IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT MWANZA

REVISION NO. 09 OF 2017

(CMA/MZA/3/2017)

MHUBIRI ROGEGA MONG'ATEKO ..... APPLICANT

VERSUS

MAK MEDICS LTD ..... RESPONDENT

EXPARTE RULING

25/09/2018 & 31/01/2019

RUMANYIKA, J.:

It is against the 06/03/2017 award and orders of the commission for mediation and arbitration for Mwanza at Mwanza (the CMA) holding that the 15/8/2012 termination by MAK MEDICS LTD (the respondents) of the contract of service of Mhubiri Rogega Mong'ateko (the applicant) was valid and fair. Given nature and circumstances, according to the Arbitrator equivalent to a dismissal order. Then held that the applicant was entitled to no terminal benefits at all.

It is supported by affidavit of Mhubiri Rogega Mong'ateko. Whose contents essentially, the applicant adopted during the hearing.

When the application was called on 25/09/2018, though through posts dully served on 22/09/2018 (as per copy of TPC delivery status

report), the respondents were not in attendance. Admittedly, Mr. Richard Amos of the respondents appeared only following up the proceedings. Their appearance, pursuant to my 25.09.2018 reasons and order was dispensed with. Hence the exparte ruling.

The applicant in a nutshell submitted that now that although were duly served, strictly the respondents had filed no counter affidavit. The application was as good as a non contested one. The CMA wasn't right, this court now grant the meritorious application. Stressed the applicant.

A brief account of evidence on record would read as follows:-

PW1 Mhubiri Rogega in his evidence admitted, in such capacity having been employed by the respondents. That with regard to the loss of shs. 15.0 million, he had not confessed or admitted it. That if anything, the purported agreement (Exhibit "D4") was, but a forged document. That he was unfairly terminated on 21/08/2012 whilst criminal proceedings were still pending against him. That he was not even notified of the date of hearing of the displinary cause. That employers (the respondents) had personal gludges with him.

PW2 Mwasi Mong'ateko stated that he was a member of the applicant's family. Therefore aware of the Shs. 15,000,000/= case now caused serious misunderstandings in the family.

The Respondent's case ran as under:-

DW1 stated that in accordance with the contract of service, the custodian applicant was in terms of ethics expected to lead by example.

But he caused loss of Shs. 150.0million. That admitted it and in writing promised to repay. That despite his admission, displinary proceedings followed and was found guilty. Hence termination of service.

DW2 stated that he chaired the displinary proceedings .As per dw1, substantially. That is it.

DW3 is on record saying that following loss of shs. 150.0 million, the applicant confessed and promised to repay. Which agreement as advocate witnessed. (Copy of the agreement cum applicant's admission - Exhibit "D4").

The Arbitrator, it appears on balance of probabilities convinced, held that having admitted occasioning loss, he was now stopped from denying the truth and wasn't entitled to benefits.

The central issues are (1) whether there was unfair termination (2) whether the applicant was entitled to terminal benefits. The answer is no. Reasons are;

One; quietly though, the applicant admitted having had such duty of care and did not dispute the alleged loss. Leave alone attempts to.

Two; the alleged applicant's admission of loss (Exhibit D4) may have been forged or, on his 2nd thought coerced, but without stating who, and how it was forged, the applicant is stopped from denying the truth. Leave alone serious contradictory evidence of his admission. Forged, forcefully obtained or both?

Three; now that the applicant owed them duty of care, and the loss wasn't disputed, even in absence of the applicant's admission, there was, on the balance of probabilities proof of misconduct. Procedural illegularities if any, notwithstanding. (Section 37 (2) of the ELRA).

Four; Now that for the above reasons, termination was for fair reason, as correctly in my considered opinion said by Arbitrator equivalency of a summarily dismissal, the issue of terminal benefits and alternative reliefs should not even have been raised. There is nothing to default the Arbitrator.

The devoid of merits application is dismissed. Ordered accordingly.

Right of appeal explained.

S.M. RUMANYIKA

JUDGE

27/01/2019

Delivered under my hand and seal of the court in chambers this 31st day of January, 2019 in the presence of the applicant and in absence of the respondent.

O.H. Kingwele

DEPUTY REGISTRAR

31/01/2019