

**IN THE HIGH COURT OF TANZANIA**

**LABOUR DIVISION**

**AT DAR ES SALAAM**

**REVISION NO. 55 OF 2022**

**HEMED IBRAHIM SEIF & 69 OTHERS .....APPLICANTS**

**VERSUS**

**TOYOTA TANZANIA LIMITED ..... RESPONDENT**

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

(Amos: Arbitrator)

Dated 28<sup>th</sup> October, 2019

in

**REF: CMA/DSM/TEM/146/2019/101/2019**

**JUDGEMENT**

25<sup>th</sup> August & 08<sup>th</sup> September, 2022

**Rwizile, J**

This application is for revision. It has been made by the applicant to call for records of the Commission for Mediation and Arbitration (CMA) and thereby revise the award.

The application emanates from the background that, the applicants were employed by the respondent. In January, 2016 the respondent, in order to comply with the Employment and Labour Relations Act, issued employment contracts to each employee to replace letters of appointment issued before.

In June, 2018, the applicant issued through an addendum, contracts with some changes to all employees. The applicants refused to sign the same because they needed proper interpretation and clarification.

The respondent referred the dispute to the Labour Office in Temeke. Both parties were advised to refer the matter to the CMA for interpretation. The dispute was referred to the CMA. After a hearing, the CMA was of the view that the respondent was right and so the applicants were advised to sign the same. The applicants were not happy with the decision of the CMA, hence this application.

Their application is supported by the affidavit sworn by Hemed Ibrahim Seif their representative. It has raised, the following issues for determination;

- i. The honorable madam arbitrator erred in law and in facts for commanding the applicants to sign addendum to the contracts of employment.*
- ii. The honourable madam arbitrator erred in law and facts for failing to record properly the crucial evidence/testimony of the applicants and failing to consider the arguments which was put forward by the applicants during the hearing.*

- iii. The honourable madam arbitrator erred in law and in facts for finding and concluding that changes in a contract can be done unilaterally without an agreement from the parties to that effect.*
- iv. The honourable madam arbitrator erred in law and in facts for the findings that a party seeking equitable relief can get advantage from his/her own doing which is against clean hands doctrine.*

The hearing was conducted orally. Both parties were represented. The applicants enjoyed services of Ms Mwanakombo Chaponda, advocate from TUICO and Mr. Ezekiel Kihari, learned advocate stood for the respondent.

Ms Mwanakombo submitted that the applicants were asked to sign the additional contract without any agreement. She stated that the CMA did not consider evidence of the applicants, that they were asked to sign new contracts while they had valid other contracts. She said, signing ought to be preceded by consultation. That is why, the applicants did not sign.

She continued to submit that the evidence by Dw1 proved, if the applicants signed the addendum, they could not claim for salary arrears. She argued, the contracts they had, had better terms in terms of salaries than the new ones, as proved by the contracts and salary slips

The learned counsel stated that exhibit P6 shows, on January, 2016 the salary was TZS 497,541.00 per month and on July, 2016, it was TZS 390,737.00 as per exhibit P7. In her view, the difference paved the way to the applicant's rejection of signing of the new agreement. She then prayed for the applicants to be paid their dues.

In reply Mr. Ezekiel submitted, there was a need to review the contract dated January, 2016 due to the business demands. He stated that the workers' union came up with the addendum to improve the workers' contracts. He strongly argued that the workers were consulted through their trade union.

The learned counsel argued further that, other workers signed except 70 of them. He added, that the former contract was for unspecified period but changed to a fixed term contract.

He continued to argued that the respondent went to CMA for a proper interpretation of the agreement/addendum whereby it was held that the same was proper and could not affect employees' rights.

Mr. Ezekiel submitted further that some of the employees signed including Nassoro and is now on duty, some were retrenched including Hemed Ibrahim, 24 others retrenched went to CMA and were paid their dues. He continued and stated that CMA told the employees about the need to sign

the addendum. He elaborated that there was no dispute of salary arrears and if it were, it is on an individual basis. He continued to argue that the 1<sup>st</sup> applicant is no longer the employee of the respondent and that the CMA proved that there was no problem with the addendum because others have signed.

In a rejoinder Ms Mwanakombo submitted that the respondent did not show how the applicants were involved in the process.

The contested issue is *whether CMA was right to order the signing of the addendum.*

The centre of the dispute started by issuance of the addendum exhibit P14. It was designed, according to the record, to supplement the existing contract dated 08<sup>th</sup> January, 2016, exhibit P6.

For easy reference it stated as hereunder;

**"NYONGEZA YA MKATABA WA AJIRA**

***Baina ya***

***TOYOTA TANZANIA LIMITED, NYERERE ROAD S.L.P 9060,***

***DAR ES SALAAM***

***NA***

## **NASSORO MIKIDADI WA DAR ES SALAAM, TANZANIA**

**AMBAPO** wadaawa katika nyongeza hii ya mkataba wa ajira wanakubaliana kama ifuatavyo:

1. Kwamba, nyongeza hii inalenga la kufanya masahihisho ya mkataba ulioingiwa baina ya mwajiri na mwajiriwa mnamo tarehe 08 Januari, 2016
2. Kwamba, nyongeza hii pia inalenga kufanya sehemu ya kifungu cha (1) cha mkataba wa ajira kuwa ni sharti ya barua ya ofa ya tarehe 08 mwezi Oktoba, mwaka 2013
3. Kwamba, kifungu cha 1 cha mkataba wa ajira ulioambatanishwa wenye alama "B" itajumuisha siku ya kwanza ya ajira ya mfanyakazi na kufanya/kuwa sehemu ya nyongeza hii
4. Kwamba, kifungu cha 6 cha mkataba wenye alama "B" itajumuisha mshahara wa kwanza wa mwajiriwa alioupokea wakati wa kusaini barua ya ofa yenye alama "A" na ongezeko la mshahara wa mwajiriwa Pamoja na stahiki zingine kuendana na mshahara
5. Kwamba, nyongeza hii ni lazima kusomwa na kujumuishwa na barua ya ofa yenye alama "A" na mkataba wa ajira wenye

*alama "B" wakati wa marejeo iwapo mwajiriwa hajawahi kupatiwa mkataba wowote wa ajira na mwajiri*

*6. Kwamba, vigezo na masharti ya mkataba wa ajira vitabakia kama awali isipokuwa kifungu cha 1 na cha 6 cha mkataba wenye alama "B"*

*Nathibitisha kuwa nimesoma/nimesomewa nyongeza hii; naelewa na nakubali vigezo na masharti yaliyoainishwa katika nyongeza hii, Pamoja na mkataba na kwa Pamoja vinaunda sehemu ya mkataba wa ajira*

*Imesainiwa na:*

*MWAJIRIWA: ..... TAREHE: ..... SAINI*

*.....*

*MWAJIRI: ROBERT MAKENE TAREHE ..... SAINI*

*.....*

***MKUU WA IDARA – RASILIMALI WATU NA UTAWALA***

Looking at the said addendum, it referred to the employment contract dated 08<sup>th</sup> January, 2016, exhibits P6 and clause 6 of the addendum was clear that, clause 1 and 6 of the former contract will be affected. Going

through exhibits P6 clause 1 is about the tenure of the employment contract and clause 6 is for salary.

On clause 1 of exhibit P6, it stated when the employment contract started plus the type of the employment contract entered. But number 6 of exhibit P6 provides for the salary and other payment dues

Going through exhibit P14, it only states there will be some corrections on exhibit P6. It did not state with certainty specific adjustments and how will the same be made. Clarity in contracts is a key thing to adhere to. It is important because the applicants ought to know the terms of employment contracts and the changes to be effected. Some of the applicants were paid TZS 497,541.00 per month as exhibit P6 shows. The addendum did not specify how would the salary be affected.

The silence of exhibit P14 raised serious doubts on party of the applicants. It is noted that the arbitrator held no doubt that exhibit P14 was plain and the applicants were to sign. For easy reference at page 14 of the award, it states: -

*"... Tume inaona kuwa marekebisho yaliyofanywa na malalmikaji kwa kuleta nyongeza ya mkataba ili kusahihisha makosa yaliyojitokeza ni sahihi na wala si kitu kipywa kama walalamikiwa wanavyodai."*



The arbitrator went further and held at page 15 of the award that: -

*"Hivyo Tume inakubaliana na marekebisho hayo na inawaamuru walalamikiwa kusaini nyongeza hiyo ya mkataba na itambue kuwa ni sehemu ya mkataba wao wa ajira"*

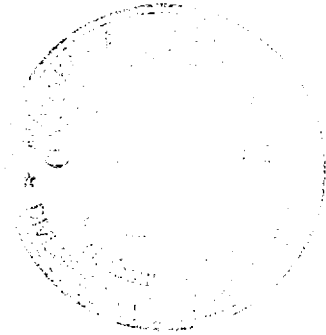
It is the finding of this court that the Commission went astray. I have the opinion that signing of the contract is an issue of two parties.

The respondent having intended to change the tenure of the contract from permanence to fixed term and having in mind to affect clause 6 dealing with salaries, the respondent ought to have made due consultation and put on the table with clarity the amount as salaries to be paid. If there were no such changes in the salary, why did it involve clause 6 of the same. Section 10 of the Law of Contract Act [CAP. 345 R.E. 2019] provides: -

*"All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void:"*

It was submitted by the respondent that some of applicants are no longer workers of the respondent. Going through records, there is no such evidence to prove that other applicants are not part of this application. From the foregoing, this court finds merit in the application. The CMA

award is therefore quashed and orders therefrom set aside. Each party to bear its own costs.





**A.K. Rwizile**

**JUDGE**

**08.09.2022**