

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

(LABOUR DIVISION)
TANGA DISTRICT REGISTRY

AT TANGA

LABOUR REVISION NO. 10 OF 2021
(CMA/TAN/45/2015)

HIZA JUMA.....1ST APPLICANT
MGANGA MRISHO.....2ND APPLICANT
NJAMA SALIM.....3RD APPLICANT
(Administrator of the estate of the Late RUA SALIM)
VICKY KANYENYE.....4TH APPLICANT
ANNA J MBELWA.....5TH APPLICANT
(Administrator of the estate of the Late CHARLES J JUAKALI)
LUCIA JOHN.....6TH APPLICANT
(Administrator of the estate of the Late ALFONS FUNDI)
MWAITA SALIM.....7TH APPLICANT
POLLYICAP BOKOLA.....8TH APPLICANT
JONAS LUNEKE.....9TH APPLICANT
SELEMAN PAZIA.....10TH APPLICANT
OKACHU LEONARD FRANK.....11TH APPLICANT
PIUS E ANGOMI.....12TH APPLICANT
KASSIM A KIZARO.....13TH APPLICANT
MSWAKI H MUSSA.....14TH APPLICANT
SAID M MATAULA.....15TH APPLICANT
MWIJUMA OMARI.....16TH APPLICANT



KIMARO I GABRIEL.....17TH APPLICANT
SHAIBU MAJENGO.....1^{8TH} APPLICANT
STEPHEN G HAULE.....19TH APPLICANT
PASHUA SHEKUE.....20TH APPLICANT
MAULID A MOHAMED.....21ST APPLICANT
ATHUMANI HASSANI.....22ND APPLICANT
ADAM MFINANGA.....23RD APPLICANT
OMARI TABWA.....24TH APPLICANT
MWANGU C KAPUNGU.....25TH APPLICANT
KOMBO RAMADHANI.....26TH APPLICANT
MATHIAS SONGAMBELE.....27TH APPLICANT
IDRISA H MMAKA.....28TH APPLICANT
CHARLES KOMBO.....29TH APPLICANT
LEORNARD MASUKA.....30TH PPLICANT
NICHOLOUS MWARABU.....31ST APPLICANT
HENRY I MDIMU..... 32ND APPLICANT

VERSUS

TANZANIA FERTLIZER CO. LIMITED.....1ST RESPONDENT



MSAJILI WA HAZINA.....2ND RESPONDENT

MWANASHERIA MKUU WA SERIKALI.....3RD RESPONDENT

JUDGEMENT

26TH MAY 2022
L. MANSOOR, J

Initially, it was 43 workers of Tanzania Fertilizer Co. Limited who initiated a claim at the Commission for Mediation and Arbitration, "CMA". They were claiming for the benefits after their retrenchment in 1994, they were claiming for payments of Tshs 35,536,312 in 1994 which was payments for 40 months salaries for each applicant and subsistence allowances for 24 months, and they claim this based on the Announcement made by the President of Tanzania, they also base their claims on Waraka No. 4 of 1993, exhibit C4 from the Treasury Registrar. They say the Bank of Tanzania gave them the current value of their claims which was Tshs 764,796,466.36, in accordance to exhibit C3 availed before CMA



After full Trial, CMA ruled that the President's directives did not cover the Applicants/claimants since they were not civil servants, and since there was no proof that the Company, Tanzania Fertilizer Co. Limited had asked the Treasurer to satisfy the Circular on their behalf. The Arbitrator said the claims of the Applicants were not proved; their application/claims were therefore dismissed.

Aggrieved, and through the representation of Advocate Atranus Method, the Applicants came before the High Court seeking for Revision of the CMA's Award claiming that the Arbitrator exercised her jurisdiction with irregularities and error material to the merits of the case in Labour Dispute No. TAN/CMA/45/2015 delivered on 16th April 2018 by Honourable Mwaikambo, the Arbitrator.

From the submissions of Advocate Atranus Method, it appears that the Applicants have admitted that they are not public servants, but the Arbitrator failed to evaluate the evidence in the sense that FTC, Tanzania Fertilizer Company was a public



corporation and had requested the Treasurer to assist the company to pay their terminal benefits after the retrenchment. He says, the evidence of DW2 Yohana Lukindo, clearly stated that Waraka No. 4 of the Registrar was directing the Heads of Public Corporation and Government Departments/ Institutions, but these Applicants could not have been entitled to benefit from this Waraka since the Waraka was issued in 1993, while the Applicants were already retrenched since 1991, in other words, this witness had told the Arbitrator that the Waraka covered the workers of the public Corporation but since these Applicants were retrenched before the issue of the Waraka, they could not benefit from it. The Applicants insists that they were retrenched in 1994, not 1991, and so they are entitled to the benefits given by the President, and in Circular No. 4 of 1993.

The Counsel for the Applicants argues further that Tanzania Fertilizer Co. Limited cannot escape liabilities since it is wholly owned by the Government and must comply with the Government Directives issued by the President in a Public



Announcement "TAMKO LA RAIS", and in a Government Circular issued by the Treasurer.

On behalf of all the three respondents, the submissions were filed by Mr. Rashid Mohamed , the State Attorney from the Office of the Solicitor General, he supports the findings of CMA, he says the Applicants failed to prove their claims as required under section 110 and 112 of the Tanzania Evidence Act and backed his arguments by citing the case of **PMM Estate (2001) Limited vs Hamad Ally Mshana and 3 others, Revision No 747 of 2019**, HC, Labour Division, Dar es Salaam, and the case of **Future Century Limited vs TANESCO, Civil Appeal No. 102 of 20018, CA**, in which it was held that *"the burden of the person alleging a fact to prove what he alleges is clearly stated under the provisions of Section 115 of the Evidence Act, Cap 6."*

The Learned Counsel for the respondents submits that the Applicants failed to prove their case, and the Arbitrator was correct to dismiss their claims.



I considered very carefully the submissions of the Parties, and I shall say that Tanzania Fertilizer Company Limited is owned by the Government of United Republic of Tanzania. It was established in 1968 through the Companies Ordinance (cap 212) and given certificate of registration no. 4335. Initially, the Company which was a joint venture between the Government of Tanzania through National Development Corporation (NDC) and M/S Klockner -INA of Germany, was to run the fertilizer production plant which was situated in Tanga. Tanga production facility was closed in 1991 on technical grounds and the same year M/S Klockner-INA surrendered all their shares to The Government of Tanzania. Therefore at the time of their retrenchment, Tanzania Fertilizer was not wholly owned by the Government, it was a private Limited Company owned jointly by the Government and the other shareholders.

The issue whether the Applicants were the public servants hence covered by the announcement made by the President was not submitted by the Counsel of the Applicants, he



instead, admitted that the Applicants are and were not the Public Servants at the time they were retrenched, since Tanzania Fertilizer Co. Limited was not wholly owned by the Government. He shifted the arguments to another issue that there was proof that Tanzania Fertilizer had asked the Treasurer to help them pay the 40 months salaries as announced in Circular No, 3 of 1993, The Arbitrator determined this issue to the effect that the Applicants were not the Public Servants and so not covered by the TAMKO LA RAISI, he also said the Applicants failed to prove that the Company had asked the Treasurer to help them satisfy the Circular as announced by the President, he said at page 13 of the typed judgement:

"katika shauri hili walalamikaji wameshindwa kuthibitisha kwamba wao ni watumishi wa serikali hivyo kuwa na sifa ya kulipwa madai wanayodai kulingana na waraka 4/1993, wameshindwa kuthibitisha kuwa kampuni yao iliomba msaada hazina ili hazina ibebe mzigo wa kuwalipa badala ya kampuni yao, wameshindwa



kuthibitisha kwa hati zao za mshahara ili kujua kila mmoja alikuwa analipwa shilingi ngapi ili kujenga madai yao, pia wameshindwa kuthibitisha kwa nyaraka au Ushahidi wa afisa kutoka NIC kwamba ni kweli walitoa tamko baada ya mjadala na walalamikaji, utawala na OTTU kwamba walipwe miezi 80 kwa waliofanya kazi Zaidi ya miaka 20, miezi 70 kwa waliofanya kazi miaka 15 na Zaidi au miezi 40 kwa wafanya kazi wengine.”

I went through the records, as well as the submissions of Advocate Atranus Method, and could not see anywhere, either by the testimonies of the witnesses or by documentary proof in which the Applicants proved before the Arbitrator that there was a communication between Tanzania Fertilizers Co. Limited and the Treasurer asking the Treasurer to assist the Company in satisfying the Circular or the Directives given by the President. Also, as adjudicated by the Arbitrator, there was no proof whatsoever for the allegations that NIC made a directive to Tanzania Fertilizer Co. Limited to pay the retrenched workers the 80 months' salaries, or 70 months salaries or even



40 months salaries. The Applicants also failed to prove their claims, and to give concrete proof that they were retrenched in 1994, and not 1991. Clearly, as stated by Advocate Rashid Mohamed, and the cases he referred, the burden of proof was on the Applicant, and they completely failed to discharge the burden.

It is also true as submitted by Rashid Mohamed, the State Attorney that all the witnesses of the Applicant who testified before the CMA could not prove or give the breakdown of the claims of all 43 claimants. They all mentioned a blank figure of Tshs 35,526,312 as their total claims without giving the breakdown of the claim of each claimant. There is no proof on record substantiating the claims of each complainant, now the Applicants, before CMA. The Counsel referred to the case of **National Agricultural and Food Corporation vs Mulbadaw Village Council and others, CA, Civil Appeal No. 3 (1985) TLR at page 88**, in which the Court, in a case which involved 64 villagers, each villager was required to prove his own case, and had held that "*each claim is different*



from the other claims in terms of the date of possession, of acreages, of method of acquisition and son on. The Court continued to hold that "person may act and represent another person, but we know of no law or legal enactment which can permit a person to testify in place of another."

Again, in the case of **PMM Estates (supra)**, it was held that *"leave to file representative suit does not dispense with the onus in each plaintiff to prove his or her own claim."*

I fully subscribe to the decision in the case of **National Agricultural and Food Corporation (supra)**, the case cited by the Learned State Attorney in his written submissions, it is the requirement of the law that he who allege must prove, the proof is on the balance of probabilities in civil cases, and that since each claim is different from the claim of another , all 43 claimants were required to each prove his or her case as each case was different in terms of the date of engagement or employment, the type of employment, and the salaries or/ and the benefits were also different. As held in that case, "a



person may act or represent another person, but we know no law or legal enactment which can permit a person to testify in place of another."


Similarly in this case, the three witnesses of the Applicants were not able to prove not only their own claims, they also could not prove the claims of 43 others.

That being the position, the Application for Revision No. 10 of 2021, filed by the Applicants is without merits, thus, dismissed. The proceedings and Award of the CMA in CMA/TANG/45/2015 are hereby confirmed.

It is so ordered.

DATED AND DELIVERED AT TANGA THIS 26TH DAY OF MAY
2022




LATIFA MANSOOR
JUDGE
26TH MAY 2022