

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LABOUR DIVISION)
AT DAR ES SALAAM

REVISION NO. 398 OF 2020

BETWEEN

ESTHER F. WAMBURA APPLICANT

VERSUS

BANK OF TANZANIA RESPONDENT

JUDGMENT

S.M. MAGHIMBI, J:

In this revision, the court is called to determine whether the applicant was fairly terminated on grounds of fraud and false pretense following her termination from the respondent bank. The undisputed facts establish that the applicant herein was employed by the respondent from the year 2001 until the year 2019 when she was terminated for allegedly tendering fake education pass marks and qualifications which she did not have at the time of her employment with the bank. She was subsequently subjected to a disciplinary hearing and was eventually terminated, a termination which she unsuccessfully battled at the Commission for Mediation and Arbitration for Ilala ("CMA") vide Labor Dispute No. CMA/DSM/ILA/1252/18 ("the disputed")

by an Award dated 24/08/2020. Aggrieved by the decision of the CMA, the applicant has moved this court under the provisions of Section 91(1)(a),(b), 91(2)(a),(b), 91(4),(a),(b) and 94(1),(b),(i) of the Employment and Labour Relations Act No. 6 of 2004, as amended by Written Laws (Miscellaneous Amendments) Act No. 3 of 2010 and Rules 24(1); 24(2)(a),(b),(c),(d),(e) & (f) and 24(3)(a),(b), (c),(d) and 28(1)(a),(b), (c),(d),(e) of the Labour Court Rules G.N. No. 106/2007 For the following:

1. The honorable Court be pleased to revise the Arbitration proceedings and award issued by the CMA on 24th day of August 2020.
2. Upon revising the CMA proceedings and set aside the award, the Court be pleased to issue an order of reinstatement of the applicant as prayed.
3. Any other relief that this honorable Court deems fit and just to grant.

The Chamber Summons was supported by an affidavit of the applicant dated 30th September, 2020. In the affidavit, the applicant raised the following grounds of revision:

That in the said Revision the Applicant has overwhelming chance to succeed as the Award of Commission for Mediation and Arbitration tainted with many irregularities.

1. That the Honourable Arbitrator erred in law and facts by holding that the Applicant was fairly terminated from employment by fraud and false presence.
2. That the Honourable Arbitrator grossly erred in law and facts by holding that the procedures were adhered to by the Respondent before termination from employment despite of the strong evidence adduced by the Applicant.
3. That the Honourable Arbitrator erred in law and facts by giving much attention to the evidence adduced by the Respondent herein while disregarding the Applicant evidence and if any ended up misconstruing the same.
4. That the Honourable Arbitrator erred in law and fact by arbitrarily granting the Award which otherwise was not supposed to be awarded.

On the abovementioned grounds, the following legal issues were raised:.

1. Whether it was legally right for the Arbitrator to hold that the applicant was fairly termination for obtaining a job by false pretence and fraud.
2. Whether it was legally right for the Arbitrator to hold that the procedure was followed in terminating the applicant.

Owing to those issues and grounds, the applicant prayed that this court revise and set aside the whole proceedings in the dispute and thereafter grant the relief of reinstatement as prayed by the applicant. The applicant further prayed for any other relief that the court may deem fit and just to grant.

On the day of the hearing, the applicant was represented by Mr. Arbogast Antony, learned Advocate while the respondent was represented by Mr. Deodat Mushi, learned Senior State Attorney and Mr. Hamidu Milulu, Principle Officer of the respondent. Having considered the records of this application and the submissions of parties, as per the issues raised in the affidavit, the two issues call for my intervention, the issues are whether the termination of the applicant was substantively and procedurally fair. The submissions of the learned Counsels on the issues will be taken aboard in due course of determining the issues herein.

Starting with the substance of the termination, it appears that the applicant was terminated due to an issue on the authenticity of her academic credentials whereby the respondent alleged that the applicant tendered fake education pass marks and qualifications which she did not have. In his submissions on this ground, Mr. Arbogast did not particularly deny the fact that the applicant lacked Form IV academic credentials. His main argument was that the credential were not mentioned as a pre-requisite when the applicant was applying for the job as the job advertisement newspaper (EXD1). He argued that the condition set therein was that *"candidates must be secondary school leavers, Form IV or Form VI and who have completed a two year pre-service secretarial course with typing speed of 50 wpm"*.

That having the applicant been a form four leaver, regardless of what she is called by mere being a Form IV leaver, she applied for the post and that in her application she attached her resume, some certificate from Secretarial College and a Form IV school leaving certificate(Collective Exhibit D2). Having been interviewed, she got the job through EXD5, an appointment letter. That after the interview, she was also required to fill some form for personal particulars (EXD3).

Mr. Arbogast then argued that the applicant worked with the respondent throughout from year 2000 until 2017, almost 17 years when she was required to furnish the respondent with her form IV qualification certificates (Collective EXD6), and having the applicant failed at Form IV level where she had only a leaving certificate, she had nothing to submit in terms of her pass mark levels because what she got was only a Form IV leaving certificate and she could not get academic certificate because she failed.

He submitted further that when the applicant was summoned to appear before a disciplinary hearing, she informed the committee that she failed Form IV therefore she only had leaving certificate and did not have a pass mark certificate showing what she got. That at the CMA, the respondent tendered EXD3, personal particulars, where it was alleged that the applicant did fill in particulars on how much she passed and to what extent she passed various subjects. That she filled in those particulars after the interview but before she was appointed EXD3 was to be filled,. The respondent allege that the applicant filled Section 16 of the form indicating that she had certain pass marks when she completed Form IV.

In reply, Mr. Mushi did not dispute the fact that the respondent advertised for a position of secretary via EXD1 and that the applicant made

an application. That in her application she attached application letter which contained a curriculum vitae, a Diploma in secretarial course certificate, and a Form IV leaving certificate(collective EXD2). He then submitted that the employment with the respondent is also governed by scheme of service which was in existence at the time of employment of the applicant (EXD4).

Regarding the recognized qualifications at the time the applicant was hired, Mr. Mushi submitted that the same are contained at pg 40 of EXD4 which include a certificate from the National Examination Council (NECTA). He hence argued that the applicant was required to attach the certificate and the leaving certificate attached in the application form is not the certificate recognized by NECTA.

At this point, my work is to determine whether the phrase "Candidates must be Secondary School leavers (Form 4 or Form6)" in EXD1 included a person who completely failed in Form IV and could not get a NECTA certificate and a "*Secondary School Leaving Certificate*" suffices the qualification advertised. As correctly submitted by Mr. Mushi, the advertisement cannot be read in isolation. It has to be read along with the respondent's scheme of service (EXD4) and other standing orders.

Starting with the EXD3, I have gone through the EXD3, the application form for personal details and on the first page the applicant filled her qualifications which mentioned the marks she got in Form IV. It included Book keeping C, Commerce D, English D, Swahili D and Mathematics C. The exhibit is also signed by the applicant on the second page. Although Mr. Arbogast attempted so much to deny that the signature on EXD3 is not that of the applicant, he did not bring any evidence to show that prior to the disciplinary proceeding of lodging the dispute at the CMA, they attempted to prove that the signature was forged. The applicant also attempted to change her name through EXD7, a deed poll executed on 03/05/2017 and she also wrote a letter to explain why she failed to bring the Form IV certificate. This means the applicant was making yet another attempt to deceive the employer by coming up with a new identity and new qualifications vide a deed poll.

Going to the EXD4 respondent's scheme of service, it is clear that the required certificate for Form IV education is the certificate from the National Examination Council which the respondent did not possess and since it is undisputed that the applicant did not have a Form IV certificate, then she misrepresented herself at the time of entry to the respondent. It was

therefore right for the respondent to terminate her on that ground. Hence the substantive reason for termination was fair.

Going to the procedural fairness, the records show that the respondent embarked an investigation on the applicant and the investigation report (EXD9) which the applicant refused to sign, she was subsequently served with the disciplinary charge (EXD10) and summoned to attend the disciplinary hearing. She was found guilty of the offence contravening Section 15.15(1) of the respondent's Code of Conduct and Ethics Upon being found guilty (EXD11) of she was given a chance to mitigate before the committee recommended that she should she be terminated. This was the evidence of DW1 which was not actually shaken by the applicant during arbitration.

The evidence further reveals that the applicant was afforded her right to appeal and she did vide (EXD12). The appeal was unsuccessful and she was eventually terminated through EXD13. The applicant did not deny to have been put through the disciplinary procedures hence the provisions of Rule 13 of the Employment and Labor Relations (Code of Good Practice) Rules, G.N No. 42/2007 were complied with. I am satisfied that the applicant was fairly terminated procedurally as well.

The last issue is on the relief(s) the parties are entitled to. Having found that the applicant was fairly terminated both procedurally and substantively, the revision before me is lacking merits and it is hereby dismissed in its entirety.

Dated at Dar-es-salaam this 15th day of December, 2021.




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S.M. MAGHIMBI
JUDGE