

**IN THE HIGH COURT OF TANZANIA**

**IN THE DISTRICT REGISTRY**

**AT MWANZA**

**LABOUR REVISION NO. 18 OF 2021**

(Arising from a decision of the Commission for Mediation and Arbitration for Mwanza at Mwanza, CMA/MZ/ILEM/91/2020/47/2020 dated 27<sup>th</sup> October, 2020)

**STECOL CORPORATION & SINOHYDRO CORPORATION .....APPLICANT**

**versus**

**JOSEPHINE LUKWETO .....RESPONDENT**

**RULING**

**22<sup>nd</sup> & 30<sup>th</sup> July, 2021**

**RUMANYIKA, J.:**

With respect to award and orders dated 27/10/2020 of the Commission for Mediation and Arbitration for Mwanza at Mwanza (the CMA), the application for revision is supported by affidavit of Cynthia Mwafongo whose contents essentially Ms. Kabula Benjamini learned counsel for Stecol Corporation & Sinohydro Corporation (the applicants) adopted during audio teleconference hearing on 22/7/2021. Ms. Milembé Lameck learned counsel appeared for Josephine Lukweto (the respondent). I heard them through mobile numbers 0769384733 and 0673772535 respectively.

Ms. Kabula Benjamini learned counsel submitted that the termination was otherwise fair save for the irregularities in the award; **(a)** that the respondent had employment contract only with Sinohydro Corporation. Stecol Corporation therefore was a stranger nor were the two subsidiary companies of each other **(b)** that the reasons for termination were procedurally and substantially fair (Rule 8 (1) (b) of the Code of good practice read together with Section 37 (2) (b) (91)(a) of the Employment and Labor Relations Act Cap 366 RE. 2019 the respondent having had been coming to work late, at times she abandoned tools of work at the sites and she absented from work for six (6) days and all the time she confessed. Whether or not the applicant was refused permission to travel and attend the sick husband in Dar es salaam it was immaterial much as also, already she had terminal benefit claims from Sinohydro Corporation. Leave alone copies of the letter of engagement (Exhibit AB -1) and letter of termination (Exhibit AC-2) contrary to the rule in the case of **Robinson Mwanjisi & 3 Others v. Republic** (2003) TLR 218 not read out in court therefore improperly admitted in evidence with respect to the same leave alone non assignment of the reasons for the objection being over ruled.

That it was settled law that unless there was, to the contrary cogent reasons on record, every witness should be believed, very unfortunately the testimony of Dw2 was, for no reasons at all not believed (case of **Godluck Kyondo v. Republic** (2006) TLR 363. That is all.

Ms. Milembe Lameck learned counsel submitted; **(i)** that in fact the grounds for termination were not that sufficient. That according to Dw1 and Dw2 the respondent may have had been reporting at work late yes, but on that one, partly Exhibit AB-2 witnesses' testimonies contradicted each other. No copy of the attendance register was produced if at all to establish her absenteeism much as the employer was obliged to assign reasons for the termination. It could have been for misconducts, incapability / in capacity and, if anything, the steps ever taken by employer to assist the employee **(ii)** with regard to the issue of delay and or something nothing on record suggested that the respondent had confessed or apologized save for the six (6) days absence where she had to, as she attended the sick husband but on that one the former was not even warned **(iii)** that the applicant was duty bound to prove fairness of the termination leave alone the procedure adopted by them however proper were the grounds for termination **(iv)** that with regard to the

contractual relationship between them, Dw1 supported the respondent's case that they employed her in January, 2020 much as, if at all the two companies were represented only by one Human Resource Officer **(v)** That as for the procedure of tendering the documentary evidence in court, the case of **Robinson Mwanjisi** (supra) was distinguishable because whereas the later was a criminal matter, the instant one was simply labor cause.

The evidence on record reads as under: -

The respondent, holder of BSC in Geometry of UCLAS, Dar es salaam, she stated that having had been employed on 25/4/2010 by the applicants Sinohydro Corporation in 2021 as surveyor (copy of the letter of engagement (exhibit AB-1) for shs. 1,830,000/= per month, she worked peacefully until on 22/2/2020 when her husband was involved in and injured on a road accident away in Dar es salaam. Then she asked for six (6) days but the manager refused her permission. That on 11/3/2020 she was just terminated (copy of the letter of termination, Exhibit AB -2).

Pw2, the respondent's co- worker he stated materially the same as the respondent's.

internal arrangement. As Ms. Milembe Lameck rightly argued, that one should not have bothered their employees much as, as said, the respondent worked supervised by one and the same Human Resource Officer and perhaps the same management team and payroll. What a coincidence!

**Two;** the respondent may have had several times reported late at work place or absented herself, just abandoned tools of work at sites and all such a series of misconduct yes, but as it was correctly in my view argued both by the CMA and counsel, no copy of attendance register was produced in evidence to substantiate the serious allegations. After all given the serious nature of the allegations, the applicants should not have, if at all just warned her orally leave alone non reference of the dispute to a disciplinary committee. It sounds to me and contrary to the rules that the respondent was sort of summarily dismissed (not terminated) as she was not, in the real sense heard leave alone a fair hearing according to the letter of termination (Exhibit AB -2) one is quoted as under: -

... We are deeply saddened to inform you that **your term of employment at STECOL Corporation has come to an immediate end. Due to your slack**

**working altitude from the company, you will chase yourself from the project without any discussion** from your employer / supervisor and there is no allowance to be given out.

Suffice against the applicant the points to dispose of the application. I therefore shall have no basis upon which to fault the Arbitrator. The award is still inforce. The application is dismissed.

**S. M. RUMANYIKA**

**JUDGE**

**27/07/2021**

The ruling delivered under my hand and seal of the court in chambers this 30/07/2021 in the absence of the parties.



**S. M. RUMANYIKA**

**JUDGE**

**30/07/2021**