

UGANDA / JUDGMENT

Protea Hotel Kampala v Nyinakiiza (Labour Dispute Appeal No. 15 of 2015) [2016] UGIC 11 (23 June 2016) [2016] UGIC 11

COURT

Industrial Court of Uganda

CASE / FILE NUMBER

Labour Dispute Appeal No. 15 of 2015

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THE REPUBLIC OF UGANDA

INDUSTRIAL COURT OF UGANDA HOLDEN AT KAMPALA

LABOUR DISPUTE APPEAL NO. 015 OF 2015

ARISING FROM LABOUR DISPUTE NO OF 2015

BETWEEN

PROTEA HOTEL KAMPALA APPELLANT

AND

NYINAKIIZA RHINA 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. Jullian Nyachow

3. Ms. Tukamwesiga Penninah

AWARD

BRIEF FACTS

As discerned from the record of the Labour Officer, the respondent was employed by the appellant from 17/09/2007.

According to the appellant, there were issues in the revenue collection and as a result the appellant decided to lay off staff. With the involvement of the workers union, the staff were indeed laid off including the respondent with their packages.

According to the respondent on 23/01/2015, misunderstandings arose, originating from unknown people threatening the life of the General Manager and the respondent was one of the suspects who were arrested but later on released. The respondent was then terminated for failure to account for the restaurant money.

The Labour Officer found that the termination was not fair and granted various awards to the respondent to which the appellant was aggrieved and hence this appeal.

When the matter came up for hearing on 7/03/2016, this court allowed the parties to file written submissions which were eventually filed.

On perusal of the submissions we find a preliminary objection a ruling upon which we feel will dispose of the whole appeal.

Counsel for the respondent argued strongly that the appeal was filed prematurely. He contended that counsel should have waited for an adjudication decision/award instead of appealing against a mediation decision/award. According to counsel the decision of the labour officer in this matter was an intermediate decision against which an appeal was illegal.

In reply counsel for the appellant argued that the preliminary objection ought to have been filed as a cross appeal. He submitted that even then the labour officer gave a ruling and not a mediation report. According to him she overstepped her powers in the ruling which showed she was no longer mediating as she ruled that her award would be enforceable through the court system.

In our considered opinion, a mediation process is an informal, negotiated settlement of a dispute where a third party called a mediator facilitates the process in which the parties are in control of the content and outcome.

Adjudication on the other hand is a process of resolving disputes whereby parties adduce evidence and make submissions to a third party called an adjudicator who after evaluation of both evidence and submissions relating to the subject matter of the dispute makes a ruling that binds the parties and is enforceable through the courts.

The instant case before us shows the following: -

* 28/04/2015, Tinshekwa A. Rukundo & Co. Advocates lodged a claim to the Labour Officer of KCCA claiming unlawful dismissal.

* On 30/4/2015, the Labour Officer wrote to the respondent informing them about the claim and requesting them to prepare for and attend a mediation meeting scheduled for 11/05/2015.

* On 11/05/2015, one Catherine Bambya appeared as the Human Resource person of the respondent and an advocate appeared for the claimant.

Counsel prayed for compensation of various categories and asked the Labour Officer “if Protea Hotel is defiant refer the matter to industrial court Division of Kampala High Court for hearing”. Subsequently submissions from the advocate for the claimant dated 14/7/2015 were filed responding to submissions of the respondent. The Labour Officer then delivered her award which is dated 21/08/2015.

The question before this court is whether the above process was adjudication or mediation or even both? At the end of it all the Labour Officer asserts:

“In the final analysis and having considered all evidence on record together with submissions of counsel for both parties besides my own evaluation of the above, Kampala Capital City Authority Labour Officer accordingly gives a ruling in favour of the complainant with the following orders In the default the complainant is free to enforce the award through the court system

A party aggrieved by the decision may appeal under section 94 of the Act to the Industrial Court "

After perusing the record of the Labour Officer it is clear to our mind that the initial stage of the proceedings was mediation as the letters addressed to the parties indicate.

The proceedings of 11/05/2015 also tend to show that the parties were still at the mediation stage as counsel for the claimant asked the Labour Officer to refer the matter to Industrial court for hearing if the respondent was defiant.

It is our considered opinion once the Labour Officer ignored this suggestion from counsel and started considering submissions and evidence she mingled up Mediation with adjudication.

We reject the insinuation by counsel for the claimant that when a Labour Officer grants a mediation award/decision with reliefs not arising from counsel of both parties or from the parties themselves such decision would not be appealable. We do not accept his contention that it was premature for the respondent to appeal against such an award for it had all characteristics of an adjudicatory award as opposed to a mediation. The mediation decision appealed against was a decision of the labour officer and not a decision of the parties which was/is uncharacteristic of a mediation process.

We agree with counsel for the respondent that it was a ruling and not a mediation report. It was an award that had the force of law, as it was enforceable through the court system.

Once both parties have not agreed with the content and outcome of mediation, such mediation must be said to have failed and the only recourse to the mediator is to record this fact of failure and forward the matter to another competent authority for adjudication.

As counsel for the respondent admits, this is the position put clearly by this court in SURE TELECOM VS BRIAN AZEM CHAN Labour Dispute Appeal

No. 008/2015. Consequently any award giving reliefs and orders not by consent of the parties to the dispute cannot be said to be as a result of a mediation process and is subject to appeal or revision.

We therefore overrule the preliminary objection.

After this ruling it follows that in accordance with SURE TELECOM VS BRIAN AZEM CHAN (supra) the labour officer was in error by converting the mediation proceedings into adjudicatory proceedings. As emphasized in the above case, once mediation proceedings fail, the labour officer is obliged to take note of the failure on the court record and forward the file to another competent authority not for mediation once again but this time for adjudication resulting into adjudicatory orders. Without considering other grounds, the appeal succeeds with orders that the matter is put before another competent labour officer this time for a adjudication which should be done as expeditiously as possible.

No order as to costs is made.

signed

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

PANNALISTS

Mr. Ebyau Fidel

Ms Julian Nyachow

Ms Tukamwesiga Penninah

Dated this 23rd June 2016

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