

**IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT MUSOMA
LABOUR REVISION NO 17 OF 2019**

**GILBERT RUGAMBWA GIDION_____APPLICANT
VERSUS
SINGITA GRUMET RESERVERS LIMITED /GRUMET FUND__RESPONDENT**

*(Arising from the Decision and Orders of the Commission for Mediation and Arbitration for Mara,
Hon. Mwebuga Arbitrator, in Labor Dispute No. CMA/SER/36/2016 dated 01.07.2019)*

JUDGEMENT

Date of last order; 26.03.2020
Date of Judgment; 24.04.2020

GALEBA, J.

In this application, the applicant is challenging a decision of the Commission for Mediation and Arbitration (the CMA) which dismissed his prayers for reinstatement or alternatively payment of Tshs. 322,546/= in lieu of notice, Tshs 645,128 in respect of accumulated leave, Tshs 150,529.8 severance allowance, Tshs 7,741,536/= as compensation and a termination letter for him to be able to claim his social security benefits from the National Social Security Fund (the NSSF).

The allegations of parties in this case are diametrically opposed. The applicant's account of the origin of the dispute is that on 04.03.2013 the respondent's human resources officer one **LUCY JOHN** called him and told him that the company was undergoing economic

difficulties and requested him to leave employment until when he would be called back. As he was not called back to work for over one year, on 08.03.2014 he went to the CMA where he was given a summons for service upon the respondent. Upon serving the CMA forms to the respondent, the latter informed the applicant that there was no need to lodge any complaint at the CMA and permitted him to start work. Following that information from Human Resource Department, the applicant went to House Keeping Department and started working whereupon he was arrested and criminal proceedings were commenced. Amidst criminal trials the applicant filed labor dispute no CMA/SER/36/2016 from which this revision arises.

Although the above was the applicant's position, the respondent's was that on 04.03.2013, the applicant without any information to any officer of the respondent as to his destination, he abandoned work and went amiss until over one year on 08.03.2014 when he re-emerged at the place of work in company uniforms, and joined other staff serving in House Keeping Department without anybody having permitted him. The position of the respondent was also that when he absented himself for over 5 working days he was deemed terminated. The CMA heard parties and dismissed the applicant's claims listed above, which dismissal aggrieved the applicant leading him to filing this application.

The single complaint of the applicant in this application for revision is that the CMA erred in law when it dismissed his application because the respondent did not tender any documentary evidence in order to back its argument that the applicant was terminated at any point in time. So the applicant moved this Court to hold that the respondent never terminated him or if there was any termination the same was illegal.

In reply to that submission, Mr. Godfrey Tesha learned advocate for the respondent, submitted that the applicant absconded from the work place contrary to law and the allegations of retrenchment because of the economic slump are not supported by any document. He submitted that if he would have been terminated based on retrenchment he would not have left with company uniforms. He submitted that there was no evidence to show that the applicant was retrenched. He submitted that the applicant was not accessed with any termination letter because the respondent did not know the applicant's whereabouts after they had tried to locate him by telephone which efforts bore no fruits.

Mr. Tesha submitted that if the applicant is entitled to leave payments or a termination letter for presentation to the NSSF or any entitlement as per clause 9 of his contract the company was ready to pay those dues.

In this application one fact is not disputed, and that is, the applicant was not at work between 04.03.2013 and 08.03.2014. The issue is whether the applicant was retrenched or he absconded work as submitted by the respondent's side.

Proof that the applicant was retrenched was supposed to be tendered by the applicant because it was him who was alleging that fact. In trying to establish that fact he submitted that he was retrenched orally by **LUCY JOHN**. However he did not call the said **LUCY JOHN** for her to affirm his allegations. In other words, the CMA was right to hold that the applicant absconded from work and that amounted to terminating himself as per **rule 1 of the Employment and Labour Relations (Code of Good Practice Rules) 2007**, GN 42 of 2004 under Offences Which May Constitute Serious Misconduct and Leading to Termination of an Employee. However the CMA was not right to dismiss the applicant's prayer for the letter of termination which would assist him to process whatever might have been his dues from the NSSF earned before 04.03.2013.

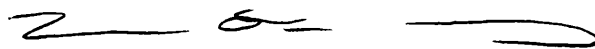
In this matter, the applicant was employed from 01.05.2012 up to 04.03.2013 which period is 10 months and 3 days. For this period the applicant earned 23.5 outstanding leave days.

Finally, this application is partly dismissed and partly allowed that is to say, despite the dismissal the applicant is entitled to the following;

1. Payment of an amount of money equivalent to the salary he would be paid if he worked for (twenty three decimal point five) 23.5 days.
2. A certificate of service showing the date the applicant was employed and he ceased to be an employee including his last position in the company.
3. A letter confirming the applicant's termination from employment.
4. Any unpaid salaries (if any) between the date of employment and 03.04.2013.

Finally any payment pursuant to this judgment shall be deemed to be income from employment and it shall be subjected to government dues and taxes and a party aggrieved by this decision may appeal to the Court of Appeal of Tanzania in terms of **rule 54 of the Labor Court Rules 2007, GN 106 of 2007.**

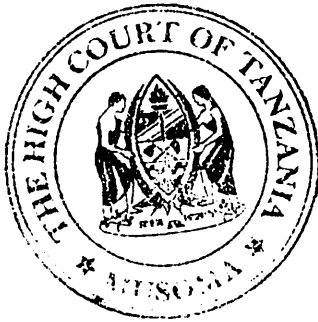
DATED at MUSOMA this 24th April 2020



Z. N. Galeba
JUDGE
24.04.2020

Court; This Judgment has delivered today the 24th April 2020 in the absence of parties but with leave to be absent following the corona virus outbreak globally and the medical advice to maintain social distance between individuals.

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



A handwritten signature in black ink, appearing to read "Z. N. Galeba".

Z. N. Galeba
JUDGE
24.04.2020