IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MOSHI DISTRICT REGISTRY

AT MOSHI

LABOUR REVISION NO. 31 OF 2021

(Arising from Labour Dispute No. CMA/KLM/MOS/ARB/25/2021, in the Commission for Mediation and Arbitrator of Kilimanjaro at Moshi)

F.M FOUNDATION PRE-PRIMARY SCHOOL ..... APPLICANT

VERSUS

GOODNESS TUMAINI KITAA ..... 1ST RESPONDENT

WAREKE SADIKI MWAIHOYO ..... 2ND RESPONDENT

JUDGMENT

MUTUNGI .J.

The applicant is seeking for revision of the Award by the Commission for Mediation and Arbitration of Kilimanjaro at Moshi (the Commission) in Employment Dispute No. CMA/KLM/MOS/ARB/25/2021 delivered on 25th June, 2021.

Briefly, the respondents were employed by the applicant as pre-school and primary school teachers from 2014. In November, 2020, after the Municipal inspector's inspection on the applicant, there were doubts raised in relation to the

respondents' academic qualifications. The applicant suspended their employment on ½ salaries pending the investigation. According to the records, the respondents were given time to verify the same but failed to do so. The applicant had also written a letter to the National Council for Technical Education (NACTE) inquiring about the respondents' qualifications. The NACTE's response thereto was to the effect, the Intel Training Centre from where the respondents got their education was neither registered nor its courses valid.

In that regard they were terminated and as a result they approached the Commission for unfair termination. The Commission decided in their favour after satisfying itself that the respondents were terminated unfairly in contravention of section 37(2) of the EALR Act, 2002. The Commission Awarded them as follows: -

1. *Half salary not paid during the period pending investigation for the month of January 2021 – Tshs. 150,000/=.*
2. *Full salary for the month of February, 2021.*
3. *Gratuity – Tshs. 484,615/=*

4. *One month salary in lieu of annual leave for the year 2020/2021 – Tshs. 300,000/=*
5. *12 months' salary compensation for unfair termination = Tshs. 3,600,000/=.*
6. *Certificate of Service.*

Aggrieved, the applicant has now come on revision. During the hearing, the Applicant was represented by Mr. Joseph Peter whereas the respondents were jointly represented by Mr. Batista Kiteve from TUPSE.

Supporting the application, Mr. Peter submitted, the applicant had lawful reasons to terminate the respondents' employment. In support thereof he cited a similar case of **Magana Migire Vs. NBC, Revision No. 641/2019 (HCT-Labour Revision DSM).** In the said case, under section 19 of **Law of Contract, CAP 345 R.E. 2019** the contracts were found voidable. On the same footing in the current dispute, the Intel college where the respondents underwent for their training was neither registered nor its courses known. In due thereof, it was proper for the applicant to terminate the respondents' employment. More so considering the NACTE report which totally disqualified their Academic credentials.

To cap it all, it is a trite procedure that parties are bound by their pleadings. Glancing through the Commission Form F1, the respondents prayed for different reliefs from the ones granted by the Commission. In that regard, the Commission erred by stating, even though the said College is now closed, that does not mean that the when the respondents were studying the same had been registered, while there was no such evidence. He finally prayed the revision be allowed and the Commission's Award be set aside.

In reply, Mr. Batista submitted it is in black and white, the respondents applied for their employment by sending applications which were dully received and they were short listed for the interviews. The Applicant's Director in his own words admitted, through the certificates dully submitted by the respondents were found to bear the requisite qualifications. After the interviews they started working and by the time the dispute arose they had served for several years. However, they never signed the employment contracts, and after constant reminders to the applicant, it is when the latter started querying their qualifications in order to avoid signing their contracts.

Mr. Batista argued, the respondents had worked diligently, hence they qualified to receive their terminal benefits. There was never a time they were asked about their qualifications despite the school undergoing frequent inspections. The applicant had acted unfairly since the respondents as young as they were and fresh from college got no education of the labour laws. In the end he submitted, the Commission was right in its Award and this court should uphold the same.

In his brief rejoinder, Mr. Peter, maintained the respondents were fairly terminated as they admitted not having valid education certificates. They also admitted on fairness on reason for termination only that the termination process did not follow the procedure. He asserted indeed, the applicant's Director acknowledged the respondent's diligence during their employment but when the Municipal Inspectors declared their college had not been registered, he gave them 14 days to verify the same (Exhibit A3). However, the respondents took no actions hence, their employment was suspended on half salary pending investigation. It is not until NACTE had confirmed that, neither the respondents' college nor its courses (Exhibit A5) were

registered that the respondents were ultimately terminated. In that regard, they cannot not benefit from their own wrongs.

Having gone through the submissions by both parties together with the Commission's proceedings, there are three issues for determination. **First**, whether or not there were valid reasons for termination. **Second**, whether procedures were followed and lastly whether the reliefs awarded to the parties were proper.

Starting with the first issue on the validity of reasons for termination, I have scrutinized the evidence by parties before the Commission and satisfied that, there were fair reasons for terminating the respondents' employment. It is undisputed the said Intel Training Centre is not recognized together with its programs. Although the respondents claim that the applicant had to conduct due diligence before entering into contract with them, the same had to be two-way traffic. They ought to have disclosed the status of their college prior to securing their employment, or rather they also ought to have done due diligence before being enrolled for their studies at the said college.

In the circumstances, I differ with the Arbitrator's reasoning as stated hereunder: -

> *"Tume inaona ya kwamba mwajiri hakutimiza wajibu wake vizuri wakati anawaajiri walalamikaji mwaka 2014. Mwajiri alitakiwa kufuatilia na kujiridhisha na uhalali wa vyeti vya anaowaajiri kabla au wakati wa kuwaajiri. Haikuwa sahihi kwa mwajiri kukaa na walalamikaji miaka zaidi ya sita (6) Nakisha kuibuka na hoja ya vyeti."*

The court is of the settled opinion as long as the applicant became aware of their qualifications late, this did not bar her to start investigating on the controversy of the respondents' education qualifications. She could not turn a blind eye on this aspect once it had become apparent after inquiries. Therefore there was a valid reason to terminate the respondents' employment.

The second issue is whether or not fair procedures were followed. Right to be heard is one of the fundamental principles of natural justice, failure of which vitiates the proceedings. The applicant had to apply the rules of natural justice by conducting a fair hearing and give the

respondents the right to explain themselves on the allegations against them. In the case of **Edwin William Shetto Vs. Managing Director of Arusha International Conference Centre [1999] TLR 130**, the court observed, since the plaintiff could only be terminated for good cause, the plaintiff should have been heard before the decision to terminate him could be taken.

The fair procedure for termination is provided for under Rule 13 of the **Employment and Labour Relation (Code of Good Practice) G.N No. 42 of 2007** (the Code). Rule 13 (1) up to 13 (10) of the Code provides for disciplinary committee hearing conditions for instance; Rule 13(1) requires an investigation to done, 13(2) requires employee to be notified on the allegations in advance. The reasonable time period prescribed is 48 hours as per Rule 13(3), while rule Rule 13(4) requires the disciplinary committee meeting to be chaired by a sufficiently senior management representative not involved in the circumstances giving rise to the case. Rule 13(5) requires the employee, during the hearing, to be given an opportunity to respond to the allegations and rule 13(8) requires the decision taken to be properly communicated to

the employee. The law also requires the outcome to be indicated in the hearing form and lastly, if the employee is dissatisfied is given room for appeal.

Perusing the CMA's record, I find all these procedures were completely left out as no hearing was done at all. Violation Rule 13 of the Code and its sub-rules which have been couched in mandatory terms by the use of the word **"shall"** meant, the function so conferred must be performed and cannot be interpreted in any other way except full compliance. Failure to observe the same has completely impacted the whole termination process of the respondents' employment. The 2nd issue is therefore answered in the negative that, proper procedures were not followed.

Coming to the last issue, since I have ruled out that there was a valid reason but procedurally unfair in terminating the respondents' employment, the law is clear on reliefs to be granted. Regarding ½ salary, Rule 27 (1) of the Code provides that: -

> *"27-(1) Where there are serious allegations of misconduct or incapacity, an employer may suspend an employee on full remuneration whilst*

the allegations arc investigated and pending further action."

The applicant therefore erred in paying the respondent ½ salary for one month of January, 2020 when the matter was investigated, hence the Arbitrator did not error in ordering payment of the remaining ½ salary on that month. I do not see the need to fault the other reliefs granted to the respondents as they worked diligently with the applicant for several years hence earned such reliefs.

In the event, this court finds the application for revision with merit only to the extent explained in the judgment. This being a labour matter I make no orders for costs.

It is so ordered

B. R. MUTUNGI
JUDGE
25/11/ 2021

Judgment read this day of 25/11/2021 in presence of Mr. Emanuel Anthony the applicant's advocate, both respondents and Mr. Batista Kiteve the respondents' representative.

B. R. MUTUNGI
JUDGE
25/11/2021

RIGHT OF APPEAL EXPLAINED.

B. R. MUTUNGI
JUDGE
25/11/2021