

**IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT DAR ES SALAAM**

REVISION NO. 285 OF 2019

FLORIANA KINAWIRO.....APPLICANT

VERSUS

**DAR ES SALAAM
DEVELOPMENT CORPORATION.....RESPONDENT**

JUDGEMENT

Date of Last Order: 21/09/2020

Date of judgment: .../10/2020

E. B. Luvanda, J

The applicant Floriana Kinawiro, filed this revision against the award of the Commission for Mediation and Arbitration (CMA) dated 26/01/2016 in labour dispute No. CMA/DSM/ILA/R.693/13. In the said award, the arbitrator ruled that the reasons for retrenchment were valid, only faulted the procedure for selection of employee subject for



retrenchment process that did not follow criterion provided in the law. the second reason was that the employer (respondent) did not bother to make efforts to look for alternative employment. However, the learned arbitrator declined to reinstate the applicant as sought in relief, instead awarded compensation of twelve months salary as coolant or crippling pain, a sum of Tsh. 3,794,400.00. The applicant was unhappy, she is challenging it on the ground that compensation was not among the relief sought in Form 1 which had initiated a dispute at CMA.

In opposition, the respondent countered the revision being overtaken by event on the explanation that an award of compensation Tsh 3,794,400.00 was disbursed to the applicant and therefore an award is binding upon the parties interms of section 89(1) of the Employment and Labour Relations Act No. 6 of 2004.

It is to be noted that initially this matter involved twelve claimants at CMA, the applicant herein being inclusive and it was pursued by way of representative suit, bestowed on representation of Situmai Malale. Seemingly her (applicant's) fellow colleagues give up and were satisfied with the award of CMA. The applicant opted to battle solo.

Generally speaking, this revision has been lodged without sufficient ground of complaint. The learned arbitrator elucidated reasons for the decision to the path he took. I reproduce in verbatim a relevant portion of his finding for appreciation,

“Baada ya kuona hayo yote, sasa ni uamuzi kuhusu nafuu, walalamikaji waliomba warudi kazini, nafuu ya kurudi kazini hutolewa kama mfanyakazi ameondolewa bila sababu ya kufaa na utaratibu haukufuatwa. Katika

mgogoro huu tuseme kuwa sababu ilikuwa ni ya kufaa yaani kufunga vitengo, tatizo nimeliona kwenye uteuzi wa wafanyakazi wa kuondoka, hapa pana wingu nene, lililoziba ukweli na haki. Aidha tuliona kuwa mwajiri hakujibidiisha kuwatafutia kazi mbadala, kwa sababu hizo mbili, ninaona kurudi kazini si sawasawa bali wahanga watastahili kulipwa fidia, naagiza kwa hiyo kwamba walalamikaji watastahili kulipwa fidia ya mishahara ya miezi 12 kila mmoja ili kupooza maumivu waliyopata kupitia uvunjaji wa sharia uliofanywa..."

What was adjudged by the arbitrator is within the purview of the provision of section 40(1) of Act No. 6 of 2004 (supra), which is all about remedies available for unfair termination. Suffice to say that the learned arbitrator exercised properly

his discretion to arrive at a just decision. I find no reason to
fault it.

The application is dismissed for want of merit.



E.B. Luvand, J

JUDGE

10/10/2020

