THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(LABOUR DIVISION)
AT MBEYA
CONSOLIDATED REVISION NO. 68 & 69 OF 2017
(Originate from CMA/MBY/113/2015)

BRIAN CELESTINE & 19 OTHERS.....APPLICANTS
VERSUS
THE SALVATION ARMY TANZANIA TERRITORY.....RESPONDENT

JUDGMENT

Date of the last order: *21/10/2019*
Date of Judgment: *17/02/2020*

NDUNGURU, J.

In the Commission for Mediation and Arbitration (CMA), the applicants filed complaints for unlawful termination from employment by the respondent. The dispute which was determined and decided that the termination based on operational requirement by the respondent was purely and absolutely unfair and unlawful. Consequently, the CMA granted the award on their favour. The compensation for unfair termination was granted basically on two groups, some people twelve

months and others one month. The decision which offended the applicants and lodged this revision.

The reasons for faulting CMA decision have been averred under paragraph 5, 7, 8, 9 and 10 in the applicants' advocate affidavit.

5. That the honourable Arbitrator erred in law and fact in granting only one-month salary as compensation for termination despite the fact that the applicants worked for more than six months with the respondent.
7. That the said applicants ought to have been given twelve months' remuneration as compensation for unfair termination because the honourable Arbitrator correctly found that the termination of the applicants from employment was both substantively and procedural unfair.
8. That the honourable Arbitrator acted in violation of the exercise of the powers vested on her by the law and with material irregularities there have been errors material to the merits of the application occasioning injustice to wit.
9. That this honourable court is invited to determine the statement of legal issues that arise from the material facts as follows
    (a) Whether the said applicants were entitled to twelve

months' remuneration as compensation for unfair termination.

10. That in view of the aforementioned circumstances, it is just and expedient in the interest of justice and good conscious, that they pray this honourable court for the following reliefs:

(a) That this honourable Court be pleased to vary the award in respect of reliefs of compensation for unfair termination.

The respondent's counsel Mr. Ngowi filed a counter affidavit in opposition to what have been stated in the affidavit.

On the other hand, the respondent through legal representation of Adv. Peter Ngowi has filed revision challenging the whole of the decision of CMA vide Revision No. 69 of 2017 which makes this a consolidated revision.

The matter was argued by way of written submissions. I thank both parties for adhering to the scheduled order.

In his submission Mr. Benedict Sahwi for the applicants submitted that compensation for unfair termination is a statutory remedy which is provided under Section 40 of the Employment and Labour Relations Act, (Act No. 6 of 2004). That, the honourable arbitrator having found that

termination was unfair, she ought to have awarded compensation for unfair termination not less that twelve months remuneration as provided in the law. He submitted further that the nature of the dispute as shown at page 4 of the Referral Forms for all the applicants were for unfair termination not breach of contract. That the justification for payment for 12 months compensation is from the nature of the contracts and duties assumed by the applicants during their employment.

In responding to the aforementioned submission, learned counsel Mr. Peter Ngowi submitted that the dispute arose from the retrenchment exercise which was concluded by Retrenchment agreement dated 29th August, 2015 as a result the college was closed. The closure was as result of failure of the college to generate income for sustainable operation.

He went further that, on 18th July, 2015 the respondent issued a notice of intention to retrench all employees who were lectures some were on full time fixed term contracts and others were on part time contracts. That, in complying with the requirement of the law, the respondent communicated this information to all the employees, followed by consultation with all employees together with their representatives and reached an agreement. He submitted that after

the completion of the retrenchment exercise and payment of all dues to all its employees, the applicants were aggrieved by the above decision hence decided to refer the dispute of unfair termination as the CMA. Subsequently, the arbitrator decided in favor of the applicants by awarding one-month salary to some of the applicants who were on fixed term contracts due to the facts that they were only remained with 1-month period before expiration of their contracts and others who were on permanent contracts were awarded 12 months' salaries.

Going through the application and submissions made by both parties, the dispute is a variation of award between the applicants after the CMA found that the termination was unfair and unlawful.

There is no doubt that, the termination of the contracts to the applicants was basically by the operational requirements. The provision of Section 23 of the Labour Relation Act, states vividly that:

> *(1) A termination for operational requirements (commonly known Operational as retrenchment) means a termination of employment arising from the requirements operational requirements of business. An operational requirement is defined in the Act as a requirement based on economic, technological, structural or similar needs of the employer.*

Going by the CMA's record it is clear that the respondent was experiencing economic crisis as a result retrenched the applicants.

However, the procedure for retrenchment are provided for under Section 38 of the Employment and Labour Relations Act, 2004 read together with Rules 23, 24 and 25 of G. N. No. 42 of 2007.

In the above cited section, it is also clear that the employees have to be consulted before retrenchment. In our present case, it appears that the employees were consulted and agreed and signed the agreement which as a result they were paid. From the record, it is also clear that there have been consultative meetings on the retrenchment issue. This is supported by exhibit No. A3 which is minutes of general staff meeting in this meeting members including the applicant participated in the meeting and in the end, among other things members unanimously proposed that all members should be paid retrenchment package before the closure of the closure. retrenchment agreement which shows each applicant signed and agreed to be retrenched, also notice of intention to close Shukrani College Exhibit No. A2, and also exhibit No. A4 shows employees were given letter and were paid their entitlement in accordance with their contracts subsisted. Basing on that, it is my view that members were consulted and that is why in the end they signed agreement.

At this juncture, it is worth quoting what was stated by my learned Sister honourable Madam Rweyemamu, J in the case of **Benard Gindo & 2 others vs TOL Gases LTD, Revision No. 18 of 2017** at Dar es Salaam Labour Division. In which her ladyship stated:

> *"...Section 38 of the Act, read together with rules 23-24 of the Employment and Labour Relations (Code of Good Practice) Rules, G.N 42/2007 (the Code) provide various stages which are not meant to be applied in a check list fashion, rather one meant to provide guidelines to ensure that consultation is fair and adequate. The law that is Section 38(1) of the Act provide for vital information to be exchanged; procedures for consultation but in law, such consultation does not have to result in a signed agreement."*

In light of the above analysis and the above cited case, I agree with the submission of the learned counsel Mr. Ngowi that information to retrench employees was communicated to representatives of the applicants and that meeting were convened followed by consultation to all employees and reached a signed agreement. In the above cited case Rweyemamu, J. (as she then was) went further that the consultation does not have to result in a signed agreement. Which is contrary to our case, that applicants went further by signing the agreement. It is undisputed fact that, the termination was by operational requirement due to economic crisis of the college. In the sense that, retrenchment

was therefore inevitable to the employees. Based on the evidence on record, I am satisfied that there was a fair and adequate consultation.

It is thus, my firm view that the applicants were not unfairly terminated and are therefore not entitled to any compensation for unfair termination.

In the upshot, I find merit in Revision No. 69/2017 hence allowed, whereas Revision No. 68/2017 is dismissed for lack of merit. Hence, the findings of the CMA are hereby quashed. Being the labour matter I make no order as to costs.

It is so ordered.

D. B. NDUNGURU
JUDGE
17/02/2020

Right of Appeal explained.

Date: 17/02/2020

Coram: D. B. Ndunguru, J

Applicant:

For Applicant: Mr. Aman Mwakolo – Advocate holding brief of Mr. Sahwi Advocate

Respondent: Absent

For the Respondent: Absent

B/C: M. Mihayo

Mr. Aman Mwakolo – Advocate:

My lord I hold brief of Mr. Sahwi Advocate for the applicant. The matter is for judgment, we are ready.

Court: Judgment delivered today in the presence of Mr. Mwakolo Advocate holding brief of Mr. Sahwi Advocate for the applicant.

D. B. NDUNGURU
JUDGE
17/02/2020