

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

TANGA DISTRICT REGISTRY

AT TANGA

LABOUR APPLICATION NO. 23 OF 2020

(ORIGINAL CMA/TAN/41/2019/29)

FREDRICK MWEMUTSI----- APPLICANT

VERSUS

TANGA CEMENT PLC-----RESPONDENT

29TH JUNE 2022

L. MANSOOR, J

JUDGEMENT

The Applicant, Fedrick Mwemutsi, was employed by the respondent on 3rd September 1998 as a Storekeeper. He was terminated on 24th April 2019 for misconduct. It was alleged by the employer that the employee had released out from the store the oil, which is petroleum oil and kerosene in the pretext of releasing the crude oil to a customer.

The employee was dissatisfied by the decision to terminate him, he filed a complaint before the CMA alleging that the misconduct was not proved as he was not responsible for



keeping the oil, but he only keeps track of the movement of the crude oil, and he allows the crude oil to be taken out of the store by liters and not by drums. He also said the procedure for termination was not followed as he was not afforded a chance to be heard, and he was never issued with any warning letters before termination.

The employer said the employee was found guilty of misconduct, and he was given the chance to be heard. He was terminated after full hearing, and he was paid all his dues.

During the hearing at CMA the employer gave details on how they found the employee attempting to deliver almost 6000 liters of oil to a buyer who had a permit to take crude oil. The 6000 liters of oil had the value of Tshs 26,000,000 while the buyer was to get delivery of crude oil worth Tshs 9,000,000 only. The employee was charged, and he denied the charge and said he arranged for delivery of 6000 liters of crude oil to Ivosha Company and he never dealt with petroleum oil or kerosine.

After the careful evaluation of the evidence presented before it, the CMA found that the reason for termination was valid as per section 37 (2) (a) of the Employment and Labor Relations Act No. 6 of 2004. The CMA also found that the procedure for termination was fair. The investigation was carried out and an investigation report was prepared (Exhibit D1). The employee was summoned to appear for disciplinary hearing, he was also asked to get a representative during the hearing. The Charge was prepared (Exh. D2), and served to the employee, the employee was suspended via Exhibit D3, paving way for investigation. Hearing was held, the employee was heard, and a decision was taken. They found the employee guilty of misconduct. Proof of hearing proceedings was brought before CMA as Exhibit D5. After the decision, the employee appealed to the Director (Exhibit D6), but the appeal was unsuccessful, as the Director confirmed the decision of Disciplinary Committee (D7).

The CMA found for the employer that the employee was terminated in accordance with a fair procedure as per section

37 (2) (c) of the Employment and Labor Relations Act No. 6 of 2004.

Aggrieved by the decision of CMA, the employee filed for Revision seeking to revise the orders passed by the CMA. The application was determined by written submissions, while the Applicant, the employee was represented by Henry Mlang'a, the Representative, the employer was represented by Denis Malegesi Advocate. The Applicant in his affidavit said the disciplinary committee was wrongly constituted in that the person who chaired the disciplinary Committee was the head of the Department where the employee was working. The Stores is under the Finance Department and Mr. Edgar Mlenge DW2, the accountant is the in charge of the Finance Department, and that he shouldn't have chaired the Disciplinary Meeting. That since he was the Head of Finance, he was an impartial person to chair the meeting since he had direct interests in the matter and could easily influence the decision/results.

The Employee faults the analysis of the evidence made by the Arbitrator, he says there was contradictory evidence of DW2 and DW3, and those contradictions of the evidence of these two witnesses if were carefully analyzed by the arbitrator, he would have found that there were no valid reasons for termination. The Arbitrator used extraneous matter and did not use the evidence on record to decide on the issue of validity or reasons for termination. He analyzed the evidence of the people who did not appear before the CMA to testify, and the employee referred to page 6 of the proceedings.

I also read the submissions of the respondent, and I agree that there were no material irregularities carried out by the CMA in its proceedings and the employee failed to point out these irregularities in his submissions made by Mr. Mlangi on behalf of the employee. It is true that the Appellant, the employee did not prove before the CMA or even before this court the management structure of the respondent's company. He even did not give proof if the Stores Department falls under the Finance Department. Thus his first ground

regarding the composition of the Disciplinary Committee lacks merits, and dismissed.

Again, I saw no contradictions between the evidence of DW2 and DW3, and there decision of the CMA was not based on extraneous matters. All what was said by DW2 and DW3 was that there was an attempt to deliver petroleum oil and kerosene oil to the client, but the attempt was not successful as they were caught before the truck of the client left the company's premises. It is no doubt true that a charge-sheet was given to the employee wherein it was stated that if the allegations therein are proved, they will constitute an offence under the code of conduct. But it must be noted that the said letter itself called upon the employee to explain why he should not be dismissed or otherwise punished. The employee gave his explanation before the Disciplinary Committee. Before the hearing, there was investigation carried out by the management, which is an inquiry, the enquiry was presented before the hearing committee, and the employee did not challenge it in any way. The dismissal order passed after the

hearing clearly shows that the management had dismissed the employee on the ground that he is guilty of the misconduct enumerated in the Code of Conduct. The order clearly shows that in view of the conduct of the employee, the management has lost confidence in him and that it considers it unsafe to retain him in his present position of trust and responsibility. At this stage it may be mentioned that even according to the employee 's defence it is stated that he was entrusted with stores and this job requires confidence and trust, and that on the date of the incident he was the in-charge of stores. He did not give any proof which contradicted the findings of the investigation report. The order of dismissal was issued in the interest of the company, although no actual theft was carried out, only that a man was caught red handily trying to commit theft.

It is rather significant to note that the management did place the employee under suspension for at least 14 days as it is entitled. Such an action was taken as the management was really inquiring into an allegation of misconduct and the

misconduct was proved. There were thus valid reasons for termination as held by the CMA.

Resultantly, the Revisions having been found unmeritorious, it is hereby dismissed. The decision passed by the Commissions for Mediation and Arbitration in Labour Dispute No.CMA/TAN/41/2019/29 by Hon. Mwaikambo K.V on 19th May 2020, is hereby confirmed.

DATED AND DELIVERED AT TANGA THIS 29TH DAY OF JUNE 2022




LATIFA MANSOOR

JUDGE

29TH JUNE 2022