

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
LABOUR DIVISION
AT ARUSHA**

REVISION NO 84 OF 2019

(Originate from dispute No CMA/ARS/ARB/202/2018)

RAPHAEL KOMBA 1ST APPLICANT
EDMOND LODIE.....2ND APPLICANT
STEVEN LAIZER3RD APPLICANT
SELEMAN OMARY SAID 4TH APPLICANT
SAID BENDERA 5TH APPLICANT
JOHN MPINGA6TH APPLICANT
SAID MBINGA7TH APPLICANT
WILLIAM MPANDA8TH APPLICANT
FARIJI SAID9TH APPLICANT
DALLO HEMED MBWAMBO10TH APPLICANT

VERUS

ULTIMATE SECURITY TANZANIA LTD RESPONDENT

JUDGMENT

ROBERT, J:-

The Applicants herein seek to revise the proceedings, orders and award of the Commission for Mediation and Arbitration (CMA) of Arusha in Dispute No. CMA/ARS/ARB/202/2017 which dismissed the claims of

unfair termination filed against the Respondent, Ultimate Security Tanzania Ltd, for lack of merits.

The application is made under section 91 (1) (a) (b) and 2 (a), (b), (c) of the Employment and Labour Relations Act, No. 6 of 2004, Rule 24 (1), (2)(a), (b), (c), (d), (e) and (f), Rule 24(3) (a), (b), (c) and (d), Rule 28 (1) (c), (d) and (e) of the Labour Court Rules, GN No. 106 of 2007 and any other enabling provisions of the law. The application is supported with an affidavit sworn by Aisha Masoud, Representative of the Applicants.

The documents in support of this application indicates that, the Applicants were employed by Ultimate Security Tanzania Ltd (Respondent) as security guards on diverse dates in contracts for unspecified period of time. Their employment was terminated on March, 2017 after a mutual agreement by parties to terminate the contracts for unspecified period of time in order to engage into new contracts that would operate on a fixed term of two years. The Applicants were also promised payment of their entitlements in respect of their old contracts. However, the Applicants did not sign the two years fixed term contracts which led to their termination. After the alleged termination, the matter was referred to the CMA for Mediation and later Arbitration.

The CMA made a finding to the effect that, parties in this dispute having entered into an agreement to terminate their contracts of unspecified period of time no legal relationship existed between them and the sanctity of contract required them to honour the terms of that agreement in good faith. Therefore, the Applicants refusal to accept the new contracts of fixed terms was equal to turning down the offer of employment made by the employer. Accordingly, the CMA dismissed the claims of unfair termination for lack of merit. Aggrieved with that decision, the Applicants preferred this application seeking revision of the CMA award.

When the matter came up for hearing on 1st April, 2020 the Applicants were represented by Ms. Aisha Masoud from the employees' trade union styled as TUPSE whereas the Respondent was under the services of Mr. Reginald Laswai, learned counsel. Hearing proceeded by way of written submissions as desired by parties.

Submitting in support of the application, Ms. Masoud, started by breaking down the claims of each Applicant. She stated that, the Respondent and Applicants had employment contract for unspecified duration which they agreed to terminate for the sake of any interested party to enter into a two years fixed duration contract. However, the

Applicants decided not to sign the new contract and challenged their termination at the CMA. She stated further that, the Respondent entered into an agreement with the Applicants to terminate the permanent contract based on the following requirements: (a) to pay all eligible and enter into a new contract which is temporary, (b) Notice of termination of employment, (c) payment for all days that they worked until the day they were terminated (d) payment of leaves, (e) severance and (f) certificate of services. However, the Respondent failed to honour this agreement by failing to pay compensation to his employees.

She argued further that, the Applicants were encouraged to enter into an agreement to terminate their permanent contract and enter into a new contract due to the presence of their employer and advocate from Headquarters in Dar-es-salaam as well as presence of Labour officers from Manyara and Arusha regions on 20th February, 2017 without being aware that the said contract was void because it was not in accordance with the labour laws and section 73 of the Law of Contract Act, Cap. 345 (R.E. 2002).

She insisted that, the reasons for the Applicants termination were lame because section 14(1) of the Employment and Labour Relations Act, No. 6 of 2004 recognizes three types of contracts with an employee, that is to

In reply, the Respondent's counsel argued that, the Applicants' submissions are devoid of merit and misleading the court. He observed that the Applicants submissions failed to focus on the grounds for revision. He responded to the argument that the new contract was void for contravening the provisions of section 73 (1), (2), (3) and 4) of the law of Contract Act, Cap. 345 R.E 2002 by noting that this ground was not raised in the Applicants' application. However, he proceeded to argue that, in the present case there was a mutual agreement to terminate the old contract and enter into a new contract which is clearly provided under the labour laws as a valid contract.

He argued further that, under section 36 (a)(i) of the Employment and Labour Relations Act, 2004, and Rule 3(1)(a) of the Employment and Labour Relations (Code of Good Practice) Rules, 2007, termination of employment includes a lawful termination of employment under the common law. A lawful termination of employment under the common law includes termination of employment by agreement according to Rule 3(2)(a) of the Employment and Labour Relations (Code of Good Practice) Rules, 2007. He maintained that, termination of employment by agreement is the best way of ending employment relationship without

much chaos, hence the employer had adopted the best practice by ending the relationship in a friendly manner.

Submitting further, he stated that the reasons for termination and the procedure used in the termination of Applicants do not point to the issue of unfairness of reasons or procedures due to the fact that the said termination was arrived at by mutual agreement between the Applicants and Respondent as evidenced by testimonies of Respondent's witnesses that, Applicants and other employees were availed with new specified contracts to read, sign and return a copy to the employer and that they were paid their entitlements with regards to the old contracts. The agreements came after four meetings with the employees and all employees including the Applicants herein were involved and given new contracts to read, sign and return a copy to their employer.

Submitting further, he stated that, the Respondents were paid their benefits through their bank accounts and in accordance with the mutual agreement to terminate the old contracts and when they were availed with an opportunity to sign a new contract they declined the offer and opted to institute a case claiming unfair termination.

On the foregoing, he submitted that this application is devoid of merit and should be dismissed accordingly.

Having considered the submissions of both parties and records in this application, I will pose here and make a determination on whether there is merit to this application. As correctly stated by the learned counsel for the Respondent, the submissions made by the Representative for the Applicants are mostly out of the realm of the grounds featured in the affidavit supporting this application. The Applicants raised the grounds for revision in paragraph 12 and 13 of their Representative's affidavit. Based on the reasons stated in the quoted paragraphs, the Applicants were expected to submit on how they think the Arbitrator failed to make a determination on the first issue raised for determination by the CMA, that is, "whether the reason for termination was fair." Instead their submissions were focused on the terms of the new contract, how they think the new contract is illegal and the entitlements of the applicants following the end of the old contracts.

However, having revisited the proceedings of CMA in this matter, it is evident that the previous contract of employment for unspecified period was terminated by a mutual agreement between the Applicants and Respondent. Evidence indicates that in the process of ending the contracts for unspecified period, both parties were involved in consultations and meetings and the Applicants were availed with new contracts for specific

period to read and sign. It seems the dispute arose with regards to the new contract when the Applicants had already signed an agreement to terminate the old contract. The Applicants refusal to sign the new contracts of employment does not make their termination of the old contract, which was made on the basis of the mutual agreement, to become unfair. Termination of employment contracts by mutual agreement is lawful under Rule 3 (1) (a) and (3) (2) (a) of the Employment and Labour Relations (Code of Good Practice) GN No. 42 of 2007.

Having perused the CMA award, it is clear that the issue as to whether the Applicants termination amounted to unfair termination was exhaustively addressed by the trial Arbitrator from page 5 to 7 of the award. The CMA made a finding that the termination was fair as the Applicants agreed to terminate the old contract of unspecified time in order to enter into a new contract of specified period voluntarily. I find no reason to fault the decision of the trial Arbitrator.

Consequently, I dismiss this application for lack of merit.

It is so ordered.




K.N. ROBERT
JUDGE
21/4/2021