IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LABOUR DIVISION

AT MOSHI

LABOUR REVISION NO. 15 OF 2022

(Arising from Labour Dispute No. CMA/KLM/MOS/ARB/69/2021)

BAHATI MAPULI ..... APPLICANT

VERSUS

MULTICHOICE TANZANIA..... RESPONDENT

JUDGMENT

03/04/2023 & 31/05/2023

SIMFUKWE, J

Bahati Mapuli hereinafter referred to as the Applicant filed this application after being aggrieved with the Award of the Commission for Mediation and Arbitration in **Labour Dispute No. CMA/ KLM/ MOS/ ARB/ 69/ 2021** of Moshi dated 10th June 2021. The application was brought under **section 91 (1)(a), Section 91 (2) (c)** and **Section 91 (4) (a) of the Employment and Labour Relations Act, No. 6 of 2004, Cap 366 R.E 2019 (ELRA);** read together with **Rule 24 (1) (2) (a) (b) (c) (d) (e) and (f)** and **Rule 28 (1) (d)** and **(e) of the Labour Court Rules, GN No. 106 of 2007.** The Applicant prayed for the following orders:

1. *That, this Honourable Court call for the records and revise the proceedings of the Commission for Mediation and Arbitration in Labour Dispute No.* ***CMA/KLM/MOS/ ARB/69/2021*** *of the Commission for Mediation and*

Arbitration at Kilimanjaro and set aside the award delivered on 10th June 2021 by Hon. M. Batenga Arbitrator.

2. *Any other relief(s) and/or order(s) that this Honourable court may deem just and equitable to grant.*

The application was supported by an affidavit sworn by the applicant himself, which was contested by the counter affidavit sworn by Tike Mwakitwange, Principal Officer of the respondent.

The factual background of the dispute is to the effect that, the applicant was employed by the respondent for a fixed term of two years as a Sales Manager from 1st January 2021 to 31st December 2022. It happened that on 31st August, 2021 his employment was terminated on ground of operational requirement (retrenchment). The applicant was not happy with such termination, he filed his complaint before the CMA claiming be compensation at the tune of Tshs 72,223,034/= as a result of such termination. The CMA after considering evidence of both parties, it found that the retrenchment was lawful both procedurally and substantively. It ordered the respondent to pay the applicant Tshs.8,181,702.59/- as terminal benefits. Aggrieved by the CMA's decision, the applicant preferred the instant application for revision on the following grounds:

1. *That, the Hon. Arbitrator erred in law and in fact by stating that the procedures governing retrenchment must not be followed word by word.*
2. *That, the trial Arbitrator erred in law and in fact by relying on contradictory evidence.*

3. *That, the Hon. Arbitrator erred in law and in fact in deciding that the respondent had followed all required procedures for retrenchment.*

The application was argued by way of written submissions. Both parties complied to the schedule of which I am very grateful. Mr. Bwire Benson Kuboja, learned counsel argued the application for the applicant, while Mr. Rahim Mbwambo opposed the application for the respondent.

Mr. Kuboja, started his submissions by narrating the background of the dispute as well as the applicant's prayers and grounds of revision of which I find no need to reproduce as it has already been covered herein above. He opted to consolidate the grounds of revision into one ground which reads; ***the Arbitrator acted with material irregularity and made errors material to the subject matter involving injustice***.

Mr. Kuboja stated that retrenchment or termination based on operational requirements is provided for under **section 38 of Employment and Labour Relations Act, Cap 366 R.E 2019 (ELRA)** and **Rule 23,24 and 25 of Employment and Labour Relations (Conduct of Good Practice) GN No. 42/2007 (Code of Good Practice**). He continued to say that termination of employment based on operational requirement is sometimes referred to as redundancy or retrenchment or downsizing. That, it is a premature termination of contract of employment which is neither caused by breach, disciplinary misconduct of the employee, incapacity or any other reason but for operational adjustments of the business of the employer. That, the justification of termination of employment based on operational requirement requires the employer to prove the existence of reasons based on either economic needs,

technological needs or structural needs. He referred to **section 37(2) of the ELRA** which provides that:

> *"37-(2) Termination of employment by an employer is unfair if the employer fails to prove:*
>
> *a) That the reason for termination is valid;*
> *b) That the reason is a fair reason-*
> *ii) Based on the operational requirements of the employer.*

The learned counsel stated further that the above provision is to the effect that an employee may be terminated if an employer proves that there was an operational requirement. He cemented his argument by quoting the provision of **Rule 23(1) of the Code of Good Practice** (supra) which provides that:

> *"23-(1) A termination for operational requirements (commonly known as retrenchment) means a termination of employment arising from the operational requirements of the business. An operational requirement is defined in the Act as a requirement based on the economic, technological, structural or similar needs of the employer."*

Mr. Kuboja argued that for the purpose of defining the situation which can lead to termination based on operational requirements the law under rule **23(2) of the Code of Good practice** provides further that:

> *"23-(2) As a general rule the circumstances that might legitimately form basis of a termination are-*
>
> *a) .....*

b) .....

c) structural needs that arise from restructuring of the business as a result of a number of business-related causes such as the merger of business, a change in the nature of the business, more effective ways of working, a transfer of the business or part of the business."

Elaborating the above provision, Mr. Kuboja explained that structural needs go with the need of reorganizing the business of the employer in the administrative aspects. That, by such reorganization some of the activities of the company become reduced automatically. He cemented his argument by citing paragraph 3 of page 107 of the book titled **"Fair Termination of Employment Contracts Under Various Circumstances"** by Isaac Nassoro Tasinga.

It was contended further that, in determining this application, it is prudent to observe whether operational reasons were genuine reasons for the applicant's termination. The learned counsel submitted further that the opinions of the **ILO Committee of Experts on Application of Convention 158 and Recommendation 166** (CEACR); the policy objective of the law in regulating retrenchment or termination for operational requirements starts from the premises that, employees have a right not to have their contract of employment prematurely terminated unfairly or unjustifiably. Thus, the court is tasked in ensuring that operational reasons are not used by the employer as a cover up to terminate employees unfairly thus circumventing employer's rights.

Mr. Kuboja quoted paragraph 6 of page 8 of the ruling of the CMA where the Hon. Arbitrator referred to **Exhibit M-4** and found that the

respondent had a genuine reason to retrench the applicant as the said exhibit was the email from the Human Resource Manager at the respondent's company, sent to a multitude of recipients including the applicant and the Managing Director of the respondent company. That, the said email was titled '*Notice: Change of Sales Structure (Regionalization)*' which provides knowledge that this was when the idea of restructuring was first communicated.

Mr. Kuboja continued to aver that it was through the above noted e-mail, that was communicated to the applicant that the company would be expanding the sales footprint across the country and in order to execute those plans, that it was necessary to develop a plan which would increase their people. That, the same was reiterated under **Exhibit BM-2**, which the learned counsel was of the view that, it was totally overlooked by the Hon. Arbitrator. He argued that, in the said exhibit the following was communicated to the applicant by *"Ofisi ya Rasimali Watu"* at the Respondent company:

> ***"Mabadiliko haya hayahusishi kupunguza wafanyakazi,*** *baadala (sic) yake kuna nafasi mpya na majukumu mapya ambayo yanaendana na mfumo mpya wa Regionalization" Emphasis added*

From the above communication, it was the opinion of Mr. Kuboja that what was initially communicated to the Applicant was not that the restructuring of the company would see people lose their jobs, hence the meaning of retrenchment for structural needs, but that in actual sense, more people were going to be hired. He believed that the Respondent intentionally deceived the Applicant to apply for the new positions with the sole

ambition of terminating him. He claimed that the operational requirement reasons were used as a cover to violate the Applicant's rights. Consequently, the Applicant was terminated for incapacity, and not for operational requirements, which is contrary to the meaning of termination for operational requirements.

Regarding the issue as to ***whether the Respondent followed the retrenchment procedures provided for by the law,*** Mr. Kuboja submitted to the effect that **section 38 of the ELRA** read together with **Rules 23, 24 and 25 of the Code of Good Practice** prescribes four procedural items in order to conduct retrenchment. The items are notice of intention to retrench; disclosure of relevant information; consultation prior to retrenchment; and retrenchment itself. He elaborated that in the matter at hand, most of the procedures stipulated in the aforementioned provisions were followed by the Respondent. They informed the Applicant of the intended retrenchment and summoned the Applicant to consultation meetings. That, the record as per Exhibits M-11, M-13 and M-16 shows that the parties did not agree as to the retrenchment packages. Thus, despite their disagreement, the Respondent proceeded to terminate the Applicant from employment on the ground of operational requirements as per **Exhibit M-15**.

It was the opinion of Mr. Kuboja that the decision to proceed with retrenchment without agreement of the parties is contrary to **section 38(2) of the ELRA** which provides as follows:

> *"38-(2) Where in the consultation held in terms of sub-section (1) no agreement is reached between the parties; the matter shall be referred to mediation under Part VIII of this Act."*

Mr. Kuboja asserted that the respondent's conduct in this matter shows that they had made their decision and there was no room for negotiation. Thus, the retrenchment in this matter was in violation of the above provisions. He cited the case of **Panafrican Energy Tanzania Ltd vs Jackline Kawishe, Revision Application No.8/2020 TZ HCLD 56** to support his argument.

The learned counsel quoted paragraph 3 of page 9 of the ruling of the CMA and argued that the Arbitrator seems to be of the opinion that the requirement of **section 38 of the ELRA** need not be followed word by word. Thus, the statement contradicts the law since the said provision is couched in mandatory terms as it uses the word *'shall.'* That, it is trite law that as per **section 53(2) of the Interpretation of Laws Act, Cap 1 R.E 2020** that a provision containing the word "shall" connotes that what is stipulated in that provision must be performed.

Mr. Kuboja faulted the respondent for failure to adduce any evidence to prove that the parties approached the decision to retrench in the form of joint problem-solving exercise and reach to an agreement on among other things, the reasons for intended retrenchment, contrary to **Rule 23(4) of the Code of Good Practice**. That, the only evidence presented was exhibit M-8 which only pointed out what was planned to be discussed in the first consultation meeting but thereafter no meeting minutes were tendered to prove that the same had been discussed and what was agreed upon or not. That, **Exhibit M-13** gives clarity to what was discussed in the second consultation meeting, but none of the contents of that email show there was an agreement reached between the parties, whether the retrenchment was considered as the last resort or whether alternative employment opportunities were discussed in accordance with the law.

Mr. Kuboja opined that the Commission completely failed to scrutinize carefully the termination based on operational requirements (retrenchment) in order to ensure that the respondent considered possible alternatives to termination before it was effected. That, the Commission failed to analyze all the evidence before it in order to decide that the respondent's termination of the applicant based on operational requirements, was equally substantially and procedurally sound.
The learned counsel prayed that the reliefs prayed in the chamber summons be granted.

In reply Mr. Mbwambo the learned counsel for the respondent, on the outset, narrated the brief history of the dispute which I will not reproduce. The learned counsel submitted that the applicant's assertion that there were no reasons for retrenchment as the Applicant was terminated for incapacity and not for operation requirement is an afterthought and it contradicts with the evidence presented before the CMA. He urged this court to make reference to the documents tendered as evidence by the parties as well as testimony of witnesses who appeared before the Commission. He told this court that, before the CMA, at pages 2 (last para) to 4 of the CMA-Award as well as pages 4-9 of the CMA Proceedings, the respondent's witness (DW1), testified that the termination was inevitable as the management were forced by the business need to do structural changes on Sales and distribution department. That, the position of Big Sales Manager which was held by the Complainant was replaced by Territory Sales Manager. That, the witness (DW1) continued to elaborate in detail the differences of duties/tasks of the Big Sales Manager and Territory Sales Manager as per Job description for Territory manager as it can be seen in **Exhibit M-7** collectively. Also, DW1 testified that Big Sales

Manager was involving with direct sales only while Territory Sales Manager was dealing with supervision of both direct and indirect sales responsibility which requires someone with a deep sales technique and knowledge. That, in the new structure the Territory Sales Managers is supervisory of DSFs and Dealers (see exhibit M-4) the position requires key technical competence, a person with people management skills, excellent communication skills and ability to understand and apply market intelligence to sales strategy with experience of 3-5 years in the Telco/ Electronics industry. He made reference to page 5 of the Territory Sales Manager structure (Job description for the new position) which was admitted as **Exhibit M-7.** That, the Big Sales Manager was reporting to Zones Sales Manager and had no any supervisory channels like Territory Sales Manager and does not require technical skills like management skills and sales technique. It was noted that the requirement stated in the job description for Territory Manager at page 5 is not amongst the requirement for being the Big Sales Manager.

Mr. Mbwambo submitted further that **section 38(1) of ELRA** which reads together with **Rule 23 (1), (2), (3), (4), (5), (6) and (7) of Code of Good Practice** provides for the requirement of the law on the operational retrenchment of the employee by the employer. Also, **Rule 23(2) (c) of G.N. No. 42 of 2007** provides structural changes as one of the fair reasons for termination by operational requirements. He emphasized that, as testified by DW1 the reasons for retrenchment were structural changes on the department of Sales and distribution as per **Exhibit M-4**. To cement his argument, Mr. Mbwambo referred to the case of **Boni Mabusi vs The General Manager (T) Cigarates Co.,** Consolidated Revision No. 418 and 619 of 2019 which held that:

"According to rule 23(2) of the Employment and Labour Relations {Code of Good Practice} GN No. 42 of 2007 the reasons for termination by operation requirement (retrenchment) may be economical needs, or technological needs or structural needs or a similar reason to this one. The evidence available in this application especially the testimony of DW1 have proved that reasons for termination was the structural needs that led to the abolition of the employee 's position after restructuring of the organization. Therefore, this reason for retrenchment was valid and fair as it is among the valid reasons for termination according to the law."

Mr. Mbwambo contended that the records reveal that, the applicant does not dispute the reasons for retrenchment rather the terminal benefits, as stated by the applicant in the email dated 9th August,2021 (Exhibit M-11), in which the Applicant declined to sign the retrenchment agreement on the reason of compensation packages. That, he never disputed the reasons, rather the benefits which means that he is not disputing the reasons. That, even in this application the grounds for revision does not challenge the reasons for the said retrenchment.

The learned counsel contended further that even the contents of the testimony of DW1 on reasons for retrenchment were neither cross examined nor challenged by the applicant both before the consultation meetings as well as before the Commission. That, it is trite law that, every witness is entitled to credence and whoever questions the credibility of a witness must bring cogent reasons beyond mere allegations as stated in the case of **Mic Tanzania Limited Vs Imelda Gerald, Civil Appeal**

No.186/2019, at pages 13 last line and page 14, 1st paragraph of the judgment.

Mr. Mbwambo faulted the applicant's counsel for mentioning and relying on **exhibit BM-2** which was neither tendered nor admitted at the CMA. That, the CMA denied admission of the said document on legal point and the applicant never challenged such rejection to date; thus, he is estopped from relying on it. He referred the court to page 17 of the CMA proceedings and argued further that the record reveal that **exhibit M-2** was a renew (sic) contract and not letter or any communication as referred by the applicant *"Ofisi ya Rasilimali watu."*

The learned counsel opined that it is trite law that the revisionary powers of this court is limited to matters which transpired before the CMA. That, since the alleged document was not tendered and admitted at the CMA, it cannot be considered at this appeal stage. He cemented his argument with the case of **Leonard Dominic Rubuye t/a Rubuye Agrochemical Supplies vs Yara Tanzania Limited**, **Civil Appeal No. 219 of 2018,** CAT (unreported) at page 24, where it was held that:

> *"In saying so, we are alive to the settled law that documents not tendered and admitted in court as exhibits cannot be relied upon as evidence and cannot be the basis of the decision."*

Concluding the issue as to whether the employer had a valid reason for retrenchment of the applicant, Mr. Mbwambo was of the view that the same was proved by the respondent to the standard required by the law and it was not disputed by the applicant. That, whatever is stated to the contrary is an afterthought which is not binding under the law. He was of

the opinion that; the Arbitrator was correct to hold that there was a reason for retrenchment.

Responding to the issue of procedure, the respondent's counsel submitted that the same is not disputed and what is disputed is retrenchment packages. In support of that, he quoted page 6 of the applicant's submission in chief. Also, to cement that the procedures were complied with, Mr. Mbwambo referred to page 9-11 of the CMA Award where the Arbitrator elaborated how the procedures for retrenching the applicant were correctly followed by the respondent.

Responding to the allegation that **section 38(2) of the ELRA** was violated as the applicant was not given room for negotiation, it was stated that this is a new issue which was never discussed or pleaded before the CMA. He reiterated that at revisional stage the court is limited to matters which transpired at the CMA and no new issue should be admitted and considered on the reason that the procedure to introduce new issue on appeal has not been followed by the applicant.

Explaining the meaning of **section 38(2) of ELRA,** Mr. Mbwambo stated that by plain interpretation the section intended that the aggrieved person who was dissatisfied by the consultation meeting should refer the matter for mediation. He argued that in the case at hand, two consultation meetings were conducted and the applicant attended and they were accorded full opportunity to respond on the reasons for consultation, selection criteria and retrenchment packages. The meetings were held on July 16 and August 11, 2021, as per **exhibits M-12** and **M-13** and finally retrenchment notice was issued on August 18, 2021. According to Mr. Mbwambo, the interval proves that the Applicant had enough time to refer

the matter for mediation if he wished, but he did not. That, by his response in Exhibit M-16, the applicant had decided to file a complaint before the CMA rather than mediation proceedings as per cited provision of the law.

Commenting on the case cited by Applicant's advocate, Mr. Mbwambo was of the view that the same was totally distinguishable to our present case. That, in the case of **PAN AFRICA ENERGY** (supra) the last retrenchment meeting was conducted on 29th October, 2019 where parties did not agree with retrenchment package and on 30th October 2019 notice of retrenchment was issued. Thus, Hon. Maghimbi, J was of the view that the respondent was not afforded time to refer the matter for mediation. That, the circumstances are different in present case, as the applicant had ample time to refer the matter for mediation from 11th August,2021 when the last consultation meeting was conducted to 18th August,2021 when the retrenchment notice was issued.

It was emphasized that, the retrenchment procedure was correctly adhered to as stated in the case of **Samora Njau and 19 Others vs Sincro Sitewatch Limited, Revision No. 944 of 2018** (HC) (unreported) at page 11-12.

Mr. Mbwambo concluded that these revision proceedings have no merit and should be dismissed forthwith as the Arbitrator was correct to hold that the applicant's retrenchment was fairly done both procedurally and substantively.

In rejoinder, contesting the argument that the terminal benefit was paid even before the award; Mr. Kuboja submitted that the same was a new

fact which was not pleaded in the respondent's counter affidavit. He prayed the same to be disregarded.

On the issue of substantive aspect, Mr. Kuboja reiterated that the content of exhibit M-4 show that more people were going to be hired and not to lose their jobs hence it was retrenchment for structural needs. That, the said assertion was not disputed by the learned counsel for the respondent in his reply submission.

Responding to the point that the applicant was terminated for incapacity, he said the same was an afterthought and contradicts evidence presented before the CMA. Mr. Kuboja stated that **exhibit M-4** was evidence communicated by the respondent to the applicant and his peers that they would be expanding their sales footprint and found it necessary to increase the employees. That, the fact that the applicant was terminated for incapacity and not retrenched for structural needs is cemented by the mere fact that the learned counsel for the respondent at paragraph 3 page 2 of his reply submission reiterated more than once that the applicant lacked technical competence.

It was stressed that termination of employment based on operational requirement is a premature termination of contract of employment which is neither caused by breach, disciplinary misconduct of the employee, incapacity or any other reason as we have mentioned above but for operational adjustments of the business of the employer.

Responding to the issue that the applicant is not challenging the reasons for termination, Mr. Kuboja said that they are challenging evidence because exhibit M-4 contradicts the meaning of termination for operational requirement and exhibit M-8 is evidence that the applicant's employment

contract was terminated for want of technical competence. He reiterated that the Arbitrator relied on contradictory evidence.

Regarding the allegation that the applicant is not disputing the procedure rather retrenchment benefits, Mr. Kuboja explained that the learned counsel misconceived the statement. That, they acknowledged that most of the procedures for termination for operational requirement were followed and not all the procedures. He said, there is a variance between the word 'most' and 'all'. He stressed that they are not disputing the retirement packages but the procedure that was followed following the parties' disagreement on the retirement packages.

Concerning the argument that the applicant raised new fact, Mr. Kuboja stated that this is in fact a procedural issue. That, the same proves the 3rd ground of this application that the Hon. Arbitrator erred in law and in fact in deciding that the respondent had followed all required procedures for retrenchment.

He insisted that referral to mediation after no agreement is reached between the parties is an important stage in the retrenchment process and failure by the respondent to take such step and proceed with terminating the applicant meant that retrenchment procedures were not followed as rightly pointed out in the case of **Panafrican Energy Ltd** (supra).

Countering the contention that as per **section 38(2) of ELRA** the aggrieved person who was dissatisfied by the consultation meeting was to refer the matter for mediation, Mr. Kuboja was of the view that either party may refer the matter to mediation after failure to agree during consultation stage. That, it is supported by the contents of CMA F.1 under

the Employment and Labour Relations (General) Regulations 2017.

Disputing the assertion that the applicant was given ample time to refer the matter to mediation before he received notice of termination, Mr. Kuboja said that **the Employment and Labour Relations Act** is silent as to time limitation to refer a matter to mediation. He referred to **CMA F.1** which prescribes time limitation of 30 days for termination disputes and 60 days for other disputes. He argued that, failure to agree to terms during the consultation stage does not constitute termination. He was of the opinion that this matter falls under all other disputes, thus the time limit is 60 days. He stated that the applicant was retrenched within 4 days, excluding excluded days and 6 days including excluded days. That, the same was before the expiry of the time limitation to refer the dispute to mediation.

In the upshot, Mr. Kuboja stated that the respondent's decision to proceed with retrenchment without agreement of the parties was contrary to **section 38 (2) of the Employment and Labour Relations Act.** That, the respondent's conduct in the matter shows that they had made their decision and there was no room for negotiation.

It was reiterated that the respondent failed to adduce any evidence to prove that the parties approached the decision to retrench in the form of a joint problem-solving exercise and reach to an agreement on, among others, the reasons for the intended retrenchment contrary to **Rule 23(4) of the Code of Good Practice**. The learned counsel also reiterated what he submitted in chief in respect of consultation meeting.

From submissions of both parties, affidavit in support of the application, counter affidavit and evidence on CMA record, I am of considered view that issues for determinations are:

1. *Whether the procedures for retrenchment were adhered to*
2. *To what reliefs are the parties entitled?*

Before scrutinizing the above issues, from the parties' submissions I have noted that they are also disputing the reasons for termination. However, I refrain from discussing the reasons for termination on the fact that; first, the issue was not tabled before the CMA for determination; second, from **CMA F1** the applicant's claim was terminal benefits after termination of employment. As rightly submitted by the learned counsel for the respondent, during trial the same was not raised and the applicant did not cross examine on such issue. Thus, this court abstain from discussing the issue of reasons for termination.

Reverting to the first issue as to ***Whether the procedures for retrenchment were adhered to***; **Section 37 (2)(c) of ELRA** provides that:

> *(2) A termination of employment by an employer is unfair if the employer fails to prove:*
>
> *(c)That the employment was terminated in accordance with a "fair procedure"*

The available evidence in this case, reveals that the applicant was terminated for operational requirements which is covered under **Section 38 (1) (a) (b) (c) (i)- (v) of ELRA** which provides that:

38 (1) In any termination for operational retrenchment (requirements) the employer shall comply with the following principles, that is to say he shall-

(a) give notice of any intention to retrench as soon as it is contemplated

(b) disclose all relevant information on the intended retrenchment for the purpose of proper consultation

(c) Consult prior to retrenchment or redundancies on

(ı) The reasons for the intended retrenchment

(ii) Any measures to avoid or minimise the intended retrenchment

(iii) The method of selection of employees to be retrenched

(iv) The timing of the retrenchment and

(v) Severance pays in respect of retrenchments

While discussing this issue the Arbitrator referred to section **38 of the ELRA** and evaluated the evidence of the applicant and the respondent and came up with conclusion that:

"Mlalamikaji alıjulishwa sababu ya kupunguzwa na kuelezwa namna ambavyo mlalamikiwa alijaribu kunusuru nafasi yake kwa kumuita kwenye usahili ili kuona kama alikuwa na vigezo vya kutosha kwenye nafasi mpya aliyoomba lakini ilishindikana.

Vikao vya majadiliano vilifanyika na mlalamikaji alikiri kuhudhuria..."

At page 11 last paragraph the Hon. Arbitrator concluded that:

"kwa kuzingatia kuwa mlalamikiwa alijaribu kumpa nafasi ya ajira mlalamikaji katika muundo mpya, alifanya majadiliano naye kumueleza na kusikiliza hoja zake juu ya upunguzwaji kazi pamoja na stahiki zake, Tume imeona mlalamikiwa alifuata utaratibu wa haki kabla ya kumuachisha kazi mlalamikaji."

Mr. Kuboja submitted for the applicant that, most of the procedures were followed. He stated that the parties did not agree with retrenchment packages. That, despite such disagreement the applicant proceeded to terminate the applicant. On the other hand, the respondent's counsel Mr. Mbwambo submitted that Mr. Kuboja conceded that most of the procedures were followed. He added that two consultation meetings were conducted that is on 16th July and 11th August 2021 and finally the retrenchment was done on 18/08/2021. He opined that, there was ample time to refer the matter to mediation.

From the above findings of the Arbitrator, I support the findings that the procedures were followed as stipulated under section **Section 38 (1) (a) (b) (c) (i) –(v) of ELRA.** Apart from that, the applicant had acknowledged that most of the procedures were followed. From the available evidence, I find that all relevant information on the intended retrenchment was communicated to the applicant. As shown in exhibit M-13 and M-14 the consultation meeting was conducted. Also, the applicant was informed to attend the interview for a new post after restructuring

the system and the same was done though unsuccessfully which suggests that the respondent took measures to avoid or minimise the intended retrenchment. All those communicative procedures indicate that the procedures were fairly conducted before issuing retrenchment notice. I am persuaded by the decision of this court in the case of **Resolution Insurance Ltd vs Emmanuel Shio & Others (Labour Revision 642 of 2019) [2020] TZHCLD 38,** at page 12 where it was held that:

> *"Notice should not be taken as an independent procedure from procedures stipulated above, all procedures have to be adhered communicatively. I am of the view that type of business and the circumstances that led to the retrenchment are the determination factors of how urgency the process of termination has to be undertaken"*

The cited case above, cited page 339 of the book titled; "**Employment Law Guide for Employers"** by George Ogembo, 2018 which states:

> *"In determining the legality of a redundancy,* ***the court examines the bona fide and integrity of the entire process****. Even if it is a fair reason, the dismissal can still turn out to be unfair if the employer fails to act reasonably and follow the steps required to effect fair redundancy"*
> [emphasis added]

In the instant matter, I am of considered opinion that the process of retrenchment was done in good faith and integrity. I thus find no reason for faulting the findings of the CMA in respect of the procedures taken by the respondent to retrench the applicant.

Lastly, is the issue of reliefs which was the main concern of the applicant as seen in CMA F.1 where he stated that:

"NILIPWE HAKI ZANGU PAMOJA NA FIDIA ZA MISHAHARA 16 KWA KUVUNJA MKATABA WANGU."

In respect of this issue, the CMA at page 13 having found that the contract of the applicant was terminated fairly, it ordered the respondent to pay repatriation costs to Dar es Salaam, one month salary in lieu of notice, leave and gratuity which make a total of Tshs. 8,181,702.59. From the Arbitrator's observation in respect of the reliefs granted to the applicant, I find no reason of finding otherwise.

In the circumstances, I hesitate to fault the arbitrator's findings and award. Thus, the present application has no merit. The arbitrator's award is hereby upheld and the application is dismissed accordingly. No order as to costs.

It is so ordered.

Dated and delivered at Moshi this 31st day of May, 2023.

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MOSHI DISTRICT REGISTRY

X

S. H. SIMFUKWE
JUDGE
Signed by: S. H. SIMFUKWE

31/05/2023