IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION

AT DAR ES SALAAM

REVISION NO. 668 OF 2019

BETWEEN

FRANCIS KIDANGA..... APPLICANT

VERSUS

KILIMANJARO FAST FERRIES LTD..... RESPONDENT

JUDGMENT

Date of Last Order: 15/04/2021
Date of Judgment: 30/04/2021

Z. G. Muruke, J.

Francis Robert Kidanga, was employed by respondent on 1st October, 2013, on one year contract subject for renew at the end of each term. On 6th April, 2017, he entered into contract with respondent to terminate his service. He was paid his due accordingly. However, he filed dispute at CMA claiming to be terminated without any reason and without being heard. After conclusion of hearing, arbitrator dismissed applicant case for lack of merits. Same dissatisfied applicant, thus filed present revision on grounds started at paragraph 9 of affidavit in support of the revision namely:-

(i) That arbitrator's decision and finding that termination was substantively fair is not supported by evidence on record.

(ii) That, the arbitrator erred in law in using a distinguished president in arriving to a decision that the respondent had a fair reason to terminate the applicant.

(iii) That, the arbitrator erred in law by not ordering compensation of twelve months even after holding applicant's termination was unfair.

Hearing was conducted by way of written submission. Applicant was represented by advocate Wilson K. Magoti, while respondent was represented by her Principal Officer, Roze Peter Mtesigwa, Advocate. According to the CMA records, this court pleadings, and submission by both advocates the issue for determination is **whether there was contract to terminate applicant employment.**

It is general principal of contract law that just as parties are free to enter into contracts; they are equally free to bring their contracts to an end by consensus. This principle is also applicable to contracts of employment. The termination of a contract under the common law requires genuine mutual agreement of both parties and neither party may unilaterally change his or her mind. When an employment contract ends so does the employment relationship. Normally employer and employee agree to terminate the contract in accordance with their agreement.

According to the evidence of DW1 Ally Mbarouk Said respondent Human Resource Manager, applicant and respondent reached an agreement to terminate their contract in terms of exhibit D7, as reflected in the CMA records. Applicant refuted exhibit D7 that he did not sign and that the signature is not his. With due respect, if signature in exhibit D7 is not of applicant as he claims, he ought to have mounted investigation of his forged signature. After investigation of the same, then, the report if any, would have been used to support his allegations of forged signature, otherwise allegation of forgery without any proof cannot be accepted. In

law forgeries and fraud not only is to be alleged, but need to be seriously proved.

It is vivid from the record that the said agreement was reduced into writing on 06th April 2017, which is the same day that parties signed as clearly shown in exhibit D7. The applicants claim's that was not given right to be heard before termination has no leg to stand since the applicant himself signed, exhibit D7. For the purpose of clarity the words read:-

> ***"Yah: Makubaliano ya kumaliza Mkataba wa Ajira. Mnamo tarehe 06/04/2017 Mwajiri na Mwajiriwa waliingia katika makubaliano ya kumaliza ajira kwa njia ya makubaliano ambayo wameyaweka katika maandishi haya kwa ridhaa zao binafsi."***

I understand, once parties have agreed on issues regarding terms of contract, court cannot interfere unless proved otherwise. It should be understood that a contract is a promise (or a set of premises) that is legally binding, the law will compel the person making the promise to perform that promise. This court insisted on adhering to the terms of the contract in her recent decision in the case of **Commercial Bank of Africa (Tanzania) Limited Vs. Anganile Mwankuga,** Rev No. 758/2019 at page 6 where it was held that;

> Respondent Anganile Mwankuga by accepting terms and conditions of employment contract, he voluntarily agreed to be vetted. He agreed that reference from the previous employer should be used to determine his suitability, for confirmation of employment. This imply that if there is any negative reference, he will not pass the probation period.

Therefore it is crystal clear that there was prior discussion and free consent which was reduced into writing as wordings of exhibit D7 provides. What the applicant is trying to do is unilateral change of mind and after though as discussed in the case of **Precision Air Tanzania Limited Vs. Gloria Thompson Mwamunyange,** Rev. 292/2017 in which this court strictly prohibit unilateral change of mind after agreement between parties. Allowing the applicant to do so is to open the door and allow irregularities. In short it was held that

> ***" It is general principal of contract law that, just as parties are free to enter into contracts, they are equally free to bring their contract to an end by consensus. This principal is also applicable to contracts of employment. The termination of contract under common law requires genuine mutual agreement of both parties and neither party may unilaterally change his or her mind."***

The advocate for the applicant has submitted that, the respondent has also failed to prove existence of investigation and existence of notice to attend disciplinary hearing as the burden of proving fairness of the termination lies to the employer (respondent) also keeping the records of employment. Applicant's advocate further submitted that the employer also failed to tender the outcome of the disciplinary hearing to show whether it was conducted or not.

As correctly submitted by Rozi Mtesigwa respondent's counsel applicant counsel has misconceived facts of the current case as there was no need for the respondent to conduct disciplinary hearing, since parties had reached consensus agreement to terminate employment contract

which was existing. The consensus was reduced into writing and signed by both parties in terms of exhibit D7.

Court of Appeal at Dodoma (unreported) in the case of **Philipo Joseph Lukonde Vs. Faraji Ally Said,** Civil Appeal number 74/2019, held at page 17 that,

> ***where parties have freely entered into binding agreements, neither courts nor parties to the agreement should not interpolate anything or interfere with the terms and conditions therein, even where binding agreements were made by lay people.***

The mode of which applicant and respondent ended employment contract (termination by agreement) is regulated by **Rule 3(2)(a) of Employment and Labour Relations (Code of Good Practice) Rules of 2007 and not guided by Rule 13(1)(2) and (3) GN 42/2007** as submitted by applicant's advocate. To this court, applicant having signed exhibit D7 he is bound by principle of ***estoppel*** that stops one form denying his own previous deed done by his won consent. Thus, the applicant is bound by termination agreement signed by both parties. As correctly decided by arbitrator, this court sees nothing worth, interfering with CMA decision, same is upheld. Thus, Revision application dismissed for lack of merits.

Z.G. Muruke

JUDGE

30/04/2021

Judgment delivered in presence of Rozi Mtesigwa counsel for the respondent and in the absence of applicant, who absented himself.

Z.G.Muruke

JUDGE

30/04/2021