

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LABOUR DIVISION)**

AT SUMBAWANGA

LABOUR REVISION NO. 12 OF 2019

TANZANIA LEAF TOBACCO COMPANY LIMITED APPLICANT

VERSUS

MOHAMED ISSA IHUKA RESPONDENT

Date of last Order: 07/12/2020
Date of Ruling: 22/12/2020

RULING

C.P. MKEHA, J

In the present application, the applicant is moving the court to revise and set aside the Arbitrator's Award made on 21st day of October, 2019 as rectified on 12th day of April 2020 in Labour Dispute No. CMA/RK/45/2017 with a view to satisfy itself as to the legality propriety, rationality, logical and correctness thereof. The application is made under Rule 24 (1), (2)(a) to (f), (3)(a) to (d), 28 (1) (c) to (e) and (2) of the Labour Court Rules G.N. No. 106 of 2007 and section 91 (1)(a), (2) (b), (4) (a) to (b) and section 94 (1)(b) (i) of the Employment and Labour Relations Act, No. 6 of 2004.

A brief statement of fact leading to this application can be stated briefly as follows. On 23rd day of September, 2015 the applicant employed the respondent in the capacity of section manager for a fixed term of three years

commencing on 1st day of October, 2015. On commencement of employment, the respondent's duty station was at Kibondo/Kahama t. Then sometimes in the same year, 2015, the respondent was instructed to go and work in Mpanda District. It would appear that there was no formal letter of transfer issued to the respondent in view of changing his duty station. Nevertheless, the respondent complied and started working in Mpanda District from the same year 2015 until the 17th day of December, 2016 when he was lawfully retrenched from his employment by the Applicant.

After the respondent had received his statutory entitlements in respect of the retrenchment, he then raised claims on transfer benefits or working out of his working station for the whole duration he worked at Mpanda duty station. Through a letter dated 19th January, 2017 the applicant acknowledged being indebted to the respondent to the tune of TZS 3, 123,000/=. The applicant promised through the said letter that, she would pay the said amount to the respondent as transfer benefits. Apart from the said letter consisting of a promise to pay, there is no evidence on how the said amount of money was paid to the respondent. As such, while the applicant insists to have paid the said sum, the respondent disputes having received such payments save for retrenchment benefits.

It is against the background stated hereinabove, the respondent approached the Commission for Mediation and Arbitration at Rukwa, seeking its assistance

to have his allowances of working outside his duty station, paid. The CMA decided in favour of the respondent. It held that, the applicant ought to pay to the respondent TZS 13,700,000/= as subsistence allowances for official overnight duties. According to the Arbitrator, absence of an official letter transferring the respondent from Kahama to Mpanda meant that, the respondent's duty station remained to be Kibondo/Kahama.

Through the present application, the applicant is challenging the said holding by CMA. The applicant is being represented by Mr. Mathias Budodi learned advocate. The respondent is being represented by Mr. Sylvester Mgallah, Assistant Regional Secretary of his trade Union, TUICO, Rukwa Branch.

In the applicant's submissions in support of the application, the learned advocate submitted on the following four issues:

- (i) Whether or not the decision of CMA dated 18th day of July, 2018 allowing the respondent's application for condonation was legally justifiable ;
- (ii) Whether or not it was legally justifiable for the Commission for Mediation and Arbitration to award reliefs which were already paid to the respondent as terminal benefits;
- (iii) Whether or not the Commission for Mediation and Arbitration was justifiable to award reliefs which were not claimed in CMF1 and

- (iv) Whether or not the principle of estoppel was against the respondent on the issue of transfer.

In the applicant's chamber summons there is no trace of the Commission's decision on the respondent's application for condonation. That being the position, I intend not to deal with the first issue in any way.

It was the applicant's submission in respect of the second issue that given the fact that the Arbitrator had acknowledged that the respondent was paid all his entitlements then, it was wrong for the Commission to award TZS 13,700,000/= as allowances for working out of his duty station. Reference was made to page No. 4 of the rectified Award dated: 12/03/2020. Upon carefully reading the relevant paragraph, what the respondent was not denying was the fact that all his retrenchment benefits had been paid as per the law. By so admitting, the respondent was not admitting having been paid transfer benefits or subsistence allowance which was at issue.

There is neither evidence that terminal benefits paid to the respondent included transfer benefits or the claimed subsistence allowances. The second issue is answered against the applicant's favour. That is irrespective the fact that the respondent did not specifically reply on this issue.

It was the applicant's submission in respect of the third issue that the Commission unjustifiably awarded reliefs which had not been claimed in CMA F1. The respondent maintained that in terms of the collective Bargaining

signed by the parties, it was his right to be paid subsistence allowance for working outside his official duty station. Upon reading CMA F1, the respondent claimed to be paid **outstanding sum**.

There is no denial that when the dispute arose, there existed a Collective Bargaining signed by the parties and which was binding upon them. The same required under its Clause 9.7, transfers to be made in writing. The applicant did not produce a letter of transfer issued to the respondent transferring him from Kibondo/Kahama to Mpanda. In the absence of such evidence, the respondent's official duty station remained to be Kibondo /Kahama up to the date he was retrenched. Therefore, in law, the respondent was entitled to allowances for working outside his duty station as it was correctly held by the Commission. And, since the said allowances had not been paid to the respondent, he was justified to claim the outstanding sum from the applicant. Apart from the letter containing a promise to pay transfer benefits, the applicant produced no evidence to the effect that actually, the said transfer benefits were paid and received by the respondent.

As per the parties' collective bargaining, transfer had to be evidenced in writing which is missing in the circumstances of this case. In terms of section 71 (2) of the Employment and Labour Relations Act, a collective agreement is binding upon the parties unless the agreement states otherwise. Neither does Exhibit K – 11 indicate that it was not intended to be binding upon the

applicant and the respondent. It is therefore my holding that the Commission was justified to award what it ultimately awarded to the respondent as the same was actually claimed in CMA F.1. The foregoing holding renders determination of the fourth issue, nugatory.

For the foregoing reasons, I confirm the Commission's Award and dismiss the application for want of merit.

Dated at **SUMBAWANGA** this 22nd day of DECEMBER, 2020.




C.P. MKEHA
JUDGE
22/12/2020

Court: Ruling is delivered in the presence both parties




C.P. MKEHA
JUDGE
22/12/2020