IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LABOUR DIVISION

AT MUSOMA

LABOUR REVISION NO. 1 OF 2021

JAMES RENATUS ..... APPLICANT

VERSUS

CATA MINING COMPANY LIMITED ..... RESPONDENT

(Revision from the Award of the Commission for Mediation and Arbitration for Musoma in Labour Dispute No. CMA/MUS/101/2020)

JUDGMENT

18th May and 18th August, 2021

KISANYA, J.:

The applicant, James Renatus was employed by Cata Mining Company Limited (the respondent) as Lab Technician on 1st June, 2016. His employment was for a specified contract of 36 months, renewable at the end of each period. It was on 9th May, 2020 when his contract of employment was terminated by the respondent. On 22nd May, 2020, he resolved to refer a labor dispute to the Commission for Mediation and Arbitration (CMA) for Musoma. In terms of CMA Form No. 1, two disputes namely, "termination of employment" and "breach of contract" were referred to the CMA by the applicant.

Upon being served, the respondent raised a preliminary objection on the two points of law: *First*, that the application contains defective pleadings; and *second*, that the application contains unattainable prayers.

The CMA upheld both points of objection after hearing both sides. The Hon. Arbitrator was of the view that the applicant had combined two distinct claims which could not happened at the same time. He went on to strike out the labour dispute before the CMA for being incompetent.

Aggrieved, the applicant preferred the present application. He has moved this Court to be pleased to examine the record before the CMA with a view to satisfy itself on the correctness, legality, and propriety of the award made thereon. Pursuant to paragraph 10 of the applicant's affidavit in support of the application, the grounds or issues for revision are:-

a) *Whether it was proper for the arbitrator to conclude that the Applicant's application contains defective pleadings.*
b) *Whether it was proper for the arbitrator to conclude that the Applicant's application contains unattainable prayers.*
c) *Whether it was proper for the arbitrator to hold that the Applicant is not entitled to any relief because his pleadings contain two disputes which is (sic) distinguishable and the remedy refer (sic) to him is to dismiss his application.*
d) *That, the Hon. Arbitrator erred in law and fact for failed (sic) to evaluate the submission of the Applicant which proof by*

considering recent judgment compared to the Respondents' submit (sic) by using not recent judgment.

During the hearing of this matter, Mr. Gervas Emmanuel, learned advocate appeared for the applicant, whereas, the respondent enjoyed the legal services of Mr. John Nerei, learned advocate.

Mr. Gervas prayed to adopt the affidavit in support of the application as part of his submission. He went on to argue that the law does not bar the complainant to combine more than one disputes in one pleading (CMA F.1). He referred me to the case of **Viettel Tanzania vs Naftari Mahenge**, Labour Revision No. 10 of 2019, HCT at Sumbawanga (unreported).

Mr. Gervas submitted further that, the CMA erred by holding that the applicant's prayers were unattainable. He pointed out that the prayers for specific damages and general damages were based on unlawful termination and breach of employment contract.

It was further submitted that the CMA failed to consider the recent judgments in the cases of **Upendo Malisa vs Kassa Charity Secondary**, Labour Revision No. 68 of 2018, HCT at Mwanza and **Jordan University College vs Mark Ambrose,** Revision No. 37 of 2019, HCT, Labour Division at Morogoro (all unreported) which discussed the same matter. From the foregoing, Mr. Gervas

asked the Court to allow the application and order that the labour dispute to be heard on merit.

Mr. Nerei vehemently resisted the application. He also started by adopting the counter affidavit and proceeded to argue all grounds for revision. The learned counsel argued that CMA Form No. 1 was defective. Citing the case of **Bosco Stephen vs Ngamba Secondary School**, Revision No. 38 of 2017, HCT, Labour Division at Mbeya (unreported), he argued that the applicant erred by combining more than two disputes in one suit.

The learned counsel went on to argue that the reliefs or prayers sought by the applicant were unattainable. He submitted that the remedies for unfair termination are provided for under section 40 of the Employment and Labour Relations Act [Cap. 366, R.E. 2019 (the EALRA) while the reliefs for breach of contract are provided for under section 73 (1) of the Law of Contract Act [Cap. 345, R.E. 2019]. He submitted further that the duty to prove a dispute based on unlawful termination lies to the employer while it is the employee who has the onus of proving a labour dispute premised on the breach of contract.

In relation to issue of non-consideration of recent decisions, Mr. Nerei submitted that the cases cited by the counsel for the applicant were distinguishable to the circumstances of this case. His submission was based on the ground that the issue of joining more than one disputes in one CMA F.1 was not discussed in

the said cases. Therefore, the learned counsel moved the Court to dismiss the application for revision for want of merit.

Rejoining, Mr. Gervas reiterated his submission that the law does bar merging of two disputes in one CMA F.1. He contended that the case of **Bosco Stephen** (supra) was distinguishable to the instant case because the applicant did not fill in Part B of the CMA F.1 which was at issue in that case.

I have considered the arguments for and against the application. In my view, this matter can be disposed of by considering whether the points of preliminary objections raised before the CMA were meritorious.

It is common ground that a labour dispute before the CMA is initiated by CMA F. 1. Parties are not at issue that, the applicant indicated in CMA F.1 that the nature of dispute was "termination of employment" and "breach of contract." Although Mr. Gervas contended that the applicant did not complete Part B of CMA F.1, it is on record that he filled in that part. As regards the reliefs on breach of contract dispute, the applicant prayed for specific damages of TZS 22, 160,000 and general damages to the tune of TZS 5,000,000. On the other hand, he prayed for "payment of all remedies of employee" on the termination of employment dispute. Did the joining of more than one disputes in CMA F.1 render the matter referred to the CMA defective? The Hon. Arbitrator answered this question in affirmative when he held that:-

"Kwa mujibu wa CMA F.1 mlalamikaji ametiki visanduku vyote viwili kuonesha kwamba aliachishwa kazi lakini vile vile alivunjiwa mkataba wake wa ajira. Katika mazingira hayo ni vigumu kwa Tume kuandaa hoja bishaniwa kwa kuwa mbele ya Tume kuna aina mbili ya madai yaliyowasilishwa na yenye taratibu tofauti na nafuu."

I went through CMA. F.1, clause 3 on the nature of dispute in particular. This clause instructs the complainant to tick the correct box in respect of the nature of disputes outlined thereto. It also requires the complainant whose nature of dispute is based on termination of employment to complete Part B of that Form. Thus, unless Part B is completed the dispute based on termination of employment cannot stand. Admittedly, as held in the case of **Bosco Steven** (supra), Part B of CMA F.1 is an addition form for termination of employment dispute only and not otherwise.

It is trite law that a party to the suit may join in the same suit several causes of action if there are questions of law and facts common to the parties arising from the series of transaction of the same matter. In that regard, I am of the considered view that, two or more disputes arising from the same cause of transaction may be united in one CMA. F.1. As indicated earlier, if the termination of employment dispute is brought together with other disputes, apart from completing clause 3 of CMA F.1, the complainant must provide information related to termination of employment by completing Part B of CMA F.1. However, that is not enough, a

labour dispute based on the unlawful termination and breach of contract disputes can only stand if there are common questions of law and facts between the parties in respect of the contract of employment.

That being the case, I agree with Mr. Nerei that the burden of proof, the issue for consideration and the reliefs on the termination of employment dispute and breach of contract dispute are distinct as shown hereunder:

One, the time within which to refer to CMA dispute concerning the termination of employment is thirty days of the termination or the date that the employer made a final decision to terminate or upheld the decision to terminate. But, other disputes, including, a dispute on breach of contract are referred to the CMA within sixty days from the dispute having arisen.

Two, the issue for determination in termination of employment dispute is whether the termination of employment was fair. On the other side, the issue whether the contract of employment was breached is framed if the dispute is founded on breach of contract.

Three, in terms of section 39 of the EALRA, the burden to prove that the termination of employment was fair lies on the employer. On the other hand, the employee is charged with the duty to prove breach of contract by the employer.

Four, the dispute of unlawful termination arises where the contract of employment is for unspecified term. It cannot arises from the contract of specified period of time. The latter give rise to breach of contract.

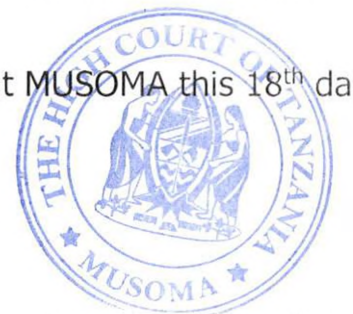
Five, pursuant to section 40 of the EALRA, the reliefs for unlawful termination are re-engagement, reinstatement or compensation not less than twelve (12) months' salary. This is not the case on the dispute premised on breach of contract where the reliefs thereto include, special damages (such as salary arrears, leave not paid, overtime not paid, salaries for the remaining period of contract etc), general damages and/ or specific performance as provided for under section 73 of the Law of Contract (supra).

In the circumstances, I find merit in the decision of the Hon. Arbitrator that the termination of employment and breach of contract disputes in the case at hand could not be conveniently determined together. Borrowing a leaf from the provision of Order II, Rule 6 of the Civil Procedure Code [Cap. 33, R.E. 2019], the CMA was enjoined to order separate arbitration. It did not dismiss the applicant's claims as deposed by the applicant. What the CMA did was to strike out the same and advise the applicant to refer before it a fresh labour dispute in accordance with the law. Therefore, the applicant was required to separate the disputes and refer the same to the CMA.

With regard to the third ground on non-consideration of recent decision, I am at one Mr. Nerei that, the cases of **Viettel Tanzania** (supra) **Upendo Malisa** (supra) and **Jordan University College,** (supra) did not determine the issue of joining two disputes in one labour dispute. Therefore, the decisions thereto were not relevant to the issue before the CMA.

For the foregoing discussion, I find no reasons upon which the award or ruling by the Arbitrator can be faulted by this Court. In the result, I dismiss the application with no order as to costs.

DATED at MUSOMA this 18th day of August, 2021.



E. S. Kisanya
JUDGE

Court: Ruling delivered this 18th day of August, 2021 in the presence of Mr. Gervas Emmanuel, learned advocate for the applicant and Advocate John Nerei for the respondent. B/C J. Katundu present.

Right of appeal explained.

E. S. Kisanya
JUDGE
18/08/2021