

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

REVISION NO. 348 OF 2019

BETWEEN

JAMES J. MBOMA APPLICANT

VERSUS

INSIGHT SECURITY..... RESPONDENT

JUDGMENT

Date of Last Order: 28/05/2020

Date of Judgment: 30/07/2020

S.A.N. Wambura, J.

Aggrieved by the award of CMA which was delivered on 15/06/2017, the applicant **JAMES J. MBOMA** has filed this application under the provisions of Sections 91(1)(a),(b), (2)(a)(b), (4)(a),(b) and 94(1)(b)(i) of the Employment and Labour Relations Act, No. 6/2004 and Rules 24(1), (2)(a)(b)(c)(d)(e)(f), (3)(a)(b)(c)(d) and 28(1)(c)(d)(e) of the Labour Court Rules 2007 GN No. 106 of 2007 praying for the Orders that:-

- i. That this Honourable Court be pleased to call upon CMA records to revise and set aside the whole award of the*

Arbitrator of the Commission for Mediation and Arbitration at ILALA DAR ES SALAAM in the Labour Dispute No. CMA/DSM/TEM/115/12016 delivered by Hon. NGALIKA, E Arbitrator, dated on 15th June 2017 at DAR ES SALAAM ZONE, with view to satisfy as to the legality, propriety and correctness thereof.

- ii. That this honourable Court be pleased to determine the matter in the manner it considers appropriate and give any other reliefs as the Court may deem fit and just to grant.*

The application is supported by his sworn affidavit.

The respondent **INSIGHT SECURITY** filed a counter affidavit sworn by Thomas Steven Osaso, who is the Managing Director challenging the revision.

By leave of this court the application was disposed off by way of written submissions. I thank both parties for adhering to the schedule and for their submissions.

Submitting on the 1st & 2nd grounds the applicant alleged that the arbitrator failed to record the evidence that he was terminated on 26/12/2015 and instead stated it was on 22/02/2016. That prior to his

termination his working conditions were surrounded by unilateral acts by the respondent by being transferred from a Driver to a Watchman contrary to the law.

That the arbitrator also misdirected himself on the date upon which the applicant commenced employment who recorded that he was employed on 22/06/2014 instead of 22/06/2013.

That whereas the arbitrator found that the applicant was not terminated, the respondent stated that the applicant was terminated so the award was illogical.

Since he was unfairly terminated he prayed that the award of CMA be set aside and this Court Orders the respondent to pay the applicant twelve (12) months salary as compensation for unfair termination as well as any other reliefs which this Court deems fit to grant.

In response the respondent prayed to adopt the contents of the affidavit of Thomas Osesa to form part of their submissions. It was further submitted that:-

- (i) The record and evidence adduced by the applicant is that he was employed on 22/06/2014 and was terminated on 15/03/2015.

- (ii) That the applicant was not terminated but rather he was employed by another company being Turu Security then went to complain that he was unfairly terminated. While in actual fact after the disciplinary hearing he was not served with the results of the same.
- (iii) That the arbitrator critically analyzed the evidence on record and found that the applicant failed to prove that he was terminated contrary to Sections 3(2)(b), 111 and 113 of the Law of the Evidence Act Cap 6 RE 2019.

They thus prayed for the matter to be dismissed as the applicant was not terminated but left and went to work for another company.

In rejoinder the applicant retaliated his earlier submissions stating that there was no evidence that he had been employed by another company which was adduced at CMA. That he was unfairly terminated by the respondents as no valid reasons were adduced and the procedures for terminating him were not adhered to.

There is no dispute that the applicant was at one time employed by the respondent and that he is now no longer so employed. What is being disputed is:-

- (i) Whether or not the applicant was terminated.*
- (ii) Whether there was a valid reason for terminating him.*
- (iii) Whether the procedures for terminating him were adhered to.*
- (iv) Reliefs which each party is entitled to.*

1. Was the applicant's employment terminated by the respondent?

Let me start by saying that the respondent was supposed to keep the record of the employee as provided for under Sections 15(6) and 96(1)(a) of Employment and Labour Relations Act. Thus the respondent had the duty to prove the date of employment of the applicant which was not so done. It is on record that the applicant was employed as a watchman sometimes in 2013 and three month later he was promoted to a driver. However there were a number of complaints on the manner in which he drove and caused a number of accidents. He was warned accordingly as per Exhibit D1 and D2.

Sometimes in 2015 the applicant was transferred from the post of driver to a watchman as per Exhibit D3 (which he refused to sign) as all motor vehicles were undergoing repairs. This was because the motor vehicles had been involved in accidents, one caused by the applicant

himself. Thereafter the applicant stopped going to work. He was seen driving cars belonging to Turu Security instead. He was thus summoned to attend a disciplinary hearing as per Exhibit D5. He attended the same on 25/01/2016. After the disciplinary hearing he did not go to take the outcome of the same and instead filed a complaint at CMA.

In the circumstances, the applicant cannot be said to have been terminated as he was not served with a letter for termination. In fact it was proposed that he be asked to explain as to why he was spreading lies and was damaging the companies reputation. This is per Exhibit D6.

2. Was there a valid reason for terminating the applicant?

As the applicant was not terminated I find no reason to go through this issue. It ought to be noted however that it is the respondent who is duty bound to prove that they had a valid reason in doing so as per Section 39 of the Employment and Labour Relations Act and not the applicant as suggested by the respondent.

3. Did the respondent adhere to the procedures in terminating the applicant?

It is on record that the applicant was summoned to attend a disciplinary hearing and before the outcome was made known to him, he

filed a complaint at CMA. It is my findings therefore that the procedures were adhered to but did not come to an end. Meaning that the matter was prematurely filed at CMA.

4. What are the reliefs which parties are entitled to?

As the matter was prematurely filed at CMA, the applicant is not entitled to any reliefs.

Having found nothing to fault the award of CMA; I accordingly dismiss the application for want of merit.

S.A.N. Wambura
JUDGE
30/07/2020

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JAMES J. MBOMA APPLICANT

VERSUS

INSIGHT SECURITY..... RESPONDENT

Date: 30/07/2020

Coram: Hon. F.A. Mtarania, Deputy Registrar

Applicant: Present in person

For Applicant:

Respondent: } Miss Jackline Modest Siame (HR)

For Respondent: }

CC: Lwiza

COURT: Judgment delivered today in presence of the Applicant in person and Miss Jackline Modest Siame (HR) for the Respondent.


F.A. Mtarania

DEPUTY REGISTRAR

30/07/2020