IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT MOROGORO

REVISION NO. 25 OF 2019

BETWEEN

AMINI MBAGA ..... APPLICANT

VERSUS

TANZANIA TOBACCO PROCESSING LTD ..... RESPONDENT

JUDGMENT

Date of Last Order: 10/06/2020

Date of Judgment: 19/06/2020

S.A.N. Wambura, J.

Aggrieved by the award of the Commission for Mediation and Arbitration [herein after to be referred to as CMA] the applicant **AMINI MBAGA** has filed this application under the provisions of Sections 91(1)(a)(b), (2)(b)(c) and 94(1)(b)(i) of the Employment and Labour Relations Act, 2004 [herein after to be referred to as ELRA] 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 seeking:-

1. *That this Honourable Court be pleased to revise and reverse the decision of the Commission for Mediation and Arbitration (Hon. Magreth K.) dated on 01st of June, 2018 for the material irregularity and errors of law and facts on the face of records by:-*

    a) *Failing to consider the prays of relief prayed by the applicant on CMA F1 hence to erroneous award.*

2. *Any other relief as the Court may deem fit to grant.*

The application is supported by his sworn affidavit.

The respondent **TANZANIA TOBACCO PROCESSING LTD** challenged the application through the counter affidavit of Aurelian Mhanje, their Senior Human Resources Officer.

With leave of the Court, the application was disposed of by way of written submissions. I thank both parties for filing their submissions as scheduled.

I also apologize that this judgment could not be delivered earlier as I only became aware that submissions had been filed on 09/06/2020.

The facts of this matter in brief are that the applicant was employed on 01/07/1999 and retrenched by the respondent in 2016. He is challenging the retrenchment and the award of CMA in respect of his medical entitlements.

It was submitted by the applicant that the Arbitrator erred in both facts and law in deciding that the applicant's retrenchment was procedurally complied with while it is on record that he was served with the retrenchment letter when he was excused from duty (on ED) which is a legal leave contrary to Section 41(4)(a) of ELRA.

He further submitted that the Arbitrator erred to direct the Labour Officer to calculate the medical costs which he was entitled to while she had the powers to do so.

He thus prayed for the revision and variation of CMA's award so that he could be compensated according to the law.

Responding to these submissions the respondent argued that according to CMA Form No. 1, the applicant was not disputing the termination. Rather, he was seeking for an interpretation of the law or agreement relating to employment, specifically whether the respondent has

an obligation to offer medical treatment to the applicant upon termination of his contract.

As for the retrenchment itself, it has been submitted that the applicant participated in all the procedures of the retrenchment process. That the applicant was not on leave but was excused from duty (ED) which is not leave. So the provisions of Section 41(4)(a) of ELRA have not been contravened.

That the applicants claim for compensation is baseless as his illness was not due to an occupational disease resulting from the work or activities which he was engaged in at work. Therefore even payment of his medical bills came to an end when the applicant was terminated as no law imposes an obligation on the employer to pay for the employees medical treatment after termination.

They thus prayed for the application to be dismissed with costs.

Now going through the record, I believe I have to determine the following issues:-

(i). Whether the retrenchment procedures where adhered to by the respondent in terminating the applicant.

(ii). Whether the respondent is obliged to pay the applicants medical bills after termination.

1. Did the respondent adhere to the retrenchment procedures in retrenching the applicant?

Retrenchment procedures are provided for under Section 38 of the ELRA. Section 38 provides as herein quoted:-

> *"Section 38(1)* ***In any termination for operational requirements (retrenchment), the employer shall comply with the following principles,*** *that is to say, be shall –*
>
> ***a) give notice of any intention to retrench as soon as it is contemplated;***
>
> ***b) disclose all relevant information on the intended retrenchment for the purpose of proper consultation;***
>
> ***c) consult prior*** *to retrenchment or redundancy* ***on;***
>
> ***(i) the reasons for the intended retrenchment;***
>
> ***(ii) any measures to avoid or minimize the intended retrenchment;***
>
> ***(iii) the method of selection of the employees to be retrenched;***
>
> ***(iv) the timing of the retrenchments; and***

(v) severance pay in respect of the retrenchments.

[Emphasis is mine].

The employer is legally bound to adhere to the procedure for retrenchment as was held in the case of **Samora Njau & 19 Others Vs. Sincro Sitewatch Limited**, Rev. No. 944 of 2018.

It is on record that the retrenchment procedures were complied with accordingly as the respondent notified the Workers Union (TUICO) prior to the exercise. Employees were also notified. Negotiations took place and terms for retrenchment were agreed upon after the workers were satisfied that there was a reasonable cause to conduct the retrenchment exercise. This is per the minutes of the meetings held on 12/07/2016 and other meetings held thereafter.

It was due to the criteria set that the applicant was also listed to be retrenched. So it cannot be said that the procedures were not complied with.

a) Was the applicant on leave at the time of retrenchment?

It is on record that the applicant was excused from duty (ED) and not on leave nor was he on sick leave which is a legal leave as per Section 41(4)(a) of ELRA. Since the applicant was only excused from duty for a few days, it did not mean that the procedures were not adhered to. Only that it would have been humane to serve him with the said letter after he returned to duty which was in two days' time. There was no reason to rush to serve him the same while he was on ED.

2. Was the respondent obliged to pay the applicants medical bills after he was retrenched?

As a general principal the respondent is not obliged to pay the medical bills of the applicant after he is terminated.

However, it is on record that the applicant was sick to the extent of having undergone an operation. The respondent agreed to pay the bill of the operation. This was sometime in June, 2016 as per Internal Memo dated 21/06/2016. Meaning it was prior to the retrenchment exercise which was effected in August, 2016. By the time the applicant was retrenched he had not yet recovered and was still required to attend clinic for checkup. The next clinic was scheduled to be on 21/09/2016. I believe

the respondent had to pay the applicants transport and medication costs for that trip as it was known as of July, 2016.

In the circumstances, if the said bill or payments were not effected, then the respondent is duty bound to pay or refund or compensate the applicant. This is irrespective of whether the illness was an occupational health disease or not for it is in terms of Clause 12(c) of the applicants terms and conditions of employment provided for in Exhibit K1, and it was the immediate checkup after being operated.

I thus uphold CMA's award but vary the Order on the calculations. The respondent was paying for the costs of the applicants treatment and knows the charges and entitlements of the applicant. Respondent should thus pay the applicant costs for the checkup of 21/09/2016 only which was known to him prior to the retrenchment.

If the applicant was shortlisted to be retrenched on medical grounds then the provisions of Section 32(1) of ELRA had to come into effect. So the applicant is also entitled to be paid any terminal benefit/ entitlement not paid.

S.A.N. Wambura
JUDGE
19/06/2020