IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY
AT MWANZA
LABOUR REVISION NO. 27 OF 2017

(Original from an Award of the Commission for Mediation and Arbitration at Mwanza, in Labour Dispute No. CMA/MZ/NYAM/450,474,572,573,574/2016)

STANLY JOSEPH MWAKALINGA & 4 OTHERS............. APPLICANT

VERSUS

KAMANGA FERRY LIMITED...............................RESPONDENT

JUDGEMENT

14.4.2020 & 29.5.2020

U. E. Madeha, J

The applicants call upon this court to examine and reverse the proceedings and the arbitration award made by the Commission for Mediation and Arbitration (herein CMA) at Mwanza in dispute No. CMA/GTA/50/2017, dated 3.5.2017. The application is made under Section 91 (1) (a),(b)(2)(b)(c), 91 (2) (a), 94 (1) (b) (i) of the Employment and Labour Relation Act, Act No. 6 of 2004, Rules 24 (1), (2), (a), (b), (c), (d), (e), (4)(a)(b)(5)(6), and Rules 28 (1), 28 (1) 28 (1), (c), (d) and (e) of the Labour Court Rules, GN. 106/2007.

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Briefly the background of the dispute is that: the applicants are Stanly Joseph Mwakalinga, George Aniset Masau, Christopher Pascal Appolonary, Kanyanduga Massanja and Albert Butambula they have been terminated by Kamanga Ferry Limited hence referred the matter to the Commission for mediation and arbitration as per section 86(1) of the Employment and the Labour Relation Act No. 6 of 2004 claiming to be paid long term services. All applicants were employed by the respondents in 2008 at different time. Following the financial hardship which faced the respondents in 2016, the respondent decided to retrench some of his employees on operational services. The applicants claimed to be paid six-month salary and the letter of resignation. They demanded long term services payment. The applicants claimed that they were disqualified and not terminated from the employment, they were not given all their benefits. The CMA gives award as follows; suffice to say that this dispute has no legal basis to stand before this commission hence the basis of the complaints does not exist in law. The respondent has proved he retrenchment of the employment of the applicant following the whole procedures as the labour law requires. The dispute was dismissed. Following the dismissal of their dispute hence this application for

revision. The issues raised in the grounds for revision is whether there was the valid reasons for the respondent to retrench the applicants.

Mr. Peter N. Makenya the appellants learned advocate elaborated that; The arbitrator in preparing the award, cited with approval Rule 27(3) of the labour Institution (Mediation and arbitration guidelines). Rules, 2007, G.N No. 67 of 2007 provides for the mandatory terms as follows; "*27(3). An award shall contain the following*

> *a) the details of the parties;*
>
> *b) the issues in the dispute;*
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> *c) Background of the information (i.e information admitted between the parties);*
>
> *d) Summary of the parties' evidence and arguments;*
>
> *e) The reasons for the decision and*
>
> *f) The order (the precise outcome of the arbitration)".*

There is no fair hearing, the arbitrator omitted mandatory part (d) of the foregoing rules. The respondent submitted that the applicant claims of long service award is not recognized by law.

The issue here is whether the retrenchment procedure was followed. Section 4 of the Employment and the Labour Relation Act defines the operational requirement of the law, as the requirement based on economic, technological, structure or similar needs of the employer. The employer may be deciding to reduce number of the employees in order to protect his business by either measuring the profits of reducing costs.

In order to have fairness of the termination of the employment on operation requirement the employer must adhere to section 38 of the Employment and the Labour Relation ACT, Act No.6 of 2004 which provides that;

"38.-(1) In any termination for operational requirements (retrench-Termination), the employer shall comply with the following principles, that is to say, be shall - on operational requirements

> *a) give notice of any intention to retrench as soon as it is contemplated; 32 No. 6 2004 Employment and Labour Relations*

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 minimise 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.

(2) Where in the consultations held in terms of sub-section (l) no agreement is reached between the parties, the matter shall be referred to mediation under Part VIII of this Act.

(3). Where, in any retrenchment, the reason for the termination is the refusal of an employee to accept new terms and conditions of employment,

the employer shall satisfy the Labour Court that the recourse to a lock out to effect the change to terms and conditions was not appropriate in the circumstances".

Rule 23 of the ELRA (Code of Good Practice) of GN 42/2007 also Provides that:

"Rule 23(1) A termination for operational requirements (commonly known as retrenchment) means a termination of employment arising from the operational requirements of the business. An operational requirement is defined in the Act as a requirement based on the economic, technological structural or similar needs of the employer.

(2) As a general rule the circumstances that might legitimately form the basis of a termination are

(a) Economic needs that relate to the financial management of the enterprise;

(b) technological needs that refer to the introduction of new technology which affects work relationships either by making existing jobs redundant or by requiring employees to adapt to the new technology or a consequential restructuring of the workplace;

(c) structural needs that arise from restructuring of the business as a result of a number of business-related causes such as the merger of businesses, a change in the nature of the business, more effective ways of working; a transfer of the business or part of the business.

(3) The Courts shall scrutinize a termination based on operational requirements carefully in order to ensure that the employer has considered all possible alternatives to termination before the termination is affected.

(4) The obligations placed on an employer are both procedural and substantive."

The respondent herein alleged that the applicants were retrenched as they faced economic crisis in their business due to lack of customers. That prior of termination, they held consultations and arrived at an agreement to retrench the applicant and 4 other employees. Thus, termination of the applicants was fair as it was due to operational requirements.
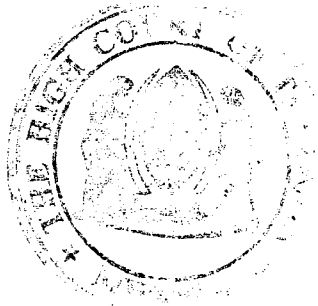
In observing the CMA case records and find that; the applicants were being paid the retrenchment costs, because of the economic instability of the company they were supposed to be retrenched. Therefore, they were given the notice and remuneration required which is being paid when any
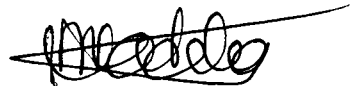
employee was terminated on ground of retrenchment. therefore, the procedures of retrenchment them was adhered to.

Therefore, I find that the termination of applicants' employment for operational requirements by the respondent followed all retrenchment procedures. Thus, this ground does not have no merits.

The applicants filed this claim to claim for a long-term services payment for the retrenchment. I agree with the CMA awards stating that long-term service payments are illegal. Therefore, I dismiss this application for revision and uphold the CMA award. It is so ordered.

DATED and **DELIVERED** at **MWANZA** this 29nd day of **May** 2020.

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U. E. Madeha
Judge
29/5/2020