

**IN THE COURT OF APPEAL OF TANZANIA**  
**AT DAR ES SALAAM**  
**(CORAM: NDIKA, J.A., KITUSI, J.A. And RUMANYIKA, J.A.)**

**CIVIL APPEAL NO. 190 OF 2018**

**MUHIMBILI NATIONAL HOSPITAL .....APPELLANT**

**VERSUS**

**LINUS LEONCE .....RESPONDENT**

**(Appeal from the judgment and decree of the High Court of Tanzania (Labour Division) at Dar Es Salaam)**

**(Mashaka, J.)**

**dated 3<sup>rd</sup> day of March, 2017**

**in**

**Ravision No. 120 of 2016**

.....

**JUDGMENT OF THE COURT**

*8<sup>th</sup> February & 28<sup>th</sup> April, 2022*

**RUMANYIKA, J.A.:**

Briefly, on 15/04/2013 Linus Leonce, the respondent was employed as an Accountant by Muhimbili National Hospital, the appellant. On 03/03/2017, the respondent instituted an unfair termination claim in the Commission for Mediation and Arbitration for Dar es Salaam at Dar es Salaam (the CMA) alleging that the appellant had terminated his employment without following the applicable procedure. The CMA found in his favour. Consequently, it awarded him 12 months' remuneration as

compensation. On revision, the High Court upheld the award. Not satisfied, the appellant now appeals.

It is evident on record that the appellant had wanted to employ a senior accountant but instead of advertising for that post, it advertised for an accountant vacancy which the respondent successfully applied for and was recruited. He worked with the appellant until on the 24/06/2014 but all along he never got paid any remuneration. The reason assigned by the appellant for not paying him any remuneration was that the Central Establishment had not sanctioned the employment. Vide a letter with Reference No. MNH/CPF.10832/01 of 24/06/2014 (Exhibit A2) the appellant terminated the respondent's employment based on the terms therein set forth. Accordingly, the respondent replied by a letter dated 27/06/2014 (Exhibit D2). Then he was paid terminal benefits.

The appellant's memorandum of appeal revolves around one point essentially. That the High Court construed and evaluated the two letters and the evidence on record wrongly by holding that the two letters did not mean the employer's offer to terminate the contract and the employee's acceptance respectively.

When the appeal came up for hearing, Mr. Daniel Nyakiha and Ms. Debora Mcharo, learned State Attorneys appeared for the appellant. Messrs John Laswai and Makarius Tairo, learned counsel appeared for the respondent.

Mr. Nyakiha submitted that had the High Court interpreted the two letters properly it would have arrived at a different conclusion, as all what transpired was nothing more than the appellant's offer and the respondent's acceptance respectively hence a mutually agreed termination of the employment contract. Therefore, he submitted, the preliminary process of a disciplinary committee and hearing should not have been raised.

On his part, Mr. Laswai submitted that there was nothing upon which to fault the CMA or the High Court because the respondent was upon procedure unfairly terminated. He added that the letter of termination and the reply thereto (Exhibits A2 and D2 respectively) did not mean or even suggest termination by agreement, but simply the appellant's premeditated unilateral decision to terminate the respondent. Irrespective of some terminal benefits that the appellant undertook to pay and the respondent's

reply thereto dated 27/06/2014, the respondent was ready for the termination if promptly paid the terminal benefits promised and the long overdue monthly salary arrears. The learned Counsel added that the respondent's letter should not have been mistaken for a concession to the proposed termination of the employment as envisaged under rule 4(1) of the Employment and Labour Relations (Code of Good Practice) Rules, G.N. No. 42 of 2007 (the GN) because, in terms of s. 2(1) (a) of the Law of Contract Cap. 345 R.E. 2019 there was no agreement at all executed by the parties but simply the appellant's imposed termination. Therefore, he said, that on that one the respondent was not fairly heard leave alone having had a hearing. He added that pursuant to s. 40 (1) (c) of the ELRA, the CMA's award of 12 months' remuneration as compensation, as correctly upheld by the High Court, it fairly met the justice of the case.

Now, before us the central issue is whether the termination of the respondents' employment contract by the appellant's inadvertent public advertisement for the post, letter with Ref. No. MNH/A5/2013 dated 09/04/2013) was preceded by a mutual agreement. At least it is not

disputed that between 15/04/2013 and 24/06/2014, inclusive of the dates the two had an employer and employee relationship.

For ease of reference and appreciation of how their contractual relationship ended, we wish to extract the relevant part of the appellant's letter Ref. No. MNH/CPF.10832/01 of 24/6/2014 (Exhibit D1) as follows: -

*"THE TERMINATION OF EMPLOYMENT CONTRACT BY  
AGREEMENT*

*Reference is made to your letter dated 5<sup>th</sup> May, 2014 and 18<sup>th</sup> June, 2014 the above captioned subject.*

*We regret to inform you that **the Hospital has failed to resolve your employment with the Government owing to the variation of employment permit which authorized the employment of Senior Accountant and the position of accountant which you were offered.** The Hospital has subsequently failed to secure your employment as you did not meet the required experience for the permitted position of Senior Accountant. In this regard, the Hospital has not been able to receive your salary to pay you accordingly from the date of your employment to date.*

***Considering the frustration of this employment contract, the Management of the hospital is proposing to terminate it with immediate effect.** Following this termination you will be considered for the following benefits: -*

1. *Salary arrears from 15<sup>th</sup> April 2013 up to June 2014 amounting to Tshs 28,000,500/=*
2. *Salary in lieu of short notice of shs. 1,964,000/=*
3. *10% NSSF total employer's contribution of shs. 2,800,050/=*
4. *Repatriation expenses of Tshs. 2,782,200/=*
5. *Severance allowance of Tshs. 458,266/= and salary in lieu of annual leave of Tshs. 1,964,000/=*

***Please indicate in writing your acceptance or otherwise on the termination of employment and the payment of related benefits as considered by the Management as the best option to resolve the problem of your employment with the Hospital***

*Yours sincerely,*

.....

**MAKWAIA M. MAKANI**  
***DIRECTOR OF HUMAN RESOURCES"***

[Emphasis added]

It is evident from the above quotation that the appellant notified the respondent of its proposal for termination of the respondent's employment with immediate effect following frustration of the contract of service for which the respondent was invited to consider and, if accepting the terms, indicate it in writing. The respondent in his reply, a letter dated 27/06/2017 (Exhibit D2), acceded as partly indicated below: -

*"...RE: TERMINATION OF EMPLOYMENT CONTRACT BY AGREEMENT*

*Refer to the captioned matter above. In response to your letter dated 24<sup>th</sup> June, 2014 with reference no. MNH/CPF.10832/01, I bring to your attention as follows: -*

*That regarding to our job termination, **I have nothing to object from the description of paragraph 3 item 1, 2, 3, 4, 5 indicated on the latter as referred in above.***

*However, **my request is that, the said terminal benefits be paid within two weeks from the date of receiving this letter** much on that, the said payment be paid **at single installment** to avoid disturbance and not otherwise.*

*Finally, taking into consideration that my salaries and other benefits have taken almost a year and a half without payment now I beg for the said terminal benefits are paid **as prompt as possible. This will enable me to comply with other alternatives especially on my subsequent job seeking respectively.***

*Sgnd.*

*.....*

**LINUS LEONCE**

It is our considered opinion therefore that from the above parties' partly quoted letters, any prudent reader would conclude; **One**, that on account of frustration of the contract of service between the parties, the

appellant had no other option but to terminate the contract and pay the appellant the proposed benefits. **Two**, the appellant's letter (Exhibit A1) was but an offer and proposal for termination. **Three**, the respondent had two voluntary options, to accept the offer and the proposed terminal benefits or otherwise. Without much ado, the respondent accepted the offer of mutual termination of the contract. He acceded to the proposed termination upon the appellant's undertaking to pay the proposed package within two weeks of his reply. Accordingly, the respondent was paid. They were done and parted company.

It follows therefore that with all that undisputed, by necessary implication on such terms the respondent agreed the appellant's offer for termination and received the agreed terminal benefits. In other words the appellant did all the needful in compliance with s. 2 (1) (a) of the Law of Contract Act Cap.345 R.E.2019.

In other words, the Common Law doctrine of estoppel bars the parties, in this case the respondent from running away from their previous freely made choices. It bars them denying their previous freely made



choices. The ground of appeal is allowed. We think the labour dispute was misconceived.

For the reasons herein above we have endeavored to give, we quash the impugned decision and set aside the resultant orders. We make no order as to costs because the appeal arises from a labour dispute.

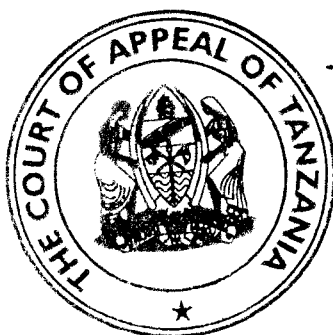
**DATED at DAR ES SALAAM** this 22<sup>nd</sup> day of April, 2022.

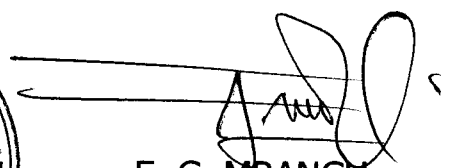
G. A. M. NDIKA  
**JUSTICE OF APPEAL**

I. P. KITUSI  
**JUSTICE OF APPEAL**

S. M. RUMANYIKA  
**JUSTICE OF APPEAL**

The Judgment delivered this 28<sup>th</sup> day of April, 2022 in the presence of Mr. Daniel Nyakiha, learned State Attorney for the appellant, also holding brief for Mr. John Ignas Laswai, learned counsel for the respondent, is hereby certified as a true copy of original.



  
E. G. MRANGU  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**