IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

(IRINGA DISTRICT REGISTRY)

AT IRINGA

LABOUR REVISION NO. 31 OF 2017

PHILIBERT MPEMBA & 4 OTHERS..... APPLICANTS

VERSUS

MUFINDI PAPER MILLS LTD .....RESPONDENT

RULING

KENTE, J:

The applicants herein namely Philibert Mpemba and four others appeared before the Commission for Mediation and Arbitration (henceforth the CMA) where they claimed from the respondent Mufindi Paper Mills Ltd twelve months salary as compensation for what they called "unlawful retrenchment". After hearing the parties the CMA was of the view and it consequently held that the applicants were retrenched for a good cause and that the respondent had essentially adhered to the procedural requirement in effecting the said retrenchment. In consequence, the CMA proceeded dismissing the applicant's claims save for an order directing the respondent to

issue the applicants with certificates for service and retrenchment letters. The applicant's were deeply aggrieved, and therefore they referred their grievances to this court for purposes of revision.

The decision of the Honourable Arbitrator was challenged by the applicants on various grounds which can however be trimmed down and summarized as hereunder:-

1. *That the CMA had improperly evaluated the applicant's evidence with regard to their attendance at work.*
2. *That the Honourable Arbitrator had himself prepared the issues without consulting or otherwise involving the parties.*
3. *That the applicants were retrenched by word of mouth and not issued with retrenchment letter and certificate of service; and*
4. *That the Honourable Arbitrator was biased in finding that, the applicants were employed on a daily contractual basis.*

Before this Court the applicants were represented by Mr. Ignas Charaji from TUICO while Mr. Nyangala learned counsel appeared for the respondent. Due to the outbreak of corona-virus, it was ordered that this application be urged by way of written legal arguments

which were prepared and dully filed by the respective parties' legal representatives.

Submitting on the question of the applicant's record of attendance at work, I would say that Mr. Charaji was rather irresolute and indecisive as to what was the real grievances of the applicants. As a result, he ended up jumping onto another ground of complaint saying that the applicants were retrenched verbally without being issued with certificates of services and retrenchment letters. But as correctly submitted by Mr. Nyangala learned counsel for the respondents, the question of the applicants not having been issued with letters of retrenchment and certificate of service was considered and resolved by the CMA which had ordered the respondent to issue the applicants with the said documents. It follows therefore in my judgment that, the same question cannot be raised at this level after it was given sufficient consideration and finally resolved by the CMA. In these circumstances, I am satisfied that the applicant's complaints on that aspect have no basis both in law and in fact and I accordingly dismiss them.

Next is the complaint that the Honourable Arbitrator had himself formulated the issues without involving the parties. For my part, I could not find anywhere from the record of the CMA where it can be said, with any degree of exactitude that the parties were not involved in the framing of the issues. But what is more is that, framing the issues in any suit is primarily the duty of the trial Magistrate or Arbitrator and in doing so the Magistrate or Arbitrator is bound to have regard to the pleadings of the parties and in labour disputes like the one under consideration, the Arbitrator is enjoined to have regard to the parties' opening statements. While in practice, an Arbitrator may require the parties or their advocates to propose or to submit a draft of proposed issues or he may sit with them immediately before commencement of hearing, with a view to agreeing on the issues so as to ascertain the real dispute between the parties, there is no law which specifically makes it imperative on the part of the Arbitrator to involve the parties in framing the issue. Instead it appears to me that, once the requirements of Rule 24 (1) of the **Labour Institutions (Mediation and Arbitration Guidelines) G.N No. 67 of 2007** on the filing of the opening statements and narrowing the issues are complied with as it was the

case here, the need for the Arbitrator to sit together with the parties and agree on the issues would in the circumstances, not arise. This position is further bolstered by the fact that the applicants in the present case are not complaining that the real matters in controversy between them and the respondent were not determined or that the omission to involve then in the framing of the issues, a complaint which has however was not been substantiated, had led to injustice or prejudice against them. For this I am disposed to think that, it is not true that the applicants were not involved in the framing of the issues. I accordingly dismiss this ground of complain for want of merit.

I will next deal with the question as to whether or not the applicants were employed on a daily contractual basis as was held by the Honourable Arbitrator. In other words, I am enjoined to determine whether the applicants were on a contract of employment for unspecified period as they claimed or they were employed on a contract for specific tasks as was held by the Honourable Arbitrator.

In his decision, the Honourable Arbitrator appears to have been convinced that the applicants were on a specific task contract of

employment or "daily employment contract" as he called it because they were paid their remuneration on daily basis. However, the applicants were of the different view, saying emphatically that, they were employed by the respondent on a contract for an unspecified period as they were being paid their salaries at the end of each month.

With due respect to the applicants, I do not agree with them. If the testimony of the respondent's witness together with the exhibit (DW4 collectively) are anything to go by as they should, it will be noted at once that, the applicants' so called monthly remuneration was not uniform. It always depended on the number of days which each particular individual had worked. The more the number of days worked in a given month, the higher the pay one would earn. It was also common ground that, the applicants' services to the respondent was rated on a daily basis. The arrangement for the applicants to be paid at the end of each month appears to me to have been preferred because it would provide them with a cash lump sum at the end of the month as opposed to the paltry payments which would be received by each of the applicants as wages for services performed

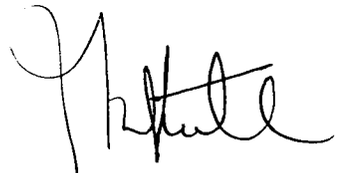
during a single working day. As correctly submitted by Mr. Nyangala learned counsel for the respondent, the accumulation of each of the applicant's daily pay, could not, by itself, transform the applicants' employment contracts into contracts of employment for an unspecified period.

From this, it is apparent that the applicant's complaints that the Honourable Arbitrator was biased when he held that they were employed on a daily employment contractual basis are evidently baseless,. In the result, I am satisfied that the CMA rightly rejected the applicant's claims and therefore the present application for revision of the said decision by the CMA is accordingly dismissed.

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

It is so ordered.

DATED at IRINGA this 13th day of August, 2020.



P. M. KENTE

JUDGE