

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF ARUSHA
AT ARUSHA**

LABOUR REVISION NO. 01 OF 2021

(Original CMA/ARS/ARS/58/2020)

HASSAN KIBONGE APPLICANT

VERSUS

SUNKIST BAKERY LTD. RESPONDENT

JUDGMENT

04/10/2021 & 17/01/2022

GWAE, J

On the 9th July 2005 the applicant, Mohamed Hassan was employed by the respondent, Sunkist Bakery Limited in the capacity of production officer however on the 19th February 2020, his employment was terminated on the misconducts namely; parking two wheat bran ("pumba") without requisite authorization or following proper procedures.

Before and during disciplinary hearing, it had been the defence by the applicant that he was hired and given two bags of wheat bran by Mr. said, his fellow staff to park into his motorcycle commonly known as toyo. Despite his defence, the Disciplinary hearing Committee found him guilty of the disciplinary offence. The applicant was finally terminated him from his

employment and he was given his terminal benefits notably; one-month salary in lieu of salary, leave due but not paid, night allowance, payment for days worked and overtime allowance. Feeling aggrieved by the decision of the Disciplinary Hearing Committee, the applicant unsuccessfully filed a dispute to the Commission for Mediation and Arbitration of Arusha at Arusha (the Commission).

Dissatisfied by the award procured by the Commission, the applicant has brought this application. In the application the applicant is praying for the following orders;

1. That, this court be pleased to call for the records and examine the proceedings of the Commission via CMA/ARS/58/2020 delivered on the 4th December 2020
2. That, this court be pleased to revise and set aside the CMA award

The application is supported by a sworn affidavit of the applicant's representative one Mr. Dorothea Peter from the trade union (FIBUCA). Through the affidavit, the applicant seriously challenged the impugned award on the following grounds;

1. That, the arbitrator erred in law and fact holding that the respondent had valid reason to terminated the applicant
2. The arbitrator failed to evaluate the evidence tendered before CMA proving that the respondent had valid reasons to the applicant
3. That, the arbitrator erred in law and fact by holding that the applicant transported the bags without authorization from the employer

This application did not go unopposed as the respondent filed her counter affidavit by stating that the arbitral award in question was properly procured by the Commission

At the hearing of this application the applicant was represented by Mr. Masatu from FIBUCA and Mr. Qamara appeared representing the respondent

Mr. Masatu argued in support of the application by stating that award was improperly procured since the offence of theft was not proved taking into account as one Said (See DEI) was the one who sold 2 bags of "Pumba" and the applicant was the one who merely carried the bags. He

also added that the disciplinary charge was defective. He substantiated his argument by the case of **NMB PLS vs. Thomas**, Rev. No. 65 of 2019 (unreported) where this court (**Tiganga J**). held that the charge is informative to an employee. He further argued that applicant's appeal was never heard by the respondent as he was not heard by Senior Manager in Appeal from Disciplinary Hearing Committee nor did the Senior Manager sign the applicant's Form 3.

On the other hand, Mr. Qamara resisted this application by arguing that it is evident from the award that the disciplinary offence was proved to the required standard particularly through DE1 & DE 2), taking into account that the applicant was seen carrying 2 bags without permit while the said Said had paid for only costs. In addition to that, the applicant did not return to his work after being required to do. He also submitted that the applicant's appeal was heard as per DE3.

In his rejoinder, the applicant's representative stated that the applicant was not availed on opportunity to testify. The employer was to charge the applicant under Schedule. Moreover, Form III was no signed nor was the applicant given his appeal result. He further stated that, the applicant was denied an opportunity to make his complaints.

I have carefully considered the records and parties' affidavits as well as the arguments by their representatives and observed that there are two issues for determinations, whether the applicant's termination of his employment was for valid reasons and whether the procedural law was followed.

In the **1st issue**, it is requirement of the law that, employers are entitled to terminate employments of their respective employees with valid reasons and adherence of fair procedures (See provisions of Section 37 of the ELRA). In our case, the reason for termination is not clear since the applicant had never disputed being given two bags by the said Said (CW1-AW1) on understanding that the all procedures were followed. Since it is evident that the applicant was merely given by the AW1, it follows therefore, the applicant's contention that, he did not commit any disciplinary offence is meritorious which ought not to be ignored by the commission taking into account of testimony of the one who gave him two bags of wheat ban (AW1).

In the **2nd issue**, from outset I am satisfied that the applicant was entitled to the appeal result, thus it was wrong for the respondent to abstain from giving him the result of his appeal. More so, the applicant's

appeal was to be signed by the manager during its receipts as opposed to the one which was produced (DE3). Similarly, I have examined the record of the CMA and came up with an observation that the applicant did not testify and reason for such abstinence was not recorded. In my view such omission construed a denial of right to be heard.

Nevertheless, I have also looked at the notice of disciplinary offence (DE2) issued by the respondent on the 7th February 2020 indicated two disciplinary offences of taking two bags without following the requisite procedures and theft equally the disciplinary hearing form (DE3). Hence, the applicant's complaint that the charge was not informative is unfounded and therefore the case of **NMB PLS vs. Thomas** (supra) cited by the applicant's representative is distinguishable.

Basing on the above findings, the applicant was therefore unfairly terminated, he shall be paid compensation of twelve months' salaries in terms of section 40 (1) (c) of the Employment and Labour Relations, Cap 366 Revised Edition, 2019. It is so ordered

Dated at Dodoma this 17th November 2022




M. R. GWAE
JUDGE