

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

REVISION NO. 184 OF 2021

BETWEEN

EFC TANZANIA LIMITED APPLICANT

VERSUS

ANITA DAVID RESPONDENT

JUDGEMENT

S. M. MAGHIMBI, J:

The present application emanates from the decision of the Commission for Mediation and Arbitration (“the CMA”) in Labor Dispute No. CMA/KIN/R.537/18276 (“The Dispute”). The application is made under the provisions of Section 91 (1) (a), 91 (a) (b), 91 (4) (b) (i) 94 (1) (b) (i) of the Employment and Labour Relations Act, Cap. 366 R.E 2019 (“ELRA”) and Rule 24 (1), 24 (2) (a) (b) (c) (d) (e) (f), 24 (3) (a) (b) (c) (d) and 28 (1) (c) (d) (e) of the Labour Court Rules, G.N No. 106 of 2007 (“the Rules”). He is moving the court for the following:

1. That this Honourable Court be pleased to call for and examine the record of the Commission for Mediation and Arbitration (CMA) in Labour Dispute No. DSM/KIN/R.537/18/276, dated 16th April, 2021, Hon. William R-Arbitrator and for the purposes of satisfying

itself as to the correctness, legality, regularity and propriety of the said decision and revise it accordingly.

2. That this Honourable Court be pleased to quash and set aside the Labour Dispute No. DSM/KIN/R.537/18/276, dated 16th April, 2021, Hon. William R-Arbitrator.

Brief background of the dispute is that the respondent was employed by the applicant as a Customer Care Officer since 09th June, 2014 on unspecified period of contract. On 31st May, 2016 the respondent was terminated from employment on the ground of retrenchment. Aggrieved by the termination the respondent referred the matter to the CMA. After considering the evidence of both parties the CMA found that the respondent was unfairly terminated both substantively and procedurally hence the respondent was awarded a total of Tshs. 10,081,368/= being 12 months salary compensation for the alleged unfair termination. Aggrieved by the CMA's decision, the applicant filed the present application on the following grounds: -

- i. That it was erroneously for the Hon. Arbitrator to order payment of TZS 10,081,368/= being payment of 12 months' salary compensation to the respondent while she admitted to have received retrenchment benefits from the applicant.

- ii. That the applicant had a valid reason for termination and all the procedures for termination were followed.

The application was argued by way of written submissions. Ms. Nancy Kissanga, Advocate was for the applicant, Mr. Gerald Hamisi fended for the respondent.

Arguing in support of the first ground, that it was erroneous for the Hon. Arbitrator to order payment of TZS 10,081,368/= being payment of 12 months' salary compensation to the respondent while she admitted to have received retrenchment benefits from the applicant; Ms. Kissanga submitted that by signing and accepting the retrenchment package it implies that the respondent was satisfied with the reason and procedures for termination. She argued that if the respondent was not satisfied with the retrenchment process, she ought to have referred the matter to the CMA pursuant to section 38 (2) of the ELRA. She argued that at this point and time, the respondent is estopped from challenging the retrenchment process because she has already benefited from it. To support his submission Mr. Kissanga referred the court to the case of **Resolution Insurance Ltd vs Emmanuel Shio & Others (Labour Revision 642 of 2019) [2020] TZHCLD 38 (29 May 2020)** where the said position was held.

As to the second ground, Ms. Kissanga maintained that the retrenchment procedures as they are provided under section 38 of ELRA were followed by the applicant in this case. That the respondent was notified of the financial crisis which the applicant was facing through various meetings which were held between the management and the employees as testified by DW1. She submitted that having given such notice, the respondent was availed with an opportunity to have a dialogue with the applicant on how to rescue the worse result of termination of employment. That it was agreed that the respondent be assigned another post of Customer Service from the post of Management Trainee, however such efforts did not bear fruits since the applicant continued to make loss thus, retrenchment was inevitable.

Ms. Kissanga continued to submit that the respondent was issued with termination notice of 30 days (exhibit D3) as required by section 41 (b) (ii) of ELRA. He stated that the respondent was paid one month salary in lieu of notice and other retrenchment benefits, the fact which was never disputed by the respondent. Further that the applicant was making a loss and as a result the institution was sold to Mwanga Hakika Microfinance Bank Limited as per annexure EFC-1 which was attached to the affidavit in support of the application. She added that if the applicant was managed well, her business could not have been sold to

another institution. She then argued that all those information was revealed to the trial Arbitrator by DW1 thus the Arbitrator erroneously held that the applicant had no valid reason to retrench the respondent. In the upshot Ms. Kissanga prayed that this court quash and set aside the Arbitrator's award.

In reply, Mr. Hamisi submitted that the procedures for termination as provided under section 38 of ELRA read together with Rule 23 of the Employment and Labour Relations (Code of Good Practice) GN No. 42 of 2007 ('The Code'); were not followed by the applicant. That in this case the respondent was not issued with any notice prior to the termination and no proper consultations were done by the applicant. He argued that the respondent had no any information about the alleged retrenchment until on 01st June, 2016 when she was served with the termination letter. Mr. Hamisi submitted further that the applicant did not invite all employees to discuss about the intended retrenchment while he was bound to comply with the provisions of Section 38 of the ELRA.

As to the payment of severance allowance, Mr. Hamisi submitted that there was no any agreement between the parties on the retrenchment package. That the applicant failed to prove the reason for

retrenchment and he did not follow the stipulated procedures, he therefore urged the court to dismiss the application.

I will start to determine the second ground of revision where the applicant strongly alleges that she had valid reason to terminate the respondent. The applicant alleges that the respondent was terminated due to operation restructuring of the financial institution as it is indicated in the termination letter (exhibit D3). Ms. Kissanga submitted that due to structural need of the business, the respondent's termination was necessary. Going through the records, there is no proof that the applicant was restructuring his business. The applicant has just attached an annexure to prove the restructuring of his business while the said document was not tendered at the CMA. It is a trite law that the revisionary powers of this court is limited to matters transpired at the CMA and no new evidence should be admitted and considered by this court exercising revisional powers. The attached annexure was not tendered at the CMA thus, it can not be considered at this stage.

As to the second limb of termination, the Arbitrator found that the applicant did not follow the retrenchment procedures in terminating the respondent. As properly analysed by the Arbitrator, the retrenchment procedures are provided under section 38 (1) of ELRA read together

with Rule 23 and 24 of the Code. I have critically analysed the records, the applicant alleges that the respondent was notified of the intended retrenchment; however his assertion is not supported by the records available in court. It is not proved that the respondent was consulted prior to her termination, neither are there minutes of the consultation meetings tendered to prove that the requirement of the law was complied with. As rightly found by the Arbitrator, there is no evidence that any of the procedures analysed under section 38 of ELRA have been complied with. The respondent was only served with the termination letter without being informed of the retrenchment in question, an act which is against the law and procedures.

Turning to the last ground as to parties' reliefs; the Arbitrator awarded the respondent 12 months' salary as compensation for unfair termination. Basing on the above findings, that the applicant had no valid reason to terminate the respondent and he did not follow the required procedures for retrenchment, I find no merits in this application, it is therefore dismissed in its entirety.

It is so ordered.

Dated at Dar es Salaam this 23th day of May, 2022.




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S.M. MAGHIMBI
JUDGE