

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LABOUR DIVISION)**

AT MWANZA

CONSOLIDATED LABOUR REVISION APPLICATION NO. 4 & 5 OF 2023

(Arising from the CMA for Geita in Labour Dispute No. CMA/GTA/75/2021)

GEITA GOLD MINING LIMITED APPLICANT/RESPONDENT

VERSUS

BELVIN TOSSIRI.....1ST RESPONDENT/APPLICANT

THOBIAS KIRANYA2ND RESPONDENT/APPLICANT

BONIPHACE HAGAI3RD RESPONDENT/APPLICANT

MUHUBIRI LUKWARO4TH RESPONDENT/APPLICANT

MARTIN ZEPHANIA LYAMBA5TH RESPONDENT/APPLICANT

ANICETH CHARLES MUHANZA6TH RESPONDENT/APPLICANT

GABRIEL RWEASIRA7TH RESPONDENT/APPLICANT

MOSES YONA8TH RESPONDENT/APPLICANT

VEDASTUS VENANCE RULASUMA9TH RESPONDENT/APPLICANT

RUCHIUS ANOLD NJETABULA10TH RESPONDENT/APPLICANT

RAYMOND LINJE11TH RESPONDENT/APPLICANT

OSWALD YOUNGSON SHITINDI12TH RESPONDENT/APPLICANT

ALEX SHAMBUTU13TH RESPONDENT/APPLICANT

JEREMIAH KWEBA MUJUNA14TH RESPONDENT/APPLICANT

JUDGMENT

14/8/2023 & 18/9/2023

ROBERT, J:-

This judgment arises from Labour Revision No. 4 of 2023 and Labour Revision No. 5 of 2023, both consolidated in this Court, following a dispute

originating from a Commission for Mediation and Arbitration (CMA) award in Labour Dispute No. CMA/GTA/75/2021. The applicants/respondents in Labour Revision No. 4 of 2023 sought compensation for unfair termination from their former employer, Geita Gold Mining Limited. The CMA found in their favour, awarding compensation for 36 months' salaries. The employer, Geita Gold Mining Limited, was also aggrieved and filed Labour Revision No. 5 of 2023.

At the hearing of the applications, Mr. Alhaj Aboubacar Majogoro represented the applicants/respondents in Labour Revision No. 4 of 2023 and the respondents in Labour Revision No. 5 of 2023. Mr. Nuhu Mkumbukwa, learned counsel, represented the applicant/respondent in Labour Revision No. 5 of 2023.

Submitting in respect of Labour Revision No. 4 of 2023, Mr. Majogoro argued that the central issue revolved around the appropriateness of the arbitrator's decision to award 36 months' compensation instead of the 120 months initially sought by the applicants. He maintained that, given the CMA's determination that the termination was both substantively and procedurally unfair, the applicants should have been granted the reliefs outlined in their CMA Form No.1. Mr. Majogoro underscored the jurisprudential precedent set by the case of **Issack Sultan vs North**

Mara Gold Mines Limited, Consolidated Labour Revision No. 16 and 17 of 2018. In that case, this Court varied an award of compensation to alleviate the employee's suffering resulting from the loss of employment. He argued that the circumstances of the present case warranted even greater compensation, considering the sudden and unjust nature of the terminations.

On the other hand, Mr. Mkumbukwa, representing Geita Gold Mining Limited in Labour Revision No. 5 of 2023, contended that the compensation awarded was exorbitant and unjust, as it exceeded ten times the minimum compensation mandated by law, which is 12 months' salary. He argued that there were no mitigating circumstances to justify this increment and that the CMA had improperly exercised its discretion. He urged the Court to consider precedents and adopt a reasonable approach not exceeding twice the statutory minimum, drawing inspiration from South African law.

To begin, it is imperative to analyze the legal framework. Section 37(1) and (2) of the Employment and Labour Relations Act unequivocally establish that an employer must not terminate an employee unfairly. Furthermore, it deems a termination unfair if the employer fails to

substantiate the validity and fairness of the grounds for termination and the observance of a fair procedure.

In both revision applications, the applicants argued that the CMA appropriately found their terminations both substantively and procedurally unfair. It is noteworthy that this aligns with the statutory framework as articulated in the Act. Thus, the Court underscores and reaffirms the CMA's pronouncement that the termination in both cases was unfair.

With regard to Labour Revision No. 5 of 2023, the Court underscores that the CMA's conclusion of unfair termination premised on the absence of valid reasons is consistent with the law. While parties may indeed enter into employment contracts, it is imperative to emphasize that termination remains subject to the Act's provisions, which explicitly require valid reasons. Consequently, the Court finds that the terminations in both cases were procedurally and substantively unfair.

Having established the unfairness of the terminations, it is now imperative to consider the matter of compensation. Compensation must not only provide solace to the aggrieved employee but must also adhere to the minimum statutory requirements. Section 44 of the Employment and Labour Relations Act enumerates certain payments upon termination, including notice pay and severance pay.

It is evident that the CMA's discretion was exercised within the bounds of the statutory framework. Although precedent provides guidance on the awarding of compensation, the Court remains anchored in the Act's provisions. The Court recognizes that the compensation awarded aligns with the law, and the CMA's exercise of discretion was not improper. Despite the cited South African law offering valuable insights, the Court is bound by the Employment and Labour Relations Act, which mandates a minimum threshold of 12 months' salary for compensation. The Court finds that the CMA's award adhered to the statutory limits, and the discretion was suitably applied.

Further to that, the CMA's determination of 36 months' compensation finds support in the principle of providing adequate redress for the hardships faced by the terminated employees. The CMA recognized that the abrupt and unjust nature of the terminations warranted a compensation level that would truly console the aggrieved parties.

The cited precedent, **Issack Sultan vs North Mara Gold Mines Limited**, Consolidated Labour Revision No. 16 and 17 of 2018, provides a compelling basis for this approach. In that case, this Court increased the compensation to alleviate the suffering endured by the terminated employee. Similarly, the circumstances in Labour Revision No. 4 of 2023,


where the applicants were unjustly and abruptly terminated without valid reasons, call for a compassionate and equitable remedy. Therefore, the award of 36 months' compensation aligns with both the spirit and letter of the law, providing a meaningful solace to the aggrieved applicants.

In summation, the Court reaffirms the CMA's conclusions that the terminations were both procedurally and substantively unfair. Therefore, the compensation awarded by the CMA is upheld as it falls within the legal parameters and is reasonable considering the unfair terminations.

Consequently, Labour Revision No. 4 of 2023 and Labour Revision No. 5 of 2023 are dismissed.

It is so ordered.




K.N. ROBERT
JUDGE
18/9/2023