

IN THE HIGH COURT OF TANZANIA  
LABOUR DIVISION  
AT DAR ES SALAAM  
REVISION NO. 676 OF 2019

**KENYA AIRPORT & PARKING  
SERVICES LTD (KAPS).....APPLICANT**

**VERSUS**

**ABDALLAH MUSSA & 6 OTHERS.....RESPONDENTS**

**JUDGEMENT**

*Date of Last Order: 13/08/2020*

*Date of judgment: .../10/2020*

**E.B. Luvanda, J**

In this application, the applicant above mentioned is challenging the decision of the Commission for Mediation and Arbitration (CMA) delivered on 17<sup>th</sup> May, 2019 in labour dispute No. CMA/DSM/ILA/R.639/17, awarded the respondents a sum of 7,350,000.00 as nominal damages for breach of contract.

In the affidavit in support of this application, the applicant raised eight grounds, which at the hearing were paraphrased into three grounds namely: one, there was no

relationship of employment between the applicant and the respondents; two, the arbitrator erred in law and fact by deciding that the applicant breached the contract of employment without evidence to that effects; three, the arbitrator erred in law and fact by reaching a final decision that the respondents were entitled to a total sum of Tsh. 7,350,000/=.

At the hearing Mr. Sylvester Sebastian learned Counsel appeared for the applicant and the respondents were represented by Ms. Asha Salum learned Advocate.

For the first ground, the learned Counsel for applicant faulted exhibits A1 and A2 that are mere offer for Abdallah Mussa and Grace Gembe, which were not returned to the Human Resource Manager as required, to signify their consent. He submitted that out of seven respondents, only two respondents appeared to testify and tendered their offer letters exhibit A2, the rest did not testify or produce their letters. This complaint is without base, letters of offer exhibit A2 on which names of respondents were typed at a first page, show vivid that were signed by the respondents on 30/10/2016 to agree to the terms and conditions of offer of employment. Thereafter, were counter signed by the

managing director of KAPS (applicant herein). And this is in line with the testimony of PW1 who explained that after signing they returned to John Kyara who gave them copy and retained original contract. Indeed, DW1 (human resource manager of the applicant) conceded that those documents exhibit A2 were issued by their office and did not dispute a signature of a managing director reflected therein. In the circumstances where letters of offer were signed by both parties, an argument of non-return of documents become mere speculation. It defeat both logic and common sense, to imagine that the managing director of the applicant had appended a signature on documents then dispatched those letters of offer to the respondents, who disappeared with them and resurfaced after elapse of more than six months. Exhibit A2 suffice to prove existence of contract of employment between the applicant and the respondents.

Regarding an argument that only two letters of offer for Abdallah Mussa and Grace Gembe were tendered (exhibit A2), and the rest respondents did not tender their letters of offer, is unmerited. As correct submitted by the learned Counsel for respondents that this complaint was initiated by

way of representative suit through a form annexure 1 to a form for referral of a dispute to CMA form 1. Annexure 1 was signed by all seven respondents including Abdallah Mussa Augossy, Abdallah Ramadhani, Grace Emanuel Gembe, David Raya, Said Iddiy, Novath Meleki and Mayombe Mohamed, where they appointed and mandated Abdallah Mussa Augossy to represent them on their behalf. As such an argument that procedure of representative suit was not followed or no leave was sought and obtained, is irrelevant. It is an acceptable practice for representative labour disputes at CMA to be made in that manner and format under auspices of rule 5(1), (2) and (3) of G.N. 64 of 2007. As it was deliberated in a case of **Security Group (T) Ltd vs Samson Yakobo & 10 others**, Revision No. 171/2011, Labour Division (cited by the learned Counsel for respondent), Honorable Rweyemamu, J (as she was), ruled I quote,

*"In this matter, Samson Jacob was one of the complainants, chosen by other complainants to appear instead of all of them as permitted under rule 5(2) and (3) of G.N. 64/2007...Further, I wish to stress that in a representative suit, one or some of claimants,*

*whether or not they are appearing in a matter in a representative capacity, can testify on behalf of other claimants, and such testimony may be sufficient proof of the whole claim"*

In this matter the claims by the seven respondents was so much similar to each other. As such, the evidence presented by PW1 and PW2 suffices to prove a claim on behalf of the rest respondents.

Regarding a second ground which goes thus, the arbitrator erred in law and fact by deciding that the applicant breached the contract of employment without evidence to that effects. The learned Counsel for applicant submitted that the respondents did not attend to their duties as were assigned by the applicant through their offer letter. However, the evidence of PW1 and PW2 suggest the contrary, as they stated that after signing contract of employment exhibit A2, John Kyara assigned them and they performed a work of preparing data of employees, to plan zone, to survey street in respect of parking (as put by PW1); to supervise collectors, to collect revenue for parking (as put by PW2). Later on 30/5/2017 they were told by human resource manager that they are not recognized as

employee and if they need job they should make a fresh application. By the time they were told so, a contract of service exhibit A2 was still subsisting and valid, as it was for a period of one year counting from a date of signing on 30/10/2016. The learned arbitrator was therefore justified to rule that the applicant had breached the contract of service. On similar vein, the learned arbitrator was correct to award the respondents nominal damages for breach of contract a sum of Tsh 1,050,000.00 each, a total sum of Tsh 7,350,000.

Therefore, the application is devoid of merit. It is accordingly dismissed.



E.B. Luvanda

**Judge**

9.10.2020