IN THE HIGH COURT OF TANZANIA

(SONGEA DISTRICT REGISTRY)

AT SONGEA

LABOUR REVISION NO. 5 OF 2022

(Originated from Labour Case No. CMA/RUV/SON/36/2022/ARB/14, Commission for Mediation and Arbitration for Songea)

WILGIS JOSEPH NDITI ..... APPLICANT

VERSUS

RUVUMA COAL LIMITED ..... RESPONDENT

JUDGEMENT

26/05/2023 & 15/06/2023

E.B. LUVANDA, J.

The Applicant, Wilgis Joseph Nditi filed this application for revision against the award of the Commission for Mediation and Arbitration (CMA) in Labour Case No. CMA/RUV/SON/36/2022/ARB/14 dated 26th October, 2022 in favour of the Respondent herein.

The genesis of the matter leading to the present application is as follows: the Applicant was employed by the Respondent under a contractual basis for a fixed employment of a year as an excavator operator. Started with a monthly salary of TZs 880,000/= which escalated to TZs 974,815/= by way of increment. His employment was terminated on 27th May, 2022. The Applicant unsuccessfully challenged

unfair termination including his claim to be paid seven (7) months' salary for breach of contract. CMA ruled that the Applicant did not deserve to be paid his claim of seven months' salary a tune of TZs 6, 823,705/= as he failed to prove his claim. Hence this application.

By consent of the parties this matter was argued by way of written submissions. In the Applicants affidavit in support of the chamber summons in particular at paragraph 3 grounded that; One, whether the Arbitrator was correct to uphold that there was no proof of either fraudulent or undue influence in breach of the parties contract; Two, whether the Applicant is entitled for the payment of seven months' salary for the breach of contract of employment.

The Applicant submitted that there was no proof to support a defence by the Respondent who alleged that the Applicant had initiated a motion for termination on the grounds of family problems. He submitted that on the contrary the wording of exhibit P1 reveal the motion was initiated by the Respondent out of fraud, with trick, undue influence, arguing that the Applicant signed without consent and knowledge. He submitted that exhibit D2 was not signed on each page, citing **Yara Tanzania Limited v. Catherine Assenga**, Revision No. 88 of 2020 HC Labour Division at Dar es Salaam to support his argument.

In reply, the Respondent submitted that there is no any legal requirement for mutual separation to be signed by a witness, cited **Majaliwa Athumani Mbembezi v. Yapi Merkezi Insaat Senayi A. S.**, Revision No. 539 of 2020 HC Labour Division, Dar es Salaam. He distinguished **Yara Tanzania** (*supra*), arguing that there is no requirement in law for mutual separation agreement to be signed in all pages or by all parties. In **Yara Tanzania** (*supra*) he submitted that did not indicate parties to the agreement due to copy and paste.

He submitted that the Applicant while under oath confirmed that he is literate, was of sound mind and of competent age. He submitted that the Applicant read the contents of exhibit D1 on 26/5/2022, meaning he was aware of a discussion for termination of employment when he appeared on 27/5/2022 for executing exhibit D2. He submitted that the Applicant did not complain or challenge the alleged act of trick, fraud, coercion, undue influence to the mining manager, immediately after receiving exhibit D2. He submitted that the Applicant waited until he received money, spent them and rushed to CMA after exhausting all money. He cited the case of **Precision Air Tanzania Limited v. Gloria Thomson Mwamnyange**, Revision No. 292 of 2017. He

submitted that the Applicant while under oath he conceded that he was not forced when signing exhibit D1 and D2.

He submitted that since the termination of employment contract of the Applicant was done through mutual separation agreement, he is not entitled to be paid the remained seven months alleged for breach of his contract. He cited rule 3(2)(a) and (4)(1) of the Employment and Labour Relations (Code of Good Practice) Rules, G. N. 42 of 2007.

Having gone through the record and exhibits tendered before the CMA, there is no dispute that the Applicant was an employee of the Respondent under contractual agreement for a year (exhibit P1), then his contract of employment was terminated on 27th May, 2022 as per mutual separation agreement (exhibit D2). It is also un disputed fact that the Applicant was paid all the agreed terminal benefit a tune of TZs 1,392,593/= as per terminal benefits invoice (exhibit D4) and awarded certificate of service (exhibit D2).

As for the issue of fraudulent or undue influence to terminate the Applicant contract of employment, the Applicant did not explain as to how the Respondent did what he claimed was done. He told this court that DW1 gave him a document to sign and he complied willingly no any use of force nor false promise mentioned by the Applicant to be used,

see page 18 last sentence and page 23 of CMA typed proceedings where he retracted his statement that the Respondent forced him to sign. The Applicant is literate and of sound mind as he claimed at pages 20 and 21 of the typed proceedings of the CMA yet he claimed to have signed a document without reading it.

Moreso, at the same date the Applicant discovered that his contract of employment was terminated unfairly but he did not refer the same to his manager who allowed him to continue with work. In labour matters when the burden to proof if the termination was fair lies to the employer as per section 37(2)(a) of the Employment and Labour Relation Act [Cap 366 Revised Edition 2019]. It is evident from the record the employer (DW1) tendered exhibits D1 and D2 to proof that the Applicant employment was terminated fairly based on mutual separation agreement which was initiated by the Applicant himself. The fact which was conceded by the Applicant at page 18,19 and 21 of the typed proceedings of CMA in which he agreed to have willingly signed the mutual separation agreement. It is a cardinal law that, people are bound with their contract, this court cherish mutual agreements by the parties, unless there are good reasons on the face of records which undoubtedly necessitate the court to interfere, this was the position in the case of

Symbion Power LLC V. Salem Construction Limited, Misc. Commercial Cause No. 128 of 2015, High Court of Tanzania (Commercial Division) at Dar es Salaam (unreported). From the record the Applicant did not adduce any plausible explanation warranting this court to rule otherwise.

In a bid to vindicate the alleged trick, fraud, undue influence alleged imparted by the Respondent to force the Applicant to sign minutes (exhibit D1) and voluntary agreement for mutual termination (exhibit D2), on examination in chief, PW1 pleaded force, on cross examination and re-examination changed a story, that he believed he was signing documentation for hearing. Indeed the two documents were not executed simultaneously, exhibit D1 was signed on 26/6 (sic, 5)/2022, resolved on mutual separation or termination. DW1 explained to have read it after exiting the office of human resource. Exhibit D2 was executed the following day on 27/5/2022. Therefore, the issue of involuntariness, coercion or fraud or foul, is an afterthought, and cannot be entertained, because the Applicant was a free agent.

In this respect, the mutual separation agreement was entered freely by the parties and for that reason the Applicant is *estopped* from denying his own deeds. In the case of **Francis Kidanga v. Kilimanjaro Fast**

Ferries Ltd, Revision No. 668 of 2019, High Court of Tanzania (Labour Division) at Dar es Salaam at page 5. The court held that:

> *'...the Applicant having signed exhibit D7* ***(mutual agreement to terminate the Applicant employment)*** *he is bound by principle of estoppel that stops one from denying his own previous deed done by his own consent'* [emphasis added]

In the case at hand the Applicant conceded to have signed the mutual separation agreement but he claimed that the Respondent used undue influence to make him signed the agreement, but no any tangible reason was forthcoming to proof the same. The laws allows the parties to a contract to terminate their contract if both parties agreed to it, as provided under the provision of rules 3(2)(a) and 4(1) of the Employment and Labour Relations (Code of Good Practice) GN No. 42 of 2007, also the case **Francis Kidanga** (*supra*). At item 13 (a) of exhibit P1 allows parties to the contract to terminate their contract mutually. For those reasons, it is the finding of this court that the Applicant signed the mutual separation agreement willingly, his claim that the Respondent used fraudulent or undue influence to terminate his contract is a concoct and unfounded.

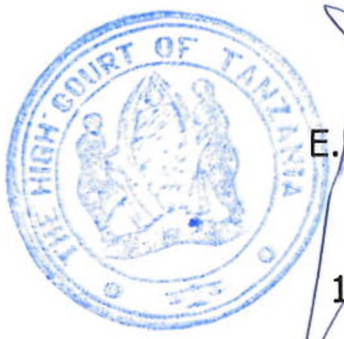
Concerning the payment of seven months' salary for breach of contract. The law under the provision of section 40(1) of the Employment and Labour Relation Act (supra) allows a party whose employment was unfairly terminated to be paid a compensation or reinstated to his employment depending on the nature of the contract entered. But, the Applicant agreed to have signed the mutual separation agreement willingly that bind him and whichever agreed therein including the terminal benefit he pocketed. Therefore, the above mentioned provision cannot be invoked in his favour in the circumstances which suggested he was not unfairly terminated. In the case of **Philipo Joseph Lukonde v. Faraji Ally Said,** Civil Appeal No. 74 of 2019, Court of Appeal at page 17; had this to say:

> *'Where parties have freely entered into binding agreements, neither court nor parties to the agreement should not interpolate anything or interfere with the terms and conditions therein, even where binding agreement were made by lay people'*

Being guided by the precedent quoted above, this court cannot interfere with what the Applicant and the Respondent mutually agreed. Thus the Applicant is bound by the mutual separation agreement he entered on 27th May, 2022 (exhibit D2) and for that reasons this court has no

reasons whatsoever to fault the decision entered by the Arbitrator. The CMA decision is hereby upheld.

The application for revision is dismissed for want of merit.



E.B. LUVANDA

JUDGE

15/06/2023