IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

LABOUR REVISION NO. 18 OF 2019

(C/F CMA/ARS/ARB/140/2017)

EDITHA FLORIAN KAROLI .....1ST APPLICANT

JOYCE ROMAN SHIRIMA.....2ND APPLICANT

ELISIA ELIKANA MOSHI.....3RD APPLICANT

BLANKA ROMAN SHIRIMA.....4TH APPLICANT

REBEKA JOSEPH ANGATIA.....5TH APPLICANT

MARY MAXIMILIAN.....6TH APPLICANT

ARIKADI ROMAN SHIRIMA.....7TH APPLICANT

EVARISTA JACOB MASHAUSI.....8TH APPLICANT

FATUMA MWIDINI KANGE.....9TH APPLICANT

VALERIA ABDALLAH CHUWA.....10TH APPLICANT

VERSUS

MEGATRADE INVESTMENT LTD.....RESPONDENT

JUDGMENT

17/05/2021 & 26/07/2021

GWAE, J

The applicants herein dissatisfied with the arbitral award procured by the Commission for Mediation and Arbitration has filed this application under the provisions of section 91(3) of the Employment and Labour Relations Act No. 6 of

2004 and Rules 24(1), (2)(a)(b)(c)(d)(e)(f), (3)(a)(b)(c)(d), of the Labour Court Rules, GN No. 106 of 2007, praying for the following Orders:

i. That, this court be pleased to call for the records and proceedings of the award of the Commission foe Mediation and Arbitration at Arusha with reference CMA/ARS/ARB/140/2017 in order to examine the records, proceedings, and award so as to satisfy itself on the legality of the said records, proceedings and award.
ii. That, this court may be pleased to make orders that it deemed fit and just to grant.
iii. That this Hon. Court be pleased to make orders that it deemed fit and just to grant.

The application is supported by an affidavit of one of the applicants known by names of **Valeria Abdallah Chuwa (**10th applicant), a representative of the rest of the applicants. The respondent on the other hand, hotly challenged the application through a counter affidavit of her advocate, **Mr. Emmanuel Noel Shio.**

Brief background of the dispute between the parties are as follows; The applicants and the respondent were in an employment contract whereas the respondent was a company dealing with the production of an alcohol commonly known as "Viroba" while the applicants were employed in a position of packing of the said Viroba. On 20/02/2017 a notice was issued by the Government through the Vice President Office prohibiting the use of "viroba" in our country which read

as follows; "Upigaji marufuku matumizi ya pombe zinazofungashwa katika vifungashio vya plastic (viroba)". This was accompanied by a notice from the Ministry of Health, Community Development, Gender, Elderly and Children. Which also banned the production and importation of the sachets liquor (viroba). Subsequently on the 24th February 2017, a Government Notice No. 76 of 2017 was published, which officially prohibited the manufacturing, importation and use of plastic sachets for packing distilled and other alcoholic beverages. Following this prohibition by the Government, the respondent informed the applicants that their employment contracts would not be renewed due to such changes. Accordingly, they were issued with letters of termination and terminal benefits. More than 150 employees were terminated by the respondent. The applicants were aggrieved by that decision hence filed a complaint before the Commission for Mediation and Arbitration which gave its award in favour of the respondent as the Commission arbitrator found that the termination was fair.

When the matter came for hearing, the applicants were represented by the learned counsel, **Miriam Jackson Nitume** while the respondent was represented by **Emmanuel Shio** from Ideal Chambers. With the leave of the court this Revision Application was disposed of by way of written submissions.

Supporting this revision application, the applicants' counsel submitted in her submission in chief and rejoinder that the applicants' employment was terminated

by the respondent without following retrenchment procedures including the right to be heard. The counsel further added that as the applicants were issued with a notice to terminate their employment contracts, impliedly, it entails that there was reasonable expectation of renewal of their contracts. More so, the counsel argued that the Arbitrator misdirected herself in holding that the applicants' employment ended on 28/02/2017 and not 01/06/2017, her query, is if at all the applicants' employment ended on 28/02/2017 why did the applicants kept on working until 02/05/2017 when they were issued with the notice of termination. According to them termination of their employment occurred in 01/06/2017.

In reply to the applicants' submission, the respondents' counsel maintained that, the applicants were fairly terminated. Essentially, the counsel for the respondent has argued that the applicants' termination of their employment was out of the respondent's control since production was banned by the Government and therefore the respondent could not in any way continue with production thus the applicants' employment had also to come to an end upon expiry of their employment contracts. The counsel was also of the opinion that the respondent followed all procedures in terminating the applicants as to what the applicants' counsel submitted as he first informed the applicants of the Government Notice on prohibition of the production of the sachet's alcohol and later on the issued notice of termination of their contracts.

Having gone through parties' submissions, Labour laws, CMA records with an eye of caution, I am of the considered view that issues for determination are, whether the respondent had a valid reason to retrench the applicants, secondly, whether retrenchment procedures were adhered and lastly is to what relief are the parties entitled.

On the **first issue** for determination, I hasten to say that I fully concur with the Arbitrators findings for the reasons which I am about to state. The law is not silent on termination basing on retrenchment or operational requirement. This is one among the reasons which may lead into termination of an employee arising from the operational requirements of the business. Rule 23 (1) & (2) of the Employment and Labour Relations (Code of Good Practice) G.N 42 2007 has provided for circumstances that might legitimately form the basis of termination on operational requirement. Basically, the rule entails that for this kind of termination to be fair it must be based on the economic, technological, structural or similar needs of the employer.

In the matter at hand the reason for retrenchment was based on Government Notice in prohibiting manufacturing, importation and use of plastic sachets for packaging distilled and other alcoholic beverages, which was the business done by the respondent and the applicants were employed for that purpose. The prohibition in question was published in the Government Gazette

dated 24/02/2017 and the same was received by the CMA as exhibit together with other exhibits which were Notice of the prohibition from the Vice President office and that from the Ministry of Heath, Community Development, Gender, Elderly and Children.

From the above it is undoubtedly clear that reasons for termination were well communicated to the applicants in fact the applicants have not disputed this fact. Therefore, it is the view of this court that the applicants were terminated on fair reasons.

On the second issue as to procedures for retrenchment, the same are provided for under section 38 of the Act read together with rule 23 & 24 of the Employment and Labour Relations (Code of Good Practice) GN. No. 42 of 2007. I perused the Commission records specifically on exhibit "E" collectively which included a notice that was issued to the applicants informing them of the intention to terminate their employment and the reason for their termination. Thus, it is the view of this court that the applicants herein were consulted, informed and thus fully aware of the reason of their termination.

I am mindful of the position that not all labour procedures that must be adhered before termination as a check list fashion rather to ensure that the processes used or adhered to are basics for fair hearing in the labour context depending on circumstances of the parties, so as to ensure that a termination is

not reached arbitrary (See the decision in the case of **NBC Ltd Mwanza v. Justa B. Kyaruzi,** Labour Revision No. 79 of 2009 (unreported).

More so, it has been also the clear legal position that, each case must be decided depending on the circumstances of each case, See the decision of the Court of Appeal in the case of **Charles Chama & others vs. The Reginal Manager TRA & others,** Civil Appeal No. 224 of 2018 (Unreported). Given the peculiar circumstances of this case, this court is of the view that the fact that the applicants were made aware of their termination and considering that termination of the applicants' employment was not at the wish of the respondent as her business was frustrated and that she could not in any way disobey the Government orders.

More so, the doctrine of reasonable expectation, in the circumstances of this case, would not hold water or be relied by the applicants since the respondent's business was seriously affected by the Government Policy. How could the respondent manage to pay salaries in favour of the applicants if the business with which they were specifically employed to perform was closed or prohibited? The answer is negative. Had the applicants been able to testify that the same business they used to perform was in operation, the finding of this court would have been different.

I have also considered the assertion that, the applicants were terminated on 28th February 2017, I am not in position to hold otherwise as even when the letters (E3) were tendered the same were received and admitted without any objection nevertheless if that was the case yet the applicants' dispute would be time barred as was rightly observed by the learned arbitrator. However, when I carefully look at the documentary evidence, it is convincing that the applicants were formally terminated on the 1st June 2017 and that notices were issued on 2nd May 2017.

I have also taken into account that the applicants were issued with notices dated 2nd May 2015 of no further intention to renew their employment contracts, one month prior to termination of the applicants' employment and that their contracts were ordinarily to end up on 1/6/2017. That means, they were issued with a requisite statutory notice of termination prior to an end of their contracts and were paid their terminal dues as per the termination letter the fact which was not opposed by the applicants.

Accordingly, I am convinced that the arbitrator was correct in holding that the applicants were fairly terminated both substantively and procedurally. The applicants' application therefore lacks merit. I consequently uphold the award of the CMA. Each party to be his or her costs.

It is so ordered.

M. R. GWAE
JUDGE
26/07/2021