

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LABOUR DIVISION)

AT DODOMA

MISC. APPLICATION NO. 3 OF 2021

(Arising from Labour Dispute No. CMA/DOM/120/2020/42)

BETWEEN

NEW DODOMA HOTEL APPLICANT

VERSUS

YAZIA CHACHA MOTTE RESPONDENT

4/7/2022 & 18/7/2022

RULING

MASAJU, J.

The Applicant, New Dodoma Hotel, lost the Labour Dispute CMA/SOM/120/2020/42 to the Respondent, Yazia Chacha Motte, hence this Revision Application made by way of Camber Summons under Rule 24 (1) (2), (a), (b), (c), (d), (e), (f), 24 (3) (a), (b), (c), (d), 28 (1) (c) (d), (e) of the Labour Court Rules GN No. 106 of 2007, section 91(1), (a) and (b) and section 94(1), (b) (i) of the Employment and Labour Relations Act [Cap 366 RE2019] supported by Affidavit sworn by John Kusekwa, the Principal Officer of the Applicant.

The Respondent contests the Application. He filed a Counter Affidavit to that effect.

When the Application was heard in the Court on the 31st day of May, 2022 the Applicant was represented by Mr. Rockus Kornba, the learned Counsel while the Respondent was represented by the learned counsel, Mr. Emmanuel Baruti.

The Applicant prayed to adopt her Affidavit to form part of her submissions in support of the Application particularly paragraph B (viii); thus,

- a. *Form 1 does not disclose what remedy the Respondent was seeking*
- b. *The Trial Tribunal failed to evaluate the evidence adduced before it. The award was based on TZS 500,000/= instead of 250,000/= that was contractual. There was due processes before the disciplinary action taken against the Respondent. The Respondent prayed for forgiveness and was heard by the disciplinary authority.*
- c. *There were reasons for fair termination of employment. The Respondent issued a handwritten receipt instead of the mandatory electric fiscal derive receipt.*

The Applicant finalized her submissions by contesting the award because the Respondent testified that he was paid all due rights including leave allowances. That, the Respondent was given an option for reinstatement on employment but the Tribunal decided monetary award for him. The Applicant prayed the court to grant the Application.

The Respondent contested the Application and adopted his Counter Affidavit to form part of the submissions against the Application. The Respondent added that, he contests paragraph B (viii) (a) (b) and (c) of the Affidavit. That, in Form 1, the Respondent stated the remedy generally. That, the trial Tribunal was right to award the Respondent the remedies he listed

when he testified and so prayed as per **National Microfinance Bank V. Ediltruda Nemes Lyimo** (HC Labour Division) Revision No. 705 of 2019 Dar es Salaam Registry since the said remedies are statutory for unfair termination. That, the trial Tribunal analyzed the evidence before arriving at the conclusion. That, the calculation based on TZS 500,000/= instead of TZS 250,000/= contractual salary because the Respondent's basic salary by the time of termination was TZS 500,000/= as per salary slip. That, the Respondent was not given the right to be heard as per Rule 13 of the Employment and Labour Relations (Code of Good Practice) Rules, GN No. 42 of 2007 which guide on the disciplinary procedure. The Respondent contested the 2nd ground of revision by submitting that there was no fair termination since on the material date the Electronic Fiscal Device (EFD) machine was not working hence the Respondent issuing a handwritten receipt. That, the trial Tribunal went for compensation as per section 40 (1) (c) of the Employment and Labour Relations Act [Cap 366 RE 2019] pursuant to **Sahara Media Group Ltd V. Bidya John & 9 others** (HC) Labour Revision No. 2 of 2020, Mwanza Registry and **Winifrida Lwasa V. The Managing Director Lancet Laboratories** (HC) Labour Division, Labour Revision No. 288 of 2019, Dar es Salaam Registry. The Respondent prayed the Court to dismiss the Application for want of merit and uphold the award by the trial Tribunal.

In Rejoinder, the Applicant maintained her submissions in chief and added that since the Respondent pleaded guilty to the disciplinary offence, hence there was no need to go for extended disciplinary procedures. That, the Respondent was therefore heard.

That is what was shared by the parties in support of, and against the Application in the Court.


The Applicant terminated the Respondent's employment for alleged misconduct. That, the Respondent allegedly issued a handwritten receipt instead of an EFD receipt. Section 39 of the Employment and Labour Relations Act [Cap 366] imposes a duty to the employer to prove that the termination was fair. In the instant case the Employer/ Applicant failed to prove the fairness of the Respondent's termination in trial Tribunal. The requirement of the law as regards to the procedure for termination of employment basing on misconduct as so provided by Rule 13 of the Employment and Labour Relations (Code of Good Practice) Rules, 2007 is that, *inter alia*, the employer to conduct an investigation to ascertain whether there are grounds of a hearing to be held, to notify the employee of the allegation using a form, the employee to be given a reasonable time to prepare for the hearing and to be assisted in the hearing by a trade union representative or fellow employee.

In the instant case, non of the said statutory mandatory requirements was complied with by the Applicant, hence unfair termination of the Respondent's employment as so rightly decided by the trial Tribunal. As regards the ground that the Respondent did not state the reliefs sought, Form 1 is clear thus; "*Naiomba Tume tukufu imuamuru mwajiri wangu anilipe haki zangu zote*". The trial tribunal so rightly awarded the Respondent the statutory reliefs as provided for in the Employment and Labour Relations Act [Cap. 366]. Thus, the Applicant's ground is baseless.

In regard to the trial Tribunal's calculation of the reliefs basing on TZS 500,000/= salary, the Respondent testified in the trial tribunal where he prayed for the reliefs relying on the TZS 500,000/= salary monthly. The amount was not contested by the Applicant, hence admission.

That said, the Court finds nowhere to fault the CMA decision /Award. The Application is therefore hereby dismissed for want of merit. The parties shall bear their own costs.




GEORGE M. MASAJU

JUDGE

18/7/2022

bear their own costs.