

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

MSIC. APPLICATION REVISION NO. 127 OF 2021

NOVATUS RUPIA... .. 1ST APPLICANT

VERSUS

TANZANIA ZAMBIA RAILWAY AUTHORITYRESPONDENT

(From the Application for Execution No. 635 of 2019)

dated 17th February, 2021

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RULING

23rd March & 20th May 2022

Rwizile, J

This court is asked by the applicant to interpret and give directives in respect of its decision in Revision No.786 of 2018, dated 2nd August 2019, whereby the respondent refused to reinstate him, and denied payment of employment rights stated in the Collective Bargaining Agreement (CBA). The application has been filed under section 94(1) (b) of the Employment and Labour Relations Act (ELRA), Rule 55 (1) (2), 28 (3) and Rule 24 of the Labour Court Rules, GN 106 of 2007.

It has been gathered that the applicant was employed by the respondent as storekeeper in 2007. When their employment relationship turned bad, he was terminated.

To challenge his termination for being unfair, he filed a dispute with Commission for Mediation and Arbitration No. CMA/DSM/TEM/05/14, and lost. The applicant was again aggrieved and filed an application for revision No. 786 of 2028 before this court. On 2nd August 2019, this court set aside the award that held termination to be substantively and procedurally fair. The court held that his termination was unfair in all fours. As the remedy, the respondent was ordered to reinstated the applicant to his employment from the date of termination without loss of remuneration during the period he was absent from duty due to unfair termination. It further directed that if the applicant does not reinstate him, she should comply with section 40(3) of the ELRA.

As a matter of choice, the respondent did not opt to reinstated the applicant. Instead, paid terminal benefits. The applicant was not satisfied with the payment. He then, filed an application for execution styled Execution No. 635 of 2019 to enforce the judgement of the court. Before the Deputy Registrar of this court, on 17th February 2021, it was held that since the

judgement of this court did not quantify the amount of compensation to be paid instead of reinstatement, the Deputy Registrar has no jurisdiction to not only compute, but also to interpret the decision of court during the execution proceedings. He therefore advised the parties to explore the provisions of Rule 48 (8) of the Labour Court Rules. This application is therefore in that response.

By his affidavit, the applicant raised two grounds for which this application should be based as follows;

- i. Whether the decree holder is entitled the remuneration stipulated in the workplace collective agreement of the workers Union
- ii. Whether the court has powers and jurisdiction define her decree.

Mr. Mgombozi from TUPSE- a Trade Union appeared as personal representative of the applicant, while advocate Beatrice Mtembei stood for the respondent and opposed the application.

Advancing his argument in the first issue, Mr. Mgombozi stated that the applicant was paid terminal benefits that counted from 23rd June 2013 to 28th February 2017 contrary to the judgement. In his view, he ought to be

paid from December 2013 to the date of final payment. Since payment made was in 21st June 2013, the respondent did not comply with the judgement. Mr. Mgombozi went on saying that there were salary adjustments of March 2017, which were not paid as well as annual increment based on the CBA an amount of 11,118.00TZS per annum. This in his view, reduced the monthly salary from 741,200.00TZS to 528,000.00 TZS per month. He did not pay, according to him, as per section 40(3) of the Act, annual leave which was for 36 days. He said, compensation was to be based on the last salary.

In his view, the applicant was to be paid the following other benefits from date of termination to date; annual leave from termination date to date of final payment, severance pay as per section 42 and 44(1) of the Act, payment of golden handshake as per the CBA-2019, long term service award for 9 years until date of final payment based on clause 15.6 of the CBA, payment of 12 months compensation at the salary of 741,200.00TZS, subsistence allowance and not repatriation as per the CBA, repatriation costs as per CBA- clause 26(ii)(b) -three tones. Further, it was added that the notice is for 6 months as per the CBA. He asked this court to refer to the case of **Lukelo Chitimbao Nyagawa vs Mufindi TEA and Coffee Co. Ltd**, Application No. 14 of 2008.

On party of the respondent, Ms Beatrice Mtembei submitted that the order of the court was complied with. She submitted that the respondent paid terminal benefits according to section 40(3) ELRA as follows; house allowance, annual leave for 216 days. The learned advocate further submitted that the annual salary increment can only be paid to the worker who performed his duties to the satisfaction of the employer upon performance appraisal. It was his submission that the applicant paid increments based on the exchanged rate in terms of USD because payment was so based as per CBA and staff regulations. Other benefits paid were 12 months salary. In her view, the golden handshake was not paid because it is paid to the retiring person or after working for at least 10 years. The learned advocate was of the firm view that the applicant was paid repatriation costs and so all payment made was to the tune of 71 million although it was done in instalments. She therefore asked this court to dismiss the application.

By way of re-joining, it was submitted that payment has not been completed and the amount last paid was on November 2020. He therefore asked this court to allow this application.

Having heard the submissions, I have to straight forward go to section 40(3) of ELRA, which this court ordered be applied. It states as hereunder;

40.-(1) Where an arbitrator or Labour Court finds a termination is unfair, the arbitrator or Court may order the employer –

(a)

(b)

(c)

(2)

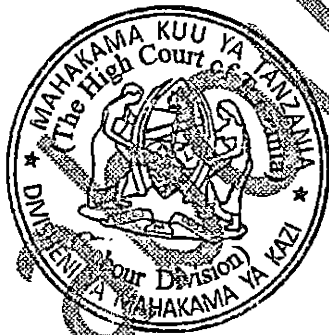
(3) Where an order of reinstatement or re-engagement is made by an arbitrator or Court and the employer decides not to reinstate or re-engage the employee, the employer shall pay compensation of twelve months wages in addition to wages due and other benefits from the date of unfair termination to the date of final payment.

The judgement is clear on what to be done. The dispute arises on the way the amount decreed was paid. It is therefore my view that the respondent ought or is required to pay the following;

- i. Salary of 12 months

- ii. All salaries due from date of termination to 2nd September 2019 when this court ordered so.
- iii. House allowance for the same period at the rate of 25%
- iv. Annual leave for the same period and
- v. Repatriation costs to the place of domicile

The respondent is directed to make calculations based on the salary payable as at 2nd September 2019. The applicant has to be paid all he is entitled as per this order after deducting what was paid to him before this application was preferred. The application is therefore granted to the extent shown above with no order as to costs.



A.K. Rwizile

JUDGE

20.05.2022