

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

REVISION NO. 495 OF 2020

BETWEEN

UYONYIMOO MAMKWEAPPLICANT

AND

UDSM COMPUTING CENTRE.....RESPONDENT

JUDGMENT

Date of Last Order: 15/9/2021

Date of Judgment: 08/10/2021

B. E. K. Mganga, J.

Uyonyimoo Mamkwe, the applicant was employed by the UDSM Computing Centre (UCC) the herein respondent as secretary cum receptionist. She had a fixed term of contracts renewable at the options of the parties. In 2018, the respondent decided to retrench some of her employees due to operational requirement, hence restructuring of the office. Applicant was among the employees who were retrenched. She was not satisfied with both reasons and procedure for retrenchment as a result on 20th September 2019 she referred Labour dispute No. CMA/DSM/KIN/778/19/132 to the Commission for Mediation and Arbitration

henceforth CMA. In CMA Form 1, applicant indicated that she was claiming to be paid TZS 25,405,000/=, Twenty-Four (24) months salaries remaining to her employment contract, terminal benefits and general damages for unexpected termination. She indicated further that there was no valid reason for termination and that procedure for termination was flawed.

On 22nd October 2020, G.P. Migire, Arbitrator having heard evidence of both parties issued an award in favour of the respondent that there were valid reasons for termination based on operational requirement and that the procedure for termination was adhered to. Dissatisfied with the award, applicant filed a notice of application supported by her affidavit seeking to revise the said award. In paragraph 19 applicant averred that, the respondent has employed other employees for the same task she was doing successfully for Seventeen good years; and in paragraph 20 she averred that termination of her employment was based on personal bias not restructuring requirement.

The application was resisted by the respondent who filed a notice of opposition and a counter affidavit of Nkwya Kapiliango, the respondent's Finance and administrative manager.

The application was disposed by way of written submissions. Applicant enjoyed the service of Raphael Lefi David, advocate while respondent enjoyed the service of Peter Ngowi, advocate.

It was submitted by Mr. David, counsel for the applicant that, the provision of section 38(1)(a),(b), (c) and (d) of the Employment and Labour Relations Act[Cap. 366 R.E 2019] was not complied with at the time of retrenchment. He submitted that respondent was supposed to transport Applicant to her place of domicile. He submitted that applicant was supposed to be given money for repatriation of the applicant and her four dependents including three tones of her belonging like all other persons who were retrenched. He therefore prayed the award be revised.

Arguing for and on behalf of the respondent, Mr. Ngowi, advocate submitted that there were valid reasons for retrenchment and that the procedure was followed. On the issue of repatriation, counsel for the respondent submitted that applicant was recruited in Dar es salaam and that she was retrenched while in Dar es salaam. For that reason, she was not in the list of employees who were entitled for repatriation package.

Having heard the parties, the most important issue to be answered by this court is whether there were valid reasons for retrenchment or not.

The issue whether, there were valid reasons for retrenchment or not, can be answered by assessing evidence of Nkwaya Esther Kipilyangu (**DW1**) and that of Uyonyimoo Edward Mamkwe (**PW1**) the only witnesses in this application. In her evidence for the respondent, Nkwaya Esther Kipilyangu (DW1) testified that applicant was employed as secretary cum receptionist. That, on 1st June 2018 the Board of Directors passed a resolution for restructuring of the office of the respondent on ground that respondent was making loss. That, by that time, respondent has recorded a loss of TZS 1,500,000,000/= as a result she closed Arusha, Mbeya and Mwanza branches. That, a notice was issued to employees that respondent intended to retrench some of her employees due to operational reasons. It was evidence of DW1 further that both employees and their trade union namely Tanzania Higher Learning Institutions Trade Union (THTU) were consulted prior retrenchment as a result a dispute was filed at CMA. CMA issued an award in favour of the respondent that she should proceed with retrenchment process. Dw1 testified further that applicant was informed that due to restructuring of the office, her post will be redundant and that she has to be retrenched based on education criteria. DW1 went on that applicant was paid TZS 3,597,866.67 as terminal benefits but claimed to be repatriated to Kigoma while her place of recruitment is Dar es salaam.

While under cross examination, DW1 stated that the position of receptionist was merged with administration and that applicant had no qualification.

In her evidence, Uyonyimoo Edward Mamkwe (**PW1**) testified that on 1st July 2002 she was recruited by the respondent as receptionist. That reasons for her retrenchment are unfair because she could do other duties as she has an experienced of 17 years and claimed to be reinstated and paid all her dues. While under cross examination, applicant (PW1) admitted that she was recruited in Dar es salaam and that she is a member of THTU and that consultation relating to fate of her employment was done. She admitted further that she was afforded right to be heard. She stated that she was challenging some of terminal benefits as she was aggrieved by Severance pay formula, transport pay to place of domicile and notice pay.

Having considered evidence of the aforementioned two witnesses and submissions by counsels, I have formed an opinion that there were valid reasons for retrenchment. Evidence of DW1 is clear to the point. This is supported by ***taarifa ya kusudio la kupunguza wafanyakazi (exh A1)*** tendered by DW1. In that report, it is clear that reasons for retrenchment were given. It is rcordeed in exhibit A1 that:-

*"...UCC imekuwa ikiendesha biashara zake Dar es salaam Pamoja na kuwa na matawi Dodoma, Mbeya, Mwanza, Arusha...katika kipindi cha hivi karibuni UCC imekuwa na matokeo ya kibiashara yasiyoridhisha. Kwa mfano, **katika kipindi cha miaka 7 iliyopita UCC imepata hasara kwa miaka mitano na miaka miwili tu ambapo UCC ilipata faida. Kwa kipindi hiki UCC imejilimbikizia hasara zaidi ya Shilingi 1.5 bilioni. Pia kwa muda wote wa uhai wake UCC haijawahi kutoa gawio lolote kwa mwenye hisa yaani Chuo Kikuu cha Dar es salaam. Hali hii imefanya mwenye hisa kutoongeza mtaji wa biashara. Pia UCC imeshindwa kupata mikopo kwenye taasisi za fedha kutokana na kutokuwa na amana za kutosha... kubadilisha aina ya huduma (hasa mafunzo) zinazotolewa na kampuni ili kuendana na mabadiliko ya mazingira kwenye tasnia ya TEHAMA na hali ya biashara..."***

This, in my view, was in line with Rule 23(1) of the Employment and Labour Relations (Code of Good Practice) Rules, 2007, GN. No. 42 of 2007. In its entirety, the evidence of DW1 and exhibit tendered (Exh. A1) proved that there was economical needs, technological needs from teaching to software design or developing. It is my considered opinion that complaints in paragraph 19 and 20 of the applicant's affidavit that the respondent has employed other employees for the same task she was doing successfully for Seventeen good years, and that termination of her employment was based on personal bias not restructuring requirement are unfounded. By whatever reason, applicant did not state so in her evidence at CMA that after retrenchment, respondent employed other employee to perform

similar duties she was performing. She was supposed to state so in her evidence so that she can be cross examined. To raise that issue at revision stage, in my view, is an afterthought knowingly that she will not be cross examined hence denying the respondent chance to contradict her.

The next issue is whether retrenchment procedures were adhered to or not. In answering this issue, I have examined the provisions of section 38 of the Employment and Labour Relations Act [Cap.366 R.E.2019] and Rule 23(4), (6), (7), (8) and (9) of the Employment and Labour Relations (Code of Good Practice) Rules, supra. That section and the said rule guides the employer what to do when contemplating retrenchment. Employer has to give notice, disclose all relevant information relating to retrenchment and do consultation. It is undisputed by both the applicant (PW1) and respondent (DW1) that parties were consulted as also evidenced by an invitation for retrenchment consultation meeting letter (exh. **A4**) addressed to the applicant, **exh. A1** that is also attached with the report from THTU and an award issued on 14th June 2019 by Alfred Massay, arbitrator in Labour dispute No. CMA/DSM/KIN/59/19 between ***UDSM Computing Centre (applicant) and THTU Mlimani(respondent)*** exh. **A3**. Based on uncontroverted evidence of DW1, I uphold the decision of the arbitrator that the procedure was followed.

It can also be discerned in termination letter (exh.B19) that was tendered by applicant that there was consultation, and further that, there were valid reasons for retrenchment. The said letter is dated 13th August 2019 and reads:-

" Re: TERMINATION OF YOUR EMPLOYMENT BY REASON OF RETRENCHMENT.

The purpose of this letter is to confirm the outcome of already communicated organization restructuring due to operational requirement that has resulted to reduction of employees by University of Dar es Salaam Computing Centre (the employer), and what this means for you.

*As a result of restructuring of the University of Dar es Salaam Computing Centre due to operational requirement to give it a **new strategic focus as per market dynamics and changes, your position of Secretary cum Receptionist is no longer needed.***

Regrettably this means your employment will be terminated. This decision is not a reflection on your performance.

The employer has made the following attempts to find you an alternative position within the organization and any associated entities with no success. We have tried to look for alternative positions across the organization and its associated entities that matches your skills, qualification and experiences but with no success.

*Therefore, **your employment will end on 30th September, 2019.** This letter also serves as notice of termination. You are reminded to adhere to Labour laws and UCC rule and regulations during the notice period.*

Due to your employment ending because of retrenchment, you will be paid the following entitlement as required by Employment and Labour Relations (Code of Good Practice) GN No. 42.

- 1. Your normal salary up to your last day of employment.*

2. *Termination notice period equal to one-month basic salary (in lieu of the notice period) (if applicable).*
3. *Severance pay equal to 7 days' basic wage for each completed year of continuous service with the University of Dar es Salaam Computing Centre, up to a maximum of 10 years.*
4. *Any accrued entitlements including outstanding leave and any outstanding pay (if any).*
5. *Transport fare and belonging to the place of recruitment.*
6. *Certificate of service".*

On 16th August 2019 applicant responded by writing acknowledgement letter (ex. A6) that she received the afore quoted letter. It should be recalled that contract of employment showed that any party intending to terminate the contract has an option of giving one month notice. This in my view, was sufficient notice and applicant was not further entitled payment in lieu of notice.

The last issue to be resolved is what relief(s) the applicant was entitled to.

In her evidence, applicant (PW1) testified that she was dissatisfied with calculations made on some terminal benefits as she was aggrieved by Severance pay formula, transport pay to place of domicile and notice pay. But in her evidence, applicant (Pw1) did not explain why and how she was aggrieved. In short, she did not explain as to how much she was entitled

to, in relation to transport, notice and severance pay. In my opinion, that is not enough for a witness to say I was not satisfied with so and so without giving grounds for that dissatisfaction. From where I am standing, I cannot step in mind of the applicant and assume what she alleged was not paid. More worse, this was not even addressed in submissions made on her behalf. But what is clear in evidence is that applicant was paid TZS 3,597,866.67 as terminal benefit as indicated in **exhibit A8** that was also tendered without objection and no question was thrown to DW1 under cross examination to show that applicant was dissatisfied with that amount. I have examined the calculations made in relation to severance pay to the applicant and find that they were correctly made and are in accordance with the provision of section 42 of the Employment and Labour Relations Act [Cap.366 R.E. 2019].

Applicant appears to be dissatisfied by non payment of her repatriation costs. She testified that she was supposed to be repatriated to Kigoma. Both applicant (PW1) and DW1 admitted in their respective evidence that place of recruitment of the applicant is Dar es salaam. In terms of section 43(1) of the Employment and Labour Relation Act, supra, an employee whose contract of employment is terminated at the place of recruitment is

not entitled to be paid repatriation costs. That said and done, this application is hereby dismissed for want of merit.



B.E.K. Mganga
JUDGE
08/10/2021

Labour Court TZ.