

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LABOUR DIVISION)

AT ARUSHA

REVISION APPLICATION NO. 19 OF 2022

(C/F Employment Dispute No. CMA/ARS/ARB/99/21/56/2021)

PHILOMENA RAPHAEL SANKA.....APPLICANT

VERSUS

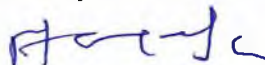
ABERCROMBIE AND KENT TANZANIA LTD.....RESPONDENT

JUDGMENT

24/08/2022 & 16/11/2022

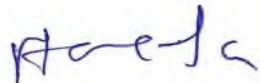
MWASEBA, J.

The applicant herein was the complainant at the Commission for Mediation where she instituted a claim over forceful and unlawful termination from her job without being accorded the right to be heard. The CMA after hearing the matter decided in favour of the respondent on the fact that the applicant exercised her right by resigning from her job. Aggrieved, the applicant filed this application seeking for revision of the CMA award to check for its correctness, legality or propriety. The application has been accompanied by an affidavit sworn by the applicant herself.



Briefly, the applicant was employed by the respondent as a Marketing consultant since 24th April, 2014 and later promoted to Sales and Reservation Manager in 2018. In 2019 there was an anonymous letter which reached the employer via email expressing that the complainant was one of the directors of a tourist company known as African Savannah Trekkers Limited which performs similar duties with the respondent. The said letter prompted the employer to have a normal meeting with the respondent who denied to be aware of the said company. However, after the said meeting the complainant wrote a letter to resign from the position/post she was holding (Exhibit P3). Her resignation has been in controversy between the parties as to whether she resigned from her position or her job. The complainant is of the notion that she just resigned from her position and not from the work so she was surprised to be given with a letter requiring her to process her NSSF payments.

During the hearing of this case the applicant was represented by Mr Duncan Oola learned counsel while the respondent was represented by Mr Qamara Aloyce learned counsel. The application was disposed of orally.



Submitting in support of the application, Mr Oola stated that the applicant resigned from her post as a Sales and Reservation manager and not from her work. However, the employer had in her mind that the applicant resigned from her work that is why he promptly replied by writing two different letters. The first letter was acceptance of the resignation (Exhibit P4) and NSSF letter for her rights (Exhibit P5). He averred that the two exhibits do differ as the designation letter (Exhibit P3) the employee is resigning from her post but in Exhibit P4 the employer is ordering the employee to hand over all the company properties in her possession.

He further clarified that during cross examination he realised that the employee was forced to resign from employment for what an employer termed as conflict of interest. He stated that the applicant was called to the meeting with the employer whereby within 30 minutes after the meeting the applicant wrote a resignation letter from employment. They wonder what the employer did to the employee which led her to resign.

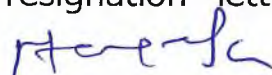
On the other hand, the counsel for applicant submitted that there was unfair termination and that the law is clear that it is the employer who should prove that the termination was fair. He referred this court to **Section 39 of the Employment and Labour Relation Act, of 2004.**



In this matter the applicant complained that she was unfairly terminated without being given an opportunity to be heard. More to that, there was no minutes that were tendered in at the commission regarding the meeting alleged to have been conducted between the applicant and the respondent. He therefore prays that this court allow the application with costs.

Replying to the submission in chief, Mr Qamara learned counsel for the respondent referred this court to the two issues that were framed at the CMA. And it is from those issues the Commission determined the fate of the complaint. He clarified on the exhibit P3 which is a resignation letter at paragraph two where the applicant did not state that she was planning for other position. She admitted that the resignation letter was voluntarily written and that when she was resigning, she had only one post. He averred that the concept of exhibit P3 can be substantiated by exhibit P4 which is a farewell made to the employee. The reason for resignation is based on the issue of conflict of interest which was raised when the employer received an anonymous letter.

He further submitted that the issue of unfair termination under **Section 39 of Employment and Labour Relation Act** cannot apply because it is apparently clear that there was resignation letter from the

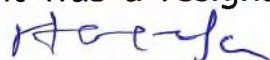


complainant which she wrote on her own will. So, it was his prayer that the CMA award be uphold and the application for revision be dismissed.

In his rejoinder, Mr Oola learned counsel reiterated what he submitted in chief and added that the exhibit P3 is clear that it is the resignation from the position and not the employment. Moreover, there is difference between the position or post is quite different from job/employment. He insisted that their application be granted as per the reliefs prayed for in the affidavit.

Having heard the rival submissions from both parties and glancing on the record, the pertinent issue for determination is whether the revision before this court has merit.

The findings of the CMA were based on the issues as to whether the complainant resigned from employment and the reliefs the parties are entitled. I have gone through the records and confirmed that there is no dispute that the applicant wrote a resignation letter to his employer (Exhibit P3) of which the employer replied promptly accepting her resignation (Exhibit P4). The dispute is on whether the applicant resigned from her post/position or employment. The counsel for the applicant alleges that it was a resignation from the position/post while the counsel for the respondent averred that it was a resignation from



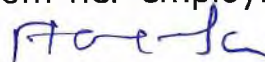
the employment. For easy reference I wish to quote the content of the resignation letter as hereunder:

"...I would like to inform you that I am resigning from my position as a sales and Reservations Manager for the Abercrombie and Kent, effective October, 2019.

Thank you for the support and the opportunity that you have provided to me during the 5yrs. ..."

Reading this letter between lines it is silent as to the reason for resignation and any promise availed to the applicant as to the substitute of the post she is resigning if it meant so.

In her resignation letter at the second paragraph, she is thankful for support she had been given during the last five years. This is a duration she had been working with the respondent's company since she was employed. If she was focusing on the position she had which she was promoted within one year she could not be thankful for all five years. More to that, the applicant admitted during cross examination that she wrote the resignation letter on her own will and that thereafter she emailed her co workers on the same date to say goodbye as it was her last day to work in that company. Due to what transpires in record, I am inclined to concur with the counsel for the respondent and the decision of the arbitrator that the applicant resigned from her employment and



thus **Section 39 of Employment and Labour Relation Act** is not applicable here as there was no unfair termination. It is the applicant who resigned from her employment on her own will.

Now, regarding the issue of the reliefs the parties are entitled to, since the applicant resigned from employment on her own will, I do not see any plausible reason to interfere with the decision of the Arbitrator. In the upshot, the decision of the Arbitrator is upheld. This application is dismissed with no order as to costs.

It is so ordered.

DATED at **ARUSHA** this 16th day of November, 2022




N.R. MWASEBA

JUDGE

16/11/2022