

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

**LABOUR REVISION NO. 128 OF 2021**

*(Originating from Labour Dispute No. MA/ARS/ARS/654/2019)*

**THERESIA SHANGAI .....APPLICANT**

**VERSUS**

**HODI (HOTEL MANAGEMENT) COMPANY  
LIMITED (MT. MERU HOTEL) .....RESPONDENT**

**JUDGMENT**

22/09/2022 & 17/11/2022

**KAMUZORA, J.**

This Application was brought under the provisions of sections 91(1), (a)(2)(b) and (c), and section 94(1) (b) (i) of the Employment and Labour Relations Act No. 6 of 2004, Rule 24(1) & (2) (a) (b) (c) (d) (e) (f) and (3) (a) (b) (c)(d) and Rule 28(1) (b)(c)(d) and (e) of the Labour Court Rules GN No 106 of 2007. The Applicant prays for this Court to be pleased to revise and set aside the Arbitration proceedings and Award of the CMA dated 27<sup>th</sup> August 2021 in Labour Dispute No. CMA/ARS/ARS/ 37/2019.

Briefly, the Applicant was employed by the Respondent as housekeeping attendant in the year 2010. She was terminated on the allegation of insubordination and refusal to abide by work schedule. It was alleged that the Applicant was not abiding to the work schedule including refusal to take leave on the date he was entitled for leave. That, she was warned in several occasions before he was sent before the disciplinary committee which recommended for her termination. She complained before the CMA and raised an argument that she was mistreated by her superior at the work place. The arbitrator was satisfied that there was valid reason for termination and the procedures for termination were fair hence dismissed the Applicant's claim. The Applicant preferred this current application on the ground that the CMA failed to consider the evidence adduced by parties and determine the issues before it.

On the hearing date, the Applicant appeared in person while Justine Lendii who is the principal officer of the Respondent appeared for the Respondent. Both parties opted to argue the application by way of written submissions and complied to the submissions schedule save for the rejoinder submission.

The Applicant submitted that she was terminated without prior notice. That, the Applicant employment was terminate in 2018 on the

allegations that she refused to take her annual leave. She however contended that no official leave was issued to her. The Applicant complained that she was mistreated and harassed by her supervisors at work and despite several letters written by the Applicant on the mistreatment she was issued with a termination letter on 10<sup>th</sup> October, 2018. That, on 1<sup>st</sup> September, 2018 she was asked to surrender the Hotel uniform by her supervisor Salim and take her annual leave without official letter compelling her to take her leave.

The Applicant is of the view that, her termination was unfair because she was not given right to be heard despite the fact that she was complaining of mistreatment and harassment at the workplace by writing several letters. That she was asked to take annual leave before her routine timetable and without an official letter. She was of the view that, her refusal to take annual leave cannot be reason for termination. That, under section 31(4) of the Employment and Labour Relation Act No. 6 of 2004, the Employer is required to pay for annual leave to the employee before annual leave begin and must be stated in writing. That, in this case, no official letter to allow the Applicant to take annual leave and no leave payment was made by the Respondent. She insisted that

termination of her employment contract by the Respondent was unfair as it did not follow the required procedures for termination.

The Applicant further submitted that the procedures for termination of employment under part III E of the Employment and Labour Relations Act No. 6 of 2004 were not followed. The reasons posed are that, the Respondent did not comply with terms and conditions stipulated under the collective bargain agreement entered between the employer/Respondent and the Trade Union (CHODAWU) being a trade union recognized at the Respondent's working place signed back in 2016. That, the employer was required to pay employee when terminating the employment. The Applicant insisted that, she is entitled to reliefs sought to wit; three months' notice payment of Tshs 1,192,500/=, severance pay of 978,461/=, payment of 2 months' salary as a compensation for termination employment equals to 9,540,000/= and general damages to be determined by the court.

Responding to the above submission the Respondent argued that the Applicant failed to comply to the Respondent's workplace procedures that required the employee to abide to the duty roster set by the management. That, the policy was tendered as Exhibit D2 and the Respondent's evidence indicate that there was leave plan for every staff

that was made available to all employees and placed on the notice board at the workplace but the Applicant failed to abide. That, the reason for termination of the Applicant was failure to follow duty roaster which needed the Applicant to go on leave in September 2018 as per staff leave plan tendered as exhibit D6 thus, she was issued with a warning letter, which she refused to receive. This caused the Respondent to charge her with the offense of failure to abide by work procedure (kutokufuata taratibu za kazi) contrary to Exhibit D3 of the Respondent.

That, the evidence on the record indicates that the Applicant was warned several times to abide by workplace procedures without success thus the misconduct leading to the Applicant's termination was not the first one but a repeated disobedience. He insisted that the law allows the employer to set rules and procedures at the workplace and the employee is bound to follow the set rules. That, failure by the employee to follow the rules and procedures set by the employer constitutes serious misconduct as held in the case of **National Microfinance Bank PLC versus Aizack Amos Mwampulule** [2014] LCCD20. He insisted that the Applicant was terminated on valid reason.

On the argument that the Applicant was mistreated at work place, the Respondent submitted that such argument is an afterthought. That,

even if the Applicant's claim were taken to be true, still could not exonerate the Applicant from abiding by lawful instructions from the employer. That, the allegation that the termination emanates from mistreatment or harassment rendering the employment intolerable must come by way of constructive termination. That, for constructive termination to stand the employee must prove to have resigned from work due intolerable environment at the workplace as held in the case of **Kobiu Tanzania Limited Vs. Fabrice Ezaovi** (Civil Appeal 134 of 2017 Court of Appeal at Dar es Salaam (unreported); Media neutral citation [2021] TZCA 485).

On the argument that the Applicant was not afforded the right to be heard on the ground that the Applicant has been complaining about mistreatment and harassment at the workplace by writing several letters that were not handled is unsupported. He was of the view that failure to handle or reply to the complaint does not amount to breach of the right to be heard. He maintained that the Applicant was heard by the disciplinary committee in respect of the charges against her.

On the argument that the Respondent did not produce any evidence to prove that the Applicant was supposed to take her annual leave, the Respondent submitted that the evidence indicated that the

staff leave plan was on the notice board and the Applicant refused to file the form for annual leave. That, section 31(4) of the Employment and Labour Relations Act on payment of annual leave is inapplicable since the employee refused to take annual leave.

On the procedures for termination, the Respondent submitted that the Applicant has raised new issue not raised before the CMA. That, the issue on collective agreement entered between the Respondent and CHODAWU was not addressed and the purported collective bargain agreement was not tended before the CMA. He insisted that matters not raised before the CMA cannot be raised on appeal/revision as it was held in the case of **Remigious Muganga Vs. Barrcik Bulyanhulu Gold Mine**, Civil Appeal No. 47 of 2017 Court of Appeal at Mwanza (unreported). It's the Respondent's prayer that the raised new issue be disregarded. He insisted that the procedures for termination were followed as correctly demonstrated by DW2. That, the Applicant was charged, given notice to attend the hearing and the Applicant admitted to have been involved in the process of hearing. That, the termination procedures complied requirements as stated in the case of **NBC Ltd Mwanza versus Justa B Kiyaruzi**, Revision No. 79/2009 HC Labour Division Mwanza Sub-Registry (Unreported).

In concluding the Respondent submitted that, the claim of compensation for unfair termination lacks merit. That, the relief sought is unfounded since the CMA found the termination to be fair in terms of reasons and procedures.

From the analysis of the records and parties' submissions, there is no dispute that the Applicant was an employee of the Respondent in the position of housekeeping attendant as evidenced by exhibit D1. The records as well as the CMA award show that the Applicant was terminated for failure to abide by the workplace schedules and gross insubordination of a senior employee. The pertinent issue for court's determination is whether the Applicant committed the above misconduct and the same are good reasons for termination of employment and whether the Respondent complied with termination procedures.

The records show that apart from employment contract, there was job description of the housekeeping attendant, exhibit D2. The Applicant also signed the acknowledgement and commitment to abide by the core values, personality, code of conduct and disciplinary code of the Respondent, exhibit D3 which among other things govern the employee's behaviour at workplace. As per exhibit D4 the Applicant was warned for her behaviour of absenting herself from work and not



abiding by the duty roaster but she disobeyed. She was issued with a last warning before she was summoned to the disciplinary committee.

The Applicant defended herself that she was harassed and mistreated at workplace and she reported the same to no avail. However, the Applicant failed to explain how that mistreatment resulted to her failure to attend work as scheduled by the employer. The alleged harassment and discrimination were raised in September 2018 as per exhibit P2 while the Applicant was already issued with a last warning on her behaviour of absenting herself from work without permission that was issued in February 2018. Thus, such claim cannot be a reason to justify the Applicant's behaviour of not attending her duties. I therefore agree with the CMA conclusion that failure to abide by the duty roaster and absenting herself from work was against employment policy hence a good reason for termination.

The Applicant was also charged for disobeying his superior officer as she was asked to take her leave but refused. The Applicant defended herself that she was not issued with any official letter directing her to take her annual leave. Exhibit D6 which is the staff leave plan indicates that the Applicant was supposed to go on leave by September. Thus, the Applicant was supposed to abide by the schedule and when she was

asked by her superior officer, she disobeyed and raised claim that she was not issued with official letter requiring her to go on leave. I agree with the CMA conclusion that it could amount to insubordination as her superior officer was asking her to abide by the available work schedule. In my view, the Respondent had good reasons for terminating the Applicant.

Turning to the fairness of the procedures, it is the claim by the Applicant that she was not accorded right to be heard. However, the records show that she was summoned before the disciplinary committee and was heard on the matter before the decision to terminate her was made by the employer. This is clearly evidenced by the disciplinary hearing form which is part of the evidence on record. The Applicant herself admitted that she was summoned to attend the disciplinary hearing and she attended. She was informed on the outcome of the hearing and the right to appeal as evidenced by exhibit D8 thus the claim that she was not heard is unjustified.

On the claim that the Respondent did not comply with terms and conditions stipulated under the collective bargain agreement entered between the employer/Respondent and the Trade Union (CHODAWU), I agree with the Respondent that it is a new issue not raised and

determined before the CMA. I therefore refrain from entertaining the same at this stage as no reason was advanced to make this court deal with a new matter at the revision stage.

In the final analysis, I find this application devoid of merits. I proceed on dismissing the same, but, bearing in mind that this revision emanates from labour dispute, each party shall bear own costs.

**DATED at ARUSHA** this 17<sup>th</sup> day of November, 2022.



  
D.C. KAMUZORA

JUDGE