IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF MWANZA)

AT MWANZA

LABOUR REVISION NO. 71 OF 2020

WARIOBA PHINIUS ..... 1ST APPLICANT

LUCAS ANTHONY ..... 2ND APPLICANT

VERSUS

MWANZA SATTELITE CABLE ..... RESPONDENT

JUDGMENT

27th April & 14th July, 2021

ISMAIL, J.

The application in respect of which this ruling is delivered, is intended to move this Court to exercise its revisional powers to call and examine the record of the proceedings of the Commission for Mediation and Arbitration (CMA), in respect of Labour Dispute No. CMA/NYAM/149/2019, delivered on 30th July, 2020. In the award emanating from the said arbitral proceedings, the CMA ordered payment of arrears of underpaid wages due from the respondent. These arrears accrued from services that the applicants rendered for 36 and 28 months, respectively, during which they were paid the sum of TZS. 80,000/- each, while the statutory minimum scale was TZS. 100,000/-. With respect to the 1st applicant, the arrears covered the period

between 2011, when he was employed, to 2014, when his salary was incremented to TZS. 100,000/-. As regards the 2nd applicant, the alleged underpayment ran between February 2014, the date on which he was employed, to June, 2016, when his salary was enhanced to TZS. 100,000/-. The award was not to the applicants' liking, hence the decision to prefer these revisional proceedings.

The application is supported by a joint affidavit, sworn by the applicants. It contains grounds for the prayers sought. This affidavit has raised three legal issues which are contained in paragraph 13. These are:

(i) *Whether it was proper for the arbitrator to enter the award without considering the applicants' evidence;*

(ii) *Whether it was proper for the arbitrator to conclude that the respondent company fell under the Ministry of Industry and Trade and not the Ministry of Works, Transport and Communications in respect of which minimum wage scales would apply; and*

(iii) *Whether it was proper for the arbitrator to order payment of TZS. 20,000/- as arrears instead of the sum stated in the Wages Order.*

The application is viciously opposed by the respondent, who contends that these employees were casual labourers whose salary stood at TZS.

100,000/-. Through counter affidavit, sworn by its representative, the respondent has averred that the applicants were hired as assistants whose main occupation was to assist in erecting cable carrying poles and not assistant technicians. The deponent further averred that their services had since been dispensed with. Terming the application baseless, fictitious and frivolous, and an abuse of court process, the respondent urged the Court to hold that the applicants are not entitled to any of the reliefs.

Hearing of the application was done through written submissions, and it pitted Mr. Salehe Nassoro, learned counsel who represented the applicants, against Mr. Vedastus Laurean, learned advocate whose services were enlisted by the respondent.

In his submission, Mr. Nassoro contended that the arbitrator failed to evaluate, analyse and consider the evidence adduced by the applicants and exhibit C1, that collectively and sufficiently proved that the applicants were the respondent's employees whose employment had been terminated for pressing for their underpaid salaries. With respect to the award, the applicants faulted the arbitrator's conclusion that the applicants fall under the Ministry of Industry and not the Ministry of Transport and Communication under which their duties fall, and governed by the Electronic and Postal Communication (Digital and Other Broadcasting Network and

Services) Regulation, 2018. This is irrespective of the fact that the respondent possessed a business licence.

With respect to the propriety or otherwise of paying 20,000/-, the learned counsel argued that, in terms of the Labour Institutions Wage Order, GN. No. 196 of 2013, the minimum salary in the sector is TZS. 150,000/-, meaning that the underpaid amount is TZS. 70,000/- and not TZS. 20,000/- as contended by the respondent. This means, the counsel contended, the 1st applicant was entitled to an aggregate sum of TZS. 4,340,000/-, covering 62 months, while the 2nd applicant's entitlement is TZS. 2,030,000/-, constituting arrears for 29 months. The applicants urged the Court to set aside the award to the extent stated.

Mr. Laurean's submission was forceful in the opposition of the application. With respect to the contention of underpayment, he argued that the 2nd Schedule to the Regulation of Wages and Terms of Employment Order, GN. 172 of 2013 put the minimum salary at TZS. 80,000. He argued that the award of TZS. 20,000/-, granted by the arbitrator, was a favour that exceeded the threshold set by the law. The respondent's counsel denied that the applicants were hired for an indefinite contract period, arguing that the nature of the services they rendered meant that they could not be employed on an indefinite period.

With respect to propriety of putting the applicant's business under the Ministry of Industry and Trade, Mr. Laurean's contention is that the arbitrator was right, and that his decision was based on the evidence on record and the provisions of the law. The Counsel further argued that the applicants contention that they were permanent employees was not evidenced. It was the counsel's assertion that, as casual labourers, the applicants did not deserve any notice for termination of their employment as doing so would be tantamount to terminating what is incapable of being terminated. He submitted that the talk of the applicants serving as technical officers was misplaced as none of the applicants demonstrated that he possessed any technical knowledge fitting the designation.

The learned counsel discounted the relevancy of GN. No. 140 of 2018, calling it an afterthought. His argument is that the respondent company is not a broadcasting corporation in the mould of other broadcasting companies such as Azam TV, TBC, Sahara Media Group Ltd, Startimes and DSTV all of which are under the supervision of the Ministry of Communications and whose licensing is done by TCRA, a regulatory authority in the communications sector.

Regarding exhibit C1, the counsel held the view that the arbitrator was right when it disregarded it, since the same was a result of a

misapprehension of the provisions of the law by the Labour Officer who prepared it.

With respect to the 2nd Schedule to the Labour Institutions Wage Order, GN. No. 196 of 2013, the respondent's take is that the same has nothing to do with sectoral framework within the respondent's business operations. Mr. Laurean argued that, notwithstanding the fact that the applicants' statutory entitlement is TZS. 100,000/-, the responded did, on several occasions, pay the applicants TZS. 158,000/- per month. This, the counsel contended, was an act of generosity that is to be commended. The counsel maintained that, in terms of section 3 of GN. NO. 196 of 2013, the respondent's business falls under the commercial or industrial enterprises, meaning that these businesses are under the auspices of the Trade, Industry and Commerce Sector. He thus argued that the talk of underpayment is a mere allegation which has no factual or legal basis. He prayed that the application be dismissed.

From the parties concise but splendid arguments, the critical issue for determination is whether the arbitrator was erroneous in ordering payment of TZS. 20,000/- as salary arrears, instead of TZS. 70,000/-. Let me state from the outset that my unflustered view is that the arbitrator's finding and conclusion is unblemished and I uphold it. I shall explain.

As stated earlier on, the applicants' claims are predicated upon the provisions of GN. No. 196 of 2013 which was gazetted on 28th June, 2013, vide a Gazette Supplement No. 24. This instrument prescribes the minimum wages payable to employees. The Order put the employers on notice to the effect that those who are currently paying their employees' wages that are lower than the prescribed wages under the 2nd Schedule should adjust and up their salaries to conform to the new Wage Order, while those who are paying better rates should continue paying the rates.

In terms of Item ***c*** of the 2nd Schedule to GN. No. 196 of 2013, the minimum wage for employees in Commercial Services sector is TZS. 150,000/-, the while Item ***k*** thereof has set TZS. 100,000/-as the minimum wage for employees serving in the Trade, Industries and Commercial Services sector. The contention by the counsel for the applicants is that the respondent's business operations fall under the communications sector, while the respondent's position is that this is purely within the purview of the trade, industries and commercial services docket. Noteworthy, the significance of these contending arguments is to determine whether the applicants deserve to be paid TZS. 150,000/- as they 'clamour' for, under item ***c***, or TZS. 100,000/- that falls under item ***k*** and is routed by the respondent. The next issue which flows from this contention is whether the

claim for arrears is in respect of TZS. 70,000/- demanded by the applicants, or TZS. 20,000/- that has been endorsed by the arbitrator. The applicants' claim derives its 'legitimacy' from the respondent's testimony, featuring at page 4 of the award, and construed to mean that the respondent's operations fell under the communication services sector, regulated under Regulation 3 of the Electronic and Postal Communications (Digital and other Broadcasting Networks and Services) Regulations, GN. No. 140 of 2018. With respect to the applicants' counsel, this construction of the testimony of the respondent's witness is faulty. In my view, the mere fact that the respondent prepares contents for transmission or sale to television and cable networks does not convert its operations into communication services. In that respect, I fully subscribe to the respondent's view that this is purely a trade and commerce undertaking which is not under auspices of the communications sector in respect of which the wage scales are those found in item ***k***. It is a misconception, in my humble view, to stretch the respondent's activities to an unrelated sector, in order suit the applicants' quest for an increment reserved for the sector they do not belong to, or at least qualified for. I, therefore, resist the applicants' invitation in that respect, and hold that the arbitrator's finding was nothing but spot on in that regard.

Lastly, the applicants have taken an issue with the arbitrator's refusal to be swayed by the contents of exhibit C1 and make a finding in the applicants' favour. The argument is that such refusal was unjustified and erroneous. I drift from this point of view. The said exhibit C1 was prepared on a wrong assumption that the applicants were employed by the respondent whose line of business falls under item ***c*** of the 2nd Schedule to GN. No. 196 of 2013. Having found and settled that the respondent's business falls under item ***k***, the significance of the analysis in exhibit C1, waned and the same became a useless workout which would not form the basis for any decision. I see nothing faulty in the arbitrator's decision in this respect.

In upshot of all this, I dismiss the application and uphold the arbitrator's award.

Order accordingly.

DATED **at MWANZA** this 14th day of July, 2021.

THE HIGH COURT OF TANZANIA
MWANZA
UHURU NA UMOJA

M.K. ISMAIL

JUDGE

Date: 14/07/2021

Coram: Hon. C. Tingwa, DR

Applicant: Present

Respondent: Absent

B/C: J. Mhina

Court:

Judgment delivered today in the presence of the applicants and in the absence of the respondent.

C. Tingwa

DR

At Mwanza

14th July, 2021