IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

REVISION NO. 419 OF 2022

(From the decision of the Commission for Mediation and Arbitration at Kinondoni in Labour Dispute No. CMA/DSM/KIN/884/2020/85/21, Kokusiima, L.: Arbitrator, Dated 26th October, 2022)

SALEHE MOHAMED MRUTU.....APPLICANT

VERSUS

MIKOANI EDIBLE OIL AND DETERGENT LIMITED.....RESPONDENT

JUDGEMENT

08th May – 16th May, 2023

OPIYO,J

This application called for this court to call, revise and set aside the proceedings and to set aside the award of the Commission for Mediation and Arbitration (CMA) in a Labour Dispute No. CMA/DSM/KIN/884/2020/85/21 by Kokusiima L. (Arbitrator) dated 26th October, 2022.

Briefly, the applicant entered into the permanent contract with the respondent on 04th December, 2018 to work as driver. The applicant was terminated on 18th September, 2020. Aggrieved, he filed for the labour

dispute at CMA. The matter was heard and the award was in favour of the respondent. Being dissatisfied, the applicant resorted to this revision application.

The application was supported by the applicant's affidavit stating grounds for revision to be: -

1. That, the arbitrator did not consider in law and in facts that there was no valid reason for termination.
2. That the arbitrator did not consider in law and in facts that there was no agreement to terminate the applicant's employment.
3. That the arbitrator did not consider in law and in facts that the lawful procedure for dealing with disputes was not followed.
4. That the arbitrator did not take into account legal arguments and analyze the evidence of both sides.

The matter was heard orally. Both parties got the opportunity to be representated. Mr. Hemedi Omary, Personal Representative for the applicant and Mr. Mahad Mvungi, Learned Advocate for the respondent.

Mr. Omary, submitted that CMA erred in law in by not finding that there were no reasons for termination of employment. That when they were at CMA it was explained that the termination came after the applicant

disagreed with his supervisor, one Said Issa and complaint reached the Human Resource officer on the same date but at the same time it was stated to be mutual claiming there was agreement between them to that effect.

Mr. Omary again cited rule 4(1)-(5) of GN. 42 2007 and argued that the provision deals only with fixed term contracts. Thus, as the contract between the applicant and the respondent was not on fixed term but permanent, the rule was not applicable in their situation. In his view, upon the complaints of the supervisor being presented to the human resource officer, she ought to have called both sides to the disciplinary committee to discuss the same and in absence of compliance with that procedure, it is vidid that the contract was unlawfuly terminated. He then cited the case of **Leopard Tours Ltd Vs. Rashidi Juma and another** Revision No. 55 of 2013 at Pg 12 para 13 which he said clearly stated procedure of termiantion. He argued that because the procedure was not followed, the applicant was entitled to the compensation of 12 months salary.

Mr. Omary submitted further that exhibit M2 shows agreeent for termiantion was between Mikoani Edible Oil and Detergent Ltd and the applicant herein, but the stamp shows it is of Mikoani Traders Ltd.

Therefore, for him the exhibit was not valid as the applicant was not employed by two different companies. The gist of his complaint is therefore that the CMA did not give regard to the invalidity of such agreement.

On the 2nd ground, Mr. Omary prayed for his submission in the 1st issue concerning failure to follow procedure to also cover for this part as well. On 3rd issue, he submitted that as the contract was permanent as per exhibit M1, it is vivid that the termination had to follow the stipulated procedures, but was not followed. He stated that DW1 said that, there was agreement to terminate instead of following usual procedure when there is complaint as in this case, he stated it came from the applicants supervisor. For him the arbitraotr did not evaluate proprerly the evidence to unveil that fact. he thus, prayed for the court to revise the decision quash and set aside the CMA award and to give any other remedy it deem fit.

In responding to the above submission, Mr. Mvungi submitted that the contract of employment like any other contract, parties are entitled to its termiantion as they deem fit. He argued tha rule 4(1) of the G.N. No. 42 (supra) provides for employer and employee to terminate contract as per

agreement be it is permanent or temporary contract. For him exhibit M2 qualifies as an agrement to terminate contract in our case.

He went further arguing that section 10 of law of contract Act, Cap 345 elements of contracts includes free consent of parties, capacity of parties, lawful consideration and lawful object. For him exhibit M2 has all those qualities. To cement his point he cited the case of **Precision Air (T) Ltd Vs. Gloria Thomson Mwamunyange** Rev No. 292/2017 which states that it is general principle of law of contract that parties are at liberty to termiante the contract they entered into. The procedure uses by the parties in the instant case was proper, he contended.

He continued to submit that, the argument of the applicant's personal represenative that the agreement is invalid for lack of company seal is misconceived. This is because, there was no dispute that the agreement was not entered into by the two parties, namely Mrutu and Mikoani Edible Oils and Detergent Ltd. He argued that the mix of stamps was a mere human error and should not be banked on to deny any of the parties his rights. To him the arbitrator impartially determined the matter and therefore, he prayed for the application to set aside award be dismissed for lack of merits.

In rejoinder Mr. Omary, submitted that the cited provision of law of contract by the advocate for respondent are not relevant as they do not support his contention. He then continued to state that, the advocate for the respondent believed that exhibit M2 qualifies to be valid, but he has failed to explain the relation the seal of Mikoani Traders Ltd has with employment contract between the two. That, the advocate for the respondent argument that use of Mikoani Traders Ltd seal is a human error, but he forgets that it is those errors that deny the other side their rights. In his view, the advocate ought to admit it is a mistake. To him, employment contract has to be terminated only if there is a reason to do so and following a set procedures and even when the employer prays to terminate employment by agreement there must be a reason to do so. Therefore, in this case, since on 18/09/2020 there was complaint of Said Issa to the human resource against the applicant, the complaint was to be heard before entering the agreement to see to it that the applicant is also given the right to be heard. In his view, the termination did not follow procedure as the complaint was not tabled before disciplianry committee.

He then prayed for the court to holds that the contract of termination was entered by three parties, Mikoani Traders Ltd, Mikoani Edible oil and

Detergent Ltd and Salehe Mrutu contrary to contract of employment as per exhibit M1 which is between two parties only, the applicant and Mikoani Ediable Oil and Detergent Ltd. He again submitted that the decision the advocate for the respondent referred to be ignorred as he did not provide full citation and copies of the same. He then prayed for the court to go through Section 73(1) of the Law of contract Act which talks of the breaching party paying compesetion to the other party read together with Section 40(1)(C) of Cap 366 RE 2019 Mr. Omary then reiterate the prayer for quashing and seting aside award and accordingly replacing it with proper award as the court deems fit.

I have carefully gone through parties' submissions, CMA proceedings, exhibits and award thereto. As per the grounds of revision raised, the issue for this courts determination is whether the termination of the employment contract of the applicant was validly done by way of agreement between the parties?

Indetermination of the raised issue one ought to take note that there is no dispute that the applicant was employed by the respondent, also that their employment contract was permanent. These are according to exhibit M1. The dispute between parties is the way the employment contract was

terminated. The applicant through his personal representative stated that termination was not fair as there was no agreement between the parties to terminate the same as alleged by the respondent given the fact that the company seal/hallmark that was used is not of the respondent. While the advocate for the respondent stated that the termination was based in agreement between the parties and the difference in corporate seal used was only a human error that resulted in such unharmful mix.

Painstakingly I examining exhibit M2 shows that the applicant and the respondent terminated their employment contract in agreement. The applicant is denying that the document is not valid as it contained other company's stamp/seal. Going through records; it shows that the applicant during cross examination recognised the exhibit M2, though he referred to it as termination letter. He admitted that the name therein is his and recognised the one who signed on behalf of the respondent. For easy reference: -

> *"Kielelezo M2 nakitambua. Nyaraka hii ni mkataba wa kufukuzwa kazi. Amesoma (Makubaliano ya Kumaliza Ajira).*
> *Shahidi amesoma aya ya mwisho ya makubaliano.*
> *Jina ni sahihi nl'la kwangu kilichoandikwa ni sahihi.*
> *Shahidi amesoma aya ya kwanza ya makubaliano.*

Mikoani Edibles alikuwa ni mwajiri wangu. Aliyesaini ni Shamsa kutoka mikoani Edible ambaye alikuwa mwajiri wangu"

Literally translated *:-*

"I have identified exhibit M2. This document is a termination of contract. He read the document (Employment Termination Agreement).

The witness has read the last paragraph of the agreement.

My name therein is correct.

The witness has read the first paragraph of the agreement.

Mikoani Edibles was my employer. The signatory is Shamsa from Mikoani Edible who was my employer."

What can be concluded from the above quotation is that the applicant recognised the agreement reached between him and the respondent on termination of the contract of employment. The question is should the use of seal of Mikoani Traders invalidate the contract in question as argued by the applicant? In my considered view, I think not; because, despite the use of different company hallmark, the applicant did not deny the contents of the agreement to terminate the contract or denied ever agreeing to that effect. He just brings the technicality of difference seal used an an afterthought. On top of that, parties in the said agreement to terminate contract have been recorded to have agreed that in the event that any provision of their agreement is found to raise any legal issue, such legal

issue would not affect other clauses or rationality of the said agreement. In this matter the applicant only challenges the use of stamp of Mikoani traders while the rest of clauses refer to Mikoani Edible Oil and Detergent Ltd. This as per noted clause does not affect other clauses in the agreement. It therefore remains that, agreement to terminate employment that was mutually entered into remains intact. For that, I borrow the wisdom of holding in the case of **Precision Air Tanzania Limited** (supra) cited by Mr Miraa to hold that the contract between these parties like any contract is capable of beeing terminated through agreement.

Therefore, applicant simmingly change of mind on that point on allegation of the stamp being of the other company does not hold water as the content therein even without the stamp binds the parties as it happened out of their own free consent and both of them recognised it and does not deny its content. The applicant's change of mind does not make the coontract which was made on the basis of the mutual agreement, to become unfair. The procedure enumerated in **Leopard Tours case (supra)** cited by the applicant's counsel constitutes one way of temination and it is applicabe where there is no an agreement to terminate. Thus, in a case where there is agreement to terminate as per Rule 3(1)(a) of G.N. No.

42, like the one at hand the proposed procedure through displinary committee is not applicable.

Based on the above this court finds that in terms of exhibit M2 (termination of the contract by way of agreement) the termination of the employement contract was by way of agreement between both parties and so there is no unfair termination as was correctly found by CMA. On borrowing the wisdom held in the case of **Higher Education Student's Loan Board vs George Nyatega**, Labour Revision No. 846 of 2018 High Court at Dar es Salaam at page 12 when citing the case of **Univeler Tanzania Ltd vs Benedict Mkasa Bema Enterprises**, Civil Application No. 41 of 2009, CAT that: -

> *"It was stated that the parties are bound by the agreements they freely entered into. No party would therefore be permitted to go outside that agreement for remedy."*

I therefore find this application to have no merit. It is hereby dismissed. CMA award is upheld and since this is a labour matter, I order no costs to either party.

MAHAKAMA KUU YA TANZANIA (The High Court of Tanzania) DIVISHENI YA MAHAKAMA YA KAZI (Labour Division)

M. P. OPIYO,

JUDGE

16/05/2023