THE REPUBLIC OF UGANDA
THE INDUSTRIAL COURT OF UGANDA HOLDEN AT KAMPALA
LABOUR DISPUTE APPEAL NO. 018 OF 2015
(*ARISING FROM LABOUR DISPUTE NO. 72 OF 2017 OF KASESE*)

REV. DR. PETER K. MUHINDO.....CLAIMANT

VERSUS

KASESE COMMUNITY HEALTH & EDUCATION.....RESPONDENT

BEFORE
1. The Hon. Chief Judge, Asaph Ruhinda Ntengye
2. The Hon. Judge, Linda Lillian Tumusiime Mugisha

Panelists
1. Mr. Adrine Namara
2. Ms. Susan Nabirye
3. Mr. Micheal Matovu

AWARD

The background is that the claimant was an employee of Kasese District Local Government. By letter dated 22/6/2005, Bishop Masereka Christian Foundation requested the Chief Administrative Officer to relocate and transfer the claimant as a part timer initially to the respondent Health Centre with his salary benefits. The respondent indeed worked with the claimant until 25/9/2017 when the service of the claimant was ended by the respondent because of his appointment as medical officer of Health, Kasese Municipal Council. The claimant's service was terminated effective 1/10/2017. He felt aggrieved and lodged a complaint to the labour officer who decided that the claimant was not an employee of the respondent and that he was only entitled to payment in lieu of notice of 4,800,000/=. The claimant was not amused by this decision and hence this appeal.

There were five grounds of appeal. The 2nd, 3rd and 4th were grounds based on both fact and law. This court in the case **of NETIS UGANDA LIMITED VERSUS CHARLES WALAKIRA labour dispute Appeal 22/2016** decided that in accordance with section 94 of the Employment Act matters of fact or matters mixed in fact and Law, unless with leave of this court, were not to be entertained on appeal. We are still of the same position. Consequently we agree with the submission of counsel for the respondent that the appellant did not comply with **Section 94(2) of the Employment Act** and we hereby strike out grounds 2, 3 and 4 of the Appeal.

We shall handle both the 1st and 3rd grounds together. The first ground is that the labour officer under evaluated evidence on record by deciding that the appellant was not an employee of the respondent and the third ground was that the whole Award and orders were against the weight of the evidence.

In analyzing whether or not the appellant was an employee of the respondent, the labour officer considered a letter dated 1/6/2005 by Bishop Masereka which he discarded as an appointment letter.

It states:

> **"RESPONSE TO YOUR APPLICATION FOR A VACANCY**
> **Greetings to you from Bishop Masereka Christian Foundation. Your appointment letter will be sent to you in due course and you will assume office the day of your appointment.**
>
> **We however invite you for an orientation course slated for 15th – 16th June 2015."**

An employee under **Section 2 of the Employment Act** is a person who has entered a contract of service. Such a contract of service can be oral or written but when the issue arises as to existence of such contract of service, the burden of proof lies on the party who asserts that it exists.

The appellant therefore was under a duty to prove that he entered a contract of service with the respondent. The evidence on the record from the appellant himself suggests that he lost his appointment letter and a binding agreement but in his testimony neither he nor his witness could recall the contents of the appointment letter or the binding agreement. The police report indicating that the claimant lost documents was short of these important documents to prove his case.

Yet evidence was clear that while the claimant was paid a salary by the District Local Government, he was paid allowances by the respondent. It was not disputed that the appellant was an employee of the District Local Government, and that he was paid allowances by the respondent. It was not disputed that the appellant was an employee of the District Local Government which seconded him to the Respondent medical centre.

In the absence of evidence of both the appointment letter and the binding agreement, and in the absence of what terms and conditions were in both of these documents, it was clear that the appellant had only been seconded to the respondent and paid allowances while the District Local Government paid him salary. Consequently we find that the labour officer was correct in his finding that the appellant was not an employee of the respondent within the meaning of **Section 2 of the Employment Act.**

In the cross appeal the respondent contended that it was an error that the labour officer ordered for payment of 4 months in lieu of notice and prayed that such order be set aside. Under **Section 18 of the Employment Act,** notice before termination of employment is only given to an employee under contract of service as provided in **Section 2 of the Employment Act.** Having correctly found that the appellant was not an employee in the spirit of the said section of the law, it follows that the labour officer made an error to order that the respondent pays 4 months in lieu of notice to the appellant. Accordingly the cross appeal succeeds while the appeal hereby fails. The order of the labour officer is hereby set aside. No order as to costs is made.

Signed by:

1. The Hon. Chief Judge, Asaph Ruhinda Ntengye

   ……..
2. The Hon. Judge, Linda Lillian Tumusiime Mugisha ……..

Panelists

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

Dated: 22/02/2019