IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LABOUR DIVISION)

AT DAR ES SALAAM

CONSOLIDATED LABOUR DISPUTE NO. 06 OF 2019 & 01/2020

DISPUTE NO. 06/2019

BETWEEN

BENSON KASALILE ..... APPLICANT

VERSUS

MCC LIMITED ..... RESPONDENT

DISPUTE NO. 01/2020

BETWEEN

1. **CHARLES NYALUKE**
2. **MICHAEL SAMWELI**
3. **MRISHO SALUM**
4. **OMARI SAMATA**
5. **JOHN NDUMBALO**
6. **JULIUS MAHULI**
7. **GALUS HOKORORO**
8. **ABSOLUM MWAKASUMI**
9. **EZEKIEL MWANJOWE**

..... COMPLAINTS

AND

MCC LIMITED ..... RESPONDENT

JUDGMENT

S.M. MAGHIMBI, J:

The two Labor Disputes No. 06/2019 and 01/2020 have been consolidated at this stage of judgment by consent of all parties. The consolidation comes from the fact that in both disputes, the Complainants in

their respective Disputes are complaining on the implementation of the same Collective Bargaining Agreement entered between the employees' trade union COTWU (T) and the respondent ("the CBA"). It is pertinent to note at this point that the respondent in both disputes is one person, a body corporate trading in the name of Malawi Cargo Centre Limited, using abbreviations MCC Limited and also the common employer of the applicants in both disputes.

After the mediation stipulated under Section 74(a) of the Employment and Labor Relations Act, Cap. 366 R.E 2019 ("The ELRA") failed in both disputes, the two disputes were respectively lodged under the provisions of Section 74(b) of the same Act. The complainants in both disputes are complaining about under payment of amount of golden handshake allowance, contrary to clause 20.2.0 of the collective bargaining contract entered between MCC Limited and COTWU (T).

In the non-settlement order issued under the provisions of Rule 10(2)(4) of the Labor Court Rules, 2007, G.N No. 106/2007 ("The Rules"), the facts which are undisputed in both disputes include that there exited an employment relationship between the respondent and the complainants. That the complainants are now retired from employments with the respondent and that the golden handshake allowance was paid. However,

the dispute, hence the issue for determination in this case on the salary that is to be used in calculating the amount of handshake to be paid. The payment was made according to several salary amounts and the complainants are now disputing the mode on the reason that the last salary should have been used in calculating the amount of golden handshake allowance. Therefore, there is only one issue for me to determine in the dispute before me, the issue is:

1. Whether the complainants were underpaid their golden handshake allowance.

On determination of the issue in favor of the applicant, the relief(s) sought by the complainants is that the respondent be compelled to pay the complainants the amount of underpaid amount of golden handshake allowance and any other relief(s) the Court may deem just and fit to grant. The respondent vehemently denied the allegation on the ground that in computing the amount and upon payment of Golden Handshake allowance, the Respondent did consider its clause 20.2.0 of the CBA. It is the interpretation of the Clause 20.2.0 of the CBA that has nurtured the dispute at hand.

In order to establish their case, in Labor Dispute No. 06/2019 the complainant had one witness, himself as CW1 and so did the respondent,

one Geoffrey Lucas Marine as RW1. The same was the case in Labor Dispute No. 01/2019, the complainants witness was the first applicant Charles Nyaluke (CW1) and the defence witness was the same Geoffrey Lucas Marine as RW1. In both disputes, Mr. Evans Nzowa represented the complainants while Mr. Fredrick Mbise fended for the respondent.

Amongst the documents tendered as exhibits were Notice of retirement with ref No. MCC/ADMIN/015/0277 dated 31st December, 2015 as (Exhibit CW1), retirement terminal Benefits letter with Ref No. MCC/ADMIN/015/0280 dated 07th January, 2015 (Exhibit CW2) and computation of shake hand benefits for retirees and terminal benefits for staff due for retirement in the year 2015 as (collective Exhibit CW3) for Dispute No. 01/2020. As for the Dispute No. 06/2019 the exhibits included notice of retirement with ref No. MCC/DAR/ADMIN/016/0522 dated 05th May, 2016 Exhibit CW1 (herein referred to as EXCW1-2019); retirement benefits and Christmas token allowance letter with Ref No. MCC/ADMIN/016/BEK/0491 as Exhibit CW2 (herein referred to as EXCW2-2019) and a computation of handshake allowance, retirement benefits calculation along with the payment vouchers as collective Exhibit CW3 (herein referred to as EXCW3-2019).

Having gone through the complaint, the issues framed and the evidence adduced, I have only one main task, to interpret Clause 20.2.0 of

the CBA the common EXCW4. Before I go into the interpretation, it is important to determine the essence of collective bargaining agreement in labor relations. Definition of the CBA can be borrowed in the context defined in ILO Collective Agreements Recommendation, No. 91 of 1951 where it is stated in Clause II(1) of the recommendation:

> *"For the purpose of this Recommendation, the term collective agreements means all agreements in writing regarding working conditions and terms of employment concluded between an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more representative workers' organisations, or, in the absence of such organisations, the representatives of the workers duly elected and authorised by them in accordance with national laws and regulations..."*

Further to that, in the **Collective Bargaining Convention, No. 154 of 1981**, Article 5(1) and (2)(a)(c)(d) &(e) of this convention provides that:

> *1. Measures adapted to national conditions shall be taken to promote collective bargaining.*
>
> *2. The aims of the measures referred to in paragraph 1 of this Article shall be the following:*

(a) Collective bargaining should be made possible for all employers and all groups of workers in the branches of activity covered by this Convention;

(c) the establishment of rules of procedure agreed between employers' and workers' organisations should be encouraged;

(d) Collective bargaining should not be hampered by the absence of rules governing the procedure to be used or by the inadequacy or inappropriateness of such rules;

(e) bodies and procedures for the settlement of labour disputes should be so conceived as to contribute to the promotion of collective bargaining.

Ratified in our Country on 14th August, 1998 and still in force, CBA is covered under Part VI of the ELRA. To explain it in simpler terms, Collective bargaining is a voluntary process through which employers and workers discuss and negotiate their relations, in particular terms and conditions of work. Since the process is voluntary, it therefore allows both sides to negotiate a fair employment relationship and as a result, it prevents costly labour disputes. When the outcome of a collective bargaining process results into an agreement of certain terms and conditions, the agreement becomes binding upon signature of the parties. However, the agreement should not

be crafted in such a way that it will infringe the rights of an employee because its coverage is wider in context to include even the parties who are not members of the trade union that participated in the collective bargaining that resulted into the agreement.

In the case at hand, as shown in the background, following the respondent's fall in business, she decided to reduce some of the benefits of the employee and owing to that, there were negotiations with the Trade Union and the CBA (EXCW4) was born. The clause 20.2.0 of the CBA reads:

> *"Management will do computation of golden handshake for each employee appointed on permanent and pensionable basis comprised* ***of two (2) month's salary for each year of service*** *to the maximum of 30 months until the date of expiry of the old collective Bargaining Agreement namely 28th April, 2013".*

The main dispute is in defining which salary should the employer use in calculating the golden handshake. The complainants pointed out that according to EXCW3, the computation of handshake allowance as per CBA, the respondent (employer), picked the existed salary of each year of service retrospectively from year 2013 to year 1998 x 2 and paid the complainant the total as golden handshake. However, the complainants are faulting the salary mode used on an argument that the computation done by the

respondent was wrong as she was supposed to compute the amount by taking the last salary of the employee times 2x15. The catching words in dispute is what is the aim of inserting the word "***for each year of service".*** It may be agreed that the language used could have just been more precise, that the employees retirement salary times 30 months, but they had to complicate it and as a result, such unnecessary dispute arose.

Further to that, unfortunately, the CBA defined salary in simple terms to mean "salary, wages rates, overtime rates and any other allowances". Therefore, the definition of salary for each year of service has remained complex in the agreement. For this, I had to borrow the holding my Sister Judge, Honorable Mongela in the case of **David L Mwakasala and 12 Others Vs. MCC Limited, Labour Complaint No. 01 Of 2017** (High Court, Mbeya), where she held:

> *In my considered opinion, the phrase "for each year of service" means that one specific figure is to be applied on each year of service to a maximum of twelve months. What follows therefore is the question as to which exact figure or salary is to be applicable? In my settled view, this certainly must be the last salary the complainants were paid during retrenchment.*

I am in total agreement with the holding above that one specific figure has to be applied for each year of service. In addition to that, in my strong view, the contextual interpretation of the phrase *"for each year of service to the maximum of 30 months"* is only the determining factor of the maximum amount of salaries to be calculated. This means that, the employees had different years when they were first employed by the respondent and had different retirement dates. So, the limit of maximum of 30 months for those whose years of service would have exceeded 30 months was set so that the 30 months period would be the threshold, the cutoff point upon which the calculations would stop. At this point, I further subscribe to Hon. Mongela's holding in the cited case of **David L Mwakasala and 12 Others** that:

> *In addition, I am also of the view that,* ***the previous salaries cannot be used because they are already affected by inflation.*** *The fact that the salaries got changed was in my view, among other things, to deal with the effects of inflation. Under the circumstances, it shall therefore be quite unfair to use salaries that the complainants used to be paid twelve or ten or five months ago to calculate their retrenchment package*

Indeed it shall be highly unfair and will defeat the purpose of CBA agreements which promote the welfare of the employees at a place of work

by mutual agreements. I have just tried to think hypothetically, if a person was hired as a driver or laborer and in due course of employment he developed himself to a senior managerial position, it would mean that calculating his golden handshake allowance to include his salary when he was a driver would be highly unfair. This will also discourage his efforts made to his career development which must have in one way or another had a positive impact on the productivity of the employer. Therefore interpretation of the words "for each year of service" should not be construed to mean the salary will be having a decreasing effect in computation of golden handshake, let alone the effect of inflation as pointed in the cited case. The words are rather the determining factor as to the maximum period within which the employee salary should be multiplied given the time they have served the employer.

Before I pen down, I must comment as an emphasis to the parties in a CBA, the importance of having the CBA at workplace. Starting with the ILO Convention on Right to Organise and Collective Bargaining, **No. 98 of 1949,** Article 4 of the Convention provides for:

> *"Measures appropriate to national conditions shall be taken, where necessary,* ***to encourage and promote the full development and utilisation of machinery for voluntary negotiation*** *between employers or employers' organizations and workers'*

organizations, ***with a view to the regulation of terms and conditions of employment by means of collective agreements****."*

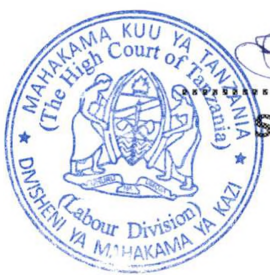
The aim of these agreements is therefore to provide regulations of terms and conditions of employment by collective agreements. The expected results are harmonious work environment to achieve optimum utilization of human resource and as a result, improve productivity. They should hence be taken seriously as these agreements can demonstrate the positive contribution that collective bargaining can make to both economic and social goals of both the employees and the employer. They should hence be crafted in such a way that they should be free of any ambiguity or capable of multiple interpretations which lead to lengthy litigations like the one at hand.

Having said that and on the above findings that the last salary should be the one used to calculate the amount of golden handshake; the next question is the reliefs that the parties are entitled to. In their Complaint, the complainants prayed that the respondent be compelled to pay the complainants the underpaid amount of golden handshake allowance and any other relief(s) the Court may deem just and fit to grant. As I have found that the respondent had misconstrued the clause on calculation of the golden shake award, the complaint is decided in favor of all the complainants in both disputes, the last salary upon retirement should be the salary used to

determine the golden handshake. It therefore declared that the complainants were underpaid their golden handshake amount.

Consequent to the above, the respondent is hereby ordered to re-calculate the golden handshake compensation under Clause 20.2.0 of the CBA (EXCW4) using proper factor, which is by using the their last basic salary of each complainant/employee as of their respective days of retirement, multiplied to a maximum of thirty months (for those who qualify) as per the agreement. Any amount that is above what has already been paid to the complainants shall be deducted and the remaining balance shall be paid to each employee/complainant accordingly. This exercise shall be done within thirty days from the date of this judgment. It is so ordered.

Dated at Dar-es-salaam this 18th day of October, 2021.



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S.M. MAGHIMBI

JUDGE