

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

REVISION APPLICATION NO. 300 OF 2022

*(Arising from an Award issue on 3/8/2022 by Hon. Lucia Chrisantus Chacha, Arbitrator, in Labour dispute
No. CMA/DSM/ILA/379/21 at Ilala)*

SUN DISTRIBUTION TANZANIA LIMITED APPLICANT

VERSUS

SHABANI JUMA 1ST RESPONDENT

AMRI MGOYE 2ND RESPONDENT

MOHAMED JUMANNE 3RD RESPONDENT

JUDGMENT

*Date of the last order:14/11/2022
Date of Judgement:16/11/2022*

B. E. K. Mganga, J.

Brief facts of this application are that, on 1st June 2021, Applicant entered a one-year fixed term contract with the respondents. On 20th August 2021, applicant retrenched the respondents on ground that she was in economic hardship. Aggrieved with termination, respondents filed Labour dispute No. CMA/DSM/ILA/379/21 before the Commission for Mediation and Arbitration (CMA) at Ilala claiming to be paid TZS

23,850,000/= being salary for ten(10) months' of the remaining period of their contracts. It was alleged that, upon termination of their employment, respondents were paid their terminal benefits. The arbitrator having heard evidence of the parties, issued an award that applicant breached contracts of the respondents and awarded (i) Shaban Juma, 1st respondent to be paid TZS 7,750,000/=, (ii) Amri Mgoye, 2nd respondent to be paid TZS 9,000,000/= and Mohamed Jumanne, 3rd respondent be paid TZS 7,710,000/= all amounting to TZS 23,850,000/=.

Applicant was aggrieved by the said award hence this application for revision. Applicant filed the affidavit of Murtaza Muraj to support the Notice of Application. In the said affidavit, the deponent raised four grounds but during hearing, Ms. Victoria Mgonja, learned advocate, argued only one ground namely, that, arbitrator erred in law in awarding respondents to be paid ten months' salaries contrary to the provisions of section 4 of the Employment and Labour Relations Act [Cap. 366 R.E. 2019] and abandoned the remaining three grounds.

In her submission in support of the application, Ms. Mgonja, argued that arbitrator awarded the respondents to be compensated for the

remaining period of their contracts, of which, she had no problem with, because applicant breached contracts of the respondents. Counsel submitted that arbitrator erred to award the respondents without deducting P.A.Y.E and Statutory contributions to NSSF, as a result, respondents were awarded to be paid gross salaries and not net salaries. She submitted further that both P.A.Y.E and NSSF contributions were supposed to be retained by the applicant. But when probed by the court, Ms. Mgonja, learned advocate conceded that P.A.Y.E were supposed to be remitted to TRA. Counsel for the applicant concluded her submissions praying that deductions be remitted to the responsible institutions.

On the other hand, Mr. Hamisi Katundu, learned advocate for the respondents, submitted that NSSF deductions and P.A.Y.E are not property of the employer for the latter to retain them. Counsel submitted that, P.A.Y.E deductions are supposed to be paid to TRA. He therefore submitted that respondents are not disputing for P.A.Y.E to be deducted from the award and be remitted to TRA. He submitted that according to salary slips, Amri Mgoye's monthly salary was TZS 900,000/= and was paying TZS 80,500/= as P.A.Y.E monthly and that TZS 805,000/= is supposed to be deducted from the award of the said Amri Mgoye as P.A.Y.E. Counsel for

the respondents submitted that Mohamed Jumanne's monthly salary was TZS 710,000/= and was paying TZS 43,800/= as P.A.Y.E monthly hence TZS 438,000/= must be deducted from the amount that Mohamed Jumanne was awarded and be remitted to TRA as P.A.Y.E. Counsel submitted further that, Shabani Juma's monthly salary was TZS 775,000/= and was paying TZS 55,500/= as P.A.Y.E. therefore TZS 555, 000/= must be deducted from the amount that he was awarded and remitted to TRA as P.A.Y.E. Mr. Katundu maintained that P.A.Y.E can be deducted but not NSSF.

In rejoinder, Ms. Mgonja had nothing material to add.

I have considered submissions of the parties, and in my view, there is only one issue, namely, whether the amount respondents were awarded are liable to deductions under the law. I have read the Income Tax Act [Cap. 332 R.E. 2019] and find that the award is taxable as individual's gain or profit for the year of income. The award paid to the respondents is taxable under the provisions of section 7(1) and (2)(e),(4), (5)(a), (b) and (c) of the Income tax Act(supra). The aforementioned Section reads: -

7.-(1) *An individual's income from an employment for a year of income shall be the individual's gains or profits from the employment of the individual for the year of income.*

(2) Subject to the provisions of subsections (3), (4) and (5) in calculating an individual's gains or profits from an employment for a year of income the following payments made to or on behalf of the individual by the employer or an associate of the employer during that year of income shall be included:

*(e) **payment for redundancy or loss or termination of employment;***

(4) In calculating individual's gain or profit from payment for redundancy or loss or termination of employment, any payment received in respect of a year of income which expired earlier than five years prior to the year of income in which it was received, or which the employment or services ceased, if earlier such payment shall, for the purposes of calculation of the tax payable thereon, be allocated equally between the years of income in which it is received or, if the employment or services ceased in an earlier year between such earlier year of income payment is so received or as the case may be, such earlier year of income in which the employment or services ceased, and each such portion, allocated to any such year of income shall be deemed to be income of that year of income in addition to any other income in that year of income.

(5) Where amount received as compensation for the termination of any contract of employment or services, whether or not provision is made in such contract for the payment of such compensation-

- (a) if the contract is for a specified term, the amount included in gains or profits shall not exceed the amount which would have been received in respect of the unexpired period of such contract and shall be deemed to have accrued evenly in such unexpired period;*
- (b) if the contract is for an unspecified term and provides for compensation on the termination thereof, such compensation shall be deemed to have accrued in the period immediately following such termination at a rate equal to the rate per annum of the gains or profits from such contract received immediately prior to such termination; and*
- (c) if the contract is for an unspecified term and does not provide for compensation on the termination thereof, any compensation paid on the termination thereof shall be deemed to have accrued in the period immediately following such termination at a rate equal to the rate per annum of the gains or profits from such contract received immediately prior to such termination, but the amount so included in gains or profits shall not exceed the amount of three years' remuneration at such rates."*

It is my view that in terms of section 7(1) and (2)(e),(4), (5)(a), (b) and (c) of the Income tax Act(supra) the said award is taxable as also submitted by counsel for the respondents. This court took a similar view in the case of [SBC \(T\) Limited vs Mary S. Shilinde](#), Revision Application No. 161 of 2020 [2021] TZHCLD 384 that the award is taxable. That said and done, I hereby allow the application to the extent only that the award is taxable. I therefore order that 555,000/=, TZS 805,000/=, TZS 438,000/= and TZS must be deducted from the amount that was awarded

to the 1st, 2nd, and 3rd respondents respectively as tax(P.A.Y.E). Therefore, after deduction of P.A.Y.E, Shabani Juma, 1st respondent will be paid TZS 7,195,000/=, Amri Mgoye, 2nd respondent will be paid TZS 8,195,000/= and Mohamed Jumanne, 3rd respondent will be paid TZS 6,662,000/=. In short a total of TZS 1,798,000/= shall be deducted from the award and remitted to the Commissioner General of the Tanzania Revenue Authority(TRA). The invitation that the said amount should be retained by the applicant is hereby rejected because that money belongs to the Government and is supposed to be collected by the Commissioner General of the Tanzania Revenue Authority on behalf of the Government. I am of the view that if that amount is remitted to the applicant, the later may take that money as hers and will not remit to the relevant authority. It is more likely that applicant will not indicate that amount in her books because respondents ceased to be her employees from 20th August 2021 on the date of termination of their employment hence under no obligation to deduct P.A.Y.E from their salaries and remit to the Tanzania Revenue Authority. Since the collector of government money namely the Commissioner General of the Tanzania Revenue Authority is known and there are means to make him aware that there are government to be

collected as tax, I direct that this judgment should be served to the said Commissioner General of the Tanzania Revenue Authority for his action.

In the upshot, I uphold the award and hold that applicant shall pay a total of TZS 23,850,000/= as awarded by the arbitrator and that the said amount is liable to taxation (P.A.Y.E) as pointed hereinabove.

Dated in Dar es Salaam on this 16th November 2022.



B. E. K. Mganga
JUDGE

Judgment delivered on this 16th November 2022 in chambers in the presence of Victoria Mgonja, Advocate for the applicant and Hamisi Katundu, Advocate for the respondents.



B. E. K. Mganga
JUDGE