

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LABOUR DIVISION)**

AT ARUSHA

APPLICATION REVISION NO. 116 OF 2021

(C/f Labour Dispute No. CMA/ARS/594/20/20/2021)

FADHILILAH HUSSEIN MAYAKA.....APPLICANT

VERSUS

POLYFORM LTD.....RESPONDENT

JUDGMENT

31/10/2022 & 21/11/2022

GWAE, J

It is through Referral Form No. 1 where the applicant, Fadhililah Hussein Mayaka unsuccessfully lodged his complaints in the Commission for Mediation and Arbitration at Arusha against the respondent, Polyform. He claimed the following, 24 months' salary compensation, leave pay, severance pay, repatriation costs and any other relief the Commission might deem fit to grant.

The Commission through its award procured on 15th October 2021 dismissed all the applicant's claims on the ground that the respondent did not terminate the applicant's employment except that, the employment

ended through parties' agreement. Aggrieved by the award, the applicant has knocked this court's doors praying for orders of the court revising the procured award and setting it aside on the following, two grounds, to wit;

1. That, the award is unlawfully and was acted with material irregularities namely; failure to pay repatriation costs while the applicant was recruited from Handeni-Tanga Region
2. That, the award was improperly procured for failure to consider that the applicant's employment was constructively terminated

The application was supported by an affirmed affidavit of the applicant whereas the respondent neither filed her counter affidavit opposing this application nor she entered appearance despite the service of summons which was evidently received by one Swalehe Assistant Human Resource Officer.

Following non-appearance on the part of the respondent. Therefore, hearing of the matter proceeded ex-parte as was the case before the Commission. At the hearing, the applicant was duly represented by Mr. Kenneth Ochina, personal representative of his own choice. Supporting this application, Mr. Kenneth at the first place sought court's adoption of the sworn affidavit. However, he orally added that the applicant was not

given severance pay as the applicant worked for seven (7) years. He further argued that, the applicant was issued with certificate of service but without being given a termination letter. The applicant's representative also challenged the impugned award in that, it was improper for the Commission to disentitle the applicant of his repatriation costs.

As was the case before the Commission, this court has to determine whether it was wrong for the Commission to hold that, the applicant was constructively terminated and whether the Commission erred in law and fact by holding that, the applicant was recruited in Arusha where he was also terminated. Thus, he is not entitled to repatriation costs.

Regarding the 1st issue whether there was constructive termination proven in favour of the applicant. It is always the duty of the trial court of tribunal to analyze diligently the evidence so adduced by the parties in proving or disproving certain facts in issue instead of relying on the mere assertions or speculations. Therefore, any fact alleged to exist or to have been in existence must be proved to the preponderance of probability pursuant to section 3 (2) (b) of the Tanzania Evidence Act, Cap 6 Revised Edition, 2019.

In our instant dispute, it was the applicant's version that, he was summoned to appear before the Disciplinary Hearing on 17th October 2020 regarding a performance below the standards set by the employer (PE3). However, there is an agreement between the parties relating to voluntary termination of the employment contract dated 21st October 2020 (PE4). As the applicant did not dispute that he duly signed the agreement terminating his employment save that the same was written in English or was just told to sign that alone cannot justify this court to hold that the applicant did not consent to the termination.

I have also considered an attempt by the applicant to demonstrate that, what is written or contained in PE4 could not be known by him since it was written in English. This complaint, in my view does not stand as the parties' agreement dated 21st October 2020 terminating their employment relationship was written in Swahili language and not as wrongly purported by him during arbitration in re-examination depicted at page 7 of the typed proceedings. Even by assuming that it was either written in English or Swahili language but the applicant did not know how to read and write, yet he ought to have ensured that, the contents therein are best known to him since the same must have intended to have legal consequences. In ordinary sense, how can a prepared document be signed by contracting

parties without having legal consequences? The answer, is very obvious that, it is not expected of a person of full age to sign a document bearing no consequences. In **Sluis Brothers (E. A) Ltd vs. Mathias & Tawari** (1980) TLR 294 it was held and I quote;

"It is broad principle of law that, whenever a man of full age and understanding who can read and write, signs a document which, it is apparent on the face of it, is intended to have legal consequences, then if he does take the trouble to read it, but signs it as it is, relying on the words of another as to its character or contents of effect, he cannot be heard to say it is not his document;"

In our instant case, the applicant's assertion that, he merely signed the document (PE4) without knowing its contents especially termination of his employment is unfounded since PE4 is self-explanatory taking into account that, it is written Swahili and it is indicative of his terminal benefits /dues. Therefore, it is doubtful that, the applicant's employment was constructively terminated.

As to the 2nd complaint on the payment of repatriation costs. In law, the applicant was required to prove that, the respondent recruited him from Handeni in Tanga Region. Or if he was terminated in a place other than place of recruitment so that, he would be entitled to repatriation

costs plus his subsistence costs during which he was waiting for his terminal benefits as provided under section 43 (1) (c) of the Employment and Labour Relations Act, Cap 366 Revised Edition, 2019 (ELRA) which reads;

“(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”

The same above quoted provisions of the ELRA was correctly interpreted by the Court of Appeal in the case of **Attorney General vs. Ahmad R. Kakuti and two others**, Civil Appeal No. 49 of 2004 (unreported) *where it was held;*

“From its wording, the section does not in our view; have a condition tying an employee to the place of his employment for the whole period until the date of transportation. In that regard Mr. Mtembwa conceded the employee’s entitlement to subsistence is not conditional upon confinement to the place of his employment pending payment of his transportation”

See also **Yustus Nchia vs. National Executive Secretary Chama cha Mapinduzi and another**, Civil Appeal No. 85 of 2005

(unreported) and **Nicholaus Hamisi and 1013 others vs. Tanzania Shoe Company Ltd and another**, Civil Appeal No. 62 of 2000 (both unreported-CAT).

Having judiciously examined the parties' evidence, both oral and documentary evidence, I have observed that, the applicant was vividly recruited from Getini Kisongo area in Arusha (PE1), which was appended by both parties in the parties' lists of documents to be tendered during arbitration, PE4 inclusive. According to the exhibit P4, it cannot be said that the applicant was recruited in Tanga Region nor can it be said so relying on the letter dated 25th day of June 2013 introducing the applicant's wife to the District Administrative Secretary (PE6).

That said and done, the applicant's application is hereby dismissed for want of merit. The applicant is entitled to terminal benefits depicted in the termination letter / parties' agreement relating to the applicant's employment termination. Given the fact that, the matter at hand is labour, each party to bear its costs

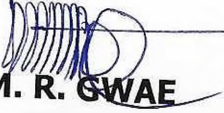
It is so ordered.

DELIVERED and **DATED** at **ARUSHA** this 21st November, 2022

M. R. GWAE
JUDGE

Court: Right of appeal to the Court of Appeal fully explained




M. R. SWAE
JUDGE
21/11/2022