

THE REPUBLIC OF UGANDA
THE INDUSTRIAL COURT OF UGANDA HOLDEN AT KAMPALA
LABOUR DISPUTE APPEAL No. 28/2018
(Arising from KCCA/CEN/198/2016)

BETWEEN

MUBIRU MARTIN CLAIMANT

AND

THE RED CROSS SOCIETY.....RESPONDENT

BEFORE

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

PANELISTS

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

RULING

When this appeal came up for mention on 26/3/2019 Mr. Mulula and Mr. Sebowa appeared for the respondent while Mr. Kinyera appeared for the applicant.

Mr. Mugalula raised a preliminary objection to the effect that the grounds of appeal were of mixed law and fact and that therefore the appeal ought to be struck off for failure to have complied with **Section 94(2) of the Employment Act**. He relied on **Karahukayo Vs Continental Tobacco Ug, Ltd, L.D. Appeal 15/2015**.

In reply Mr. Kinyera submitted that since the preamble of the memorandum of appeal spoke of seeking leave to appeal, this Court should exonerate the claimant. He argued in the alternative that court should strike out reliance on points of fact and leave out reliance on points of law so that the appeal proceeds.

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 Labour Officer.”

The memorandum of Appeal in the instant appeal provided 2 grounds:

- 1. The labour officer erred in law and in fact when he failed to fully evaluate the whole evidence thereby arriving at a wrong conclusion that the appellant did not continue to offer service to the respondent between the months of January and March 2016 leading to entitlement of the salary for that period.**
- 2. The Labour officer erred in law and in fact when he failed to fully evaluate evidence presented thereby arriving at a wrong conclusion that the appellant should make a comprehensive handover report before claiming his provident funds.**

In the recent case of **Onyango Robert Vs Security Group (U) (SGA)** L.D. Appeal 040/2018 delivered on 21/3/2019 this court stated:

”Ground I alleges improper evaluation of evidence on the record by the Labour Officer thus arriving at an erroneous decision. As already stated earlier , re-evaluation of evidence is an inherent obligation of the appellate court and in the case of Baingana J. P. Vs Uganda Cr Appeal 068/2010 (COA) failure to evaluate evidence was held to be a matter of law which the court on appeal could delve into.

The court of Appeal in the above decision singled out evaluation of evidence from among other grounds that related to a mixture of law and fact and entertained it striking out all the rest of the grounds. Since the instant appeal constitutes two grounds both of which are based on alleged failure by the Labour officer to properly evaluate evidence of the record, we hereby overrule the preliminary objection.

No order as to costs is made.

SIGNED BY:

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

PANELISTS:

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

Dated: 05/04/2019