

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

APPLICATION FOR REVISION NO. 164 OF 2022

*(Arising from the award of Commission for Mediation & Arbitration of DSM at Temeke
Dated 14th March 2022 in Labour Dispute No. CMA/DSM/TEM/211/2020/89/2020)*

INNOCENT ADOLF KARUGENDO.....1st APPLICANT
ISSA ABDUL KINYOTO..... 2nd APPLICANT
TWALIBU EVANCE MWASUMBA.....3rd APPLICANT
MWALIMU M. MUSSA.....4th APPLICANT
SHABANI WAZIRI DEGE.....5th APPLICANT
JANETH BAKARI MBAGA.....6th APPLICANT
AMINA MIKIDADI TAJDIN.....7th APPLICANT

VERSUS

GOLDSTAR PAINTS TANZANIA LTD.....RESPONDENT

JUDGEMENT

K. T. R. MTEULE, J.

24th November 2022 & 7th December 2022

This Revision application arises from the award of the Commission for Mediation and Arbitration of Dar es Salaam, Temeke (CMA) which was delivered by Hon. Nyang'uye, H.A, Arbitrator, dated 14th Day of March 2022. The Application is instituted by the former employees (the Applicants) of the Respondent. The Applicants are praying for orders of the court as paraphrased herein below: -

1. That, this Honorable Court be pleased to call for the record of the proceedings in the Labour Dispute with **Ref. No. CMA/DSM/TEM/211/2020/89/2020** between the above mentioned parties decided by the Commission for Mediation and Arbitration at Dar es salaam by Nyang'uye, H.A (arbitrator) on 14th March 2022, revise and quash the proceedings, order and the award/ ruling and make such order as it deems fit.
2. That, this Court be pleased to determine the matter in the manner it considers appropriate and give any other relief it considers just to grant.

From what is gathered from the CMA record, affidavit and counter affidavit filed by the parties, the applicants were employed by the respondent in different dates with different positions until 17th May 2020 when they were terminated for an alleged misconduct (breach of trust and gross insubordination) resulting from what was said to be unlawful strike. On **05th February 2020**, there was a strike which involved the workers of the Respondent. Temeke Regional Labour Officer and the Trade Union TUICO held a discussion to resolve the misunderstandings between the workers and the Respondent. The respondents were appointed by the workers to participate in the discussion on their behalf. After the discussion, certain terms were agreed amongst the employee

and the employer including agreement to end the strike. It is alleged by the Respondent that on **6th February 2020**, the Applicants continued the strike which the respondents considered to be unlawful, hence initiating disciplinary proceedings. After the proceedings, the Applicants were found guilty of breach of Trust, gross insubordination and abandoning of work/responsibilities.

On **12th Day of May 2020**, the applicants filed the matter in the CMA claiming for unfair termination. The Commission awarded nothing to the respondents having found the respondent to have a fair reason to terminate the applicants and followed proper procedure. Being resentful with the CMA award the applicants filed the present application for revision.

Along with the Chamber summons, the applicants filed an affidavit sworn by Mr. Noel Nchimbi applicant's counsel, in which after expounding the events leading to this application, alleged that the award was improperly procured, thus its correctness, propriety and legality comes into question. The applicant is of the view that on such illegality it needs to be quashed and set aside.

The application was challenged through a counter affidavit affirmed by Mustafa Premji respondent's Principal Officer. The deponent in the

counter affidavit vehemently and strongly disputed applicant's allegation that the award was not properly procured by the arbitrator.

The application was disposed of by a way of written Submissions. The applicants were represented by Mr. Jamael Ngowo, Advocate from TUICO whereas the Respondent was represented by Mr. Mustapha Premji respondent's Principal Officer.

Supporting the application, Mr. Ngowo submitted that the arbitrator erred in law in holding that there were minutes signed by the applicants and others who were on the meeting on **05th February 2020**. He refuted this fact and stated that the only thing which was provided and marked as **Exhibit D-1** shows that it was signed by those who were present in the meeting. According to Mr. Ngowo, those matters agreed were not signed on the same day and they were seen by the applicants for the first time when the matter was referred to the CMA.

Mr. Ngowo faulted the arbitrator on what he asserted to be arbitrator's disregard to the evidence adduced by the respondents and the applicants in their testimonies that there were 80 workers who did not work on both 05th and 06th day of February, 2020 but only the applicants were terminated. He is of the view that such act of terminating only the applicants leaving aside the other employees amounts to double standard and discrimination contrary to **Section 7 of the Employment**

and Labour Relation Act, Cap 366 R.E 2019. He thus prayed for the application to be granted and revise the CMA award.

Opposing the application, Mr. Mustapha faulted the applicant's submission for having departed from the grounds that were stated in the applicant's affidavit. He added that the applicants opted to argue on the issue of fairness of the reason and he aligned his submission to respond to the effect that the arbitrator gave a fair award based on the fairness of the reasons and procedure.

Mr. Mustapha submitted that the applicants failed to elaborate how the evidence adduced by them was not considered. Referring to page 3 of the award, the Respondent stated that the contents differ from what the applicants are asserting.

The Respondent challenged the reality of the applicants' statement in the submission on an account that the employees were involved in a strike only on 05th February 2020. According to him on the same date the meeting was convened and chaired by Labour Officer, and attended by TUICO and employees, and it was agreed that on 06th February 2020 the employees would resume to work and all went back to work except the applicants. The respondent is therefore of the opinion that the applicants are giving false facts.

Mr. Ngowo for the applicants filed a rejoinder. It will be taken into account in determining this matter.

Having gone through the parties' submissions and their sworn statements together with the record of the CMA, I am inclined to address two issues. The first issue is **whether the applicants adduced sufficient grounds for this Court to revise the CMA award** issued in Labour Dispute No. CMA/DSM/TEM/211/2020/89/2020 and secondly, **to what reliefs are parties are entitled?**

In addressing the issue as to **whether the applicants adduced sufficient grounds for this Court to revise the CMA award**, I will focus on what is argued by the parties. By going through the parties' submissions, I agree with the respondent that the ground regarding procedural fairness was abandoned by the applicants during the submission because they opted not to argue it. I will equally not dwell on it.

Coming to the substance of this revision, the applicant's counsel challenged the arbitrator's holding that there were minutes signed by both the applicants and others who were on the meeting on **05th February 2020**. According to him, the only thing which was provided and marked as **Exhibit D-1** shows that it was signed by those who were present in the meeting and those matters agreed were not signed

on the same day. He further added that there were 80 workers who did not work on both 05th and 06th day of February, 2020 but only the applicants were terminated, something he considered to amount to double standard and discrimination.

On the other hand the Respondent maintained that the applicants failed to elaborate how evidence adduced by the applicants was not considered in arbitrator's findings. He added that employees failed to resume on work on 06th February 2020 as agreed in the meeting held on **05th February 2020**. It is apparent that there was a strike on **05th February 2020** which was resolved by an agreement of resuming to work on **06th February 2020**. This is substantiated by the Minutes of the Meeting and attendance list - **Exhibit D-1** collectively. Whether the strike was lawful or unlawful was not an issue for determination in the CMA. But from what transpired in the meeting, it remained that after what was agreed on **05th February 2020**, no expectation was there for the said strike to continue further on **06th February 2020**. The respondent alleged continuation of the strike on **06th February 2020**. It is undisputed in the CMA that there was a stoppage of work by the applicants on **6th February 2020**. The respondent considered this stoppage of work as continuation of strike while in the CMA the applicants through PW1 testified that they spent the whole 6th February

2020 from morning of 8.am to evening 5.pm to explain to the employees about the outcome of their meeting. This means they did not work in their respective work positions and tasks on that **06th February 2020**. This is what made the arbitrator to confirm that there was still strike on the part of the applicants on 06th February 2020.

In the case of **Hotel Sultan Palace Zanzibar vs. Daniel Laizer & Another**, Civil Application No. 104 of 2004, Court of Appeal of Tanzania, (unreported) it was held: -

"It is elementary that the employer and employee have to be guided by agreed terms governing employment. Otherwise, it would be a chaotic state of affairs if employees or employers were left to freely do as they like regarding the employment in issue."

Thus, basing on the above cited authority since it was agreed in the meeting of **5th February 2020** that on 6th February the employees would resume to work, the applicants did not honor what was agreed purporting to have been explaining to the employees about the outcome of the meeting for the whole day. I share views with the arbitrator, it does not get into mind how reasonably can a person spend the whole day explaining the outcome of the meeting while abandoning the other

primary tasks of his work. There was a reasonable cause for the employer to consider this continuing work stoppage as a strike and since it came after the agreement of resuming back to work, calling it unlawful is just and proper course.

In such circumstances, I am of the view that the respondent was right in initiating disciplinary hearing against applicants. Being leaders, the applicants ought to have discouraged such purported meeting which spent the whole day affecting the respondent's business.

The applicants alleged discrimination in terminating just few employees while the strike involved 80 workers. I have gone through the CMA record; I could not find this being raised therein. Bringing it at this revision is not correct, so I cannot decide on a matter which was not a subject of dispute in the forum of first instance. Therefore, the allegation of discrimination lacks background support, and it is disregarded.

From the above reasoning and circumstances of the case I find that the applicants failed to adduce good reason for this Court to depart from the award of the Commission for Mediation and Arbitration. The first issue is therefore answered negatively.

With regards to relief, I am of the view that the only relief is to have the application dismissed for want of merit. Consequently, the application is hereby dismissed, and I uphold the CMA award. It is so ordered.

Dated at Dar es Salaam this 07th Day of December 2022.



KATARINA REVOCATI MTEULE

JUDGE

07/12/2022

