

**IN THE HIGH COURT OF TANZANIA  
LABOUR DIVISION**

**AT MOROGORO**

**REVISION NO. 38 OF 2019**

**TANZANIA TOBACCO PROCESSRS LTD.....APPLICANT**

**VERSUS**

**JUMA ABDALLAH MANYAMA.....RESPONDENT**

**JUDGMENT**

*Date of last Order: 02/12/2020*

*Date of Judgment: 08/12/2020*

**Z.G.Muruke, J.**

Respondent was employed by the applicant on 1<sup>st</sup> February, 2008 in the position of receiving officer. He was promoted to a position of parking material supervisor until when terminated on 27<sup>th</sup> June, 2016, on ground of negligence causing loss of 16,975, boxes worth 130,882,00. Being dissatisfied with termination, filed dispute number CMA/MOR/181/2016, at Commission for Mediation and Arbitration (CMA) claiming to have been unfairly terminated. Upon hearing both parties, (CMA) decided in favour of respondent to be paid 21,1444,000 Tshs, being 24 months salaries as compensation for being unfairly terminated. Same dissatisfied applicant, thus, filed present revision on the ground of illegality and material irregularity reflected on ground 4.1 up to 4.5.

From the grounds of revision in paragraph 4 of affidavit in support of the revision, applicant raised following issues for determination:-

- (i) Whatever having investigation report and the applicant's witness testimonies tendered before the CMA, the arbitrator was still right to hold that the respondent was unfairly terminated hence 24 month's salary compensation.
- (ii) Whether the arbitrator was legally right to hold that the respondent was unfairly terminated regardless the fact that, it was adduced before him that the respondent had admitted to the allegations during disciplinary hearing.
- (iii) Whether the arbitrator was legally right in law for holding that the respondent was on sick leave during the incidence in the absence of any evidence.
- (iv) Whether it was legally right to arbitrator to grant respondent 24 month's salary compensation without justifiable reasons.

On the date set for hearing, Hassan Mwemba, Learned counsel represented applicant while respondent had the service of professor Binamungu, Learned Counsel.

On issue number one, applicant counsel submitted that, arbitrator failed to consider evidence of applicant in particular exhibit MKW-1, investigation report at page 4, in which findings revealed that, **one** the custodian of the main warehouse did not have any record of movement receiving and issuing of cartons, at Kihondo warehouse in which respondent was responsible.

**Two;** there was no larger book to keep the records as respondent who was responsible did not, **three** respondent was responsible in issuing delivery note and get pass, **four;** there is high possibility most of stock was missing at the warehouse due to mixed record.

On second issue, Mr. Hassan member submitted that arbitrator misdirected in his decision by not giving weight to exhibit MKW-8 Disciplinary hearing minutes in which respondent admitted, and also in exhibit MKW-5 letter dated 12<sup>th</sup> July, 2016 respondent admitted loss of boxes. On paragraph 1 of page 3 of MKW -8 respondent said.

Katika kipindi cha mwezi March 2016 had May 2016 kulikuwa na upotevu wa maboxi 1421 yenye thamani ya Shs. 23,000,000.

From the evidence, respondent had knowledge of the loss of 2706 following stocktaking from 1<sup>st</sup> April, 2015 to May 2015, insisted Mr. Hassan Mwemba for the applicant. On the third issue, arbitrator adjudicated on issue of respondent health, that during the loss of boxes he was sick not at work, without any proof, while, respondent was present and responsible for the loss. On the forth issue, respondent did not give justified reasons in granting 24 months salary compensation and more so did apply wrong law when ordering compensation. To the applicant 24 months salary compensation was erroneously granted. Respondents is entitled to terminal benefit only, insisted applicant counsel.

Respondent counsel on the other hand submitted that, arbitrator made analysis of evidence at page 23, 24 of the award. No evidence to disprove that respondent was sick during which loss occurred from



December 2015 – March, 2016. On issue number two, respondent did not admit loss of the boxes to have been caused by him. No evidence paraded by applicant to prove that, respondent caused loss. On issue number three, it is on record that respondent handled his work to Mohamed while on sick leave. He was absent for (4) four months.

On issue number IV respondent counsel submitted that on awarding 24 months' salary the law quoted is wrong. The proper law is Section 40(1)(c) of Employment and Labour Relations Act, in awarding compensation. The above notwithstanding arbitrator gave reasons, when considered respondent age (57 years) it is not easy for him to get another job of his profession. In totality, respondent counsel pressed for dismissal of the revision for lack of merits.

In rejoinder, applicant counsel insisted that there is no evidence to prove that respondent sickness and absence for sickness for (4) four months. Equally, no evidence to prove hand-over from respondent to other person as alleged. At page VIII of MKW-8 respondent while being cross examined, he admitted that loss occurred, so respondent is responsible for the loss of 2706 boxes as claimed by applicant.

Having heard both parties submission issue before me are mainly two:-

**One;** Whether evidence available in records prove that respondent is responsible for loss of boxes claimed if yes, then,

**Two;** Whether, the award of 24 month salary is justified.

According to exhibit MKW-1 investigation report titled Internal Audit Investigation on cartons theft FYE March, 2016, from page 6 to 7 on sub herding people involved, responsibility, and accountability on the carton movements is reproduced as follows:

(a) Stores personnel responsible for cartons his title Packing Material Operator (Hezron Kakuyu) reports to stores Incharge (Mr. M. Msuya).

- i. He is the one receiving all cartons in the ledger from manufactures – this ledger is not properly updated.
- ii. Responsible for initiating gate pass (which is the primary document to issues cartons from the warehouses)- these gate pass are not recorded in the ledger.
- iii. He is incharge of the mini store at factory responsible for accepting the cartons form warehouses through delivery notice –the DNs are not recorded in the ledger to reconciliations and accountability.
- iv. He should be issuing cartons from the mini store after receiving the SIV from production –but production people seem to take cartons from mini store before the SIV is issued hence no control of the mini store stock.

(b) Production Manager (Mr. J. Mollel)

- i. He is the person that approves the gates pass (which is the primary document to issues cartons from the warehouses) that should not be his responsibility. This activity should be done by stores Incharge (Mr. Msuya) because he has an ultimate accountability of the cartons.
- ii. He is responsible for approving the Stores Requisition and Pick Up Tag (SIV)- this should be done prior to taking cartons from the ministore. Cartons were issued from mini store even if the SIV has not been raised.

(c ) Warehouse custodian his title stores receiving Supervisor (Juma Manyama) reports to Stores Incharge (Mr. Msuya):

- i. He is responsible for maintaining ledgers t the warehouse-there is no proper ledgers at the warehouse to record receipt and issuing.
- ii. He is responsible for issuing delivery Notes (DNs) by recording the gate pass record in it.
- iii. There is high possibility most of this stock was missing at the warehouse-based on the incomplete records analysis.

(d) Truck Drivers.

- i. Ones transporting cartons from warehouse to the factory.
- ii. There is high possibility that same of this cartons does not reach to the factory.

(e) Security at the warehouse.

- i. They are responsible for maintaining the ledger of trucks coming in and out of the warehouse premises-the ledger was not complete to validate expected data.
- ii. They are responsible for retaining a copy of gate pass which is the primary document from the factory detailing what to be loaded- a lot of missing gate pass was observed which made it difficult to validate some data.

From the above observation by Auditors, then recommended as follows, from page 7 to 8 of same investigation report that;

1. The whole system and process need to be re-designed taking into consideration the loop holes identified in this report. This include ensuring proper procedures that can control the movement of cartons from Kihonda and Ladwa warehouse to TTPL factory.
  - (a) Enforce use of ledger books at warehouse and mini store. These ledgers would complement the documents such as DN's, SIVs and Gate Pass.
  - (b) Ensure proper segregation of duties.



2. Production should not get involved on the activities of storage and warehousing of cartons to enhance segregation of duties and accountability.
3. Production department should find the way of controlling damaged cartons as the quantity is piling up.
4. Reconciliation of cartons should be done at least every month unlike now that reconciliation is done at the end of financial year.
5. Management should determine the level of involvement of each person in this process. This shall be per management consideration of these findings and further HR investigation on people mentioned in connection with the cartons loss.

From part of investigation report above reproduced:- Respondent is mentioned on and incriminated on paragraph 4(c)(i)(ii) and (iii), that he being responsible for maintaining ledger at the warehouse, there is no proper record of receipt and issuing. That alone, is not expected respondent not to comply with basic duty of his profession and his position. Respondent being stores receiving supervisor, not having ledger to record, what he receives and what he is issuing, is negligence of highest kind for a person having experience of that of Mr. Juma Abdallah Manyama in terms of his CV available in court records. Defense that, he was having sick leave at the time loss occurred is not backed up by any evidence. There is neither hospital documents nor sick leave granted by employer the applicant, as correctly submitted by Mr. Hassan Mwemba. Failure by respondent to produce evidence of sickness is reflected at page 32 of CMA typed proceedings while being cross examined by applicant counsel then respondent GHATI NYAKITINA.

**Swali:** Je ni kweli kuwa wakati wa stock taking inafanyika ulikuwa unaumwa.

**Jibu:** Nilikuwa naumwa sikuwa likizo.

**Swali:** Ushahidi unao kuthibitisha kuonyesha kwa kweli katika kipindi ulikuwa unaumwa.

**Jibu:** Hapana

**Swali:** Kwa hiyo tume iamini ulipata ajali pasipo uthibitisho wowote.

**Jibu:** Kwa hapo mbele ya tume haupo uthibitisho wa ajali hiyo lakini ofisini kwa mlalamikiwa upo.

From the evidence of respondent during cross examination, clearly proves that issue of sickness, thus absence during which loss occurred is a lie. There is no single evidence let alone suffice evidence to prove such allegationns. This court wonders, how came same evidence featured in the arbitrator award. To this court, applicant was present during period of loss of boxes, thus responsible to the extent of investigation report.

From the observation of Audit team in the investigation report, it is clear that there is serious weakness in the internal control, of the applicant, as reflected from page 4 of investigation report on findings, that

- (i) There is improper management and control of cartons movement at Kihonda and Ladwa warehouse.
- (ii) Improper management and control of cartons at factory ministore.
- (iii) There is incomplete records, thus, none reconciliation of data.



From the findings above, from page 4 to page 5 of investigation report basis of charging and finally dismissing respondent, it is crystal clear that, not only respondent to blame for loss but applicant (employer) created favorable conditions for the loss. From the records, what prompted internal Audit investigations on cartons theft is information by Morogoro Police, having sized truck number T.027 CLE, loaded with tobacco 999 cartons that where suspected to have been stolen form applicant. On 7<sup>th</sup> December, 2015 the team of staffs from applicant went to the Police Station to identify those cartons. Then, internal investigation was conducted on 11<sup>th</sup> to 15<sup>th</sup> December, 2015, covering the receiving and issuing cartons for the period of 1<sup>st</sup> April, 2015 to 8<sup>th</sup> December, 2015.

Obviously, it is police report on 6<sup>th</sup> December, 2015 that prompted investigation. Otherwise, applicant management was all along relaxed, thus, very weak internal control system that respondent took advantage of the same. In any institution, let alone, company like applicant, weak internal control system act as leaking car fuel tank. Without controlling the leaking, ultimately car will come to a standstill for loss of fuel. This is not the aim of establishing the company, like applicant, who create jobs and pay taxes for the benefit of the nations.

Whether 24 months salary is justifiable to the respondent. To this court the answer is, No. Despite being ordered under wrong law, but no justifiable strong reasons. The fact that respondent was about to retire, (57) years at the time he testified, is not sufficient cause for ordering compensation of 24 months. At that age, respondent was suppose to be

more mature thus responsible. The way he acted while knowing he is about to retire, is business as usual.

From the evidence, he is responsible for the loss despite weak internal control system, that he took advantage. To this court, he is not the only one to blame, as said, internal control system were weak. Both applicant and respondent are to blame for the loss of boxes, thus no reason to order 24 months' salary as compensation, same is quashed and set aside. Respondent to be paid statutory terminal benefits, and other related benefit together with, six month salaries as his retirement benefit. Revision allowed to extent shown.



Z.G. Muruke

**JUDGE**

08/12/2020

Judgment delivered in the presence of Professor Binamungu for the respondent, and in the absence of applicant having notice.



Z.G. Muruke

**JUDGE**

08/12/2020