

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY WOF ARUSHA

AT ARUSHA

REVISION APPLICATION NO. 9 OF 2020

(C/F Labour Dispute No. CMA/ARS/ARS/241/2019)

PROSPER SWATTY..... APPLICANT

VERSUS

ARUSHA INTENATIONAL CONFERECE CENTRE..... RESPONDENT

JUDGMENT

27/4/2022 & 20/7/2022

ROBERT, J:-

The applicant, Prosper Swatty, moved this Court to revise the award of the Commission for Mediation and Arbitration (CMA) in Labour Dispute No. CMA/ARS/ARB/241/219 and set aside the whole decision. The application is supported by an affidavit sworn by the applicant and resisted by a counter affidavit sworn by Ms. Juliana Deograsias Mrema, the Respondent's Legal Officer.

Briefly stated, facts giving rise to this application reveals that, the applicant was employed by the respondent on 15th March, 1993 as Estate Officer before his retirement due to sickness. He stayed on leave due to

sickness for one year where he was paid full salary for six months (from 15/07/206 up to January, 2017). Thereafter, he received half the salary for six months from February to July, 2017. No further salary was paid and on 28th November, 2017 he retired officially. After his termination the respondent did not pay him his terminal benefits on grounds of financial constraints.

In January, 2017 the respondent had a meeting with TUICO where they agreed the applicant will be paid one-year salaries and the minute was registered with the Ministry of labour. The applicant was then paid his arrears until July, 2017 when his sickness leave expired. Dissatisfied, the applicant referred the matter to the Public Service Commission alleging non-payment of the salary arrears and the delayed repatriation and the respondent maintained that he was already paid his entitlements. Aggrieved, the applicant referred the matter to the Commission for Mediation and Arbitration (CMA) claiming for the following reliefs:-

- i. Arrears of salary from July 2017 to December 2017 Tsh. 12,650,585/=
- ii. Salaries from December 2017 to July 2018 Tshs 17,710,819/=
- iii. Underpayment of retirement award Tshs. 15,180,702/=
- iv. Long Service award Tshs. 3,500,000/=

- v. Payment as per endowment scheme Tshs 15,807,020/=
- vi. Substance allowance from December 2018 to July 2019 Tshs 17,710,819/=

At the end of the trial, the CMA ordered that since the respondent did not repatriate the applicant for six months he should be paid substance allowance together with the arrears from August to November, 2017 to the tune of Tshs. 28,799242/=. This decision aggrieved the applicant who is now seeking revision of the award on the following grounds:

- A) The honourable arbitrator grossly erred in law and facts by deciding the dispute in favour of the applicant only arrears from August to November 2017 and substance allowance and ignored other terminal benefit.*
- B) That, the arbitrator erred in law and fact by relying on his own belief and contradicting himself by dealing with the issue which were neither raise nor disputed in CMA as a result reached in the erroneous conclusion.*
- C) That, the honourable Arbitrator refused/ignored without good reasons to admit in all Applicant's evidence documents showing that Applicant had good reason to be paid his all-terminal benefits. The said evidence document is hereby attached and marked collectively as annexure P-8; Court leave is craving for this to form part of this affidavit.*
- D) That, the honourable Arbitrator erred in Law by disregarding the Applicant's evidence which led him to come up with erroneous finding which has no legal basis and properly reasoned.*

This application was disposed of by way of written submissions where both parties filed their respective submissions accordingly. The applicant enjoyed representation from Mr. Alex Michael, Personal Representative while the respondent was under the legal representation of Ms. Fabiola Kisarika, learned state attorney.

The applicant alleged that on 6th day of June, 2016 at Kilimanjaro Christian Medical Centre (KCMC) he had an interview with the Medical Board to determine if he will be able to resume his duties or not as per the requirement of law and before the recommendation was given the respondent reduced his salary to half and later on stopped giving him salaries while he was still an employee who was depending on his salary. He submitted further that, he received letter of termination on 28th November, 2017 informing him of his removal from the payroll with effect from 1st December, 2017. Until 22nd March, 2018 the respondent had not yet paid the applicant his entitlements. Hence, he decided to write a letter to the respondent claiming for his entitlements. His letter was answered on 17th May, 2018 and by 4th July, 2018 he was paid his entitlements including the repatriation costs to his place of domicile.

He maintained that, the respondent did not pay his entitlements in full as a result he referred the matter to CMA claiming his entitlements

from July, 2017 to July, 2018. He added that, the CMA erred in law by failure to consider exhibit D4 which shows that CA was ordered to prepare his entitlements and to remove his name from payroll with effect from 1stDecember, 2018. Further to that the Commission failed to understand AICC Group Endowment Assurance Scheme and Trust Deeds and Rules which required that he be paid the employee benefits at maturity which is the accumulated lump sum of his gross entitlements at retirement. Thus, he maintained that, according to clause 7.1 of the AICC incentives scheme the applicant was required to be paid 5years' salary as benefit after working for more than 15 years. However, the applicant was paid one year salary only (TZS 37,951,755.00/=) instead of five year's salary (189,758,775/=) based on exhibit D12 which provided that payment will depend on the financial status of the employer. He objected to the use of the said exhibit as it was against section 71 (1) (2) (3) of the Employment and Labour Relations Act.

Further to that, he argued that, according to clause 7.1.10 of exhibit D9 (AICC Incentive scheme) the applicant was entitled to the retirement gifts of 30 months' basic salary for an employee who worked for more than 25 years, however the respondent only gave him 24 month's salary instead of 30 months' salary. Hence, he prayed for under payment of TZS

15,180,702/= . He also claimed for a long service award as per clause 7.1.12 which is TZS 3,500,000/= which was not paid.

In response, counsel for the respondent disputed all the claims raised by the applicant. She submitted that the applicant was informed that according to the Labour laws and staff regulations, he was entitled to payment of full salary for six months and half salary for six months with effect from February, 2017 as per exhibit D2. Further to that, on 28th November, 2017 he was notified of his retirement on medical grounds according to the recommendations of the Medical Board (See exhibit D3). On 22nd January, 2018 the applicant was paid TZS 60,256,832 being retirement award for 24 months, transport, parking and crating as per exhibit D4. Later the applicant wrote to them claiming for his benefits and they replied to him that the same was already paid and attached the payment voucher (exhibit D7) to prove the same. He was dissatisfied and decide to refer the matter at CMA.

The learned counsel submitted further that, the endowment payment claimed by the applicant has no merit since rule 10 of exhibit D11 defined sum assured as salary which amounts to one year's salary and Rule 14 of exhibit D11 provides that, the claim under the rules will go in accordance with the rules. With regards to the claim that the applicant

worked for more than 25 years, he referred the Court to clause 8 of the exhibit P9 which sets limitations of payment where the respondent is facing financial constraints. He clarified that, the respondent's financial constraints were caused by the UN-ICTR tenants having to shift and left the respondent's building which was discussed by TUICO where the applicant was a member (see exhibit D12). Hence, she maintained that disputing the said exhibit at this stage is just baseless.

Regarding the claim of retirement award, she argued that, the applicant had not attained the period of 25 years (calculating from 5/03/1993 – 28/11/2018) when he retired that's why he was paid 24 months' basic salary (see exhibit D9 at page 8 to 9). She maintained that the payment was never disputed at the CMA. In respect of the claim of salary arrears from December, 2017 to July, 2018 which is TZS 17,710,819 she argued that the respondent owes the applicant nothing as he received his termination letter and his name was removed from the payroll from 1st December, 2017 and not 1st December, 2018.

Lastly, with regards to the claim for long service award, Ms. Kisarika submitted that, the award is given to employees who works for 5 years, 10 years, 15 years, 20 years, 25 years and 30 years continuously. This is according to clause 7.1.12 of exhibit D9. She explained that the applicant's

service had fallen short of 25 years as he retired from employment having worked for 24 years and 8 months only. She submitted that the award is given to the employees who works for 5 years, 10 years, 15 years, 20 years, 25 years and 30 years continuous. She prayed for this application to be dismissed in its entirety.

From the submissions of parties and records in this application, the main question for determination by this Court is whether the applicant had received all his final benefits and entitlement after his retirement from the office.

With regards to the issue of endowment benefit as claimed by the applicant (TZS 151,807,020/=), Rule 9 of Exhibit D11 provides that;

"A member shall receive 100% in accumulated lump sum of his gross sum assured, at retirement. Inflation levels shall be provided to a certain margin to cater for any risks that may arise due to depreciation of money."

Further to that the sum assured was defined on the same exhibit D11 that;

"SUM ASSURED- shall mean such an amount which shall amount to 1 year's x annual salary of the members' current salary."

Further to that, Rule 14 of Exhibit D11 provides that the said benefit will be provided in accordance with the rules, and the applicant relied on clause 7.1.1 of exhibit D9 and forgot clause 8 which provides for limitation clause in case the respondent is facing financial constraints. Therefore, based on the above definition the respondent was correct in paying the applicant the said amount of One year's annual salary based on the financial circumstances of the applicant as explained.

As for the retirement award, clause 7.1.10 of exhibit D9 provides that:

"Employees shall be given retirement allowance for their length of services as follows:

- 1. 10 consecutive years of service – 12 months of basic salary*
- 2. 15 consecutive years of service – 18 months of basic salary*
- 3. 20 consecutive years of service – 24 months of basic salary*
- 4. 25 consecutive years and above – 30 months of basic salary*

Therefore, based on the excerpt above, the applicant was entitled to the payment of 24 months of basic salary and not 30 months' basic salary as he had worked for less than 25 years (24 years and 8 months to be specific). Thus, this Court is in agreement with the CMA that this claim lacks merit as the Applicant was already paid his 24 months' basic salary as required under exhibit D9.

Coming to the salary arrears claim, the applicant claims for payment of TZS 17,710,819/=. This court having revisited the trial commission's records together with the admitted exhibits, it is clear that the employee's retirement letter (Exhibit D3) which is dated 28/11/2017 provides that;

"Kustaafu kwako ni rasmi kuanzia leo"

Therefore, as the applicant was no longer an employee of the respondent on the dates of the alleged claim, this Court finds that he was not entitled to payment of salaries after his retirement. Thus, the alleged claims lack merit and are hereby dismissed.

As for the last claim of long service award, clause 7.1.12 of exhibit D9 provides that;

"Employees will be paid long service award as provided for in the budget"

The cited clause did not provide the specific amount which the employee will be paid, the same was left blank as it will be paid depending on the budget of the employer at the time of retirement. Therefore, the applicant was never awarded this payment due to the financial status of the respondent at the time of retirement.

As for the issue of subsistence allowance, this is payable upon repatriation, following termination of employment to the former

employee's place of engagement or place of domicile according to section 43 (1) of the Employment and Labour Relations Act. The section provides that;

“(1) Where an employee's contract of employment is terminated at a place other than where the employee was recruited, the employer shall either-

(a) transport the employee and his personal effects to the place of recruitment,

(b) pay for the transportation of the employee to the place of recruitment, or

(c) pay the employee an allowance for transportation to the place of recruitment in accordance with subsection (2) and daily subsistence expenses during the period, if any, between the date of termination of the contract and the date of transporting the employee and his family to the place of recruitment.

In this application, the applicant alleged that he was supposed to be paid subsistence allowance from 17th December, 2017 to July, 2018, however exhibit D6 and D7 reveals that the applicant was paid repatriation costs on 17th May, 2018, therefore, the CMA was correct in awarding him subsistence allowance for six months only, that is, from December, 2017 to May, 2018.

In conclusion, I find no reason to interfere with the CMA's award as this application is wanting in merit and it is hereby dismissed accordingly. I give no order for costs.

It is so ordered.



A handwritten signature in blue ink, which appears to read "K.N. Robert".

K.N.ROBERT
JUDGE
20/7/2022