

THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

REVISION APPLICATION NO. 529 OF 2020

BETWEEN

MAGENTA (T) LIMITED..... APPLICANT

VERSUS

AHMED A. AHMED..... RESPONDENT

JUDGMENT

Last order: 07/10/2021

Date of Judgment: 19/11/2021

B.E.K. Mganga, J

On 1st March 2020, applicant entered into one year contract of employment with the respondent. The relationship between the two went sour as a result on 13th June 2020, applicant terminated employment of the respondent. Aggrieved by termination, on 17th June 2020 respondent referred Labour dispute No. CMA/DSM/KIN/477/2020/240/20 claiming to be paid TZS 500,000/= as 14 days leave, TZS 66,600/= for Karume holiday, TZS 8,000,000/= as compensation for the remaining period of his contract all amounting to TZS 8,566,600/= on ground that applicant breached contract and prayed to be issued with certificate of Service. In the same CMA F1, respondent indicated that he was unfairly terminated.

On 06th November 2020, Lyimo Joyce Christopher, arbitrator, issued an award in favour of the respondent and ordered the applicant to pay TZS 3,200,000/= to the respondent as salary compensation for eight (8) months remaining on the contract. Aggrieved by the said award, on 16th December 2020, applicant filed a notice of application supported with an affidavit seeking the court to revise the said award. The application is supported by an affidavit of Hasnain Khimiji applicant's Director. In the affidavit in support of the application, applicant advanced five grounds namely:-

- 1. That, arbitrator disregarded or ignored all credible evidence tendered by the applicant*
- 2. That, arbitrator failed to analyze documentary evidence tendered by applicant.*
- 3. That, arbitrator erred on analyzing testimonial evidence tendered.*
- 4. That, arbitrator erred in law and fact in holding that the respondent is entitled with compensation for breach of contract without even to consider that the respondent was given a second chance to work with promise to correct and obey his superior, and the fact that respondent is the one who asked to be terminated if he will not be transferred.*
- 5. The learned arbitrator deliberately manipulated the arbitration proceedings to arrive at the decision she wanted.*

Oposing the application, the respondent filed a counter affidavit that the award was properly issued.

In their written submissions, Ms. Hawa Tursia and Mr. Martin Frank, counsels for the applicant, argued that, at CMA respondent pleaded in CMA F. 1 both breach of contract and unfair termination. They argued that the two cannot be pleaded together. They were of the view therefore, that, CMA was not clothed with jurisdiction to determine the matter and prayed proceedings be nullified, and the award quashed.

On the other hand, Mr. Cosmas Kumalija Maige, personal representative of the respondent, argued that applicant was supposed to raise this issue at CMA and not at this stage and prayed the argument be dismissed.

I have examined CMA F.1 and find that respondent pleaded both breach of contract and unfair termination. I therefore agree with the applicant in that aspect alone and not on jurisdiction of CMA. Applicant was required to raise an objection at CMA, but she didn't, as correctly submitted on behalf of the respondent. I am of the view that, that does not preclude him from raising it at this stage if at all he feels it goes to the jurisdiction of CMA. Applicant has submitted that by pleading both breach of contract and unfair termination, caused CMA to lack jurisdiction to entertain the matter. In my considered view, this argument, is not a correct position of the law. Jurisdiction is a creature of a statute. CMA had

jurisdiction to deal either with breach of contract or unfair termination. All these were filed within time hence CMA had jurisdiction. It can be said that pleading was not properly made but that cannot cause CMA to lack jurisdiction. I have examined CMA record and find that issues that were framed by the parties are whether, there was breach of respondent's contract of employment and what are the reliefs thereof. It is clear that the dispute was heard at CMA based on breach of contract and not unfair termination. In short, the issue of unfair termination was not discussed by CMA. Since CMA had jurisdiction to deal with the issue of breach of contract indicated in CMA F.1, the prayer by the applicant to nullify proceedings on ground that CMA had no jurisdiction is hereby dismissed.

It was submitted by counsel for applicant that arbitrator acted illegally when he held that applicant proved reason for termination as insubordination and respondent's bad relationship with his co-employees but proceeded to award the respondent on ground that applicant breached employment contract as there was no misconduct committed by the respondent. Counsel cited the case of ***Yohana Karanja v. Mbeya City Council***, [2015] LCCD II page 103, wherein this court put criteria to be used in charging an employee for insubordination and prayed the same to apply to the application at hand. It was further submitted that, the

arbitrator ignored evidence tendered by the applicant and ordered respondent be compensated without considering that respondent was previously warned.

In his submission, Mr. Maige, the personal representative of the respondent had not much to submit rather than praying that the application be dismissed.

Having gone through the CMA record, I noted that the respondent's employment commenced on 1st March 2020 as clearly indicated in employment contract (Exhibit A-1) and that he was terminated on 13th June 2020 as per termination letter (Exhibit A-2). In his evidence in chief, respondent (PW1) testified that reason for termination of his employment contract is bad relationship with his fellow employee who was a foreigner. In his evidence for the applicant, Hafsa Waziri (DW1) confirmed that, the respondent was quarrelling with his co-employees and was not ready to report to his supervisor. DW1 testified further that, respondent declared that he was not ready to work with his supervisor. This evidence was not contradicted even on cross examination. With this evidence, in my view, there was valid reason for termination of contract of employment of the respondent contrary to what the arbitrator held. It is my view that, in any business, it is expected that all employees live in harmony in order to be

productive. It is unexpected, a place of work that has turned itself to be a battlefield, to be productive. Any reasonable employer will always try to minimize or remove the real issue that will cause his business to be a battlefield. In other words, in any normal life let alone business environment, people do struggle to create harmony and avoid causes of disharmony. Normally any cause of disharmony has to be avoided at a minimal cost before it grows. It was unexpected for the applicant to continue keeping the respondent but causing disharmony among employees and affect his business that in turn will affect the rest of the employees altogether. In my view, the conduct of the respondent falls in the category of incompatibility, which is amongst the reasons provided under the law, for termination of employment of any employee. Under Rule 22(1) of the Employment and Labour Relations (Code of Good Practice) Rules, 2007 GN. NO. 42 of 2007 provides:-

"22(1) Incompatibility constitutes a fair reason for termination. There are two types of incompatibility: -

- 1. **Unsuitability of the employee to his work due to his character or disposition;***
- 2. **Incompatibility of the employee in his work environment in that he relates badly with fellow employees, clients or other person who are important to the business".***

This rule applies to what was testified to, by DW1 on behalf of the respondent. In addition to that, evidence is clear that rule 22(4) of GN. No. 42 of 2007, supra, was complied with prior termination of contract of the respondent as he was warned as per exhibit M1.

All said and done, I hold that there was valid reason for termination of employment contract of the respondent and hereby allow the application and set aside the CMA award.

It is so ordered.



B.E.K. Mganga

JUDGE

19/11/2021