

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

REVISION NO. 69 OF 2021

LAIZER LAZARO RASHID 1ST APPLICANT
RIZIKI A. MWANDIKE 2ND APPLICANT
ISSA RASHID SELEMEN 3RD APPLICANT
JUMANNE ALLY JUMA 4TH APPLICANT
SADICK HAMIS MHANDO 5TH APPLICANT

VERSUS

SUNSHINE LAUNDRY
AND DRY CLEABERS LIMITED RESPONDENT

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

(Mayale : Arbitrator)

Dated 04th January, 2021

in

REF: CMA/DSM/KIN/287/2020/202

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JUDGEMENT

19th August & 01st September, 2022

Rwizile, J

The application emanates from the decision of the Commission for Mediation and Arbitration (CMA) in Labour Dispute No. CMA/DSM/KIN/287/2020/202. This Court has been asked to call for and examine the proceedings and revise the award.

The brief history to this case is; the applicants were employed by the respondent in a fixed term contract. The employment started on 22nd August, 2019 until 01st April, 2020 when they were terminated. Aggrieved, a dispute was filed before the CMA for claims of unfair termination. The award was in favour of the respondent. Not satisfied with the award, they have now filed this application.

The application is supported by their joint affidavit, which advanced grounds for revision: -

- a. That, the arbitrator erred in law and facts for failing to properly evaluate evidence adduced by the parties. The termination letter was not balanced; it did not incorporate the applicant ideas.*
- b. The arbitrator erred in law and facts for failing to consider evidence adduced by the applicant. The termination letter was unilaterally prepared by the respondent and the applicants did not get proper time to consultation meeting and reach a proper decision.*
- c. The award had material irregularities and errors of law and facts on the face of the record and explained in paragraph 6 of the award that the arbitrator erred in law and facts to say that the applicant's termination was fair while there was no proper procedure followed. Basically, in the pleadings of the Commission, the award was delivered on 04.01.2021, the applicants were faulting the arbitrator*

for failure to find that termination was procedurally unfair, despite the fact that the employer did not prove procedural fairness.

- d. That, the arbitrator erred in law and facts for reaching to an award which is not supported by the evidence adduced during the arbitration. The applicants were terminated without any consultation by the respondent.*
- e. The arbitrator erred in law and facts for failing to consider evidence adduced by the applicants, the respondent had claimed to pay the applicants notice according to the employment contract.*
- f. That the arbitrator erred in law and fact by reaching to a conclusion and did not award the remaining three months which have legal basis or foundation, that the applicants have the right to work.*
- g. That, the arbitrator erred in law and fact for failing to realize the lies presented by the respondent.*
- h. That the arbitrator erred in law and fact by failing to summarize, evaluate and record the key issues presented by the parties. Instead relied on one source, the termination letter.*
- i. That the arbitrator erred in law and facts for issuing an award which is incompetent and incapable of determining rights of the applicants.*

The applicant was represented by Michael Deogratius Mgombozi, Personal Representative whereas the respondent was represented by Ashery K. Stanley, learned Advocate.

The application was scheduled for hearing on 21st July, 2022. On 20th July, 2022 the advocate for the respondent informed this court via a letter stating his withdrawal from representing the respondent. On the hearing date the respondent did not show up. The personal representative of the applicant prayed the application be heard ex parte. The prayer was granted and the hearing proceeded ex parte.

Mr. Mgombozi submitted that the applicants had a fixed term contract of one year that commenced on 22nd August, 2019 and was supposed to end on 22nd August, 2020, as exhibit P1 shows. The first applicant was paid the salary of TZS 350,000.00 per month and the rest were paid TZS 300,000.00. In his view, the respondents ought to be awarded their remaining period of their contracts. He continued say, that the applicants were terminated on 07th April, 2020 as exhibit P2 shows and were paid days worked, notice of termination, leave balance and golden handshake. He continued to argue that the applicants were not consulted. To support his point, he cited cases of **Mtambua Shamte and 64 Others v Care Sanitation and Suppliers**, Revision No. 154 of 2010, High Court at Dar es Salaam at page 8, **Asanterabi Mkonyi v Tanesco**, Civil Appeal No.

53 of 2019, Court of Appeal of Tanzania at Dar es Salaam at page 10 and **Registered Trustees of Vignan Education Foundation (Tanzania) v Dr. Ali Mzige**, Revision No. 764 of 2018, High Court at Dar es Salaam at pages 9-12.

Mr. Mgombozi was clear that rule 8(2) and rule 4(1) of the Employment and Labour Relations (Code of Good Practice) G.N. No. 42 of 2007, were not followed. In his view, the award had errors, it should be revised.

After going through the submission, CMA proceedings and exhibits, the court is to determine *Whether the contract was breached*.

It has been evidenced by exhibit P1 (Mkatoba wa Kazi) that only three applicants (1st, 2nd and 3rd) were employed by the respondent and entered into employment contract that commenced on 22nd August, 2019. They were terminated by way of retrenchment on 01st April, 2020.

The law under section 38(1)(a), (b), (c)(i), (ii), (iii), (iv) and (v) provides for termination based on operational requirements, that;

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 the 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 retrenchments,*

As the law provides, the procedure for retrenchment, there is no evidence to prove if the notice for retrenchment was given to the employees and whether relevant information to retrenchment was disclosed to the employees and whether there was consultation, measures and methods for selection of the employees to be retrenched

Going through records, there is exhibit P2 (retrenchment letters for the 1st, 2nd, 3rd and 5th applicants) which referred the meeting of 01st April, 2020. For easy reference: -

"1st April, 2020

Dar es Salaam

Dear ...

RE: RETRENCHMENT

We refer to our meeting held on 1st April, 2020.

In the above mentioned meeting the company informed you of its intention to retrench staff due to hard economic climate facing the hotel industry who are our main clients. ...

Consequently, the company, hereby regretfully informs you that you have been retrenched effective from 1st April, 2020.

...”

As exhibit P2 shows, the letter referred the meeting held on 01st April, 2020 of which there is no any evidence tendered to show the said meeting. The meeting would show if the applicants were consulted on the reason for retrenchment, measures taken and methods for selection used. On such instances, it is proved that procedures for retrenchment was not followed. It is clear to me that there was no evidence to prove the procedure for retrenchment was followed. Therefore the application has merit.

Further, as per exhibit P1, the 1st, 2nd and 3rd applicants had their case presented before the CMA. There is no evidence whatsoever in respect of

the 4th and 5th applicants. Therefore, when quashing the award, it is the 1st to 3rd applicants that are entitled to the following;

1. Laizer Lazaro Rashid

Salary 350,000/= * remaining of the employment contract 5 months

Total amount to be paid TZS. 1,750,000.00

2. Riziki A. Mwandike

Salary 300,000/= * remaining of the employment contract 5 months

Total amount to be paid TZS. 1,500,000.00

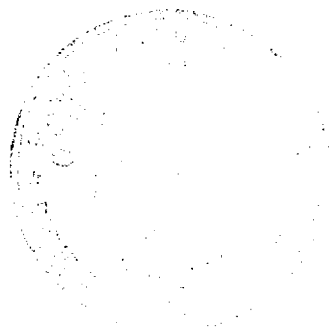
3. Issa Rashid Selemen


Salary 300,000/= * remaining of the employment contract 5 months

Total amount to be paid TZS. 1,500,000.00

As for the 4th applicant, there is no proof that he was once employed by the respondent. For the 5th applicant, even though there was a retrenchment letter on his part, but there was no his employment contract.

The application is therefore allowed. The award is quashed and the orders set aside. The 1st to 3rd applicants are intitled to the reliefs stated above I make no order as to costs.




A.K. Rwizile
JUDGE
01.09.2022