

THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT DAR ES SALAAM
REVISION APPLICATION NO. 292 OF 2021

BETWEEN

SHIRIKA LA USAFIRI DSM LIMITED APPLICANT

AND

RASHIDI HAMADI MANIKI & 7 OTHERS RESPONDENTS

JUDGMENT

Date of last order: 23/3/2022
Date of judgment: 22/4/2022

B. E. K. Mganga, J.

The respondents namely Rashidi Hamadi Maniki, Omari Mohamed Mziray, Muhkisin S. Selemani, Sitraton Alexander, Frank Alexzander Kilawe, Charles A. Shabani, Stanley Alfred Mjema and Nogota Natanel Baladiga, on 18th September 2017 filed labour dispute No. CMA/DSM/TEM/557/2017/230/2017 before the Commission for Mediation

and Arbitration hereinafter referred to as CMA. In the referral Form referring the dispute to CMA (CMA F1) signed on 15th September 2017, they showed that, they were claiming to be paid Ninety-Six Million Eight Hundred Thousand Tanzanian Shillings (TZS 96,800,000/=) only and that the dispute arose on 11th August 2017. On 31st May 2019, Hon. Amos, H, Arbitrator, having heard evidence of the respondent, issued an *exparte* award in favour of the respondents. In the award, the arbitrator ordered the applicant to pay TZS 66,914,944/= to the respondents.

Applicant was aggrieved by the said *exparte* award as a result she filed Revision Application No. 543 of 2019 before this court. The respondents raised a preliminary objection that the application is incompetent for failure to set aside the *exparte* award. This Court (Hon. A.A.N. Wambura, J, as she then was) sustained the preliminary objection and struck out the said Revision Application No. 543 of 2019 for being incompetent.

In the bid to set aside the said *exparte* award, applicant filed at CMA an application for extension of time within which to file an application to set aside the *exparte* award. In the affidavit in support of the application, Jonas Maheto, showed *inter alia* that employment contract of (i) Rashid

Hamadi Maniki expired on 1st January 2017, (ii) Omari Mohamed Mziray expired on 9th October 2015, (iii) Muhkisim S. Selemani expired on 27th July 2016, (iv) Sitraton Alexander expired on 31st October 2016, (v) Frank Kilawe expired on 7th April 2017, (vi) Charles Shaban expired on 3rd October 2017, (vii) Stanley Alfred Mjema expired on 28th August 2017 and (viii) Nogota Natanel Baladiga expired on 4th August 2017. The deponent attached copies of contracts of the respondents to his affidavit to form part of the affidavit. He stated further that, initially applicant was represented by TAS attorney but later applicant experienced shareholding structure whereby the government became the majority shareholding hence TAS was unable to represent the applicant.

In opposing the application to set aside the *exparte* award, respondents filed the counter affidavit affirmed by Rashid Hamadi Maniki. In the counter affidavit, Rashidi Hamadi Maniki stated *inter-alia* that, (i) his employment was terminated on 11th August 2017, (ii) Omari Mohamed Mziray had two years contract that expired on 10th October 2016 and continued to work hence automatic renewal, (iii) Mukhisin S. Seleman had one year contract that expired on 27th July 2017 and continued to work hence automatic renewal, (iv) Straton Alexander had two years contract

expiring on 31st October 2016 but continued to work hence automatic renewal that was terminated on 11th August 2017, (v) Frank Kilawe had one year fixed term contract that expired on 7th April 2017 but continued to work hence automatic renewal that was terminated on 11th August 2017, (vi) Charles Shabani had one year fixed term contract that expired on 3rd October 2017 but he was terminated on 11th August 2017, (vii) Stanley Alfred Mjema had one year fixed term contract expiring on 28th August 2016 and continued to work hence automatic renewal that was terminated on 11th August 2017 and Nogota Nataniel Baladiga had two years fixed term contract that expired on 5th August 2017 but continued to work hence automatic renewal that was terminated on 11th August 2017. In the counter affidavit, the deponent did not dispute change in Management of the Applicant and noted that applicant filed revision application No. 543 of 2019 before the High Court. I should point at this stage that no copies of contracts or any other documents were attached by the respondents.

On 29th June 2021, Nyang'uye H, arbitrator, delivered a ruling dismissing the application by the applicant that the later failed to advance good grounds for the delay to set aside exparte award.

Aggrieved by the said ruling, applicant has filed this application for revision. In the affidavit in support of the application, Jonas Maheto stated *inter- alia* that the exparte award is tainted with illegality. In opposing the application, respondents filed the counter affidavit of Rashid Juma Kasisiko, advocate, who, in his counter affidavit, deponed as it was deponed by Rashid Hamadi Maniki in his counter affidavit filed at CMA.

Arguing the application on behalf of the applicant, MS. Sechelela Chitinka, Advocate, submitted that arbitrator erred to dismiss the application for extension of time to set aside exparte award because the award is tainted with illegalities. She submitted further that, in the award, respondents were awarded salary arrears some for 14 months' while there was no application for condonation for salary arrears that were awarded/claimed out of time. Counsel for the applicant cited Rule 10(2) of the Labour Institutions (Mediation and Arbitration) Rules GN. No. 64 of 2007 and argued that the same requires claims on salary arrears to be filed within 60 days. During submissions, she conceded that applicant was served with the award on 10th June 2019 and filed an application for extension of time on 3rd March 2021. She cited the case of ***Selina Chibago V. Finihas Chibago, Civil Application No. 182A of 2007,***

CAT (unreported) and argued that circumstances of each case should be looked at before holding that there are sufficient reasons. That, circumstances in the application at hand, namely, changes in shareholders structure was a good cause for the delay.

Mr. Rashid Kasisiko, Advocate for the respondents resisted the application by arguing that reasons of restructuring of the applicant are not valid. He submitted that Applicant filed Revision No. 543 of 2019 before this Court (Hon. Wambura, J as she then was) and the same was struck out on 21st November 2019. Mr. Kasisiko submitted further that applicant is the respondent in Execution No. 165 of 2020 now pending before this court and that applicant was served with all documents including the award on 8th May 2020. Counsel for the respondents submitted that Solicitor General was served with notice of Execution Application No. 165 of 2020 on 15th July 2020.

Counsel for the respondents submitted further that, Revision Application No. 543 of 2019 was struck out because it was incompetent as it was challenging exparte award before even making application to set it aside. That, applicant made an application at CMA one year and ten months after the said Revision Application No. 543 of 2019 was struck out

by this court. He argued further that, that was six months after applicant was served with execution application. Counsel for the respondents went on that, applicant was supposed to account for each day of delay and adduce good grounds for the delay, but she has failed. He cited the case of **Zawadi Msemakweli V. NMB PLC**, Civil Application No. 221/18/2018. He therefore prayed the application be dismissed because applicant has failed to account for one year and eight months.

Counsel for the respondents submitted that there is no illegality in the award. He argued that the award of salary arrears of 14 months is within the law and was pleaded by the respondent. Counsel for the respondents submitted that there was application for condonation and that the same was granted. Counsel for the respondents submitted that **Chibago's case** is distinguishable but did not state how.

In rejoinder, Ms. Chitinka, Advocate for the Applicant reiterated her submissions that there are illegalities in the award and prayed that based on the illegalities, CMA ward should be quashed.

As pointed hereinabove, there is no much contention that there was structural change in administration of the applicant whereby after the said change, the government became majority shareholder. There is also no

dispute that applicant filed Revision Application No. 543 of 2019 before this court but the same was struck out for being incompetent for reasons stated above. I have examined submissions by counsels and find that their contention is whether there are illegalities in the exapрте award or not. Counsel for the applicant submitted that the award of 14 months' salary arrears was awarded without condonation but counsel for the respondents submitted that there was condonation. This prompted me to carefully examine evidence of the parties contained in both the affidavit and counter affidavit filed at CMA and before this court and what was held or reproduced by the arbitrator in the said exapрте award.

It is clear from the exapрте award that Hamadi Maniki (PW1) testified that he was claiming *inter- alia*, compensation for 14 months' salary arrears. That, Charles Alphonse Shabani (PW2) testified that he was claiming 38 months' salary arrears and 7-year leave pay while Muhisin Salum Selemani (PW3) testified that he was claiming 36 months' salary arrears and 3 years leave pay. The exapрте award shows that, Omari Mohamed Mziray (PW4) testified that he was claiming to be paid 20 months' salary arrears and 4 years leave pay while Nogota Nataniel Baladiga (PW5) testified that he was claiming 30 months' salary arrears.

The ex parte award shows further that, Stanley Alfred Mjema (PW6) testified that he was claiming 18 months' salary arrears and 4 years leave while Straton Alexander (PW7) testified that he was claiming 22 months' salary arrears and 3 months' leave pay. The ex parte award shows also that Frank Kilawe (PW8) testified that he was claiming 19 months' salary arrears and 4 months leave pay. It is clear in the award that respondents testified that their employments were terminated because they demanded to be paid salary arrears. The arbitrator believed the respondents that their employment contracts were unfairly terminated and awarded them the remaining period of their contracts.

I have noted that in the application both before this court and at CMA, applicant annexed CMA F1 to form part of the affidavit in support of the application. On the other hand, in their counter affidavits filed before this court and at CMA, respondents did not attach either CMA F2 and an affidavit applying for condonation or an order granting them condonation. This means that the application at CMA did not require condonation and that no condonation was granted. In my view, the submission by counsel for the respondents that condonation was granted without support thereof, cannot be accepted as that is submissions from the bar and not evidence.

I have examined CMA F1 and found that respondents showed that they signed it on 15th September 2017 showing that the dispute arose on 11th August 2017. That being the position, it was filed at CMA on the 34th day. Rule 10(1) and (2) of the Labour Institutions (Mediation and Arbitration) Rules, GN. No. 64 of 2007 requires disputes relating to termination of employment be filed within 30 days and other claims be filed within 60 days. From what is contained in the exparte award, the arbitrator found that employment contracts of the respondents were terminated which is why they were awarded. If we go in line with the arbitrator that respondents were unfairly terminated, then, the dispute was filed out time requiring condonation. In my care examination of the CMA F1, I have found that respondents did not fill in part B of the said CMA F1 that relates to unfair termination. Therefore, I take that their claim was not based on unfair termination although they testified that their fixed term contracts were terminated because they demanded to be paid salary arrears. From what was testified by the respondents as reflected in the exparte award, salary arrears of the respondents were claimed out of the 60 days provided for under the law. The claim by the respondents was time barred. In short, CMA had no jurisdiction. Therefore, CMA had no jurisdiction to issue the

said exparte award. This is an important legal issue that goes to the root of the impugned exparte award as it was held in the case of ***Serengeti Breweries Limited v. Hector Sequeira***, ***Civil application No. 373/18 of 2018***, CAT (unreported).

For the foregoing, I allow the application, nullify CMA Proceedings, and set aside all orders arising therefrom.

Dated at Dar es Salaam this 22nd April 2022.



B.E.K. Mganga
JUDGE

Judgment delivered today 22nd April 2022 in the presence of Richard Kasisiko, advocate for the respondent but in absence of the applicant.



B.E.K. Mganga
JUDGE