**IN THE HIGH COURT OF TANZANIA**

**LABOUR DIVISION**

**AT DAR ES SALAAM**

**REVISION NO. 480 OF 2020**

**ALBERT GUSTAV CHANJALE ..... 1st APPLICANT**

**SALAMA AMAD ..... 2nd APPLICANT**

**ALIMA SALUM ..... 3rd APPLICANT**

**SIMIMI MOHAMED ..... 4th APPLICANT**

**SAIDI BAKARI ..... 5th APPLICANT**

**VERSUS**

**SWEEPERS GROUP ..... RESPONDENT**

**JUDGEMENT**

26th November & 23rd December 2021

**Rwizile J**

In this application, the applicants are praying for revision of the arbitration award made by the Commission for Mediation and Arbitration (CMA) in labour dispute No. CMA/DSM/ILA/182/19 delivered on 09.10.2020 by Hon. Kiangi, Arbitrator.

Briefly; the applicants were employed by the respondent as sweepers at Kariakoo Area in Dar es salaam on different dates. On 19.02.2019 the

applicants were retrenched. Aggrieved by the retrenchment they referred the matter to the CMA claiming for terminal benefits due to unfair termination. After considering the parties' evidence the CMA was of the view that the applicants were fairly retrenched in both, substantively and procedurally. Dissatisfied with the CMA's findings, the applicant filed this application. In the affidavit sworn by Albert Gustav Chanjale, two issues were raised in the followings;

i. Whether the arbitrator exercised jurisdiction properly by awarding the respondent while there was evidence that it was the respondent who did not show anywhere on how much did they pay the applicants after termination of the contract of work

ii. That the arbitrator exercised her jurisdiction wrongly by reaching at a conclusion that the applicants had nothing to be paid.

The matter was argued by way of written submissions. Before this court the applicants appeared in person, unrepresented whereas Mr. Evance Ignace John, Learned Counsel who is also the respondent's Principal Officer was for the respondent. The applicants jointly argued the application. They stated that at the CMA, the respondent admitted that she terminated the applicants' contracts because the company lost

contractual service with the company known as Green Wastepro Limited (to be referred herein as the contracted company). They argued that the contract entered between the applicants and the mentioned company did not depend on each other. They added that in their employment contract, it was not specifically stated that their payment would depend on the income, the respondent received from the contracted company. They therefore stated that the ground of retrenchment cannot stand in this case.

They argued further that, termination on the ground of retrenchment must be accompanied by valid reason, followed by procedures stipulated under section 38 of the Employment and Labour Relations Act, [CAP 366 RE 2019] (ELRA). To support their submission, they referred the case of **Alhamdu Ndimkanwa & others v. Director VIC Fish**, Lab. Div. Mwz. Rev. No. 196 of 2009 LCCD 2011. They further submitted that termination in this matter did not follow the stipulated procedure as well as adhere to the requirements of Rule 23 of the Employment and Labour Relations (Code of Good Practice) GN 42 of 2007 (GN 42/2007). The applicants also cited the case of **V-Marche Limited v Fitina Rashid Mloola**, Revision No. 371 of 2019, High Court of Tanzania (unreported).

The applicants went on to submit that there is no proof that the respondent had financial crisis to the extent of terminating them from employment and that, no measures were taken to minimize the exercised retrenchment. They alluded that the respondent did not consult them before retrenchment, rather, they were called in a meeting to discuss about the company's future after termination of the company's contract with the contracted company. As to compliance of retrenchment procedures the applicants invited the court to refer to the case of **Mustafa M. Mrope and Ester Mkandawile v. Ultimate Security (T) Limited**, Revision No. 875 of 2019, High Court of Tanzania (unreported).

As to payment of terminal benefits the applicants, submitted that no evidence was tendered by the respondent to prove payment of their terminal dues. They stated that the respondent deceived them and made them to sign a document which had less amount of money, which they accepted because they only needed money.

In the upshot the applicants urged this court to declare that there was breach of employment contract and that termination in this case was unlawfully. They asked the court to order the respondent to pay them damages and the reliefs claimed in CMA F1.

Responding to the application Mr. John, adopted the respondent's counter affidavit to form part of his submission. He stated that the respondent is a registered partnership group (Firm of Individuals) organized to do cleaning works in various premises including sweeping of streets. He submitted that the respondent entered into a sub-contract with a company known as Green Wastepro Limited, a big company specialized in the business of waste management operating in Mwanza, Dodoma and Dar es salaam. He alluded that the latter company entered into a sub-contract agreement with the respondent's company to do cleaning works at Kariakoo area. The respondent engaged his own employees who were the applicants to work therein.

He stated that, if the contracted company loses its tender, the respondent will be adversely affected also. Mr. John went on to submit that DW1, Aminata Mchomvu tendered at the CMA the contract between the respondent and contracted company signed in 2012 (exh. D1). He stated that the witness further testified that in 18.12.2018, the contract between Ilala Municipality and Green Wastepro Limited was terminated and the tender was allocated to the company known as M/S KAJENJERE TRADING COMPANY. He added, that the evidence of DW1 was also supported by DW2 who was the employee of the contracted company

who also tendered a letter of notice of termination of the tender in question (exh D6). He submitted that following such incident the respondent had no any other option than to retrench his 55 employees who were working at the Kariakoo area.

As to the allegation that the respondent's contract with the contracted company has no link with the applicants' employment Mr. John submitted that the employer has no duty to disclose his source of income to his employees thus such allegation is misconceived and preposterous. He strongly submitted that the respondent discharged his duty of disclosing the reason for retrenchment and that the procedures provided by the law were followed. To support his submission, he cited the case of **Macrina Rwechungura v. Mwananchi Communications Limited**, Revision No. 473 of 2016, High Court of Tanzania, Labour Division Dar es Salaam.

Mr. John further submitted that lack of business is a genuine reason for retrenchment. He stated that the respondent informed the applicants of his intention to retrench by letters which were admitted as exh. D2. He alluded that in the said meeting the retrenchment exercise was discussed and agreed that the 55 employees including the applicants be retrenched and paid severance pay, annual leave and

salary for the worked days as reflected in exh D3. He stated that following such meeting the applicants received their entitlements and acknowledged receipt of their entitlements by signing letters signifying their acceptance. That the said letter was admitted as exh. D4. He added that the applicants were finally issued with termination letters (exhibit D5). He stated that the allegation that the applicants did not receive any payment is a misconception and an outright lie aiming at benefiting twice. He stated that the cases cited by the applicants are strictly distinguishable to the case at hand.

Mr. John went on to argued that if the applicants were dissatisfied with the way the retrenchment process was carried out, they would have referred such complaint to the CMA. He supported his argument, with the case of **Resolution Insurance Limited v. Emmanuel Shio and 8 others**, Revision No. 642 of 2019, High Court of Tanzania Labour Division, Dar es salaam. The Learned Counsel insisted that the respondent followed all the required procedures for retrenchment. Conclusively, he urged the court to dismiss the application and confirm the Arbitrator's decision.

After considering the parties submissions, CMA and court records as well as relevant laws, I find the court is called upon to determine the

following issues; *whether the respondent had sufficient reason to retrench the applicants*, *whether the respondent followed procedures in retrenching the applicants* and *what reliefs are the parties entitled*.

As to the first issue of whether the respondent had justifiable reason to retrench the applicants; retrenchment is one form of termination which is also known as operational requirement. The same is defined under section 3 of the ELRA to mean requirement based on the economic, technological, structural or similar needs of the employer. The circumstances that might legitimately form the basis of termination on the ground of retrenchment are provided under Rule 23 (2) of GN 42/2007.

In the application at hand, it is undisputed fact that the applicants were retrenched following the termination of contract between Ilala Municipal Council and Green Wastepro Limited (who contracted with the respondent). The respondent asserted that he entered into a sub-contract with the contracted compony. However, in 18.12.2018 the contract between Ilala Municipal Council and Green Wastepro Limited was terminated as reflected in the letter dated 04.01.2019 (exhibit D6). Following such termination, the respondent lost a contract with the contracted company and he had no any other option than to retrench

his employees. Going through the records, it is my view that the respondent's reason for retrenchment is sufficient and proved. The respondent tendered a sub-contract between him and Green Wastepro Limited (exhibit D1). Therefore, it is undisputed fact that the two companies had contractual relation. As also stated above, the records are clear that the contract between the contracted company and Ilala Municipal was terminated. Following such circumstance, I join hands with the applicant's submission that he had no any other means than to terminated the applicants.

I have noted the applicants' allegation that their contract with the respondent had no any relation with the contracted company.

With due respect to such submission, it is undisputed fact that the respondent is a company dealing with cleaning services hence, having lost a place where the applicants were engaging in their daily work, at Kariakoo area necessitated the respondent to retrench the applicants' employment contracts. Thus, as rightly found by the Arbitrator the respondent had valid reason to retrench the applicants.

On the second issue as to whether the respondent followed procedures in terminating the applicants. The procedures for termination

on the ground of retrenchment are provided under section 38 of the ELRA. The same are further provided under Rule 23 (4) (5) (6), 24 and Rule 25 of GN 42/2007. In the application at hand the records shows that the respondent adhered to all the procedures stipulated in the relevant provisions. The applicants were informed of the intended retrenchment and notified to attend a consultative meeting as evidenced by exhibit D2. Again, the applicants attended the consultative meeting where retrenchment and the applicants' entitlement were agreed as reflected in the consultative minutes (exhibit D3 collectively). Thereafter the applicants received their terminal benefits pursuant to exhibit D4 collectively. After compliance of all the procedures then the respondent proceeded to terminate the applicants where he served them with termination letters (exhibit D5).

Therefore, on the basis of the foregoing discussion, I join hands with the Arbitrator that the respondent followed all the stipulated procedures in terminating the applicants from employment.

I am not in disregard of the applicants' allegation that they acknowledge receipt of the terminal benefits only because they needed the money. In my view what the applicants had in mind should have been clearly stated in the relevant letters. By not stating so, it proves

that the applicants agreed and accepted all the procedures used to retrench them. As correctly submitted by Mr. John, if the applicants were aggrieved with the retrenchment process, they should have not signed the questioned letters which is the correct position of the law under section 38 (2) of the ELRA, the position which was also restated in the case of **Resolution Insurance Limited v. Emmanuel Shio** (supra).

On the last issue as to reliefs, as it is found that the respondent had sufficient reason to terminated the applicants and he followed the stipulated procedures, I find the applicants are not entitled to the reliefs claimed for as correctly find by the Arbitrator.

In the result, for the reasons stated above, I find the present application has no merit and it is accordingly dismissed.


A.K. Rwizile

**JUDGE**

23.12.2021