IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

REVISION NO. 57 OF 2021

FREDRICK MELAMARI AND ANOTHER.....APPLICANT

VERSUS

NAS DAR AIRCO CO LDT.....RESPONDENT

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

(Lemurua: Arbitrator)

dated 24th November, 2020

in

REF: CMA/DSM/ILA/818/19/396

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JUDGEMENT

16th August 2022 & 01st September 2022

Rwizile, J

This application emanates from the decision of the Commission for Mediation and Arbitration (CMA) in Labour Dispute No. CMA/DSM/ILA /818/19/396. The applicants are asking this court to set aside, the decision of the CMA. Albeit briefly, in fact, the applicants were employed by the respondent as cabin cleaners since April 2019. For what has been considered as operational grounds, the applicants were terminated by retrenchment on 30th September 2019. They were however, paid terminal benefits.

Although not satisfied, they filed a labour dispute with the CMA. They were unsuccessful. This application therefore is an expression of their dissatisfaction with the CMA award dated 24th November, 2020.

By their joint notice of application, this application has been preferred. It is supported by an affidavit that has advanced five grounds of revision as per paragraph 4 of the affidavit;

i. *That, the honourable arbitrator erred in law and facts by agreeing that the reasons for termination was legal and fair without taking into consideration the evidence of applicants thereto.*

ii. *That, the Honourable Arbitrator erred in law and fact by agreeing with the evidence from trade union which the applicants were not members or part of it to be used against the applicants.*

iii. *That the Honourable Arbitrator erred in law and fact by accepting financial statement and trade Union documents which were tendered by unqualified person to be used against the applicants.*

iv. *That, the honourable arbitrator erred in law and facts by not calling members of trade Union and Auditor to come and prove beyond reasonable doubt that the documents which were prepared by them are same tendered on the commission.*

v. *That, the honourable arbitrator erred in law and facts by not taking into consideration reasonable time for the notice issued*

by the respondent on the intention for retrenchment, since the applicants were not given much time for being educated as the law require.

The application was heard by written submissions. The applicants who were represented by one Robert Motwe a personal representative submitted essentially on each ground though briefly that, there was no meeting between the applicants, trade union and the employer that discussed issued of retrenchment. He was of the view that since there were no minutes showing that all stated procedure for retrenchment was adhered to, this application should be granted.

Submitting on the second ground, it was stated that in law, the meeting for consultation should be done in good faith. He said, section 68(1) and (2) of the Employment and Labour Relations Act was not complied with because the trade union did not discuss the same with the applicants who after all were not members of the union.

It was his argument that the financial report tendered and admitted was doubtful because it had no stamp of the respondent. He said, it is even more doubtful that it shows, the loss that was subject of retrenchment was since 2017 before the applicants were even employed.

On the fourth ground, it was submitted that the there was no evidence from the auditor and trade union member of staff who came to testify before the CMA to prove what is alleged about loss and discussion of the retrenchment procedure. He said, this was in conflict with section 70 of the Evidence Act.

Lastly, he was of the view that there was not proper consultation that being so, the award should be nullified. He was of the view, that the procedure was not followed.

In reply, the respondent who was represented by Mr. Arnold Peter learned counsel submitted that in material terms, the respondent properly followed the law on retrenchment. He said, there was discussion of the same with member of the trade union (COTWU). In the meeting, the reasons for retrenchment were agreed upon by the parties. He said, the applicants were present in person during the consultation meetings.

On admission of documents, the learned counsel was of the view that it is the exhibits which were not objected to but were tendered by competent persons according to the law.

Submitting on who is a material witness, it was the view of the learned counsel that it was not necessary for the auditor and the trade union member to come to testify. He said, since the respondent had documents in his custody, the same were properly tendered and received with no objection.

On consultation meetings, it was argued that the consultation meeting was held between the trade union and management, and then a good amount of time was given to the trade union to meet with its members. Following this process, he added, the general notice was issued to all staff on 28th August 2019. In his view, section 38(1)(a) of the Employment and Labour Relations Act was complied with. The learned counsel concluded by referring to the case of **Resolution Insurance Ltd vs Emmanuel Shio & 8 Others**, Revision No. 642 of 2019.

In a rejoinder, Mr. Motwe personal representative submitted as in chief. Having heard the parties' submissions, it is important to state that the case rests on retrenchment. First, there must valid reasons for retrenchment. It must be proved that the applicants were informed of the retrenchment. This is done by consultation meetings and notices to that effect. Then, there should be step by step procedure for that matter. So whether procedure for retrenchment was followed, for such termination to procedurally hold, there is need to comply with section 38(1) of ELRA read with Rule 23(4), (5) and (6) of G.N. No. 42 of 2007. The employer is required to take the following two steps upon contemplating retrenchment;

(a) give notice to employees of any intention to retrench as soon as it is contemplated,

(b) disclose to them, all relevant information on the intended retrenchment for the purpose of proper consultation.

Upon complying with the first two above stated procedure, the employer has to state in clear terms;

(i) the reasons for the intendent retrenchment,

(ii) any measures to be taken to avoid or minimize the intendent retrenchment,

(iii) the method to be used to select employees to be retrenched,

(iv) the employer has to explain why retrenchment at the time it is to be done,

(v) whether there is payment of severance allowance,

(vi) consult with the trade union recognized at the work place with the majority of the workers or,

(vii) in another way consult with employees not represented by a recognized or registered trade union.

In this application it has been stated that that the process started on 20th August 2019, where the trade Union was informed of the process. Then all employees were called in a meeting on 29th August 2019. It was stated that the consultation meeting went smoothly and a consensus was reached. To prove so, the notice for the meeting was issued, it is exhibit D6, the meeting was called for consultation and this is exhibit D7. In the

meeting a report was tendered establishing the fact in issue. This was exhibit D11 and a revenue forecast exhibit D12.

There is evidence also that is not controverted either that the applicants attended the meeting. This is shown in the list of participants of the meeting, exhibit D8. All the that done, it was finalized by agreement on the package for retrenchment, exhibit D13. Then the applicants were terminated as per exhibit D5.

From the foregoing, it is my view, that the law provides for the procedure. The duty of the employer was to follow the law and prove so in court or before the CMA. Based on the evidence as I have stated above, I am of the firm view, like the arbitrator, the procedure was complied. The application therefore has no merit. It is dismissed without any order as to costs.

A.K. Rwizile

JUDGE

31.08.2022