

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

REVISION NO. 360 OF 2020

BETWEEN

SHAMTE HABIBU & 11 OTHERS APPLICANTS

VERSUS

TANZANIA AIRPORT AUTHORITY RESPONDENT

JUDGMENT

S.M. MAGHIMBI, J:

The application beforehand is lodged under Section 91(1)(a), 91(2)(c) and 94(1)(b)(i) of the Employment and Labour Relations Act, CAP 366 R.E. 2019 ("the Act") read together with Rule 24 (1), 24 (2)(a)(b)(c)(d)(e)(f), (3)(a)(b)(c)(d) and 28(1)(b)(c)(d)&(e) of the Labour Court Rules GN. No. 106 of 2007 ("the Rules"). She is moving the court for the following:

1. That this Honourable Court be pleased to revise and set aside the CMA award and proceeding thereof and make such orders as it deem fit.
2. Any other relief(s) this Honourable Court may deem fit to grant

The application was supported by an affidavit of Shamte Habibu, representative of the applicants dated 31st August, 2020. The respondent opposed the application by filing a notice of opposition under Rule 24(4) of

the Rules. Before this court, the applicant was represented by Ms. Judith Rutajuna, Personal Representative while the respondent was represented by Mr. Kennedy Wembe, learned advocate. The application was disposed by way of written submissions and both parties adhered to their schedule of admission.

From the gathered fact on record, the brief background of the matter is that the applicants were employed by the respondent times and were terminated on operational requirements. Aggrieved by the termination, the applicants unsuccessfully lodged a dispute at the Commission for Mediation and Arbitration ("the CMA") through Labor Dispute No. CMA/ILA/R.924/16/11 ("the Dispute"). The CMA dismissed the dispute for lacking merits hence this application on the on ground that, the same is tainted with irregularities on the following grounds.

- (a) That, the Honourable Arbitrator erred in law and facts in making her decision partially considered the Respondent's Evidence and thus arrived to unjust and unfair decision.
- (b) That, the Honourable Arbitrator made her award that the Notice was given on 13/07/2016 the respondent to the Applicants Prior termination, without considering there was no Evidence.
- (c) That the Honourable Arbitrator observed the payments of

Notice, Leave severance without considering that they were paid after termination two months later, hence the procedure was not followed, that are consultation, Notice, disciplinary hearing.

- (d) That, Honourable Arbitrator observed, erred in Law in not considering the reason for termination was due to operational requirements and was not known to the applicant's Prior termination.
- (e) The Honourable Arbitrator erred in Law and Fact by not awarding appropriate damages and any additional payments.

Having considered the parties' submissions and the records of this application, I am partly in agreement with the findings of the CMA that the substance of the termination was valid as it followed a government directive following abolition of retention scheme (EXD2 and EXD3). However, I find that in awarding the reliefs sought, the CMA forgot one important issue on termination of employment contracts before the end of the contract. This is governed by the Employment and Labour Relations (Code of Good Practice) G.N No. 42 of 2007 (the Code). Rule 8 (2) (a) of the Code provides:

"(2) Compliance with the provisions of the contract relating to termination shall depend on whether the contract is for a fixed term or indefinite in duration. This means that:

(a) where an employer has employed an employee on a fixed term contract, the employer may only terminate the contract before the expiry of the contract period if the employee materially breaches the contract."

In principle, the applicants are exempted from the clause of material breach of the contract because as indicated in the evidence, the termination was out of operational requirement, the lack of finance to pay the applicants following a government directive to do so. Hence the employer/respondent could not under the circumstances sustain the employment of the applicants. However, be it as it may, the respondent was still not exempted to compensate the applicants according to the law. Now, the evidence clearly establishes that the applicants were paid salary in lieu of notice, gratuity and the amount of unpaid leave. I have noted with concern that there is another important aspect of payment of terminated employee before the end of a fixed term contract, the salaries of the unexpired period of the contract.

I have borrowed the principle in the holding of this court in the case of **Good Samaritan vs Joseph Robert Savari Munthu, Labour Revision No. 165 of 2011 reported in High Court Labour Digest No 09 of 2013** where it was held that:

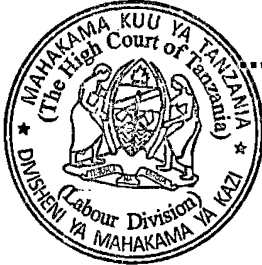
"When an employer terminates a fixed term contract the loss of salary by the employee of the remaining period unexpired term is a direct foreseeable and reasonable consequence of the employers wrongful action. Therefore in this case, probable consequence of the applicant's action was loss of salary for the remaining period of the employment contract which was 21 months. To that extent, the arbitrator's award is sound in law and I see no basis to revisit it"


As for the case at hand, since the employment of the employees/applicants was terminated before the end of their fixed term, then the applicants are entitled to; which I hereby order the respondent to; pay the applicants' salaries for the unexpired period of the contract. I have noted that in their evidence, all the witnesses (DW1, PW1 and PW2) undisputedly established that the applicants were hired at different times, in different capacities earning different salaries. So for the purpose of clarity and smooth execution of the decree, the parties shall go back into the drawing table, calculate each and every applicants' compensation amount by taking their salaries multiplied by the unexpired period of the contracts (in months). The total amount for each employee/applicant shall be paid to the

employee/applicant. This exercise shall be concluded within 30 from the date of this judgment, which is by 01st day of April, 2022.

Save for the above variation of award, the remaining findings and orders of the CMA are upheld.

Dated at Dar es Salaam this 02nd day of March, 2022.




S.M. MAGHIMBI
JUDGE