IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT MOROGORO

REVISION NO. 06 OF 2021

BETWEEN

ALLIANCE ONE TOBACCO TANZANIA LIMITED.....APPLICANT

VERSUS

MARTIN CHEMBELI GENELA & 3 OTHERS.....RESPONDENT

JUDGMENT

31st August & 3rd September 2021

Rwizile J.

This application is challenging the award made by the Commission for Mediation and Arbitration (CMA) in consolidated labour dispute No. CMA/MOR/100/2019, CMA/MOR/101/2019, CMA/MOR/102/2019. CMA/MOR/103/2019. The applicant, is applying for orders in the following terms: -

1. That the honorable Court may be pleased to call for the records, revise and set aside the whole award of the Commission for Mediation and Arbitration at Morogoro Zone (Hon. Mtalis, R, Arbitrator) in respect of Consolidated Labour Dispute No. CMA/MOR/100/2019, CMA/MOR/101/2019,

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CMA/MOR/102/2019, CMA/MOR/103/2019 dated 04th December 2019

2. That the Honourable Court may be pleased to determine the dispute in a manner it considers appropriate.
3. Any other reliefs that the Court may deem fit and just to grant.

Briefly, it was stated that the respondents were employed by the applicant on various positions. However, their employment was terminated for reason of retrenchment on 31st July 2017. Following the decision to terminate them, the respondents filed the matter at CMA, complaining of unfair termination. Upon hearing, it was decided in their favour. The decision dissatisfied the applicant, hence this application.

The application as the matter of law is file by a chamber summons supported by affidavit of one Sabatho Musombwa who is the applicant's Principal Officer. The affidavit, advances four legal point for this court to determine as hereunder;

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i. Hon Arbitrator erred in law and fact by hearing and determining the labour dispute by way of arbitration without having requisite jurisdiction according to the law.

ii. Hon. Arbitrator erred in law and fact by holding that the applicant deserved to be paid their retrenchment package as per CBA as permanent employees and failed to appreciate clear evidence adduced by the applicant's witness that they did not qualify.

iii. That the Hon. Arbitrator erred in law and fact in assuming that the interpretation of the disputed provision given by the applicant is not correct because it was not part of the 17/05/2019 agreement and also there was no evidence to prove if there was another agreement reached and failed to appreciate a clear evidence from the applicant's witness that in lieu of the misunderstanding of that provision and clear the

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air, the management of applicant agreed second severance pay to all respondents.

iv. That the Hon. Arbitrator erred in law and facts by awarding the respondent the sum of TZS 6,904,976/= each and failed to consider that the respondents had already received their terminal benefits package.

At the hearing of the application, the applicant was represented by Mr. Boniface Woiso, learned advocate, while the respondent was represented by Mr. Zongwe, Personal Representative from (TPAWU). Supporting the application, it was argued that CMA had no jurisdiction to entertain the application. He stated that the arbitrator erred in law by entertaining the dispute relating to Collective Bargain Agreement (CBA) contrary to sections 74(a)(b) and 67(9)(a)(b) of the Employment and Labour Relations Act, [Cap 366 R.E 2019]. He was of the view that the dispute should be filed at CMA for mediation, failure to mediate the same, should be referred to the Labour Court for decision.

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The counsel submitted that the dispute was not within the jurisdiction of the CMA, because it was based on the retrenchment agreement as evidenced by exhibit P-3, the agreement, which stated that all workers with 3 years contract not renewable who continued working for a long-term employment were to be covered by collective bargain agreement (CBA) as permanent employees. Their terminal benefit would be the same as permanent employees.

It was his view that it is not true that there was no evidence for the respondents who had a contract for three years but not renewable. He stated that the applicant observed all procedures in implementing retrenchment exercise including, offering respondents alternative jobs but they decided to resign with no reason thereby filing the matter at CMA. It was further submitted that the order was of double payments regardless of its business crises that resulted to retrenchment. It was the applicant's prayer that the application be granted.

Mr. Zongwe for the respondent submitted that the issue of jurisdiction is misplaced. It was his argument, that before CMA, retrenchment agreement was an issue between the parties. He stated that the provisions cited dealt with collective bargaining agreement

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and not retrenchment agreement. He stated that the meeting for consultation were covered in it, because employment was for 3 years and were still on duty despite of renewals which were continued for 10 years.

Mr. Zongwe argued further that Dw1, did not prove before the Commission the employees whose contracts come to an end but still continue to work. He stated that on severance pay, Dw1 testified that it was on 09.09.2019 but the dispute before CMA was on 30.07.2019. On such payment, the applicants (Pw1-Pw4) told CMA did not know if there was such payment as the same was made silently through their bank accounts without any agreement. He was of the view that Dw1 did not prove payment agreement on severance pay. It was further submitted that termination was not in dispute but the dispute was on execution of retrenchment agreement.

The applicants and TPAWU agreed that those with 3 years contract be paid as those who had a permanent employment. This payment had to include collective bargaining agreement, he added. It was his conclusion that the retrenchment agreement covered them and ought

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to be paid as per the agreement dated 17.05.2019 between the parties.

In a rejoinder, the learned advocate said, the dispute was on execution of collective bargaining agreement, therefore the arbitrator lacked jurisdiction on the same. He lastly added that, the respondents were not covered by the clause as their contracts were renewable.

After carefully considering the arguments of the parties, I think, I am inclined to first determine if the CMA was seized with jurisdiction to hear the dispute before it. Section 4 of the Employment and Labour Relation Act, defines Collective Agreement as "*a written agreement concluded by a registered trade union and an employer or registered employers' association on any labour matter*". As to whether there was such an agreement is a matter of fact. The CMA decision is to the effect that there no dispute that between the parties, as Pw1 to Pw4 testified in support of the evidence of Dw1 as per exhibit PP3 present in the record is to that effect. The same was also referred in the award at page 8. This therefore, was a collective agreement made on 17th May 2019. The dispute therefore, was hinging on,

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application, interpretation or implementation of clauses of the collective agreement as define by section 4 of the Act.

That being the case then, the relevant provision applicable in my view, is section 74(a)(b) of the Employment and Labour Relation Act, it provides that;

> *Unless the parties to a collective agreement agree otherwise –*
>
> *(a) a dispute concerning the application, interpretation or implementation of a collective agreement shall be referred to the Commission, for mediation; and*
>
> *(b) if the mediation fails, any party may refer the dispute to the Labour Court for a decision.*

It is therefore clear, that in case there is a misunderstanding between the parties regarding, application, implementation or interpretation of the said agreement, the only remedy is to refer the matter for mediation before the Commission. In case mediation fails, then the complaint should be referred to the Labour Court for decision.

In this matter, upon failure of mediation, by the letter and spirit of section 74(a)(b) of the Employment and Labour Relation Act. The

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same was to be referred to this court for decision. Failure to do so, rendered what was done thereafter faulty in procedure.

I therefore agree with the applicant that the CMA award was out of procedure. It is quashed and set aside. The application is therefore allowed, with no order as to costs.

AK. Rwizile
Judge
03.09. 2021

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