IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LABOUR DIVISION)

REVISION APPLICATION NO 7 OF 2019

(Originating from CMA/ARS/ARB/64/2016)

BETWEEN

FRANK E. MUKANO ..... 1ST APPLICANTS

JAMES L. JOSEPH ..... 2ND APPLICANTS

VERSUS

BANSAL STEEL ROLLING MILLS LTD ..... RESPONDENT

JUDGEMENT

24/2/2021 & 21/4/2021

ROBERT, J:-

The applicants, **Frank E. Mukano** and **James L. Joseph,** seek to revise and set aside an award of the Commission for Mediation and Arbitration (CMA) delivered in favour of their erstwhile employer, the Respondent herein. The applicants had lodged a dispute against their employer at the CMA claiming unfair termination. After the hearing, the CMA dismissed their complaint for

lack of merit hence, this application. The application is supported by an affidavit sworn by the first applicant.

Briefly stated, facts of this matter reveals that, the applicants were given warning letters by their employer at the work place which they refused to receive and sign. The employer refused to allow them to continue working unless they sign the warning letters. Dissatisfied, the applicants lodged their complaint at the CMA alleging unfair termination. After the hearing, the CMA decided that the applicants were not terminated from employment and dismissed their claims for lack of merit. Aggrieved, the Applicants filed this application. The Respondent lodged a counter-affidavit sworn by Timothy Gilbert Joel Maeda, counsel for the Respondent to oppose this application.

On the date fixed for hearing, applicants appeared in person unrepresented whereas the respondent was under the service of Mr. Timothy Maeda, learned counsel. At the request of parties, the Court ordered hearing to proceed by way of written submissions.

Submitting in support of the application, the applicants argued that, the Hon. Arbitrator misdirected himself by failing to observe that the

applicants were orally terminated from work and further that the CMA failed to consider the applicants' evidence.

They argued further that, the respondent's witnesses informed the CMA that the applicants absconded from work but there was no any evidence adduced to prove that allegation or establish that the applicants committed the offences of threatening to kill and damage of property which led to their termination. They maintained that, the respondent was required to prove that termination was fair under section 39 of the Employment and Labour Relations Act, No. 6 of 2004. He cited the case of Youth Dynamix vs Fatuma A Lwambao Revision No. 427 of 2013 in support of his argument.

On the question of procedural fairness, the applicants submitted that, faulted the Arbitrator for failing to consider if the Respondent adhered to the procedure in terminating the applicants. They maintained that, if the reason of terminating the applicants was abscondment from work the respondent was supposed to take the required steps in terminating the applicants. There was no disciplinary hearing, investigation or right of appeal given to the applicants contrary to rule 13 of the Employment and Labour Relations (Code of Good Practice) G.N. 42 OF 2007. He cited the

case of Ezekia Samwel Ndehaki versus Tanzanite Online Mining Ltd, Revision No. 59 of 2013 in support of his arguments.

The applicants submitted further that they had a fixed contract of one year from 1st January, 2015 to 31st December, 2015 and the monthly salary was TZS 350,000/= for each applicant. The first applicant was terminated on 29th April, 2015 whereas the second applicant was terminated on 2nd May, 2015. On that basis, they prayed that, the Court should revise and set aside the CMA award and order the respondent to compensate each applicant eight months of the remaining period of contract.

In response Mr. Timothy Maeda, counsel for the respondent disputed the applicants' claims. He submitted that, the applicants were not terminated from work by the respondent but they absconded from work for five consecutive days without any justifiable reason and failed to comply with their employer's directives which was an act of disobedience. He maintained that, the CMA was right in deciding that the applicants were not terminated but chose not to report to their place of work without informing their superior about their absence. Accordingly, applicants were not entitled to any reliefs.

On the procedure of termination, he argued that, the Respondent took a disciplinary action upon the respondents by heading a disciplinary employee-employer joint committee and further issued warning letter which the applicants refused to accept or sign and decided to abscond the place of work. He maintained that, the respondent complied with all procedures needed in events of abscondment from work by an employee. The respondent also complied with the rule of natural justice by providing the applicant the right to be heard.

On the basis of the foregoing, he prayed for this application to be dismissed.

In a brief rejoinder, the applicants reiterated their argument that, the CMA delivered an award in favour of the respondent without considering the evidence adduced before it and further that the CMA did not conduct disciplinary hearing.

The central question for determination in this matter is whether the applicants were unfairly terminated by the respondent. It is apparent from the CMA proceedings that the applicants having been given warning letters and refused to sign they were asked not to enter the place of work unless

they signed the warning letters. It is therefore evident that the applicants did not abscond from work but they were barred from entering the work premises. In the circumstances, this court is in agreement with the applicants' claim that they were terminated by the respondent orally. If the applicants' act of not signing the warning letter was regarded as a misconduct by the respondent, then the respondent ought to have followed the proper procedure to have the applicants' employment terminated fairly.

Even if, for the sake of argument, the applicants had absconded from work for five working days, as alleged by the respondent, and this is considered to constitute a good ground for termination, the respondent was still required to follow the proper procedures to have the applicants' employment terminated fairly as provided in Rule 9 (1) of the Employment and Labour Relations (Code of Good Practice) G.N No 42 of 2007 that;

> *"An employer shall follow a fair procedure before terminating an employee's employment which may depend to some extent on the kind of reasons given for such termination."*

Rule 13 of G.N No. 42 of 2007 also provides for procedures of conducting disciplinary hearing before terminating an employee. In the instant case the respondent could have conducted a disciplinary hearing

with regard to the misconduct shown by the applicants for refusing to sign a warning letter and absconding from work before terminating them orally. Although the respondent denied to have terminated the applicants, the act of telling them not to enter the work premises until they sign a warning letter had the effect of deciding on their termination without following a fair procedure.

In the circumstances, I find this application to have merit. Accordingly, I revise and set aside the CMA award. Consequently, as prayed by the applicants, I grant each applicant eight (8) months salaries in compensation for unfair termination.

It is so ordered.

K.N.ROBERT
JUDGE
21/4/2021