

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

REVISION NO. 282 OF 2021

ABUBAKARI JUMA AND ANOTHER APPLICANTS

VERSUS

LAKE CEMENT LTD. RESPONDENT

JUDGEMENT

S.M. MAGHIMBI, J.

This application is made under the provisions of Section 91(1)(a) and 91(2)(c) Section 94(1)(b)(i) of the Employment and Labour Relations Act, Cap. 366, R.E. 2019 ("the Act") and Rules 24(1), 24(2)(b), 24(2)(c), 24(2)(d), 24(2)(e) and 24(2)(f), 24(3)(a), 24(3)(b), 24(3)(c), 24(3)(d) and Rule 28(1)(b), 28(1)(c), 28(1)(d) and 28(1)(e), of the Labour Court Rules 2007, G.N. No. 106 of 2007 ("the Rules"). The Applicant is moving the court for an order in the following terms:-

1. This Honourable Court be pleased to revise and set aside the part of the proceedings and award/ruling of the Commission for Mediation and Arbitration dated 11th June, 2021 in CMA/DSM/TMK/14/2020/17/2020.
2. Any other reliefs this Honourable Court deems fit and just to grant.

The application is supported by a joint affidavit of Mr. Abubakar Juma and Atilyo Luwumba the Applicants herein, dated 23/07/2021. The respondent opposed the application by filing a notice of opposition. The application was disposed by way of written submissions; the applicants' submissions were drawn and filed by the applicants in person while the respondent was represented by Mr. Dickson Mwesigwa, learned advocate.

Having considered the submissions of both parties, I find the main issue in dispute is whether the termination of the applicants was procedurally and substantively fair. As per the records, the applicants were terminated on allegation of theft and the property alleged to have been stolen belonged to the respondent, their employer. As per the evidence, the DW1, DW2 and DW3 adduced evidence which properly established that the applicants were involved in a scam and how they were found with extra tons of cement and their connection thereto. I have noted that the evidence in support of the allegation of theft was circumstantial but as correctly submitted by Mr. Mwesigwa; it was proved that the applicants were on duty on the date that the theft occurred and they were involved in loading the truck. There was also DW3, a police officer who investigated the matter who testified that the CCTV camera of the respondent shows

that the car that carried the cement did not pass through the weighing scale.

I have also perused the testimony of the applicants and they both admitted to have been at work on the material day and they were also responsible in one way or another to cross check the merchandise that was going out of the factory. Hence the evidence adduced was sufficient to connect the applicants to the alleged theft; making it a substantive reason for their termination. Hence the termination was substantively fair.

Going to the procedural aspect, the records show that the procedures for termination was followed. Even in their testimony the only issue of procedural aspect that the applicants are complaining of is that they were denied the right to appeal. On this point, I am in agreement with the arbitrator that the fundamental issue was for them to be accorded a right to be heard before termination, something which undisputedly happened. Failure of giving them the right to appeal cannot be said to be fatal because after all, the applicants had the opportunity to approach the CMA and have their case re-opened, an opportunity which they had utilized which has led to this application. The termination was therefore procedurally fair.

On those findings, it is conclusive that the termination of the applicants was substantively and procedurally and fair. Consequently, this application is hereby dismissed in its entirety for lacking merits.

Dated at Dar-es-Salaam this 20th day of July, 2022.




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S.M. MAGHIMBI
JUDGE

Labour Court