

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF KIGOMA)**

AT KIGOMA

APPELLATE JURISDICTION

LABOUR APPEAL NO 1 OF 2021

(Arising out of the Order of the Labour Commissioner dated 4th May, 2020 Ref. No. BC
101/210/04/26; Originating from the Labour Officer's Compliance Order Ref. No. KGM/LAI/5/22
dated 5th March, 2018)

KIGOMA HILLTOP HOTEL LIMITED..... APPELLANT

VERSUS

LABOUR COMMISSIONER..... RESPONDENT

J U D G M E N T

09/05/2022 & 30/05/2022

L.M. MLACHA, J.

The matter before this court has its genesis in a Compliance Order made by the Labour Officer of Kigoma in the execution of his duties under section 45 of the Labour Institutions Act 2004 against the applicant, Kigoma Hilltop Hotel Ltd. The order was made on 5/3/2018 and directed compliance on several issues but what is at stake as of now is salary arrears of 28 employees from July 2013 to February 2018, total Tshs 138,780,000/=. The appellant Kigoma Hill Top Limited was aggrieved by

the order because it rated the hotel as a four/five star tourist hotel while he thought it to be different. They wrote a letter with Reference No. 001/MD/LABOUR/2018 dated 28/3/2018 to the labour officer objecting the order. They learned later that they were not supposed to lodge their objection to the Labour Officer but the Labour Commissioner. When they thought of lodging the objection to the Labour Commissioner they noted that the 30 days period of appeal had already expired. Using the services of their lawyers Damas & Associates Advocates they wrote a letter reference No. D & AS/ADV/VOL.1/17/2020 dated 24/3/2020 to the Labour Commissioner seeking extension of time within which to lodge the objection against the Compliance Order. The Labour Commissioner replied vide letter reference No. BC 101/210/04/26 dated 4/5/2020 and declined to extend the time. Following the rejection, the appellant filed Miscellaneous Labour Application No. 10 of 2020 seeking condonation to appeal out of time against the decision of the Labour Commissioner. The court (I.C.Mugeta J) granted an extension of 15 days. This is therefore an appeal against the labour Commissioner's refusal to extend the time within which to object the compliance order.

The appeal has 3 grounds which read as under;

1. *That, the Labour Commissioner erred in law and fact to refuse extending time to the appellant to object out of time against the Labour Officer's compliance order Ref. No. KGM/LAI/5/22 dated 5th March, 2018 compelling the appellant to pay Tshs. 138,780,000 to 28 employees which compliance order was timely challenged by the appellant through objection dated 28/3/2018 Ref. No.001/MD/ LABOUR/2018 lodged to the Labour Officer instead of the Labour Commissioner (the respondent herein).*
2. *That while the Labour Officer's Compliance Order towards the appellant contains claim of salaries arrears from July 2013 to February 2018 for all 28 employees while some in 2013 or subsequent years thereto were yet to be the employees of the appellant, the claim which entails fraud on the part of the Labour Officer; the Labour Commissioner erred in Law and fact to refuse condonation of time to the appellant to object out of the time against the Labour Officer's compliance order towards the appellant.*
3. *That while the Labour Officer's compliance order against the appellant ranked the appellant to be a five or four stars hotel while she has never been so ranked by the Tourist Board of Tanzania which is the authority rested with power to rank hotels in Tanzania; the Labour Commissioner erred in law and facts for*

refusing condonation to the appellant to object out of time against the Labour Officer's compliance order to tell the appellant remain on record so ranked as five or four stars hotel and subject her to a minimum wage of Tshs 250,000/= to employees under the wage order, 2013 GN. No. 169/2013.

When the parties appeared before my brother, Mugeta J. on 6/9/2021, given the nature of the dispute and the road through which it had passed, they decided to resolve the matter in a way which could end the dispute once and for all. It was decided to engage the parties in discussions which could bring the matter to a permanent solution. They had several off record discussions which were also shared to me when I took over the case. We decided to go straight to the problem. Time was extended impliedly by the mutual consent of the parties.

We took a route which had two ways; one, parties should sit to work out the mathematics to get the amount which is due for payment to each employee and file their findings in court. The parties had an opportunity to sit and work out the calculations and file a report. Two, the court was asked to direct the Permanent Secretary Ministry of Natural Resources and Tourism to send officials to Kigoma to assess and grade Kigoma Hilltop Hotel. This order was made on 27/10/2022 and complied with. Officials

from the Ministry came and made the assessment and graded the hotel to two stars in the category of town hotels.

The report which was filed by the parties was based on the understanding of the Labour Officer that the hotel had the rank of four or five star which has a minimum of Tshs 250,000/= per month. The parties found some errors in the Labour Officer's calculations which were based on a wrong assumption that all employees were employed on the same day. They made the corrections and filed a report reducing the amount from Tshs. 138,780,000/= to 100,570,000/=.

An issue arose about the clarification which was made by The Permanent Secretary Ministry of Labour and Employment in his letter dated 4th October 2013 addressed to The Chief Executive Officer, Hotels Association of Tanzania (HAT) P.O. Box 1124 Dar es Salaam on the Labour Institutions Wage order, 2013 GN.196/2013. The parties had divergence opinions. For easy of reference the letter is reproduced as under:

***"RE: CLARIFICATION ON MINIMUM WAGE ORDER,
GOVERNMENT NOTICE NO.196/2013***

Reference is made to your letter No. HA 41/371/09/25 dated 2nd October 2013 regarding the above captioned subject matter.

As previously stated that according to international standards, fixing minimum wage in the hotel sector is based on star classification. The same has been difficult in Tanzania due to the fact that not all hotels in the country are classified according to stars. However, we hereby once again provide you with the classification regarding minimum wage rates for the Hotels as stipulated in the above mentioned order with additional information on the none rated hotels, as follows;

- i. Potential and Tourist Hotels will include all Hotels with 4 stars and above and the non rated of the same status,*
- ii. Radium Hotels will include all Hotels with 1 to 3 stars and the non rated of the same status.*

We account on your understanding.

D.N. Kaali

For PERMANENT SECRETARY"

The relevant part of the Wage Order is item (d) of the Second Schedule, **Domestic and Hospitality Services**. Item (d) (e) (f) (g) which read as under:

(e) Potential and Tourists Hotels	monthly	250,000.00
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(f) Medium Hotels	monthly	150,000.00
(g) Restaurants, Guest Houses and Bars	monthly	130,000.00

The letter had the element of ~~stars~~ which does not exist in the wage order. It speaks of Potential and Tourist Hotels which were put in the category of 4 and 5 stars (with a minimum of 250,000.00) and Medium Hotels which were put in the category of 1 to 3 stars (with a minimum of Tshs. 150,000.00).

Mr. Allan Shija who appeared for the applicant sought the leave of court to allow Mr. Andrew Mwalwisi, the Assistant Labour Commissioner to address the court on the import and message behind the letter. Speaking from Dodoma through the virtual court services, Mr. Mwalwisi argued the court to follow The Labour Institutions Wage Order, 2013 which grade hotels to three grades: i) Potential and Tourist Hotels ii) Medium Hotels and iii) Restaurants, Guest House and Bars and ignore the letter. He had in mind that the appellant is a potential tourist hotel so must abide to the compliance order and pay 250,000/= per month plus the arrears. He

admitted that the letter comes from the Permanent Secretary Ministry of Labour and Employment where he works but yet advised the court to ignore it. Mr. Musa Kasimu could not accept this approach. He called the letter a guidance from the Ministry for all employers who must follow it.

I must admit that the advice of the Assistant Labour Commissioner appeared strange to me because it was a contradiction to the views of his employer, the Permanent Secretary. With respect, I will not follow it so long as the letter remains in force. The letter as correctly pointed out by Mr. Musa remains to be the guidance on the matter until when it will be revoked by the Permanent Secretary. I will thus take that all hotels are graded by the stars and must pay their employee within the directives of the government.

The permanent Secretary Ministry of Natural Resources and Tourism made an assessment after being ordered by this court. He issued certificate No. 00111221 ranking the hotel to two stars in the category of town hotel as said above. The certificate did not call it a Potential and Tourist Hotel. It called it two stars in the category of town hotel. This takes the hotel to item (f) of The Labour Institutions Wage Order, 2013 which has the minimum wage of Tshs.150,000/= per months. It also means that the

appellant was paying the correct salary. The calculations done by the Labour Officer were therefore erroneous. That also applies to the compliance order. The compliance order was based on wrong calculations and a wrong assumption that the hotel is a four or five star hotel. It is thus illegal, null and void.

That said, the appellant is directed to pay the minimum wage in respect of the ranking of the hotel, two stars hotel, which is governed by item (f) of The Labour Institutions Wage Order, 2013, Tshs. 150,000/= per month. They are however advised to pay some other allowances as the case may be, to improve the welfare of the staff because that amount has already been passed by the cost of living.

It is ordered so.




L.M. MACHA

JUDGE

30/05/2022

Court: Judgment delivered. Right of appeal explained.




L.M. MLACHA

JUDGE

30/05/2022

ORIGINAL