

IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
DAR ES SALAAM
REVISION APPLICATION NO. 393 OF 2021

BETWEEN

SUZAN KABOGO.....APPLICANT

AND

DCB COMMERCIAL BANK.....RESPONDENT

JUDGMENT

Date of Last Order: 08/04/2022
Date of Judgment: 22/04/2022

B.E.K. Mqanga, J.

This is an application for revision of the award issued by the Commission of Mediation and Arbitration (CMA) in Labour dispute No. CMA/DSM/KIN/441/19/218 dated 11th December 2020. The dispute was filed by the applicant having been aggrieved with termination of her employment contract effected on 14th March 2019.

Brief facts leading to this application are to the effect that, the applicant herein was employed by the respondent as a Credit Officer on unspecified period contract. She worked until 25th November 2015 when she was suspended pending investigation following loss of TZS

334 million, property of her employer, the respondent. While on suspension, on 14th December 2015, the applicant issued a 28 days' notice of resignation to the respondent. The said notice was accepted by the respondent on 14th March 2019 being 3 years from the date it was issued. After such acceptance respondent terminated employment of the applicant on ground that she resigned. Applicant was aggrieved with the said termination and decided to refer the matter to the CMA claiming to have been unfairly terminated. CMA determined the dispute and decided that there was no termination, rather, applicant resigned from her employment. Arbitrator held that what was done by the respondent was just acceptance of her resignation letter.

Applicant felt resentful with the CMA's decision, she thus knocked this court's door challenging the. The application was supported by the affidavit of the applicant. The same was resisted by the counter affidavit of Meshack Kayila, the respondent's Human Resources Supervisor.

When the matter was scheduled for hearing, applicant was represented by Mr. Edward Ngatunga, Personal Representative while the respondent was represented by Mohamed Muya, Advocate.

In his submission, Mr. Ngatunga for the applicant, arguing the 1st ground of revision, submitted that, the arbitrator erred in law and fact in

holding that there is no time limitation for acceptance of resignation letter referring to Rule 6(2) of the Employment and Labour Relations (Code of Good Practice) GN. No. 42 of 2007. He further submitted that; applicant tendered resignation letter on 14th December 2015 giving 28 days' notice to the respondent. After expiry of 28 days, there was no response from the respondent, as a result, applicant continued to work until 14th March 2019, when the respondent accepted his resignation letter and terminated her employment on the same date. Mr. Ngatunga, emphasized that acceptance of resignation was an afterthought because respondent had no valid reason for termination.

On ground 2, Mr. Ngatunga submitted that, the arbitrator erred to hold that respondent was right to wait until conclusion of the criminal case filed against the applicant. He went on that the arbitrator did not explain how the acceptance of resignation would have affected the case at Kisumu RM's court where the applicant was acquitted on 29th September 2018. He went on that, at all times, applicant was working with the respondent, and she was paid salary.

Regarding the 3rd ground Mr. Ngatunga, submitted that the arbitrator erred in holding that the contract of employment between the two came to an end after acceptance of resignation letter and that there

is no law providing that the resignation must be accepted. Mr. Ngatunga submitted that resignation must be accepted prior expiry of the time stated in the resignation letter.

On the 4th ground, Mr. Ngatunga submitted that, the arbitrator failed to evaluate the applicant's evidence especially resignation letter. he argued that Arbitrator was supposed to hold that acceptance of resignation was prolonged illegally and made impression to the applicant that her resignation was not accepted for the past four years. He therefore prayed the application be allowed and applicant be reinstated. When asked by the court as whether reinstatement was one of the reliefs prayed by the applicant, he readily conceded that in CMA F1, applicant did not pray for the relief of reinstatement.

In response to the submissions made on behalf of the applicant, Mr. Muya, Advocate submitted that the arbitrator did not error in holding that there is no time limit for accepting a resignation letter. he submitted that applicant served the respondent with a resignation letter on 14th December 2015, after being charged with a criminal case relating to fraud committed while working with the respondent. He further submitted that; applicant was suspended without loss of her remuneration pending conclusion of the said criminal case. He further

contended that, applicant was not terminated by the respondent, rather, she served 28 days resignation letter to the respondent. To bolster his argument, counsel cited the case of Joseph ***Mbarouk Mmbaga v. Coastal Travels Limited, Revision No. 24 of 2020.*** (unreported) He insisted that, after expiry of 28 days, applicant was no longer respondent's employee.

Further to that, Mr. Muya submitted that, there is no law requiring resignation to be accepted within the period stated in the resignation letter. To support his argument, he cited the case of ***Abdallah Mbukuzi v. TPB Bank Plc, Rev. No. 662/2019*** (unreported) wherein this court held that upon expiry of a notice, the employee terminates employment.

Mr. Muya submitted that; parties are bound by their pleadings hence the court cannot grant what has not been prayed by the applicant. He submitted that the prayer for reinstatement was not part of applicant's pleadings. He therefore prayed the application be dismissed.

In rejoinder, Mr. Ngatunga, submitted that applicant was reporting at work and was paid salary. Therefore, it cannot be said that she was paid salary as per of wisdom or mercy of the respondent. He

insisted that, the conduct of the parties after the said resignation letter, shows that resignation letter was revoked by implication.

Having gone through the argument of both parties and their affidavits, I will start with the CMA's finding that applicant was not terminated by the respondent, rather, the respondent accepted resignation letter after final determination of the Criminal case against the applicant. It is undisputed that, applicant issued a 28 days resignation notice on 14th December 2015, and the said notice was accepted by the respondent on 14th March 2019. It was argued on behalf of the respondent that there is no time limitation for accepting the resignation notice.

It is true that the law is silent on time within which an employer can accept resignation letter. Section 41 of the Employment and Labour Relations Act [Cap. 366 R. E. 2019] provides only for a duration of termination notice. Since applicant was employed on monthly basis, the relevant provision is section 41(1)(b)(ii) of Cap. 366 R. E. 2019 (supra) which requires a party who wishes to terminate the contract on notice, to issue a 28 days' notice to the other party. But the law does not provide the duration within which an employer is supposed to accept or refuse the said notice of resignation. It is my considered view that,

since the law provides for a duration of termination on notice, then, the response to such notice ought to be within such a notice period. Therefore, respondent was supposed to communicate with the applicant regarding the said notice, in such a notice period or immediately after expiry of the said period. Even if respondent waited for conclusion of the pending criminal case against applicant, the respondent was supposed to notify applicant to such effect, and not to remain silent for about 3 years. Communication was supposed to be made within reasonable time. In my view, parties did not intend to terminate their employment relationship, which is why, applicant worked with the respondent for about three years after serving the respondent with resignation letter. At all this time, applicant was being paid salary by the respondent while under suspension. If respondent intended to terminate employment relationship as applicant intimated in the resignation letter, it was open for her to accept it and end relationship at the option of the applicant.

Further to that, it is undeniable fact that, during the time of suspension, applicant continued to report at office and sign in the attendance register on Monday and Thursday. Even after expiry of the resignation notice period, respondent continued to pay applicant salary.

That means, respondent recognized applicant as her employee despite expiry of the notice issued by the applicant. Respondent's failure to communicate acceptance of resignation letter with applicant, impliedly, respondent did not accept resignation letter. It is impliedly also that continua of applicant attending at work and accept salary despite expiry of the resignation period, revoked the said resignation letter. In my view, termination of employment of applicant by the respondent allegedly accepting the said resignation letter is unfounded. In my view, termination of employment of the applicant was done as an afterthought because respondent had no valid reasons for termination. Since termination of employment of the applicant was an afterthought and without valid reasons, I hold that applicant was unfairly terminated. Respondent did not comply with the provisions of section 37(2) Cap. 366 R. E. 2019 (supra) that requires validity of reasons and fairness of procedures in termination of employment.

In the CMA F1, applicant prayed for 24 months' compensation, notice and severance pay. Since this court has found that applicant was unfairly terminated both substantively and procedurally, I do hereby order that applicant should be paid TZS 26,092,800/= being twelve (12) months' salary as compensation for unfairly termination, TZS 2,174,400

being one (1) month salary in lieu of notice, and severance pay of TZS 5,854,153.85 as the record reveals that the applicant's monthly salary was TZS. 2,174,400 and that she worked with the respondent for 10 years. In total applicant will be paid TZS 34,121,353.85

For the foregoing, I hereby allow the application. CMA award is hereby revised and set aside.

Dated at Dar es Salaam this 22nd April 2022.



B.E.K. Mganga
JUDGE

Judgment delivered today 22nd April 2022 in the presence of Suzan Kabogo, the applicant and Halima Semanda, advocate, for the respondent.



B.E.K. Mganga
JUDGE