

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LABOUR DIVISION)

TANGA DISTRICT REGISTRY

AT TANGA

LABOUR REVISION NO 08 OF 2021

*(Originating from an Award of the Commission for Mediation and Arbitration at Tanga in Labour
Dispute No CMA/TAN/62/2020/19)*

M/S WS INSIGHT LIMITED.....APPLICANT

VERSUS

MS GRACE FRANCIS MICHAEL.....RESPONDENT

JUDGEMENT

31/05/2022

MANSOOR J

Grace Francis Michael was an employee of the respondent, M/S WS Insight Limited which used to be Warrior Security (T) Limited, a company providing security services, since 13th April 2016 working as a security guard until 04th May 2020 when her employment contract was terminated. The charges leading to her termination according to the termination of employment letter, were; -



- 1. Suspicions of stealing property belonging to the client when she was seen by her fellow employee taking client's bags and hiding them in her bag and her fellow employee Joffrey Mayalla on 19th March 2020*
- 2. Committing any serious act of insubordination at company premises during working hours against the employer when she refused to obey a lawful instruction from her supervisor when she refused to be inspected and decided to go home*
- 3. Wilful refusal to obey a lawful instruction when she snatched her bag before it was searched while she knew she was suspected of stealing client's bags*

Dissatisfied with the termination, she channeled her complaints to the Commission for Mediation and Arbitration in Tanga hereinafter referred to as the CMA or the commission vide CMA/TAN/62/2020.

According to the evidence adduced at the CMA by four applicant's witnesses, on 19th March 2020, the respondent was on duty at PPTL factory in Tanga. Her shift commenced at 06:00 pm and ended at 06:00am in the morning on the next date i.e., 20th March 2020. According to the first witness of the applicant,

Mr. James Edward Fugije, on that date the respondent was suspected to carry bags produced by PPTL who was their client. The second witness Levina Huruma Tukay testified that on the date of the incident there was a quarrel between the respondent herein with one Sara. The respondent picked her handbag and left. She had a sweater hanged on her shoulder; Sara was alleging that she had stolen some plastic bags which she hid in her handbag. She was not searched at the exit gate. Another witness, Sara Jumanne, the one who suspected the respondent to have stolen stated that on 19th March 2020 she was phoned by one Stuart Mganga that the respondent, Grace had stolen bags and hid them in the bag of one Mayala. She went to search Mayala's bag and found 12 plastic bags. She decided that if that habit repeats, she will report him to the supervisor. Faraja Giriard testified that the disciplinary meeting was conducted on 09th April 2021, the respondent stated that on the date of the incident, she left hurriedly so as to take her child to the hospital although she had no proof. Also, that it was decided that the respondent be terminated from employment.

On her side, the respondent stated that she was terminated following the incident of being suspected to steal bags and place them in one Mayala's bag. During the disciplinary hearing, the complainant was James Fugije whose shift commenced on 20th March 2020 during morning hours. She was not told how many bags she had stolen. The theft incident was not reported anywhere. The supervisor on the date of the alleged incident was one Shaban Juma Mganga who was neither involved in the disciplinary hearing nor called as a witness at the commission. She also stated that there are three distinct minutes of the disciplinary committee. She further submitted that her working relations with Jeffrey Mayala was not well and he once swore that he will make sure that he causes hitches to her.

At the commission, three issues were framed for determination.

- 1. Whether the termination of the employee by the employer was for valid reasons*
- 2. Whether the termination followed lawful procedures in terminating the respondent*
- 3. Which reliefs are parties entitled to?*

At the end of hearing from both sides, the commission found that the respondent's termination was unfair and proceeded to give an award in favour of the respondent herein who was the applicant by then.

In the award, the applicant was ordered to compensate the respondent a total of Tshs 3,857,692 within 30 days from the delivery of the award and also give the respondent a Certificate of Service. This court is now moved to invoke its revisional powers to call for and examine the proceedings and award of the Commission for Mediation and Arbitration.

The reasons for this application can be reflected in the applicant's affidavit. The first being that the arbitrator was legally wrong to entertain and decide a dispute which was referred before him by a defective notice CMA F8 also that the arbitrator grossly failed to appropriately and correctly examine and analyse the testimonies and exhibits tendered by the applicant's witnesses and give them the weight they deserved with regards to all three offences of the respondent's termination but instead considered only one offence of stealing and as a result reached a to an unjust decision. Lastly that the arbitrator was wrong for not considering

the required standard of trust and integrity surrounding the business activities of the applicant as a crucial component to determine appropriate disciplinary measures for the wrongs committed by the respondent during the incidence.

In these proceedings the applicant was represented by Mr Henry Mlang'a Personal Representative and the respondent by Mr. David Kapoma, also a personal representative. It was agreed that the matter be heard by way of written submissions. Parties are commended for submitting brief and straight to the point submissions. It is noted that after the respondent filed her reply of the applicant's written submission, no rejoinder was filed up until the time of composing this decision.

In his submission in chief, Mr. Mlang'a first pointed out that his application ought to be granted right away as the respondent did not file notice of opposition but only a counter affidavit. He stated that the Labour Court Rules, GN No 106 of 2007 under Rule 24 (c) and 24 (4) (e) and 6 requires the respondent to file a counter affidavit together with a notice of opposition.

Further, Mr. Mlangá lamented that the application was not supposed to be entertained by the commission as it was moved

by a defective notice. Lastly it was his submission that the arbitrator was wrong in basing on a single ground in deciding the matter, leaving out the rest of the grounds.

In reply, the respondent refuted the allegation that the matter is uncontested merely by not filing a notice of opposition. With regard to defectiveness of the notice to the commission, it was the respondent's averment that the same is not true as the notice was duly signed even though it contained no space for signing it. Hence it was valid before the commission.

With regard to the grounds of this revision, the respondent submitted in general that the core issue giving rise to the termination was the allegation of stealing. In that case the arbitrator was right to consider that one issue and proceed to decide the matter. He added that all the three issues were interrelated. With regard to analysis of evidence given the respondent submitted that the weight of the respondent's evidence was heavier. As said earlier there was no rejoinder and so the matter was ready for this decision.

Before going to the determination of this revision, I will first clear the issue of whether this application is contested or not by failure

to file notice of opposition as raised by the applicant in his written submission in support of the application. To back up his argument, Mr. Henry Mlang'a had cited the provisions of Rule 24 (c) of Labour Court Rules, GN No 106 of 2007 which is non-existent. He also cited Rule 24 (4) (e) which is equally non-existent. Rule 24 (6) was also cited but having read it, I noted that it was undoubtedly irrelevant from the point Mr. Mlang'a was trying to establish. For ease of reference, I will quote Rule 24 (6)

(6) The replying affidavit shall only address the issues raised in the

Counter affidavit and shall not introduce new issues of fact or of law

Except with the leave of the Court.

Since the gist of the applicant's argument lies on the act of the respondent in this case only filing a counter affidavit without the notice of opposition, this court enquired from our Labour Laws on what the position of the law is with regard to such a matter.

Rule 24 (4) (a) which is a relevant provision state that; -

(4) A notice of opposition, a counter affidavit or both shall—

(a) be filed within fifteen days from the day on which the application is served on the party concerned.

The wording of the statute uses the phrase 'OR' which means an option between or among the available reliefs. The respondent is at liberty to either file a notice of opposition only or a counter affidavit only or both the notice of opposition and counter affidavit. In that case, the respondent cannot be said to not oppose the application simply by opting to skip filing of a notice of opposition.

Having carefully considered the parties' written submissions together with the grounds of revision as deponed in the applicant's affidavit, the issue is whether the sanction of termination imposed against the respondent was fair in terms of the Code of Good Practice Employment and Labour Relations (Code of Good Practice) G.N. No. 42 of 2007.

The Employment and Labour Relations Act under Section 39 states

"In any proceedings concerning unfair termination of an employee by an employer, the employer shall prove that the termination is fair.

It is the duty of this court therefore to find out whether the applicant furnished the commission with evidence enough to prove that termination of the respondent was fair.

The first reason for termination as can be gleaned from the termination letter which was tendered at the CMA as R.8 is *"Suspicious of Stealing property belonging to the client*".

The plain meaning of this is that the employee was suspected to have stolen property belonging to the applicant's client. In other words, her termination was based on suspicion.

The one who suspected that the respondent had stolen some bags is one Sara Jumanne whose evidence was to the effect that she was told by Stuart Mganga through phone that Grace had stolen some plastic bags. She had no direct evidence proving that the respondent had stolen property. After the said suspicion, the bag belonging to the respondent was never searched.

There is an incident report admitted as R2 which explains that at 0548 hrs, supervisor James Fugije reported to the control room

to have been informed by Security guard 05345 Sarah Jumanne that she is "suspecting" Grace Francis and Jeoffrey Mayalla to have stolen client's properties namely Mambo Poa bags. It is a long-established law that suspicion, however grave cannot take place of what can be proved in court.

It was also submitted by the respondent at the commission that no inquiry was made into the suspicion. They remained so until her termination. She further claimed that there was ill will against her from other workers. No crime of theft reported anywhere. All this establishes inadequacy in the reasons leading to the respondent's termination.

With this kind of evidence leading to termination, all based on suspicion, it was clearly unfair to terminate the respondent. There is no evidence stating that the suspicions were proved, nor is there any evidence that there were previous disciplinary conducts on the part of the respondent. The reasons entailed in the letter for employment are frail and under any circumstances cannot form basis of termination.

On the basis of the foregoing, it is my view that the applicant had no valid reason to terminate the respondent's employment. The evidence available on record even when assessed by any prudent man, not necessarily a lawyer, will not justify termination of the employee in question.

It follows therefore that the Respondent was rightly awarded the compensation of Tshs. 3,857,697/= and a Certificate of Service by the commission for being unfairly terminated. I therefore dismiss the application. This being a labour matter, I will not make any order as to the costs.

DATED AND DELIVERED AT TANGA THIS 31ST DAY OF MAY 2022



A handwritten signature in blue ink, appearing to read "Latifa Mansoor".

LATIFA MANSOOR

JUDGE

31ST MAY 2022