IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

(IRINGA DISTRICT REGISTRY)

AT IRINGA

LABOUR REVISION NO. 8 OF 2018

FRANCO MBANGWA & 241 OTHERS.....APPLICANTS

VERSUS

CHINA CIVIL ENGINEERING CONSTRUCTION CORPORATION (CCECC).....RESPONDENT

RULING

KENTE, J.:

The applicant Franco Mbangwa and his fellow two hundreds forty one employees were each, on various dates, employed by the respondent namely China Civil Engineering Construction Corporation in a variety of capacities such as drivers, mechanics, operators, carpenters, surveyors, diesel-checkers, nurses, masons, level-checkers, trip-checkers, supervisors, boozer-helpers and water pump operators to mention but a few. Notably, the respondent had a road rehabilitation contract with the Government of Tanzania in respect of Mafinga – Nyigo Highway Project covering a total distance of about 74.1 kilometers. On the 12th November 2017 the

applicants' contracts of employment were terminated in anticipation of the rain season which was due to start from November 2017 to April 2018. According to the respondent the said rain season would negatively impact on their operations as to lead to the suspension of a major part of its road construction works. Dissatisfied with the said termination of the contracts of service, the applicants referred their grievances to the Commission for Mediation and Arbitration which however, after hearing both sides, it decided in their disfavor holding that they were not employed on a permanent contractual basis but rather for a specific period and task. To that end, pursuant to section 41 (1) (b) (i) of the **Employment and Labour Relations Act (No. 6 of 2014),** the Commission for Mediation and Arbitration awarded each of the applicants a four days notice pay as they were found to have been engaged on a daily or weekly basis. The applicants were deeply aggrieved by the decision of the Commission for Mediation and Arbitration hence the present application.

Through their representative one Mr. Kassimu Masimbo of TAMICO Dar es Salaam, the applicants preferred the present application in which they are complaining thus:-

a. *The Honourable Arbitrator immensely failed to award appropriate remedy as required under the law after finding that termination was unfair.*

b. *Honourable Arbitrator erred in facts and law in failing to understand that the law provides for only three remedies for unfair termination where he can award either of them but nothing out of them.*

c. *The Arbitrator totally failed to distinguish the case he sighted on his award from the case which was before him hence reached an erroneous conclusion in his finding.*

d. *The Arbitrator improperly failed to direct his mind on the facts, evidence, precedents and law govern remedies for unfair termination especially compensation and thus deriving at an erroneous award which has occasioned injustice to the applicants for it been illegal, irrational, illogical and improperly procured.*

e. *The Arbitrator failed to analyze evidence adduced before him as the results reached conclusion that there was*

valid reason for retrenching applicant instead of laying them off for the purported rain season.

f *That Arbitrator erred in law and facts in not awarding other benefits claimed by applicants such as leave, one month's notice and severance pay.*

g. *The Arbitrator erred in la and fact by failing to understand that the applicants had permanent contract and were paid their salaries monthly although their salary could be calculated monthly, weekly and daily even hourly.*

Before I proceed to determine the question as to whether or not the applicant's contracts of employment were fairly terminated, I propose first to deal with the fundamental question regarding the nature of their employment contracts. As stated before, the Arbitrator was of the view and he consequently found that the applicants were not in permanent contracts of employment as they were paid on a daily or weekly basis and that they were employed for a specific task. However in their grounds of complaints and in their written submissions expounding on them, the applicants through their representative strenuously maintained that they were employed on permanent contractual terms.

Having gone through the evidence which was led before the Commission for Mediation and Arbitration, and having considered the applicable laws, I take the view, as the Honourable Arbitrator did that in this case, the applicants were indeed not on permanent contracts of employment. The evidence on record shows that it was agreed by each of the applicants on one hand and the respondent on the other hand that there was an agreed daily pay rate for each employee covering the hours or days he worked. However, every employee was at liberty to choose to be paid either at the end of each day, week or month. Moreover, I have to emphasize here, for the sake of completeness that, in the face of the uncontroverted evidence that the respondent had a contract with the Government to rehabilitate the Mafinga – Nyigo highway for a period of two years only, it would be rather inconceivable for the respondent to recruit and employ workers of the middle and lower ranks such as the applicants on a permanent contractual basis. In the main, this could be a case of fixed term contracts of employment as opposed to employment contracts for an unspecified period. It appears to me that, the applicants were employed by the respondent for the specific project of rehabilitation of the highway between Mafinga Township and Nyigo covering 74.1 kilometers after which they would definitely be discharged. They were

squabble on the fact that a heavy rain-season is likely to negatively impact on road construction. This will invariably lead to suspension of a major part of some works which would in turn call for retrenchment of some employees or sending them on an unpaid leave. In the context of the present case, section 37 (2) (b) (ii) of the **Employment and Labour Relations Act** is saying that, a termination of employment by an employer is unfair if the employer fails to prove that the reason is a fair reason based on the operational requirements of the employer. For my part, I have no reason whatsoever to doubt the plain fact that the rain-season could have the effects as those envisaged under the above-stated provisions of the law. While I am mindful to the requirement that as a Judicial Officer, I am not supposed to be absorved by my own grandiosity as to belittle any litigant appearing before me with an air of superiority and critical opprobrium, I would expect the applicants in the present case to gracefully bow out of this legal wrangle by sincerely accepting the plain, even if painful truth that, given the nature and the expected duration of the said road rehabilitation project, they could hardly be employed by the respondent company on a permanent employment contractual basis or for an unspecified period as it is currently called under our laws. It would be rather uneconomical if not foolhardy for the respondent to continue

being paid on a daily or weekly basis and therefore in view of the decision of my brother Mandia, J (as he then was) in the case of **Omari Mkele & 20 Others Bs. M/s Shipping Freight Consultant, Labour Dispute No. 6 of 2008 (unreported)** to which I was ably referred by the respondents in their written submission, when such a type of employment contract is discharged, the provisions of section 41 (1) (b) (i) of the **Employment and Labour Relations Act, No. 6 of 2014** come into play. Under the said provisions an employer who is engaged on a daily or weekly basis is entitled to four days of notice pay when such a contract of employment is discharged as happened in the instant case.

It is clear therefore, that the applicants in this case were paid in accordance with the law and for this reason they cannot be heard to lay claims to payments other than what was lawfully due to them.

I shall now turn to the question as to whether or not the applicants' contracts of service were fairly terminated. The evidence led before the Commission for Mediation and Arbitration shows that the applicants' contracts of employment were terminated due to the anticipation of the rain season which was expected to start in November 2017 and end sometimes in April 2018. It appears to me that there cannot be any serious

retaining the applicants on the pretext that they were permanent employees but who, as it turned out, would essentially be doing nothing but still continue to be paid throughout the rain season. In short therefore, what comes out clearly from the evidence is that, the applicants were not permanent employees and they were laid off to meet the respondent's operational requirements. In other words there was insufficient work for them to do during the rain-season hence the downsizing exercise in the respondent company.

For the foregoing reasons, I am of the settled view that the Honourable Arbitrator was perfectly justified in reaching to the impugned decision. In the upshot this application is found to have no merit and is hereby dismissed.

This being a labour dispute, I make no order as to costs.

It is so ordered.

DATED at IRINGA this 14th day of July, 2020.

P. M. KENTE
JUDGE

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