IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LABOUR DIVISION

AT ARUSHA

LABOUR REVISION NO. 48 OF 2022

(Originating from the Commission for mediation and Arbitration at Arusha in Dispute No CMA/ARS/KRT/35/78/19)

FLORA W. KYARA.....1ST APPLICANT

CHRISTINA N. BASSO ..... 2ND APPLICANT

ADELINA H. SHAURI ..... 3RD APPLICANT

SARAH E. MALLYA ..... 4TH APPLICANT

REHEMA J. YUDA ..... 5TH APPLICANT

VERSUS

HIS HEALING HANDS AFRICA ..... RESPONDENT

JUDGMENT

21st September & 19th December, 2023

KAMUZORA, J.

The Applicants instituted labour dispute before the Commission for Mediation and Arbitration (CMA), Dispute No. CMA/ARS/KRT/35/78/19 challenging their termination. According to the complaint form filed before the CMA, the Applicant pleaded unfair termination of their employment. The Applicant's opening statement and evidence reveals that they were forceful made to sign agreement paper to terminate their employment contract. The Respondent on the other hand alleged that

the Applicant agreed to terminate their employment contract mutually and they received all their entitlements. Among the issue before the CMA was whether there was mutual agreement between parties to terminate employment contract. Upon assessing evidence in record, the Hon. Arbitrator was satisfied that there was valid agreement between parties to terminate employment contract mutually hence, dismissed the dispute for want of merit.

Aggrieved, the Applicants brought this application under the following provisions; section 91(1), (a) and (b),91(2)(b) and section 94(1) (b) (i) of the Employment and Labour Relations Act No. 6/2004, Rule 24(1) 24(2) (a) (b) (c) (d) (e) (f) and 24(3) (a) (b) (c)(d) and Rule 28(1) (a) (b) (c) (d) & (e) of the Labour Court Rules G.N No. 106/2007. The Applicant prays for this Court to be pleased to call for the CMA records and revise the decision in Dispute No. CMA/ARS/KRT/35/78/19. The Applicants is thinks that there is material irregularity to the merit of the subject matter as the arbitrator exercised jurisdiction with material irregularity thus, calls for the intervention of this court to find that: -

1) *The findings and order of the CMA dismissing the dispute was based on the ground of unfair termination instead of basing on ground of operational requirement for the reason of economic needs.*

2) *The Commission did not consider that the procedures for fair retrenchment were not complied as required under the Employment and Labour relations Act 6/2004.*
3) *The the complainants were members of CHODAWU as labour union but the union was not involved as bargaining agent to its members during negotiation meaning that the retrenchment process did not involve the registered trade union at workplace for the consultation meeting and preparing the agreement.*
4) *The commission unreasonably refused to accept the documents tendered by the Applicant as the evidence.*

The Respondent opposed the application by filing counter affidavit sworn by Mr. Emmanuel Shio, the Respondent's advocate. On the hearing date, Mr Mathayo Lawrence appeared as personal representative for the Applicants while Mr. Shio, learned counsel appeared for the Respondent.

Arguing in support of the application, Mr. Lawrence adopted the affidavit in support of application and submitted that, on 31/07/2018 the Applicants were terminated under retrenchment process but they were not given time to read the retrenchment letters as they were asked to sign immediately. That, the Applicants being members of trade union, CHODAWU was supposed to be involved in the retrenchment process. That, their non-involvement was contrary to section 23(6)(a)(b) (8)(9) of GN No 42 of 2007. He was of the view that, since the procedure for retrenchment was not followed, the Applicants be reinstated and paid

their salaries from the date of termination to the date of the decision of this court.

In reply, Mr, Shio submitted that there is no any affidavit filed by the representative which he seeks to adopt. That, the Applicants' representative did not state if the CMA award is contrary to the law. He explained that, before the CMA the Applicants pleaded termination of their employment contract and nothing shows that they raised a claim for retrenchment, thus the retrenchment claim is contrary to parties pleadings. Mr. Shio insisted that parties are bound by their pleadings and referred this court to the case of **Yara Tanzania Ltd Vs. Ikuo General Enterprises Limited,** Civil Appeal No 309 of 2019 (unreported).

Referring exhibit D1 before the CMA, Mr. Shio submitted that parties agreed to terminate their employment contract hence, there was termination by agreement as per the ELRA and GN No. 42 of 2007 Rule 4. He added that the exhibit was not objected at CMA thus, prays for the application to be dismissed.

I have gone through the CMA record, affidavit for and against the application and the submissions by the parties. The main issue for consideration is whether the matter before the CMA was unfair termination or unfair retrenchment.

Reading through the pleadings there is confusion on what exactly the Applicants were challenging. While their complaint form shows that their claim was based on unfair termination, their opening statement reveal that they were forced to sign an agreement to terminate employment. The response by the Respondent herein before the CMA also reveal that the termination of the Applicants was by agreement but the argument by the Applicants' representative shows that the Applicants were terminated on operational requirement (retrenchment).

I agree with the submission by the counsel for the Respondent and the cited authority on **Yara Tanzania Limited Vs. Ikuwo General Enterprises Limited (Supra)** that parties are bound by their pleadings. In this case, there was departure from the complaint form as observed above. However, irrespective of their error in filling the complaint form indicating unfair termination, the subsequent documents and evidence reveal that the issue was whether there was agreement between parties to terminate the employment contract. Thus, the termination challenged was termination by mutual agreement governed by Rule 4 of the Employment and Labour Relations (Code of Good Practice) Rules, GN No. 42 of 2007 and not by operational requirement governed by Rule 23 of the same GN. In the matter at hand, the document which was signed by the Applicants reveal that their

termination was under Rule 4 meaning by agreement. They however challenged the same on account that they never consented to the termination.

The Applicants herein do not deny signing agreement to terminate the contract but they claim that it was not out of their free will as they were forced to sign the said agreement. The CMA assessed such allegation and was satisfied that the applicants' claim that the they were forced to sign was unsubstantiated. The CMA reasoned that if forced to sign, the Applicants would not have agreed to receive the benefits paid after signing the agreement. To him, the Applicant knew and agreed to the terms of the agreement and that is why they received payment associated to their agreement. I equally agree with the CMA reasoning that being forced to sign must be associated to subsequent conducts showing that the Applicants resisted the decision made. Much as they received payment without hesitation, it suggests that the Applicants consented to the terms set in the agreement they signed thus, what binds them are terms of the agreement they signed.

Exhibit D1 shows that the Applicant agreed to terminate their employment by mutual agreement. The terms of the agreement were clear on the effective entitlements of the Applicants upon signing the agreement were listed in the agreement. Thus, the argument by the

Applicants' representative that the termination was by operational requirement and procedures under Rule 23 and 24 were not adhered to, is unfounded. As well pointed above, the termination was by mutual agreement and not under operational requirement and nowhere indicated in the said agreement it is shown that the termination was because of operational requirement as so alleged by the Applicant's representative. In that regard, the procedures for termination under operational requirement (retrenchment) are not applicable in the circumstance of this case.

On the argument that the CMA refused document from the Applicant, this court perused the CMA record and discovered that the Applicants intended to tender letters showing that they were terminated by Falcon which is an instituted run by the Respondent. It is clear from the CMA decision that the documents which the Applicants alleged as termination letters were well discussed and the reason for not admitting the same is well clear. Being an employee of the Respondent as per their employment contracts, the Applicants tried to tender letters indicating that they were terminated by Falcon who was never their employer. Thus, even if issued with termination letter, Falcon was not mandated to terminate them as it was never their employment authority hence,

termination letters coming from Falcon could not have any legal effect. I therefore find this ground meritless.

In concluding, I find that the CMA did not dismiss the dispute based on the ground of unfair termination as so alleged by the Applicants" representative. The same was dismissed on ground that the parties entered into mutual agreement to terminate the contract. Thus, the suggestion by the Applicants' representative that the CMA ought to consider procedures under retrenchment cannot stand as nothing indicate that the Applicants were terminated for economic reasons to suggest termination under operational requirement.

In the upshot and considering the above discussion, I do not see any reason to interfere with the CMA award. This application is therefore devoid of merit and is hereby dismissed with no order for costs considering the nature of dispute being labour dispute.

DATED at **ARUSHA** this 19th day of December, 2023

D.C. KAMUZORA

JUDGE