[20] This Court has also observed that conciliation results in the settlement of a labour dispute by agreement, while adjudication results in a decision[9]. According to **Black's Law Dictionary**[10], conciliation is the settlement of a dispute in an agreeable manner. It is a process in which a neutral person meets with the parties to a dispute and explores how the dispute might be resolved.

It is an unstructured method of dispute resolution in which a third party facilitates communication between parties in an attempt to help them settle their differences. In a preeminent treatise, "**Alternative Dispute Resolution, The Uganda Court Experience**", the Learned Author, the Honourable Justice Geoffrey Kiryabwire J.A/JCC, speaks of traditional dispute resolution that focuses on bringing the parties to dispute back together. Further, the International Labour Organization defines conciliation as the effort to reduce inflammatory rhetoric and tension, open communication channels, and facilitate continued negotiation. In essence, conciliation is about reconciling the parties, and this is rooted in the constitutional precept under Article 126(2)(d) of the Constitution

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[6] LDA 13 of 2020
[7] LDA 007 of 2016
[8] LDA 029 of 2018
[9] Ben Rhaiem Aimen v Granada Hotels Ltd LDA 002 of 2023
[10] 11th Edn by Bryan Garner at page 361

of the Republic of Uganda, 1995, which enjoins the Court's to promote the reconciliation of parties in the adjudication of disputes.

[21] It is beyond dispute that the decision of the Labour Officer in the matter now before us, where she found that the Respondent was constructively dismissed and made a monetary award of **UGX 411,089,388/=,** was not arrived at by conciliation. The Labour Officer did not facilitate the parties to reach an agreement. She invited the parties to a conciliation meeting, took notes, evaluated the submissions and made a decision. That was, to all intents and purposes, an adjudication, albeit improper, that resulted in a miscarriage of justice. The Labour Officer was precluded from holding a conciliatory meeting and then turning the same into an adjudicatory decision. We agree with Counsel for the Appellant that the approach taken by the Labour Officer goes against the right to a fair hearing. It is a procedural misstep whose consequences occasion a miscarriage of justice. A properly conducted hearing allows either party to present their cases and evidence and challenge the opponent. In the circumstances of the matter before us, we are persuaded that grounds **c** and **d** of the appeal should succeed. The decision of Ms. Namaarwa Ruth Kulabako, Labour Officer, issued on the 21st of March 2022 in Labour Dispute KCCA/KWP/LC/133/2020, cannot stand and is hereby set aside.

[22] The resolution of grounds **c** and **d** disposes of the entire appeal, and it is unnecessary to consider the remaining ten grounds of appeal. We only note that it would be helpful for parties to be more concise and prolific in drafting grounds of appeal in future appeals. Several of the other grounds of appeal related to remedies and were capable of being reduced into a single ground. As was demonstrable in grounds **c** and **d**, as argued, they both related to dispute resolution methods. That notwithstanding, the Appeal succeeds, and the decision of Ms. Namaarwa Ruth Kulabako Labour Dispute KCCA/KWP/LC/133/2020 is set aside. The file is remitted to the Commissioner of Labour with a direction to allocate it to an alternative Labour Officer for resolution.

Costs

[23] The Appellant suggested that the Respondent should meet the costs of the appeal. In the case of **Joseph Kalule v GIZ**, this Court has ruled[11] that while costs follow the event in labour disputes, the award of costs is the exception rather than the rule. The exceptions include some form of misconduct by the unsuccessful party. In the present case, the miscarriage of justice was occasioned by the procedural misstep of the Labour Officer. In our view, such a misstep does not invite an award of costs against the Respondent. Therefore, there shall be no order as to costs.

Final decision

[24] The appeal is allowed with orders that the decision of Ms. Namaarwa Ruth Kulabako, Labour Dispute KCCA/KWP/LC/133/2020, is set aside and the file is remitted to the

[11] LDR No. 109/2020(Unreported)

Commissioner of Labour with a direction to allocate it to an alternative Labour Officer for resolution. There is no order as to costs.

Signed in Chambers at Kampala this 1st day of March 2024

Anthony Wabwire Musana,
Judge, Industrial Court

THE PANELISTS AGREE:

1. Hon. Adrine Namara, _____
2. Hon. Susan Nabirye & _____
3. Hon. Michael Matovu. _____

1st March 2024

10.08 a.m.

Appearances

1.	For the Appellant:	Ms. Florence Nalukwago
2.	For the Respondent:	None
		Parties absent
Court Clerk:		**Mr. Amos Karugaba**

Ms. Nalukwago: Matter is for the award, and we are ready to receive it.

Court: Award delivered in open court in the presence of Ms. Nalukwago for the Appellant.

Anthony Wabwire Musana,
Judge, Industrial Court