

**IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT DAR ES SALAAM**

CONSOLIDATED REVISION NO. 50 AND 106 OF 2020

BETWEEN

NATIONAL MICROFINANCE BANK PLC APPLICANT

VERSUS

MOHAMED HASHIL RESPONDENT

JUDGMENT

Date of last order: 24/06/2021

Date of Judgment: 06/07/2021

NGUNYALE, J.

The parties were under employment relationship from 1997 where by the applicant employed the respondent as a bank officer. The relationship was terminated summarily by the applicant on 23rd December, 2005 on allegations of misconduct.

The termination aggrieved the respondent who referred the labour dispute before the Commission of Mediation and arbitration (herein after to be referred to as CMA) on ground that the termination was substantively and procedurally unfair. CMA presided over by U. N. Mpulla Arbitrator found that the respondent's termination was substantively and procedurally unfair and the relationship between the parties was noted to

be intolerable hence the Arbitrator ordered compensation amounting to a total of 158,776,128/=.

Such decision aggrieved both parties whereas the applicant filed revision No. 50 of 2020 whereas the respondent filed revision No. 106 of 2020 both parties seeking revision of the CMA award in the labour dispute No. CMA/DSM/U10/M9/844 dated 28 January 2020. On the hearing date parties sought and order of the Court to consolidate the two applications and determined on the issues as reads in their respective affidavits. The following were the issues per their respective affidavits;-

- (1) Whether the relief meted by the CMA should have based on the now repealed labour laws including the Security of Employment; 1967.
- (2) Whether the Commission was justified to deny the respondent payment of subsistence allowance at Tshs. 10,000/= per five dependent members of complainants' family as his contract of employment and the required.
- (3) Whether the Commission was justified to deny the Respondent payments on interest on decretal sum from the date of award to the date of payment in full.

- (4) Whether the Commission was justified to deny the respondent payments on interest in reinstatement and subsistence allowances as they fell due to the date of payment in full.
- (5) Whether the Commission was justified to deny compensation equivalent to 60 months salaries as pleaded in respondent's statement of complaint; and
- (6) Whether the Commission was justified not to categorically state that the respondent was also entitled to social security contribution in lieu of reinstatement.
- (7) That the arbitrator erred in law and fact for granting the respondent reliefs which are contrary to the law.
- (8) The trial Arbitrator erred in law by exercising discretion not vested by the law by considering the relief provided by the law as unreasonable.

Hearing was made by oral submission. The applicant was represented by Mr. Antipas Lakama assisted by Mr. Alex Felician and Ms. Esther Msangi L and the respondent was represented by Mr Chacha Wambil all Learned Counsels. The Court is proud of their professional assistance towards the ends of justice.

Advocate Antipas Lakama for the applicant submitted that they are in agreement that the proper laws to govern the matter are Security of Employment Act Cap 387 R: E 2002 and the Employment Ordinance Cap 366 R: E 2002. The same are proper due to the provisions of Employment and Labour Relations Act Second Schedule Paragraph 13. The said paragraph provides that all disputes arising before the commencement of Employment and Labour Relations Act are dealt by the previous laws mentioned earlier herein.

On the second issue the advocate for the applicant submitted that on the second issue about subsistence allowance at rate of Tanzania Shillings they submit that under the repealed law Employment Act section 59 gives obligation to the employer to repatriate the employee or pay the repatriation costs. The respondent was paid the same per exhibit D7 as reflected at page 23 of the proceedings whereby the termination letter indicated the employee payment of repatriation allowance. In the circumstance the employee is not entitled to repatriation costs.

He went on submitting on the third issue that the employee was not entitled to any interest from the date of award to the date of full payment. They were of the view that under the Security of Employment Act the law required payment upon unfair termination. The relief were reinstatement

or re engagement or payment of statutory compensation. The same is provided under section 40(a)(1)-(5) of Security of Employment Act with amendment of Act No. 1 of 1975. The CMA when deciding this matter was assuming the powers and jurisdiction of the Minister and the Board. The CMA could not provide any relief which the previous organs did not have.

In respect of the fourth issue whether the Commission was justified to deny payment of interest in re instatement as they fell due to the date of payment in full he submitted that the CMA had no jurisdiction on reason that even the Minister and the Board under the Security of Employment had no jurisdiction to grant interest. On the fifth issue he submitted that the Commission had no jurisdiction to grant compensation to the extend of six months upon a remedy of unfair termination. Compensation was not a remedy to unfair termination. The only allowed compensation under the Security of Employment Act was compensation arising from provision of section 40 (a) (5) which was compensation paid to an employee when the employer refuse either to re instate or re-engage the employee. He referred the Court to the case of **PIUS SANGALE AND OTHERS VS TANZANIA PORTLAND CEMENT CIVIL APPEAL NO. 100 OF 2021** on the said position.

He went on submitting on the sixth issue that both under the current law and the previous Security of Employment Act and Employment Act provides that contribution of to Social Security is not a labour matter. They cannot be enforced using the Courts dealing with Labour Matters. He referred the Court to the case of **IZACK CHIMWAGA VS MBEYA CEMENT, LCCD 2012-2011** pg. 131 that contribution of social security scheme have their own procedure of enforcement. From legal position he submitted that the Commission was justified to deny a claim of social security contribution.

The applicant counsel went on submitting on issue number eight that the arbitrator erred in law and fact by granting respondent reliefs which are contrary to law. The payment of 12 months salary and salaries from 23rd December 2005 the date of termination to the date of award was unlawful because the employee ought to have retired on 7th July 2015. The Arbitrator acted without jurisdiction. Non payment of subsistence allowance, interest on decretal sum were correctly denied by CMA.

In reply the respondent strongly contested the submissions by the applicant. He was of the view that unjustified summary dismissal attracts damages either specific or general as stated in the case of **WALTER**

CHAGA VS. CORDIORA LTD t/as TANGANYIKA TOURISTS HOTELS AND OYSTERBAY HOTEL (1972) HCD 133. The Arbitrator granted relief based on specific and general damages. The employee was terminated at the age of 40 on what the employer purported to be breach of trust. The termination blacklisted the respondent. He could not work anymore in banking and financial industry for the rest of his life.

On the first issue the respondent agreed with the applicant that the applicable laws are the labour laws under the old legal regime on substantive matters. In the other hand on the second issue the employee deserve payment of subsistence allowance, repatriation and social security. On the third issue about payment of decretal sum which the commission did not order payment the respondent submitted that the same ought to be paid with interest. He avoided to argue issue number three and four for reason that they are similar to what he has already argued.

Payment of six months was lawful taking into account the way the employee was mistreated. The mistreatment justify to seek sixty months compensation. The reason for dismissal was unjust reason and un fair procedures. No for almost twenty years the respondent is seeking amicable solution unsuccessful.

On payment of social security contributions, he submitted that the same is not part of labour matter and therefore the commission had no jurisdiction. Re- instatement will be impractical for a retired employee like the respondent who was to have retired since 2015. Re instatement is not the only remedy. He is entitled to monetary compensation. The respondent counsel submitted further tha because this is the Court of record with inherent powers to meet justice, since the procedural law allow Labour Court Rules to be applicable. The Court should invoke Rule 55 (1) of Labour Court Rules to expediate disposal of this matter as employee is now also suffering from diabetes.

In rejoinder advocate Antipas Lakama submitted that in any case where compensation is needed the proper provisions are section 45 (a) 5 read together with section 36 of Security of Employment Act re instatement was the only remedy in case of unfair termination or dismissal.

The Court has read very careful the proceedings, the award, pleadings and the submission by both parties. So far there is no dispute that the respondent's dismissal was both substantively and procedurally unfair. The Arbitrator clearly laid foundation on how the employer failed to prove that he had valid reasons with fair procedures. The parties


submissions tells the Court that there is not dispute on the fact that the dismissal was both substantively and procedurally unfair. The only issue in dispute is whether proper reliefs were awarded by the Arbitrator?

The Arbitrator in granting relief he said that;-

"I am aware that under the Security of Employment Act, where dismissal is found to be unfair, the only relief was reinstatement which has been prayed by Mr. Chacha herein. However, considering the time taken to dispose this matter from 2005 up to now which makes 20 years, such relief is unreasonable. Instead, I find it wise to order that the complainant be compensated 12 months salaries for unfair/unlawful dismissal and, without loss of remuneration from the date of unfair dismissal (23/12/2005) to the date of this award (28/01/2020)."

Both parties were of the view that re instatement was a proper remedy but impracticable as found by the Arbitrator instead they had a long argument in respect of other reliefs sought. I agree with the Arbitrator that compensation was a proper and the only remedy necessary. To compensate till the date of award covers grievances about the way the respondent suffered since he was terminated, in the event I see no reason to differ with the findings of the arbitrator. The Arbitrator was right to dismiss other claims because they had no legal basis.

Finally, there is no reason to depart from Commission for Mediation and Arbitration award. The application lacks merit, thus dismissed.



D. P. NGUNYALE

JUDGE

06/07/2021