IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT MOROGORO

REVISION NO. 24 OF 2020

TANBREED POULTRY LIMITED.....APPLICANT

VERSUS

FAINAS DIDAS ONG'UNDI & 6 OTHERS.....RESPONDENT

JUDGEMENT

30th August & 6th September 2021

Rwizile J.

This application is for revision. The applicant moves this court to revise the decision of the Commission for the Mediation and Arbitration, CMA/DSM/MOR/13/2017, dated 7th February 2020. It is filed by the chamber summons supported by an affidavit of Habiba Amanzi. It contains one ground for determination at paragraph 4 of the affidavit thus;

> *The trial honourable Arbitrator failed to scrutinize evidence adduced during the hearing.*

When the matter came for hearing before this court. the applicant enjoyed services of Mr. Kalasha a Principal Legal officer of the

applicant. The respondents were represented by Mr. Hamis Salum from TASIWU.

In his oral submission supporting the application Mr. Kalasha argued that the arbitrator failed to evaluate the evidence. He cited para 16 of the award where exhibit Kw2 and the evidence of Dw2 to have proved that there was sufficient notice for retrenchment. According to him, exhibit MKW3 which are email exchanges clearly showed the email was received and so the workers representative was duly informed of the same. He said, member who attended the consultative meeting included Avit Anicet, the area secretary for catering for Morogoro and Dar- es salaam. In his view, section 38 of ELRA was complied with as per the evidence of Dw1 and Dw2. He asked this court to refer to the decision of the case of **Tanzania Building Works Ltd vs Ally Mgomba, and 4 Others**, Civil Application No. 5 of 2010.

On his party, Mr. Hamis was of the different view. He argued that the section 38 ELRA on retrenchment process was not complied with. He said, there is no evidence proving all 171 employees were involved in the meeting. He went saying, Anicet who attended the meeting for the workers is for workers of Dar-es salaam not Morogoro, as per

exhibit MKW4. It was his argument further that the area Chairman one Peter Edward was not involved. He hailed the award as correct.

As part of his rejoinder, Mr. Kalasha was of the view that since Area secretary covered the Dar-es salaam and Morogoro and was employed by TPAWU), he had full authority to stand for workers. He finally submitted that the retrenchment agreement was proper and asked this court to allow this application.

The point worth determination is if there is evidence that the retrenchment agreement was properly obtained. To able to do so, I have to revisit the evidence on record. It is proper to observe that the respondent experienced economic difficult due to loss of business. In normal parlance, when businesses fall, workers in all aspects get affect. This apparently is what was advanced as the reason for retrenchment. Retrenchment therefore is legally known and allowed. There is no dispute that the respondent may have experienced one or more of business difficulties leading to retrenchment. But in order to properly reduce the number of workers. There are legal steps to be taken. As submitted, section 38 of ELRA provides for principles to follow as; **one**, give notice of the intention to retrench, **two,** disclose relevant information for retrenchment for purposes of proper

consultation, **three**, consult before retrenchment. The law further directs that consultation should be done with view of stating reasons for retrenchment, measures to be taken to minimize the exercise, the way to select workers to be retrenched, the timing of the same and payment of severance allowance to the retrenched.

As to who should be notified, subsection 1 (d) identifies, any trade union recognized under section 67, any registered trade union with members in the work place not recognized by trade union, and lastly any employees not represented a recognized or registered trade union.

The law therefore sufficiently provides safeguards to both parties on how retrenchment exercise may be conducted or implemented. In the spirit of section 39 of the ELRA, it is the duty of the respondent to prove that this process was fairly done in line with law.

Exhibit MKW2 shows, there was a communication by the applicant and area secretary of TPAWU in Dar es salaam. In MKW3, it sufficiently shows, there was an email exchange where one Anicet Avit is recorded as to be among the informed. It is these two commutations that the applicant dwells on to prove that the respondents were duly informed.

I have scrutinized all evidence from both sides. I am in serious doubt if the law was complied with. I am saying so because, if the workers at Morogoro were 171 as submitted and not disputed, and that the same had their own representatives at their work place why was it taken that the area secretary was only informed. After all, there is no evidence showing that area secretary catered for both Morogoro and Dar- es salaam. Further, the law says, representatives at the work place have to be consulted. The applicant was therefore duty bound to notify respondents before making consultations, meaningful consultations had to notify without doubt the persons to be affect by the decision to be taken.

To answer, the question asked, I have said, the submission that the Arbitrator did not scrutinize the evidence is not supported by record. The evidence by Pw1 and Pw2 was clear enough that no consultations that were made involving their representatives at their work place. From the foregoing therefore, I hold that the application has no merit. It should be dismissed. I dismiss the same with no order as to costs.

MAHAKAMA KUU YA TANZANIA
The High Court of Tanzania
(Labour Division)
DIVISHENI YA MAHAKAMA YA KAZI

AK. Rwizile
Judge
06.09. 2021