IN THE HIGH COURT OF THE UNITED

REPUBLIC OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

REVISION NO. 01 OF 2021

STEPHANO ABELY KAHOMBWE ..... 1st APPLICANT

SULTAN SALEHE SANGA .....2nd APPLICANT

WAZIRI RASHIDY MHENGA .....3rd APPLICANT

ABDALLAH RAMADHANI KASSIM ..... 4th APPLICANT

SHUKURU JONAS MWAISUMO ..... 5th APPLICANT

VERSUS

YAPI MARKEZI INSAAT VE SENAYI A.S ..... RESPONDENT

JUDGEMENT

27th October, & 14th December, 2021

Rwizile, J

The applicants filed the present application urging the court to revise and set aside the decision of the Commission for Mediation and Arbitration (CMA) in labour dispute No. CMA/DSM/ILA/754/19/22/20 delivered by Hon. Mwabeza, N.L Arbitrator on 15/12/2020.

The dispute arose out of the following context; the applicants were employed by the respondent's company in diverse dates as plumbers on contracts of unspecified period of time. On September, 2019 the applicants were terminated from employment on allegation that they so

agreed. Aggrieved by the termination the applicants referred the matter to the CMA claiming for unfair termination. The CMA found there was fair termination in this sense that the parties agreed to terminate their employment contracts by agreement. Hence, their claim was dismissed. Again, being dissatisfied by the CMA's findings the applicants filed the present application on the following grounds: -

i. That the Learned Arbitrator being aware that the process which lead to the termination of the applicants was operational requirement, she erred in law and fact to hold that it was subject to agreement without following procedures provided for termination based on operational requirements.

ii. That the learned Arbitrator erred in law and facts to base on alleged agreement which did not exist.

iii. That the learned Arbitrator erred in law and fact by misinterpreting and misusing the case of Yara Tanzania Ltd v. Athuman Mtangi & others, Rev. No. 49 of 2019, HC. Lab. Div. DSM (unreported).

iv. That the learned Arbitrator erred in law and fact to ignore the closing submission of the applicants without assigning any reason.

v. That the learned Arbitrator erred in law and fact to deny the applicants with statutory reliefs prayed as a result of unfair termination.

vi. That the learned Arbitrator erred in law and fact by failing to keep the record of the Commission as to the names of the complainants as well, the nature of the reliefs they claimed.

The matter was argued by way of written submissions. Before this court the applicants were represented by Mr. Isaac Nassor Tasinga, learned counsel whereas Mr. Ceasor Kabissa, Learned Counsel appeared for the respondent.

On the first ground Mr. Tasinga submitted that the applicants were terminated on the ground of operational requirement without following the required procedures. He stated that the applicants invited the Arbitrator to rely on the case of **NUMET v North Mara Gold Mine Ltd**, Lab. Div. DSM Rev. No. 06 of 2015, however the Arbitrator ignored such case without assigning reasons thereof.

As to the second ground Mr. Tasinga submitted that the Arbitrator relied on the purported termination agreement which was not tendered at the CMA.

Regarding the third ground it was contended that in her decision the Arbitrator referred the case of **Yara Tanzania Ltd** (supra) without following procedures pursuant to Rule 12 (2) of GN 66 of 2007. Mr. Tasinga argued that the mentioned provision requires the Arbitrator who come across with a binding decision to convene the parties to address him/her on the extent of such authority to influence their case. He further submitted that the Arbitrator did not rely on the case they cited and suo motto referred to the disputed case without following the required procedure.

Turning to the third ground Mr. Tasinga strongly submitted that, the Arbitrator ignored the applicants' closing submissions which contained authoritative decisions of the superior court. He alluded those submissions of the parties are not cosmetics in court file but they carry views of the parties and touch the right to be heard.

Arguing the fifth ground Mr. Tasinga submitted that the Arbitrator ignored the applicants' reliefs sought in the CMA F1.

Lastly, it was submitted that throughout the award the names of the applicants were not mentioned. Mr. Tasinga stated that the only name of the first applicant was mentioned. The Learned counsel argued that

such an omission is an error on the face of the records. In the upshot the learned Counsel persuaded the court to allow the application.

Responding to the first ground Mr. Kabissa submitted that the applicants' counsel is misleading the court because the applicants were terminated by agreement. He argued that termination by agreement is recognized by our laws under Rule 3(2) and 4 (1) of the Employment and Labour Relations (Code of Good Practice) Rules, GN 42 of 2007 (GN 42 of 2007). He further argued that the purported agreement was due to reduction of workload and not operation requirement as alleged by the applicants' counsel. To support the submission on termination by agreement the Learned Counsel cited numerous court decisions which will be considered by this court.

Mr. Kabissa further argued that the applicants were not forced to sign the termination agreement hence they are estopped from raising further claims under the doctrine of estoppel.

As to the allegations against the closing submissions Mr. Kabissa strongly submitted that the Arbitrator considered the same as reflected at page 4 of the impugned award.

Regarding the fourth and fifth grounds the learned counsel firmly submitted that the arbitrator considered the evidence of both parties and each complainant was awarded in accordance with the law.

On the last ground Mr. Kabissa argued that the omission by the arbitrator not mentioning the names of the applicants is not an issue that touches the merits of the matter. Thus, such an omission is not fatal at all because the dispute being consolidated involved five complainants. He thus urged the court to upheld the CMA's decision. In rejoinder Mr. Tasinga reiterated his submission in chief.

After going through the rival submissions of the parties, court records and relevant laws, the court is called upon to determine whether there was termination by agreement in this case and what reliefs are the parties entitled to.

As to the first issue of whether there was termination by agreement in this case; as rightly submitted by the respondent's counsel termination by agreement is recognized in our laws under Rule 3 (2) (a) and 4 (1) of GN. 42 of 2007. The applicants are disputing that there was no termination by agreement in this case because the respondent did not tender the alleged termination agreement. I have careful gone through the CMA records, the respondent tendered the applicants' termination

letters (exhibit D1), reading the content of such exhibit word by word, I am satisfied that the parties agreed to terminate the employment contracts by agreement. For easy of reference, I hereunder reproduce relevant parts of (termination letter of Sultan Salehe Sanga) exhibit D1, the clause which is provided in all termination letters of the applicants except the date difference: -

> *"We wish to inform you that, following our earlier communication on our mutual agreement, we are now formally advice you that the employment contract between you and* ***YAPI MARKEZI*** *signed on 07th of February, 2019 is officially come to an end on 16th of September, 2019 this is your last working day within YAPI MERKEZI."*

The above quotation clearly shows that the parties had prior discussion before termination of the disputed contract. The applicants the letters accepting that indeed the parties had prior negotiation before signing the termination letters. As correctly held by the Arbitrator, there is no proof that the applicants were forced to sign their termination letters which had an agreement clause. Therefore, through the contents of the termination letters, I am satisfied that the parties agreed to terminate the employment contract freely on their own will.

I have noted the applicants' submission on the procedures for termination on the ground of operational requirement. As stated above and also found by the Arbitrator termination of employment contracts in this case was by agreement. Therefore, the respondent was not duty bound to follow the alleged procedures. In other words, no required procedures were supposed to be followed by the respondent in terminating the applicant's employment contracts.

I am not in total disregard of the applicant's allegation on the case referred by the Arbitrator. With due respect to Mr. Tasinga's submission, I do not think his interpretation reflects the terms Rule 12 (2) of GN 66 of 2007. It is common knowledge that decisions of the High Court and Court of Appeal bind the courts below as well as the CMA.

Mr. Tasinga wants this court to fault the arbitrator's decision for referring to the disputed case which was not cited by the parties. On the basis of the foregoing discussion, it is my view that the Arbitrator's decision cannot be faulted for referring to the alleged case so long as the cited case had no new issue raised apart from the ones discussed by the parties. Secondly, I find no prejudice occasioned to the parties by referring to the disputed case. Thus, such ground lacks merit and is dismissed accordingly.

The allegation as to failure to state the names of the applicants in the award also lacks merit. CMA records includes the case proceedings therefore so long as the names of the applicants are in the CMA record, the award was well composed by the Arbitrator. I have also noted that Mr. Tasinga's submission consideration of the parties' final submissions. As rightly stated by the respondent's counsel the parties' final submissions were considered by the CMA as clearly stated by the Arbitrator at page 4 of the impugned award.

On the last issue as to reliefs, as it is found that the there was no unfair termination the applicants are not entitled to the reliefs claimed.

In the end, the CMA's award is hereby upheld. The respondent is ordered to pay the applicants the reliefs agreed in the termination letters if they are not paid yet. Application dismissed, with no order as to costs.

A. Rwizile

JUDGE

14.12.2021