IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DODOMA DISTRICT REGISTRY)

AT DODOMA

LABOUR REVISION NO. 19 OF 2022

(Originating from Labour Dispute No. CMA/DOM/45/2022/14/2022)

NYAMANDA UKWAJU.....APPLICANT

VERSUS

YAPI MERKEZI INSAAT VE SANAYI ANONIM SIRKET.....RESPONDENT

JUDGMENT

Date of last order: 28/8/2023
Date of judgment: 4/12/2023

KHALFAN, J.

The above-named applicant was aggrieved with award of the Commission for Mediation and Arbitration for Dodoma (hereinafter referred to as the CMA) in labour dispute No. CMA/DOM/45/2022/14/2022, hence he has preferred the instant application by way of chamber summons and the same is being supported by an affidavit affirmed by the applicant himself.

A brief background giving rise to the complaint before the CMA is as follows: the applicant and the respondent had employment relationship in which the former was employed as a civil engineer in the project of

construction of Morogoro-Makutupora Standard Gauge Railway (SGR) effectively from 22/9/2021. Having worked for about six months, the applicant's employment was terminated by the respondent for the reason of downturn of project.

The applicant was aggrieved with such retrenchment maintaining that he was not given prior notice and also the reasons for the retrenchment were not stated.

The applicant further claimed that he was not paid as stipulated under the retrenchment letter which included the payment of the salary for the days he worked up to and including 31/3/2022, leave earned but not taken, one month salary in lieu of the notice, seven days salary allowance to seek for new job, repatriation costs and clean certificate of service.

Basing on the above complaints, the applicant instituted labour dispute before the CMA. After hearing the parties, the CMA dismissed the applicant's complaint. It observed that the respondent complied with the procedure of termination of the applicant's employment.

Aggrieved, the applicant preferred the instant application. The issues for determination as raised by the applicant are as follows:

1. *Whether the honourable arbitrator erred in law and fact by holding that the respondent lawfully retrenched the applicant.*
2. *Whether the honourable arbitrator erred in law and fact by refusing to grant allowance acknowledged by the respondent in the retrenchment letter.*
3. *Whether the honourable Arbitrator erred in law and fact by failure to determine that the applicant is the lawful employee of the respondent and he is entitled to be paid allowances and other remunerations.*

By parties' consensus, the application was disposed of by way of written submissions. The applicant appeared in person while the respondent was represented by Ms. Sekunda Lyimo, learned advocate.

In his submission in support of the application, the applicant argued that the provisions of section 38 of the Employment and Labour Relations Act [CAP 366 R.E 2019], (hereinafter referred to as the Act) read together with rule 23 of the Employment and Labour Relations (Code of Good Practice) GN No. 42 of 2007 (hereinafter referred to as the rules), provide for the procedures which must be complied with in retrenchment process.

The applicant faulted the CMA in its decision that it was not mandatory for the respondent to comply with the procedures stipulated under section

38 of the Act. The applicant argued that he was not issued with the notice of the retrenchment. He referred to the testimony of DW1 that she was given documents namely, exhibit D3 and D4 relating to the commencement of the retrenchment exercise and she placed them at the camp. The applicant argued that such modality could not convey information to him.

To buttress his argument, the applicant referred to the decision of this court in the case of **Mustafa M. Mrope & another v. Ultimate Security (T) Ltd** Revision Application No. 875 of 2019 (unreported) in which it was observed that:

> *"The law does not provide the manner in which the notice shall be issued therefore, it will depend on the circumstance. However, placing an announcement on a wall and distributing a memo to employees, in this court's opinion, is not satisfactory mean as it does not create a room for feedback to the employer. It is not easy for the employer to be sure that the information has reached every intended employee. Notice for retrenchment is an important information, the respondent would have taken better ways to communicate the same."*

The applicant therefore argued that there was no evidence to establish that the notice of retrenchment was served to him.

Equally, the applicant contended that there were no consultations carried out hence he was condemned unheard. He argued further that he never authorised DW2 to represent him in consultations on behalf of the employees.

He further argued that he had permanent contract, therefore, he faulted the learned arbitrator in holding that the applicant had fixed term contract. He therefore prayed the court to revise the award by the CMA.

In reply, Ms. Lyimo contended that the applicant was served with the notice of retrenchment. She submitted that there was evidence of DW1 which was to the effect that the notice of retrenchment was issued to all employees and it was fixed on the notice boards, cafeteria and at the main entrances.

She contended that the notice required all the employees to appoint representatives. She argued that after the consultation, all the employees signed retrenchment agreement to the effect that the project was coming to an end.

On further submission, the learned advocate maintained that TAMICO was the only trade union at the working place hence in terms of section 67(1) of the Act, it was recognised as the bargaining agent, hence there was

no need to consult every individual employee. To buttress her arguments, she referred to the case of **Mechanized Cargo System (T) limited v. Mohamed Mkumba**, Labour Revision No. 118/2021 (unreported).

She submitted that since the applicant signed the retrenchment agreement, he was barred from filing any case challenging the fairness of the retrenchment both substantively and procedurally as provided for in terms of section 38(2) of the Act and rule 23(8) of the rules. Therefore, failure to refer the matter before the CMA before signing of the retrenchment agreement, makes his complaint an afterthought.

As to the second issue in which the applicant faulted the CMA for not granting the allowances shown on the retrenchment letter, the learned advocate for the respondent pointed out that as per exhibit D7 which is the salary slip, the actual amount payable to the applicant is shown. She argued that during cross examination, the applicant admitted that the said amount was deposited in his bank account. She thus argued that, the learned arbitrator was right to reject the applicant's claims.

The learned advocate for the respondent maintained that the applicant had specific contract as stipulated under exhibit D6 which ended in February

2022. She argued that the specific contract is stipulated under section 14(1)(c) of the Act.

She averred that the specific contract came to an end upon completion of the project. To buttress her arguments, she referred the decision of this court in the case of **Franco Mbangwa & 241 others v. China Civil Engineering Construction (CCECC)** Labour Revision No. 8 of 2018 (unreported) in which this court observed thus:

> *"It appears to me that, the applicants were employed by the respondent for specific project of rehabilitation of the highway between Mafinga Township and Nyigo covering 74.1 KM after which they would definitely be discharged."*

The learned advocate for the respondent therefore urged the court to dismiss the application for lack of merits.

In rejoinder, the applicant essentially reiterated his submission in chief. Having gone through the parties' rival submissions, the issues for my determination are which type of contract existed between the parties and whether there were valid reason(s) for termination of the applicant's employment and whether the procedures were followed.

In determining the above issues, I have first gone through the employment contract which was admitted as exhibit D6 in order to determine the type of contract which existed between the parties. On the first page, it shows that the project for which the applicant was employed was Morogoro-Makutupora Standard Gauge Railway (SGR). Thus, his employment was for the specific task. I have also gone through the exhibit D2 in which the duration of the said project was extended for the second period of time which expired on 25/2/2022.

On record, there is evidence of DW1 who told the CMA that the project began in February 2018 and it was supposed to be completed in February 2021 but since it was not completed in time, the duration was extended up to February 2022 as evidenced by exhibit D2. It follows therefore that the project for which the applicant was employed came to an end upon its expiry. Hence, contrary to the applicant's claim that he had permanent contract, I am of the settled view that the contract was for the specific task as indicated in the employment contract and its duration was also specific as shown in exhibit D2.

The applicant maintained that the reasons for his termination were not stated. With respect, I do not agree with him because the notice of

termination served to him shows clearly that the reason for the termination was downturn of the project operations. He argued that the project was still going on. I do not agree with the applicant on this contention because exhibit D2 shows that the duration of the project ended in February 2022. Hence there was no evidence tendered by the applicant to show that there was another extension of period of time.

I have gone through the terms of the project, there are instances on which the contract could be terminated. Clause x reads as follows:

> *"Kuachishwa kazi katika kitengo kutokana na kupungua kwa kazi au kuzidi kwa idadi ya wafanyakazi."*

Given the above reasons, I concur with the findings by the learned arbitrator that the provision of section 38 of the ACT regarding retrenchment was inapplicable to the instant matter since there was specific project for specific period of time on which the applicant was employed and the same came to an end on 25/2/2022. Thus, automatically, the applicant's employment was terminated with the coming to an end of the project. To this, I fully subscribe to the decision of this court basing on the case of **Franco Mbangwa & 241 others v. China Civil Engineering Construction (CCECC)** (supra).

As to whether the procedures were followed, the respondent issued a notice to the applicant as required under the contract of employment and it indicated the reason for such termination. As to the entitlements, the applicant claimed, I have gone through the evidence on record. It is revealed that the applicant acknowledged to have received the entitlements and allowances as stipulated under exhibit D7.

Hence, rightly as pointed out by the learned arbitrator, the applicant's employment was lawfully terminated and since the applicant was paid all of his benefits, he was not entitled to anything.

I therefore find the application lacking in merits. Consequently, the same is dismissed in its entirety. In the circumstance, I order each party to bear its own costs.

It is so ordered.

Dated at **Dodoma** this 4th day of December 2023.

F. R. KHALFAN

JUDGE