

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

AT MBEYA

**REVISION NO. 18 OF 2020
(Arising from Labour Dispute No. CMA/MBY/01/2019)**

BETWEEN

TANZANIA BREWERIES LIMITED.....APPLICANT

AND

RAYMOND DEGERA.....RESPONDENT

JUDGEMENT

Date of last order: 27.10.2021

Date of Judgment: 11.02.2022

Ebrahim, J.

The applicant TANZANIA BREWERIES LIMITED being aggrieved with the award of the Commission for Mediation and Arbitration at Mbeya in Labour Dispute no. CMA/ MBY/01/2019 dated 30/09/2020, filed the instant application seeking to revise and set aside the award. The application was supported by an affidavit sworn by Mr. Mika Mbise, counsel for the applicant. The same was not challenged since the respondent failed to file a notice of opposition per the requirement of the law.

The brief facts leading to the present application are that, the applicant was the employer of the respondent. Due to the change of structure in the business, the applicant conducted retrenchment. The respondent was one of the retrenched employees. The respondent signed the retrenchment agreement and retrenchment package of Tanzania Shillings (Tshs.) 173,156,918 (One hundred seventy-three million, one hundred fifty-six thousand, nine hundred eighteen). The respondent also did an exit interview. After all these, the respondent instituted a labour dispute against the applicant claiming a sum of 466,826,025.40 for unfair termination.

Upon hearing the evidence of both parties, the CMA decided in favour of the respondent. It awarded him a sum of Tshs. 115,867,643.76 as 24 months' compensation. Aggrieved, the applicant preferred the instant application.

The applicant's grievances are pegged into different areas of the CMA award as can be gathered from paragraph 1- 28 of the affidavit. However, this court will firstly consider the issue of time limitation as complained by the applicant at paragraphs 17 – 22 and 29 (a) of the affidavit.

As I have hinted earlier, the application was not opposed. It was thus, heard *ex parte*. It was heard by way of written submissions. Mr. Mbise, learned counsel advocated for the applicant.

In essence Mr. Mbise complained that the CMA entertained the matter while it was already time barred. The issue for consideration at this juncture therefore, is whether the Complaint before the CMA was lodged within the time fixed by law. The issue had also been with dealt by the CMA in the impugned award. The CMA concluded that the complaint was lodged within time.

The law, Rule 10 (1) of the Labour Institutions (Mediation and Arbitration) Rules, 2007 G.N. No. 64 of 2007 provides that:

"Disputes about the fairness of an employee's termination of employment must be referred to the Commission within thirty days from the date of termination or the date that the employer made a final decision to terminate or uphold the decision to terminate."

It was argued before the CMA as it is argued in this application that, the respondent was availed with retrenchment

agreement for him to sign or decline it on 02/11/2018. The respondent remained with the agreement for reading and consultation. He signed it on 05/11/2018 and signed the retrenchment package. On the following day i.e 06/11/2018 he did an exit-interview. However, after signing the agreement and doing the exit-interview there continued a conversation between the respondent and the applicant about the possibility of having alternative/optional job for the respondent. He was offered an option of Warehouse Supervisor-Arusha. However, on 09/11/2018 the respondent declined the offer and insisted to be paid retrenchment package.

The complaint was instituted on 04/01/2019. The CMA was convinced by respondent's contention that he received the retrenchment agreement signed by the applicant on 05/12/2018 therefore the CMA concluded that from 05/12/2018 to 04/01/2019 the respondent lodged the complaint within the time.

Mr. Mbise insisted that the CMA erred in its findings since the said date of 05/12/2018 the respondent did not state how he got the agreement and from whom. According to him (Mr. Mbise) the retrenchment agreement was effected after being signed by the

respondent on 05/11/2018. Alternatively, he argued that since after signing the agreement the two continued discussing the optional job, it might be prudent to consider that the retrenchment agreement was effected when the respondent declined to the option job i.e on 9/11/2018. It was his argument therefore that, the reckoning date was 9/11/2018 and that the CMA was supposed to dismiss the application for being time barred.

This court therefore, is tasked to decide on when exactly the retrenchment agreement which terminated the respondent's employment started to run. It is in my mind that retrenchment agreement is a contract. This is due to the reason that under our law, section 10 of the Law of Contract Act, Cap. 345 of the Revised Edition, 2019 all agreements are contracts if they are made by free consent of the parties who are competent to contract, for a lawful consideration and with a lawful object and are not on the verge of being declared void. It is crucial to point out however, that contracts begin by an expression of a proposal/offer, and that in terms of section 7 of the Contract Act;

for such a proposal by the offeror to become a binding promise it must be absolutely accepted by the offeree.

In the matter at hand, according to Rule 10 (1) of G.N. No.64 of 2007, thirty days are counted from either the **date of termination** or **the date that the employer made a final decision to terminate** or **uphold the decision to terminate**. The retrenchment agreement which was received as evidence in the CMA and marked as **Exhibit R.2** provides under Item 1.1 that:

"Notwithstanding the date of signature of this Agreement, the Employee's employment will cease by mutual agreement with the effect from the 31 October 2018 ("Effective retrenchment date/the Termination Date")"

The respondent was availed with the agreement on 2/11/2018, he signed it on 5/11/2018 and the record shows that the respondent did not allege to sign it under any influence . This means that he accepted that termination started 31/10/2018. Nevertheless, there was no dispute that after signing the agreement the respondent and the applicant continued bargaining if the respondent could have alternative job. The

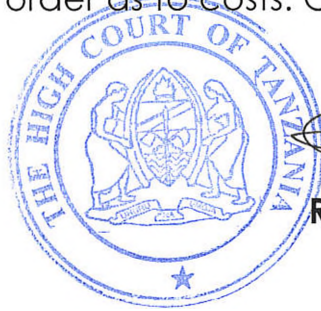
alternative job, to wit Warehouse Supervisor-Arusha, was offered but the respondent declined it through an e-mail on 09/11/2018.

In my view, though the retrenchment contract specified that the termination started on 31/10/2018, the date that the employer made a final termination was 9/11/2018. This is because the date mentioned by the employer seemed to be waived after opening the door for further bargain between them. Nevertheless, since the respondent had already signed the agreement and he declined the offer in the bargaining, the employer/applicant confirmed the termination upon the respondent declining the offer.

Under the above findings, I failed to grasp the circumstance considered by the leaned Arbitrator when she agreed with the respondent's oral evidence that he received the agreement on 05/12/2019. Thus, I concur with Mr. Mbise Counsel for the applicant that on that day nothing happened taking into consideration of all what transpired between the applicant and the respondent.

All said above, it is my concerted view that the complaint was lodged before the CMA out of time. In the circumstance, basing on the ground of time limitation, I hereby quash the award

and set aside the order made therefrom. Being a labour matter, I
make no order as to costs. Ordered accordingly.




R.A. Ebrahim

JUDGE

Mbeya

11.02.2022

Date: 11.02.2022.

Coram: Hon. A.E. Temu -DR.

Applicant:


For the Applicant: } Advocate, Mika Mbise.

Respondent: Absent.

B/C: Gaudensia.

Court: Hon Presiding Judge is on official safari. The matter is coming for judgment.

Judgment delivered in the presence of Mika Mbise (Advocate) for the applicant.


A.E. Temu

Deputy Registrar

11/02/2022