

IN THE HIGH COURT OF TANZANIA
AT MWANZA
REVISION APPLICATION NO. 87 OF 2017
(Arising from CMA/ MUS No. 144 of 2013)

RICHARD M. AUGUSTINE.....APPLICANT
VERSUS
KAMPUNI YA SIMU TANZANIA (TTCL).....RESPONDENT
JUDGMENT

Hearing concluded.....15/10/2018

Judgment delivered...29/01/2019

Gwae, J

The applicant, **Richard M. Augustine** was employed by Tanzania Telecommunication Company Limited (TTCL) since 14th **April 1975** under permanent and pensionable basis. He served at different capacities at different places. Last position held by the applicant was Regional Manager-Mara.

In the 2007, the respondent went restructuring which necessitated retrenchment of employees, the applicant inclusive, thus, ceasure of the applicant's permanent and pensionable status with his employer. However the applicant successfully applied for a job after restructuring on a different

employment contract. Eventually, the applicant's employment with the respondent compulsorily ended on 12th June 2013.

The applicant immediately after his compulsory retirement, he filed a labour dispute in the Commission for Mediation and Arbitration at Mwanza however he withdrew the same following the fact that the dispute arose in Mara Region. He then successfully applied and obtained a leave to file the dispute before CMA at Musoma out of time.

The applicant through Form No. 1 described the nature of dispute being claim for unpaid and under payment of terminal benefits, namely; **firstly**, Non-payment of special service award (Tshs.14, 454,126/=), **secondly**, one month in lieu of notice (Tshs.890, 000/=), **thirdly**, severance pay (Tshs.4, 039, 592.70), **fourthly**, underpayment of repatriation (Tshs. 2,634,305/=) and **fifthly**, non-payment of termination compensation (Tshs. 23,126,592/=).

Upon hearing of both parties, the CMA Musoma dismissed all of the applicant's claims after it was satisfied that both statutory and non-statutory benefits were honored by the respondent. Hence this application for revision on the ground that;

“Whether it was proper and just for the CMA to deny the applicant his statutory and contractual benefits at his retirement”

The respondent through his affidavit sworn by one George Alex, stated that this application is non-meritorious simply because that the applicant was accordingly paid his termination dues prior to reorganization.

Before this court, the applicant and respondent were represented by **Mr. Luhigo** (adv) and Magambo (applicant’s solicitor and advocate) respectively. The parties’ representatives sought and obtained leave to argue this application by way of written submissions. I shall take into account of the parties’ written submissions in the course of determining the applicant’s ground for the sought revision of the arbitral award by this court (1st to 5th claim)

Starting with the claim over Special Award upon Retirement and ex-gratia payment, the applicant respondent in their submissions relied on the Employment and Labour Relation Act, No. 6 of 2004 and TTCL’s Human Resources Policies, Guidelines and Regulation for Managers (Hereinafter to be referred to as Rules-**DE5**), equally the CMA. The Policies and Regulation came into operation effectively from 1st July 2006.

The applicant has urged this court to consider the fact that he was employed by the respondent since 1975 and he compulsorily retired in 2013, he thus urged this court to make reference to Clause 71 of the Rules, which for the purpose of clarity I reproduce it herein under;

“When the manager voluntarily or compulsorily retires from the service of the Company after serving the Company for ten consecutive years or more in any capacity he shall be paid six months’ salary”.

According to the clause 71, the applicant is not covered since his employment ceased in the 2007 following the purported restructuring as it is vividly clear that the applicant was re-employed by the respondent on 17th October 2007 with new terms and conditions of the employment as stipulated in the contract of employment (**DE4**) and he served for a maximum of **six** years and **not** ten years as envisaged under clause 71 of the Rules.

Moreover nowhere in the parties pleadings’ and documents tendered and admitted for evidential value is indicated that there was continuity of the employment between the applicant and respondent from 1975 to 2013 except the letter dated 29th September 2008 (**DE1**) that the former

contract of employment under permanent and pensionable terms was terminated and the applicant was paid his terminal benefits.

The CMA was therefore justified to deny the applicant this kind of claim as he had not worked for consecutive ten years or more.

In respect of the claim of ex-gratia payment, as it is evident that the applicant was not paid ex-gratia vide letter dated 29th September 2008 in which statutory and non-statutory payments for termination of the applicant's employment under permanent and pensionable terms were paid. The ex-gratia payment was not among the terminal benefits that were paid to the applicant.

Clause 29 (d) (iii) of the Rules is unambiguous and it reads;

"The service of manager who loses his/her position due to restructuring shall be terminated in accordance with the terms of his /her contract. In addition an ex-gratia payment will be made as follows;

- (i) 1 to 2 years employment equivalent to 6 months' salary
- (ii) above 2 but below 4 years employment equivalent to 9 months' salary
- (iii) 4 years employment and above equivalent to 12 months' salary

It follows therefore the respondent cannot be heard contending that the applicant's permanent and pensionable employment was not terminated as he secured another employment with new terms of employment contract, consequently, according to him, he was not entitled to ex-gratia payment.

Carefully looking at the applicant's application for condonation duly received on the 10th September 2013 by the CMA, I do not find if the applicant was praying for extension of time file the dispute against the respondent to include unpaid and underpaid terminal benefits following his retirement in June 2013. The extension granted therefore lucidly covered only his claims on termination of his employment under permanent and pensionable terms-2007 (see paragraph 5 of the affidavit and the letter addressed to the chief Marketing and Sales Officer dated 17th May 2013, It is to my considered view that the applicant is entitled to ex-gratia, $(1,036,722/\times 12=12,440,664/-$ (minus 3 month salaries paid) vide payment voucher dated 14th June 2013 as ex-gratia=**9,330,498/=**) subject to necessary taxes.

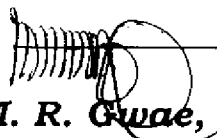
Given the undisputed fact that the applicant's counsel did not argue on the remaining claims, notably, allegedly unpaid repatriation, twelve

months compensation, severance pay, I shall thus not dwell to the claims which have not been argued, therefore, they are deemed as abandoned.

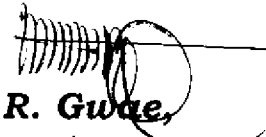
The applicant's application is consequently allowed to the above extent, the applicant is entitled to ex-gratia payment on unpaid 9 months' salary amounting to Tshs. **9,330,498/=**). Each party shall bear its costs order as to costs

It is so ordered




M. R. Gwae,
Judge
29/01/2019

Right of appeal explained fully


M. R. Gwae,
Judge
29/01/2019