**THE REPUBLIC OF UGANDA**

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

**LABOUR RESPODENTS APPEAL NO. 15OF 2015**

**[ARISING OUF HIGH COURT SUIT NO. 168/1/2775]**

**KARAHUKAYO DAVID &04 OTHERS…………..APPELLANT**

**VERSUS**

**CONTINENTAL TOBBACO UGANDA LTD………………………………..RESPONDENT**

**BEFORE:**

1. Hon. Chief Judge Ruhinda Asaph Ntengye

2. Hon. Lady Justice Linda Tumusiime Mugisha

**PANELISTS**

1. Mr. Ebyau Fidel
2. Mr. Anthony Wanyama
3. Ms. Rose Gidongo

**AWARD**

This is an appeal against the decision of a Labour officer sitting at Hoima.

There were four grounds stipulated in an amended memorandum on appeal as;

1. The labor officer erred in law and fact when he held that the appellants were not dismissed from employment.
2. The labor officer erred in law and fact when he failed to properly evaluate the evidence on record hereby reaching an erroneous decision which occasioned a miscarriage of justice.
3. The labor officer erred in law and fact when he held that the appellants did not satisfy his office about their claims thereby reaching a wrong decision which occasioned a miscarriage of justice.
4. The labour officer erred in law and fact 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.

Before we go on to scrutinize the grounds of appeal and the lower record, we would like to remind both counsel that the appeals to this court lie from the Labour officer on matters of **law** and not matters of fact or of **fact** and **law.**

 Section 94 (2) of the Employment Act provides

**“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 labor officer’’.**

By framing grounds of appeal in a mixture of those of law and those of fact, the appellant pressed upon this court a duty to distinguish between matters of fact and matters of law. Yet as section 94(2) above stipulates,

the appeal must be grounded in matters of law only unless leave is sought from and

granted by this court for the appellant to argue matters of fact.

We shall therefore not accept grounds that purport to be both of fact and of law unless it is obviously and essentially clear that only a matter of law is in issue. We shall therefore ignore ground 1, 2 and 3 and concentrate on ground No. 4.

In his submission, the appellant through legal counsel, contended that there was no record to show that evidence was adduced by either parties and that the Labour officer should have made a mediation report instead of making an award without hearing evidence of the parties.

In reply counsel submitted

**“……………we were never served with the said record and we have carefully made further efforts to peruse the file before this court to appraise ourselves with the said record but to no avail…….”**

The award of the Labour officer states

“**The hearing was held on 24th day of August 2015 at 10.00 a.m and was attended by both parties ……..having heard from both parties, I conducted further investigations on that matter and was able to ascertain the following with due diligence……….……….”**

We have perused the whole record but there is nothing close to a hearing or any adducing of any evidence from any of the parties.

Neither is there any formal complaint from the appellant to the Labour officer as prescribed under **section 71 of the Employment Act** nor any communication from the Labour officer requiring the respondent to offer some explanation. There is nothing on the record to suggest that the Labour officer did any investigation as he claims in his award. There is no indication that that there was any form of mediation or conciliation.

The fact that there is a decision in favor of one party pronounced by a Labour officer suggests that there was an adjudication or an arbitration of the dispute but since both of these require that evidence be adduced and yet the record has none, this court cannot be certain that such was the case. It is possible that the Labour officer orally talked to some people without recording anything and relied on whatever he gathered orally which is not acceptable.

We find therefore that the Labour officer had no legal basis to decide as he did and this caused a miscarriage of justice. The orders of the Labour officer at Hoima therefore are hereby set aside and a retrial ordered before another competent Labour officer. No costs are awarded.

**SIGNED BY:**

1. Hon. Chief Judge Ruhinda Asaph Ntengye

2. Hon. Lady Justice Linda Tumusiime Mugisha

**PANELISTS**

1. Mr. Ebyau Fidel
2. Mr. Anthony Wanyama
3. Ms. Rose Gidongo

**Dated:15/9/2017**.