

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

REVISION NO. 205 OF 2021

MAIKO KULWA KADOMA	1st APPLICANT
ANGELINA JOSEPH KALINGA	2nd APPLICANT
KASTORY DAMACY MAYUNGA	3rd APPLICANT
OSWARD SIMON	4th APPLICANT
EZRON SELESTINO	5th APPLICANT
SHABAN VUMBI	6th APPLICANT
YUSUPH JAMBIA	7th APPLICANT

VERSUS

KNIGHT SUPPORT (T) LIMITEDRESPONDENT

(From the decision of the Commission for Mediation and Arbitration at Kinondoni)

(Gerald: Arbitrator)

Dated 17th May, 2021

in

REF: CMA/DSM/KIN/519/20/243

EXPARTE JUDGEMENT

17th March & 22nd April 2022

Rwizile, J

This application is for revision of the decision of the Commission for Mediation and Arbitration (CMA). The applicants, after being terminated, they successfully filed a dispute, claiming for benefits due to unfair termination.

After an ex parte hearing, due to failure of the respondent to appear, the CMA ordered re-engagement of the applicants. Being aggrieved by that decision, they filed the present application on the following grounds: -

- i. That, the honourable arbitrator erred in law and facts to order that the applicants be re-engaged as the applicants were not interested with this remedy.*
- ii. That, the commission/arbitrator procured the award contrary to the evidence tendered by the applicant.*
- iii. That, the honourable arbitrator erred in law and facts to hold that, the applicants were not entitled to any benefit(s) as claimed through CMA Form No.1 without considering the evidence given by the applicants.*

When the matter was set for hearing, the respondent did not appear or her representative. It is on record that on 17th August 2021, one Shokoro who called himself an investigation officer of the respondent appeared for the first time. He asked this court to afford her time to file necessary papers. He never appeared again or file any document. The date that followed one Rebecca Julius appeared, that is on 7th October 2021, on 31st January 2022, one Remmy William an advocate also appeared. On 17th March 2022, the matter was set again for hearing when Rebacca appeared to seek for an adjournment on ground that she

was holding briefs of Mr. Remmy who was indisposed. Following the state of affairs in this case, the matter was heard *exparte*.

The applicants were not also represented. It is Angelina Joseph who submitted orally for the applicants that they were not satisfied with re-engagement order, the same be reviewed by payment of terminal benefits. She said, the decision of the commission was not reasoned and the terms of their contracts were not followed.

After considering the submission by the applicants, the court is called upon to determine *whether the award was based on the evidence adduced by the applicants, whether re-engagement was a proper remedy and to what reliefs are the parties entitled.*

Dealing with the issues raised, starting with the first issue, the applicants stated that the decision was contrary to their documentary evidence. In record, the documents alleged were contracts of employment, notice of termination and letters of termination. The award states at pages 3 and 4 that: -

"Katika hoja ya kwanza na ya pili zinazosema endapo kulikuwa na sababu za msingi na endapo kama taratibu zilifuatwa na ndipo hapo Tume hii Pamoja na mambo mengine ya kisheria yanayohusu mgogoro huu kwanza kabisa imependezewa kujiridhisha juu ya

aina ya ajira ya walalamikaji wote... Kwa mujibu wa Ushahidi uliotolewa imethibitishwa mbele ya Tume hii kiasi cha Tume hii kuridhika kuwa ajira ya walalamikaji wote ilikuwa chini ya kifungu 14(1)(a) cha Sheria ya Ajira na Mahusiano Kazini (Na. 6/2004) na kwa maana hiyo walalamikaji walikuwa na mikataba ya kudumu."

From the above, it clear that the Commission considered the documentary evidence. It lastly ruled out that they were in permanent employment contracts. Further, the extract below at page 4 of the award states;

"Kabla ya mikataba hiyo ya walalamikaji kuisha kwa mujibu wa makubaliano tarehe 29/05/2020 mlalamikiwa aliwaandikia barua walalamikaji kuwaeleza nia yake ya kutowapatia mikataba mengine ya ajira baada ya mikataba yao kuisha tarehe 01.06.2020 na katika barua hizo mwajiri aliorodhesha stahiki walizitakiwa kulipwa walalamikaji ambapo walalamikaji walikubaliana na malipo hayo kwa kusaini na kuthibitisha kuyapokea."

From the above finding, it is clear to me that this ground has no merit. It is so because all documentary evidence tendered were considered by the arbitrator.

The second issue, is an order for re-engaging the applicants. The evidence of Maiko Kulwa Kadoma' provides the answer. He stated as follows: -

"Madai yetu ni:

- i. Likizo*
- ii. Kiinua mgongo*
- iii. Fidia ya kuachishwa kazi*
- iv. Malipo ya sikukuu"*

The claims are supported by pleadings as stated in CMAF1 where the applicants sought for the reliefs as *compensation for unfair termination, severance pay, unpaid leave, allowance, and golden shake hand*. In the case of **Magnus K. Laurean v Tanzania Breweries Limited**, Civil Appeal No. 25 of 2018, Court of Appeal of Tanzania held at page 27: -

"... It is settled that generally an arbitrator or the High Court, Labour Division has no jurisdiction to grant a relief which is not prayed for in the referral form..."

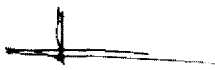
Based on the prayers of the applicants and the cited case law, I find re-engagement was not a proper remedy. I therefore agree with the applicants that re-engagement cannot stand. Therefore, this ground has merit. Having determined the two key issues, I am bound to hold that this application has merit. It is allowed.

Lastly, the applicants are therefore to be paid the following reliefs. Since there is evidence that notice was paid on termination date, I order the applicants be paid as hereunder;

- i. Severance pay which should be calculated based on the salary they were last paid at the tune of 150,000.00 each.
- ii. They should also be given a certificate of service.
- iii. 12 months' salary as compensation for unfair termination.

Under Section 40(1)(c) and (2) of ELRA [CAP 366 R.E. 2019].

The court also is of the view that, in order for one to be terminated, first there has to be employment. On perusal of the CMA record and exhibits tendered there are no contracts of employment, in respect of Ezron Selestino- 5th applicant. No evidence in relation to his case. For that matter it can be held that because there is no proof that he prosecuted his case and is not mentioned therein, the CMA award is quashed and set aside on his party. There is no order as to costs.


A. K. Rwizile

JUDGE

22.04.2022