

**THE REPUBLIC OF UGANDA  
THE INDUSTRIAL COURT OF UGANDA HOLDEN AT KAMPALA  
LABOUR DISPUTE LDA NO. 005 OF 2014  
(ARISING FROM LABOUR DISPUTE CB NO. 109 OF 2014)**

**BETWEEN**

**ACTION AID UGANDA..... CLAIMANT**

**AND**

**DAVID TIBEKANGA ..... RESPONDENT**

**BEFORE**

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

**Panelists**

1. Mr. Ebyau Fidel
2. Ms. Julian Nyachwo
3. Mr. Baguma Filbert Bates

**AWARD**

This labour dispute appeal arises from the decision and award of the Labour Officer stationed at Kampala City Authority.

The appeal is based on two grounds:

- 1) The Labour Officer erred in law and fact when she 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 when she awarded the complainant/respondent a sum of Ug. Shs. 14,786,577.5 for the defamation of character and name of the complainant/respondent.

We shall deal with the second ground first. Counsel for the appellant strongly argued that the award of 14,786,577.5 was based on character and name which is expressly prohibited by section 93(6) of the Employment Act. He argued that defamation of character was a tort and that as such the Labour Officer had no jurisdiction to make an award.

In reply counsel for the respondent submitted that the Labour Officer did not base the award on defamation of character but on section 78(2) of the employment Act. He argued the basis was that the action of advertising the name of the claimant in the news papers would deny the

claimant opportunities for employment. The award, he submitted, was not for defamation of character. Section 93 of the Employment Act provides for Remedies, jurisdiction and appeals and section 93(6) thereof provides:

**"a claim in tort arising out of employment relationship; claim shall be brought before a court and the labour officer shall not have the jurisdiction to handle such a claim."**

Section 78(2) of the Employment act stipulates:

**"An order of compensation to an employee whose services have been unfairly terminated may include additional compensation at the discretion of the Labour Officer, which shall be calculated taking into account the following:**

- a) .....
- b) .....
- c) .....
- d) Opportunities available to the employee for securing comparable or suitable employment with another employer:"**

In her award, the Labour Officer is reported on the record to have said **"The respondent's action of publicizing the complainant in the various media and dates on unsubstantiated allegations was damaging to the complainant's reputation and career he had taken so long and sacrificed a lot to build. This definitely impedes the complainant's further carrier advancements not limited to re-employment. In the circumstances the complainant is hereby awarded additional compensation of 2.6 months pay amounting to Ug. 14,786,577.5/=".**

It is our firm conviction that the fact that the Labour Officer alludes to the reputation and career of the claimant being damaged by the advertisement, meant that such advert in her mind was tortious and the tort allegedly committed would necessarily be the tort of defamation. The impediment of the advancement of the claimant's re-employment in our view would be a result of this tortious act. We therefore do not accept the contention of counsel for the respondent that in allowing additional compensation, the Labour Officer was not influenced by the alleged defamatory publication of the name of the claimant in the media, which in express terms of section 93(6) of the employment Act excludes the Labour Officer from exercising jurisdiction over an alleged tort. Accordingly ground 2 succeeds.

Counsel for the claimant in support of ground one of the appeal, submitted that the Labour Officer took a decision without hearing the parties.

On perusal of the record we find that the Labour Officer looked at the disciplinary proceedings and decided that;

**"It is not indicated anywhere that the complainant was given the opportunity to hear the witnesses testify or given the opportunity to cross examine the witnesses of the respondent .....whereas the respondent tried to give a hearing to the complainant, procedurally in my opinion, it was not a fair hearing as natural justice demands".**

It seems to us that the Labour Officer acted like an appellate court.

Nowhere on the record is there any evidence adduced by either the claimant or the respondent after mediation failed. During mediation according to the record, the complainant put his position which was replied to by counsel for the respondent, KGM Advocates. And it is these positions that the Labour Officer relied on to make the award. We think this was inherently irregular and illegal. As a first court, the Labour Officer is expected to call evidence of both parties and allow cross examination and all this must be on the record.

This court in the case of **SURE TELECOM VS BRIAN AZEMCHAP (Labour Dispute Appeal No. 008/2015)** held that **"it was a travesty of justice for a Labour Officer having initially attempted to settle the dispute by mediation, to turn to adjudication after failure of mediation. We are in agreement with counsel for the appellant that the ends of justice could only be met by the transfer of the dispute to another competent arbiter who could be any other Labour Officer or even the industrial court. ....A Labour Officer is constrained from handling both mediation and adjudication at the same time in respect to the same complainant".**

We have no reason to depart from this position. Accordingly the appeal is allowed, the orders of the Labour Officer are set aside and a re-trial of the complaint before a Labour Officer other than the one who engaged the parties in mediation is ordered. No order as to costs in made.

8/09/2015: Mr. G. Niwagaba for appellant  
Mr. Twinomugisha for Respondent  
Appellant absent.  
Respondent present.

Court: Award delivered in Chambers.

Date: 8/09/2015:

**Signed:**

1. The Hon. Chief Judge, Asaph Ruhinda Ntengye .....

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

**Panelists**

1. Mr. Ebyau Fidel .....

2. Ms. Julian Nyachwo .....

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