

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

**REVISION NO. 39 OF 2021**

**MPOKI MWANGALABA ..... APPLICANT**

**VERSUS**

**ACHELIS TANGANYIKA LIMITED ..... RESPONDENT**

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

(Chacha: Arbitrator)

Dated 18<sup>th</sup> December, 2020

in

REF: CMA/DSM/KIN/328/20/222

**JUDGEMENT**

27<sup>th</sup> July & 24<sup>th</sup> August, 2022

**Rwizile, J**

The Applicant has asked this Court to call for records of the Commission for Mediation and Arbitration (CMA) and revise the decision therefrom.

Facts are that, the applicant was employed by the respondent on permanent basis as a technician. The employment commenced on 14<sup>th</sup> November, 2011 until 30<sup>th</sup> March, 2020 when he was retrenched. Aggrieved, he filed a dispute at CMA. The same was heard and decided in favour of the respondent. Dissatisfied, he then filed this application.

The application is supported by the applicant's affidavit which advanced three grounds for revision as hereunder;

- i. Whether arbitrator was correct, to hold as he did, that applicant's termination of his employment contract by retrenchment was with justifiable reasons, while there was no disclosure of all relevant information on the intended retrenchment for the purpose of proper consultation.*
- ii. Whether arbitrator was correct, to hold that the applicant's retrenchment made by the respondent followed the procedures.*
- iii. Whether the trial arbitrator was correct to hold in disregard of the agreed selection criteria (LIFO) done by the respondent was right.*

At oral hearing both parties were represented. Miss Angelina H. C. Onditi, learned Advocate was for the applicant and Mr. Dennis Christopher Mwesiga, learned Advocate was for the respondent.

Miss Angelina submitted that the applicant was employed by the respondent under permanent contract. He was paid the sum of TZS. 1,350,000.00 per month. The employment contract started on 14<sup>th</sup> November, 2011 and ended by way of retrenchment on 30<sup>th</sup> February, 2020.

It was her submitted that section 37(2)(a) of the Employment and Labour Relations Act [CAP. 366 R.E. 2019] was not followed. She stated that reasons for retrenchment were not stated, also exhibits were tendered during cross examination. To support her point, she cited cases of **Junior Construction Company Ltd v Revocatus Bebile**, Labour Revision No. 2 of 2018, High Court at Bukoba and **Sharaf Shipping Agency (T) Ltd v Bacilia Constantine and others**, Civil Appeal No. 56 of 2019, Court of Appeal of Tanzania at Dar es Salaam.

On the second and third grounds, she submitted that section 38(1) of the Act was not followed. She stated that even the procedure *first in, last out* was also not followed. She added, exhibit D2 proves that the company used its own procedure and not the law applicable. She supported her submission with rule 24(3) of The Employment and Labour Relations (Code of Good Practice) Rules, G.N. No. 42 of 2007. Onditi further stated that, there is evidence showing employees who were last employed were left, no proof of measures taken to avoid retrenchment and also employees were not informed of the retrenchment. She supported her submission with case of **Sharaf Shipping Agency (T) Ltd' case** (supra). She then prayed, the application be granted.

On the fourth ground, Miss Angelina submitted, there were no document tendered at CMA to prove economic downfall of the respondent. Documents tendered, it was her view, only showed, the list of retrenched employees and the amount paid. She asked, the award be set aside as there were no reasons for retrenchment and also procedure was not followed.

In reply, Mr. Denis submitted that exhibits D1 which is a notice of intention to retrench dated 07<sup>th</sup> February, 2020, D2 which are the minutes and D3 proved that there were reasons for retrenchment and also the procedure was adhered to. For him, the CMA was proper in arriving at its decision. He stated that cases cited by the applicant are distinguishable as retrenchment was done in three phases and the applicant was in the first list.

Mr. Denis continued argued that the retrenched employees were paid statutory payment as it was proved by records of three years that retrenchment was inevitable. Further it was that there was no agreement on the method of selection. He stated that the applicant was paid all his dues and so prayed for the application to be dismissed.

In a rejoinder, Miss Angelina submitted that there were no proof to show loss of three years. She then reiterated what has been submitted in the

submission in chief and prayed for 48 months compensation as stated in CMA F1.

After hearing of the parties, I have to determine one crucial issue which is *whether retrenchment was grounded on reasonable cause and proper procedure.*

To start with Rule 23(1) of the Employment and Labour Relations (Code of Good Practice) G.N. No. 42 of 2007 defines retrenchment to mean: -

*"A termination for operational requirements (commonly known Operational as retrenchment) means a termination of employment arising from the requirements operational requirements of the business. An operational requirement is defined in the Act as a requirement based on the economic, technological, structural or similar needs of the employer."*

On the first issue ground, going through records, exhibits D3 shows profits and losses got. It is evidenced that in the year 2019 the actual amount was TZS 17,451,271,658.79 while the whole budget was TZS 28,654,750,000.00. Also, in the year 2020 the actual amount was the one brought from year 2019 while the budget was TZS 24,164,028,000.00. The undisputed figure proved, the respondent was financially unstable.

This proves, the respondent had reason to retrench her employees. This was due to some economic hardships faced.

Reasons for retrenchment has to go together with the procedure for retrenchment. This means if the employer does not follow procedure, it amounts to unfair termination. The law under section 38 of the Act provides: -

*"(1) In any termination for operational requirements (retrenchment), the employer shall comply with the following principles, that is to say, he shall-*

- (a) give notice of any intention to retrench as soon as it is contemplated;*
- (b) disclose all relevant information on the intended retrenchment for the purpose of proper consultation;*
- (c) consult prior to retrenchment or redundancy on-*
  - (i) the reasons for intended retrenchment;*
  - (ii) any measures to avoid or minimize the intended retrenchment;*
  - (iii) the method of selection of the employees to be retrenched'*
  - (iv) the timing of the retrenchments;*

*and*

- (v) severance pay in respect of the retrenchment,*
- (d) give the notice, make the disclosure and consult, in terms of this subsection, with-*
  - (i) any trade union recognized in terms of section 67;*
  - (ii) any registered trade union which members in the workplace not represented by a recognised trade union;*
  - (iii) any employees not represented by a recognized or registered trade union."*

Again, going through the applicant's testimony and evidence tendered it is safe to find that; The admitted that he and his fellow employees were provided with notice of intention to retrenchment. For easy reference on untyped testimony: -

*"Swi: Ilikuwaje ukapunguzwa kazi*

*Jb: Kulikuwa na notice ubaoni ya kupunguzwa. Mwezi wa 2 walikuja watu wa labour na tukakaa kikao kulikuwa hamna muafaka."*

This is also proved by the exhibit D1 a notice of intention to Retrench due to Operational Requirement, where it was stated thus;

*We have over the past years seen an increased pressure to keep our business's going however despite our best endeavours this has not been possible, and we are being forced to review our number of amount of people, with the right skills doing the right jobs. This is going to be departmental redesigning to meet operational challenges and to become more efficient.*

*As per legal requirement, we are issuing this notice to all staff members at Achelis (Tanganyika) Limited, that there is an intention to conduct a retrenchment process, in phases. Departments that are to be affected are Graphics, Security Screening, Workshops, Material Handling and Administration staff. Up to 20 roles are likely to be affected in this entire process if all phases are finally activated. It is most certainly understood that this situation is not easy but a necessary step in protecting the long-term interest of our people, our business and other stake holders.*

*The next part of the process will be highlighted as outlined in the correct procedures to be taken. Therefore Achelis (Tanganyika) Limited takes the opportunity to inform you that it has given*



*thirty (30) days notification to all employees who will be retrenched with the effect from 1<sup>st</sup> April 2020."*

Thereafter, the consultation meeting was conducted. This can be evidenced through exhibit D3 which is the attendance of all employees who were present during the meeting of retrenchment. It is proved that the applicant was one of them.

The applicant alleged that employees including the applicant did not agree to the retrenchment process. I find it hard to believe as all employees who were retrenched were all paid their dues. This has been proved with exhibit D3 and also applicants' testimony stating that he was paid all his dues except certificate of service. He stated that under untyped testimony during cross examination that: -

*"Swl: ulilipwa stahiki zako*

*Jb: Baadhi sijalipwa, certificate bado"*

This shows that by the applicant agreeing to be paid his dues, he accepted retrenchment. Of course, this notwithstanding, the court is satisfied that the retrenchment procedure complied with key procure of retrenchment.

From the foregoing, it is apparent that the respondent had reasons to retrench and then followed the procedure. The application has no merit.

It is hereby dismissed. This being a labour matter, each party has to bear its own costs.



A handwritten signature in black ink, appearing to read "A.K. Rwizile".

**A.K. Rwizile**

**JUDGE**

**24.08.2022**