

**IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT MUSOMA
LABOUR REVISION NO 16 OF 2019
BETWEEN**

PETER JACOB WEROMA AND 11 OTHERS _____ APPLICANTS

VERSUS

AKO GROUP LTD _____ RESPONDENT

(Arising from the Decision and Orders of the Commission for Mediation and Arbitration at Musoma, Hon. Mwebuga, Arbitrator in labor dispute no. CMA/MUS/156/2018 dated 18.06.2019)

JUDGEMENT

Date of last order: 26.03.2020
Date of judgment: 24.04.2020

GALEBA, J.

In this application, the applicants are moving this Court to revise and set aside the award of the Commission for Mediation and Arbitration (the CMA) made in labour dispute no. CMA/MUS/156/2018. The award is dated 18.06.2019 and the same is in favor of **AKO Group Limited**. The applicants are also seeking any other reliefs that this Court may, in its wisdom consider just to grant. In defending itself the respondent filed a counter affidavit together with a preliminary objection which it later withdrew on 27.01.2020.

The brief background to this application is that the applicants were employed by the respondent until 31.05.2018 when the relationship came to an end on operational requirements. The applicants being dissatisfied by the decision of the respondent they decided to refer their grievances to the CMA. Their complaint was that they were not given notice before the retrenchment and also the trade union,

NUMET was not given a notice to participate in the retrenchment process. The CMA heard parties and ruled that there was notice given to them and that when they came to the negotiation meeting they could have come with NUMET, if they wished. Therefore their complaints were dismissed, which dismissal they are now challenging before this Court.

In support of the application at the hearing Mr. Ernest Mhagama learned advocate for the applicants submitted that their complaint is that the due process of law was not abided with by the employer because the latter did not give notice to the applicants as required by **section 38(1) (a), (b), (c) and (d) of the Employment Labor Relations Act** (the ELRA). He further submitted that the respondent failed to consult the applicants' recognized trade union called NUMET at their work place. To support his submission, Mr. Mhagama supplied the court with a copy of a decision in the case of **BARLCAYS BANK (T) LTD VS FRANK MAKUNDI AND 4 OTHERS REVISION NO. 243 OF 2013** where this court held that a notice has to be issued to allow consultation according to section 38 of the ELRA. Mr. Mhagama concluded that during the termination the procedure detailed in the Code of Good Practice, GN. 42 of 2007 concerning retrenchment was not observed. He prayed that the CMA award be revised and the applicant be paid compensation as per section 73 of the Law of Contract Act.

Mr. Innocent Ndaga was counsel for the respondent. In reply he submitted that the CMA was right in dismissing the claims of the applicants because the employees had notice and that is why they attended two meetings on 16.05.2018 and 28.05.2018. As for the trade union he submitted that there was no agreement because the respondent and the said union therefore there was no need of sending a notice to the union. He submitted that the respondent consulted the applicants themselves and NUMET's presence would not change anything.

In this application, the issue presenting itself for determination is whether the applicants were unfairly terminated. The procedure to retrench workers culminating from operational requirement is summarized at section 38 (1) of the ELRA which provides as follows:

"S.38 (1) In any termination for operation requirements (retrenchment), the employer shall comply with the following principles, that is to say, he shall;

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- (a) give notice of any intention to retrench as soon as it is contemplated;***
- (b) disclose all relevant information on the intended retrenchment for the purpose of proper consultation;***
- (c) consult prior to retrenchment or redundancy on; –***
 - (i) the reasons for the intended retrenchment;***
 - (ii) any measures to avoid or minimize the intended retrenchment;***
 - (iii) the method of selection of the employees to be retrenched;***
 - (iv) the timing of the retrenchments; and***
 - (v) severance pay in respect of the retrenchments.***
- (d) shall give the notice, make the disclosure and consult, in terms of this subsection, with –***
 - (i) any trade union recognized in terms of section 67;***
 - (ii) any registered trade union with members in the workplace not represented by a recognized trade union;***
 - (iii) any employees not represented by a recognized or registered trade union."***

I have gone through the records of the respondent, the evidence tendered in the CMA and all documents in this Court. It is possible that the respondent might not have proved to the satisfaction of the applicants that he sent a written notice to them on paper but what about compliance with the spirit of the notice, that is, attendance and participation in the consultation meeting? For instance **EXHIBIT D2** which is the minutes of the meeting of 16.05.2018 shows that the agenda items of the meeting were the following;

"LENGO KUU LA MKUTANO; KUTOA NAFASI KWA MWAJIRI NA WAAJIRIWA INAYOLENGA KULIKABILI NA KULIJADILI TATIZO KWA PAMOJA ILI KUWEZA KUFIKIA MAKUBALIANO KUHUSU;

- (i) Sababu zinazopelekea kufanyika kwa zoezi la uachishwaji kazi.***

- (ii) *Hatua zilizochukuliwa kuzuia au kupunguza uachishaji kazi uliokusudiwa.*
- (iii) *Utaratibu na vigezo vitakavyotumika kufanya zoezi la uaachishaji.*
- (iv) *Muda mwafaka wa zoezi la uachishwaji*
- (v) *Malipo ya mwisho na stahiki zingine kwa uvunjaji wa mkataba wa kazi.”*

The above points were discussed on 16.05.2018 in a meeting that the applicants personally participated. The applicants did not only attend the meeting on 16.05.2018 but also they attended another meeting on 28.05.2018 on the same subject of retrenchment. The submission of the applicants is that although they participated in the two meetings on the subject but they were not given notice of the same meetings. After the meeting, it appears resolutions were made and a financial package was prepared for each but immediately thereafter the issue of notice become a legal matter. In this case Mr. Mhagama submitted that the applicants are seeking civil reliefs based on the **Law of Contract Act [Cap 345 RE 2002]** and not any labor statutes. The question would be, if the labor rules were offended, why is it that the applicants are not seeking civil remedies not provided under the labor laws?

It is different if they were retrenched without any kind of consultation. Here they are saying; “*we were consulted but we were not given notice*”. It is important for users of laws to interpret them not only logically but also contextually. In the context of retrenchment the spirit of the law is that the employer and employees need to meet and discuss matters like those listed in the agenda of the meeting of 16.05.2018. This Court takes the view that, if the notice was meant to call the meeting which all appellants attended the complaint that they did not receive notice of the meeting cannot, for all intents and purposes, be a valid complaint.

The other complaint is that the respondent did not consult the union in order to comply with section 38(1) (d)(ii) of the ELRA. In the CMA the respondent admitted not to have consulted the trade union, because, it had no agreement with the union for it had been terminated. The applicants stated that they were not aware that they had no agreement with the union and fairly so because they are not parties to the agreement. On this aspect, the credible position is that of the respondent because it was a party the agreement and not the applicants where not parties to the agreement or its custodian. The CMA therefore was entitled to believe this position.

On this aspect the CMA held, and correctly so that, if the applicants saw that the union leaders as their representatives were not called to the meeting they were supposed to call them instead of deciding to attend alone. In any event, the union leaders are representatives or agents and the workers the principals. The applicants did not call their union leaders on 16.05.2018 even in the repeat meeting of 28.05.2018 the applicants did not call their representatives from the union to let them know that there were processes going on in relation to their retrenchment.

In summary, the complaints of the applicants on the notice to them and also to the trade union are both afterthoughts. Laws must be interpreted widely to ensure that interests of justice are well protected for the benefit of all that are involved. The purpose of law is not to punish a person who ensures implementation of its spirit and purpose even though he could have disobeyed its letter. The purpose of law is not a mechanical compliance of what is written on paper rather it is its larger and logical objective of achieving its usefulness to members of society or its target stakeholders.

The requirements of notices under section 38 of the ELRA are not meant to punish the employers; the notices under that section are

meant to ensure that the workers are not terminated abruptly in large numbers without any warning or their participation in their termination which in this case, was fulfilled. The usefulness of the notice is not the paper on which they would be written upon, rather the fact that the applicants are accorded a right to participate in the process towards their retrenchment which objective was in this case met.

Based on the above discussion, this application is dismissed and the CMA award challenged in these proceedings is upheld and the parties aggrieved have a right of appeal to the Court of Appeal of Tanzania in terms of Rule 54 of the **Labour Court Rules 2007, GN 106 of 2007.**

DATED at MUSOMA this 24th April 2020



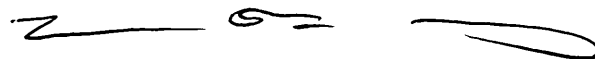
Z. N. Galeba

JUDGE

24.04.2020

Court; This Judgment has delivered today the 24th April 2020 in the absence of parties but with a general permission to them not to appear before a Judge following corona virus outbreak and a government directive to keep social distance from one another for the time being.

Order; Sufficient copies of this judgment and decree be deposited at the Judgment Collection Desk at reception area for parties to collect their copies free of charge.



Z. N. Galeba

JUDGE

24.04.2020