

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

DISTRICT REGISTRY

AT ARUSHA

LABOUR REVISION NO. 73 OF 2018

(C/F Labour Dispute No. CMA/ARS/ARB/79/2018)

RONALD UFOO MURO.....APPLICANT

Versus

AIM STEEL LTDRESPONDENT

JUDGMENT

19/03/2020 & 28/05/2020

MZUNA, J.:

This is an application for revision of the award filed by **Ronald Ufoo Muro** against **AIM STEEL LTD**. Reading from the statement of legal issues the claim is for failure to evaluate the evidence as well as the allegation that “the applicant himself dismissed from work” (sic). It is his view that the CMA arrived at a wrong conclusion.

The facts leading to this application, albeit in summary, is that the applicant was employed in the respondent company as a driver from 13th March, 2013 to 14th March, 2018 when his employment contract was suspended though the CMA termed it as termination.

The CMA where the matter was referred to found that the applicant was terminated based on operational grounds and was paid all his terminal benefits on voluntary agreement. He proceeded to dismiss the complaint on the ground that the reliefs he claimed in the CMA F1 were already paid to him by the respondent. The applicant felt aggrieved, hence this application for revision.

The application is supported by the affidavit sworn by the applicant, and opposed by a counter affidavit sworn by Mr. Narendra Vaghela, the Principal Officer of the respondent herein. During the hearing, the applicant defended for himself, whereas the respondent had the services of Mr. Herode Bilyamtwe, personal representative.

Submitting in support of the application, the applicant argued that the CMA awarded lesser amount than what he claimed. He lamented that as per the CMA F1 he claimed for a total of Tshs 4,475,000/= but was awarded only Tshs 216,500/=. He invited the court to revise the award and order him be paid his claim as calculated in the CMA F1. In reply, Mr. Bilyamtwe fully adopted the counter affidavit of the respondent and argued that the applicant was paid all his terminal benefits including one month salary in lieu

of notice. That he cannot get more than what he was paid after serving an employment term of five years only.

Mr. Bilyamtwe was of the view that all the relevant procedures were followed in putting an end to the applicant's contract on grounds of retrenchment. That he was consulted about the mechanical defects of the vehicle he was driving and he agreed to sign for his terminal benefits. On the reason for termination, and possible alternative job, Mr. Bilyamtwe submitted that there was no expectation to purchase a new motor vehicle shortly because the employer had no financial resources at his disposal to do so. Mr. Bilyamtwe invited the court to dismiss this application for the reason that the applicant cannot claim the terminal benefits twice. On the same token, he referred the court to exhibits D1 the termination letter as well as the payments he was awarded exhibit D2.

In a very brief rejoinder, the applicant stated that the respondent decided to unilaterally terminate him. He went on to submit that he was not consulted nor a termination letter was handed to him. He concluded by asking the court to allow his application for want of fairness of the procedure. Above all that even the motor vehicle was not defective.

I have carefully considered the submissions from both parties, in line with the award passed by the CMA. I have also considered the CMA record for the purpose of satisfying myself on the propriety and legality of the award thereof. The main questions for determination are: **One**, whether the procedure for termination on operational requirement (redundancy) was followed; **Two**, whether there were fair and valid reasons for the termination of the applicant by the respondent and; **Three**, whether the award passed by the CMA is justifiable in law.

The law prohibits termination of an employment of an employee by an employer unfairly. That termination of an employment is unfair if the employer fails to prove: **First**, valid reason for termination; **Second**, that the employment was terminated on a fair procedure (See the provisions of section 37 of the Employment and Labour Relations Act, No 6 of 2004 (hereafter Act No. 6 of 2004)). Similarly, section 39 of the Act No. 6 of 2004, the law imposes an obligation on the employer in any proceedings of unfair termination to prove that the termination was fair.

Let me start with ground No.1 and 2, issue of procedure and fair reason.

I have carefully revisited the CMA record and in particular the CMA F1. It is on the record that the applicant claimed for unfair termination based on procedural unfairness "***Mwajili hakunipa sababu za msingi.***" In the payment letter (exhibit P2) it shows such payments were for redundancy package. The question for determination is whether there were valid reasons for termination?

The CMA seems to capitalize on the point that the motor vehicle was defective and that since the applicant was employed as a driver there was no other alternative for him as the employer had no options of purchasing another motor vehicle. There was also issue of on and off payment of traffic fines due to defectiveness of the motor vehicle which led to its being locked in the godown.

From the evidence as gathered on the record, it is apparent that the employment of the applicant was terminated by the respondent. This is clearly proved by the testimony of *Narendra Vaghela*, respondent's witness, at page 3 of the typed CMA proceedings. Again it is also cemented by exhibit D1 a letter titled "*YAH: KUSIMAMISHWA KAZI*". It is also undisputed fact

that the reason for termination was due to the defects that befallen the said motor vehicle which was a working tool for the applicant.

The CMA further based on what the applicant said at page 5 where he was asked:-

"S. Je, kiinua mgongo, notice, siku ulizofanya kazi ulilipwa?"

J. Ndio, na ilikuwa ni ndogo."

The applicant testified further on cross examination that:-

"S. Mbona tena katika form CMA F1 umeomba tena madai hayo.

J. Mimi sijui."

As above indicated, a letter purporting to be a termination letter reads:- **"KUSIMAMISHWA KAZI"** which literally means suspension. This by all means does not mean termination though there purports to be paid terminal benefits. *"Kusimamishwa kazi"* presupposes employment had not come to an end. So the alleged payments for redundancy did not correspond with the letter of termination.

Where the employer opts to terminate the employer on grounds of operational requirement, there must be consultation. The question to ask was there such consultation? There is no mention on such consultation with

the Trade Union. I find authority in the case of **Samora Boniface & 2 Others v. Omega Fish**, Labour Revision No. 56 of 2012 High Court at Mwanza (unreported) which I fully associate myself with, which stated that:-

"...the basic duties of the decision maker in an unfair termination dispute, where operation reasons are raised as a cause for terminating an employee; is to enquire into and ensure that, the employer has proved existence of fair reason, in that context, meaning proved existence of operational reasons..."

The advanced reasons that the respondent had no means to buy another motor vehicle without tendering the financial status of the company cannot pass that test. There was non compliance with Rule 23 (1) and (4) (a) –(f) of the Employment and Labour Relations (Code of good Practice) Rules, GN No. 42 of 2007.

It is said there was no possibility of accommodating the applicant into another job position since the respondent had no another staff vehicle. The possibility of repairing the motor vehicle was not even tested. Similarly, there was no suggested option for the applicant to perform other similar job in the company. In a similar South African case of **Wolfaardt & Another v. IDC of SA (Pty) Ltd** (2002, 11BLLR1127), the court dealt with a situation where the employer failed to give two employees a chance to apply for alternative

posts before retrenching them. It found (the position I fully associate myself with), that it was procedurally and substantively unfair. The labour court proceeded to award compensation as it found there was "a pre decided agenda."


In a situation like this where flimsy reasons are given as a cover to terminate the employee, the only option is payment for the remaining period of his contract of employment or compliance with section 40 (1) (c) of the Employment and Labour Relations Act, Act No. 6 2004 for payment of compensation of not less than 12 months remuneration. In our case, the contract of employment (exhibit D3) clause I provides for the term of employment from 1/6/2015-31/12/2018. The purported termination letter is of 14/03/2018. The remaining period to end of the contract was nine months. If you multiply by Tshs 130,000/- (his monthly salary) the sum of money he is entitled to, is Tshs 1,170,000/- (say one million one hundred and seventy thousand only). The employer purported to pay him severance pay Tshs 149,000/-, Notice pay Tshs 160,000/-, Salary 14 days 67,000/-, total Tshs 376,500/-. That will be in addition to that sum. I cannot grant the requested 12 months salary as claimed by the applicant Tshs 1,960,000/= as

shown in the CMA form No1 as that will go far beyond his remaining term of employment.

I rule out the alleged voluntary agreement and that the employer cannot reclaim what he received. In his words, Mr. Bilyamtwe said that he signed for his entitlements and that he cannot reclaim the same benefits he was paid. That would be valid explanation if there were fair and valid reasons for termination not a retrenchment cover as in our case. There was no agreement to retrench him possibly as per the letter he was just suspended but his employment had not come to an end.

Having found that the applicant was unfairly terminated by the respondent, I find that he is entitled to a clean certificate of service as well as Tshs 1,170,000/- being salary due for nine months up to end of his contract of employment for early retirement.




M. G. MZUNA,
JUDGE.
28. 05. 2020