

**IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT DAR ES SALAAM
REVISION APPLICATION NO. 27 OF 2020**

BETWEEN

**ABDULRAZACK M. NGATIPULA.....1ST
APPLICANT**

AUGOSTINO NGOGWA.....2ND APPLICANT

AND

LAKE TRANS LIMITEDRESPONDENT

JUDGMENT

Date of the Last Order: 23/06/2021

Date of Judgment: 05/07/2021

Z.A. Maruma,J.

The Applicants ABDULRAZACK M. NGATIPULA and AUGOSTINO NGOGWA as the then employees of Lake Trans Limited are aggrieved by the decision of the Commission for Mediation and Arbitration in Labour Dispute No. CMA/PWN/KIBH/49/19 dated 13th December 2019. Before this Court, they are seeking for following orders that:-

1. This Court to order re trial before another mediator.
2. This Court to order re- in statement with no conditions.
3. The order to the respondent to pay all entitlement as applicants were unfairly terminated.

The gist of this application resulted from the employment dispute instituted at the Commission for Mediation and Arbitration on 22nd May 2019. The applicants herein were employed as security guards by the respondent at different periods. The 1st applicant was employed on 1st July 2013 with a salary of TZS 400,000/= and the 2nd applicant was employed on 14th February 2013 with a salary of TZS 300,000/=. Both were terminated on 6th May 2019. Aggrieved with the employer's decision, they went to CMA claimed for their rights for re- engagement or compensation due to unfair termination.

The hearing of this application was in the presence of the applicants in persons represented by Mr. Joachim Joliga and Mr. Heriolotu Boniface represented the respondent. The application was supported by a joint affidavit of the applicants, ABDULRAZACK M. NGATIPULA and AUGOSTINO NGOGWA and counter affidavit of Mr. Innocent Emmanuel Mwaipopo, the principal officer of respondent. Both affidavit and counter affidavit were adopted and form part of the submissions to this application.

Mr. Joachim Joliga for the applicant started running the ball submitted that, the grounds for this application were that, the Arbitrator did not consider applicants' evidence adduced before the

Commission for Mediation and Arbitration. He added that, the award did not consider that respondent did terminate the employment of the applicants without reasonable ground and following of the proper procedures.

Also, he submitted that, the procedures of disciplinary proceedings were not followed as per Rule 13 GN. 42 of 2007. The applicants were not called for the hearing on the disciplinary matter. Moreover, he submitted that on the same proceedings, the respondent did not follow the meeting rules. He sits as the chairperson and decided for himself. The counsel argued that was contrary to the principles of natural justice.

For those reasons, he argued that the applicants have the reasonable grounds to dispute the decision of the CMA. He added that, since the applicants were employee under salary scheme of the respondent, they are entitled for the unfair termination. He submitted that, since there were no valid reasons for termination and procedures for were not followed. The applicants are entitled either to be re-instated or paid for 12 months as per section 40 (1) Employments & Labour Relations Act No. 6 of 2004.

He, further, argued that the applicants are also entitled for notice of termination, leave allowance and certificate of services, terminal benefit and other relief as per E&L Relation Act.

Contested the application, Mr. Heriolotu Boniface adopted affidavit to support his submissions. He argued straight to the issues that, the applicants were given right to be heard. The CMA considered the evidence adduced and the decision was pronounced hence this revision. He argued that, the grounds for the termination was due to theft events occurred at applicants' stations as per exhibit **A1** on the record. He submitted that there was sufficient evidence that theft occurred, and some property alleged to be stolen were found at the premises of one of the applicants. Likewise, he submitted that the procedure for termination were properly followed as per the law. He further argued that the applicants were summoned to appear at disciplinary committee and refused to exercise their rights, and that is evident at CMA's record at annexure **A2**. Moreover, he submitted that, the Rule 13 (6) of GN. 42 of 2007 gives power to the employer to proceed with disciplinary matter regardless the failure of the applicants to appear as they did refer to an exhibit **A3** which resulted to the termination of applicants. He

further pointed out that, the entitlements for applicants were paid such as notice, leave and others as exhibit **A4**. In concluding his submissions, He argued, the application be dismissed and the decision of CMA upheld.

In a short rejoinder, Mr. Joachim Joliga submitted that, the respondent did not say who was responsible for the theft and how frequent it was. Also, he submitted that the theft was not proved by the court of law and there was no any written warning to applicants.

This Court, in evaluating the arguments raised by both representatives for the applicant and the respondents, finds the issue to be determined is whether the grounds are valid to amount termination and what are the remedies for the same.

Having going through the record and arguments above, it is apparent that, the applicants were employed by the respondent at different period. It is also clear that their employments were terminated on 6th May 2019.

However, the ground of termination according to the applicants was that, on 23rd April 2019 before the termination, the applicants were summoned to the headquarters office located at Kigamboni

where they were told that, they were no longer needed by the respondent's company. On the other hand, the employer established that, the grounds for the termination were due to carelessness resulted to theft at their working station, and the applicants have been warned orally before the termination.

The record also revealed that, the respondent alleged on the misconducts of the applicants as indicated in page 5 of the proceedings that, the applicants did commit three offenses one is of carelessness at the working stations, second, they put in danger the properties of the employer and the third one was that, they caused loss of employer's properties. DW1, a Human Resources officer testified to summon the applicants to submit "*maelezo yao*" on the above allegations, but they refused to do so and he referred a notice A1. Also, DW1, testified that, on 29th April 2019 the applicants were called for disciplinary hearing however, they refused to appear, he referred a notice A2. The minutes of the said meeting was also tendered as exhibit A3. Dw1 further submitted that upon the termination, the payment were made to the applicants as exhibit A4. Therefore, according to DW1 all procedures were followed. However, questioned by the Commission about the measures taken on the alleged misconducts, DW1 testified that, the theft was reported to the

police and investigation was still going on. DW1 also, admitted there were no written contracts for the applicants, and he was not understanding the weight of the misconduct committed by the applicants neither their effect. DW1 also admitted that the Lake Trans Ltd has no any code of conduct availed to the staff at working area.

Going through the evidence on record, it is apparent, clear, that the applicants were not given a fair hearing of their allegations resulted into the termination of their employments. This is evident by the evidence of DW1 at page 5, 6,7 and 8 together with the evidence of DW2 at page 11 and 12 which revealed that, the applicants were not properly summoned and informed about the allegations. No report was availed to them before the disciplinary meeting as per evidence of DW2. This is contrary to section 13 (1) of the Employment and Labour relations (Code of good practice) Rules of 2007 that, there must be an investigation conducted.

Based on the above facts, it is the finding of this court that, the respondent failed to prove that the termination was fair as required by the law under section 39 of the E&LRA of GN. No. 6 of 2004 and Rule 9 (3) of the GN. 42 of 2007. Therefore, there was unfair termination, as the record transpires on the evidence of DW1 and

DW2. Thus, the Arbitrator was erred in law to rule that there was fair termination under section 37 (2) of E&LRA of GN. No. 6 of 2004.

Also, since the employer has no records of the contracts of the applicants, this court finds that the applicants worked for the employer for more than six years, they are covered under section 42 of E&LRA of GN. No.6 of 2004.

In considering of the above findings, this Court is of the view that, the applicant's employments were unfairly terminated. However, there is no chance for them to be re-engaged as their employer is not in need of them and the employment relationship is irreparable. Based on the findings above, the award of CMA is hereby set aside, instead, under section 40 (1) and 42 (1) of the E&LRA of GN. No.6 of 2004. I order the applicants to be paid compensation for unfair termination for 18 months' salary and severance pay for one (5) year.



Z.A. Maruma

JUDGE

05/07/2021