IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

REVISION NO. 501 OF 2021

BETWEEN

MORRIS D. NG'ONDO AND 31 OTHERS ..... APPLICANTS

VERSUS

DAIKIN TANZANIA LIMITED ..... RESPONDENT

JUDGEMENT

S. M. MAGHIMBI, J.

The present application emanates from the following background; the applicants were employed by the respondent at different dates and positions as workshop and technicians. They had a contract of one year. On 02/01/2016 they were issued with the notice of termination on the ground of redundancy. Aggrieved by the termination, they referred the matter to the Commission for Mediation and Arbitration ('CMA') where their claims were dismissed for lack of merit. Again, being dissatisfied by the CMA's decision, the applicants filed the present application on the following grounds: -

i. That the Arbitrator erred in law for holding that the applicants are not entitled to payment of notice.

ii. That the Arbitrator erred in law by holding that the applicants are not entitled to any payment from the respondent.

iii. That the Arbitrator decision is tainted with material irregularities.

The application was argued by way of written submissions. Before the court the applicants were represented by Mr. Jonas Kilimba, Learned Counsel whereas Mr. Adam Stanslaus Moshi, respondent's Human Resource Manager was for the respondent.

Arguing on the first ground, Mr. Kilimba submitted that the redundancy notice was issued on 02nd January, 2016 which was also the date of termination of the applicants' employment. He argued that the said notice was contrary to Section 41(1)(b)(ii) of the Employment and Labour Relations Act [Cap 366 RE 2019] ("ELRA") which require a period of notice to be not less than 28 days. He argued that the applicant's employment contracts were not terminated automatically as found by the Arbitrator.

As to the second ground, Mr. Kilimba submitted that the applicants were supposed to be paid leave allowance and severance pay since they were terminated while their employment contracts were still subsisting.

Regarding the third ground, Mr. Kilimba submitted that the Arbitrator chose one applicant to testify on behalf of other applicants, an

act which denied them the right to be heard. He argued that such irregularity denied the applicants the right to be heard. To support his submissions, the counsel cited the case of **Bakari Salehe, Upendo Mbughu and 232 others v. Tanzania Cigarrate Company, Revision No. 525 of 2019** (unreported) and the case of **Kijakazi Mbegu and 5 others v. Ramadhani Mbegu (1999) TLR 174** which all emphasize on the right to be heard. He then argued that the CMA decision is void for failure to afford each applicant the right to be heard and defend his case since the said Morris Daniel Ng'ondo was not granted power of attorney to represent others. He added that even the reason for termination was not proved by the respondent contrary to section 39 of ELRA. He therefore urged the court to allow the application.

Responding to the first ground, Mr. Moshi submitted that the respondent issued notice of termination on 02nd January, 2016 to a contract which was expiring on 01st February, 2016 pursuant to section 41(1)(b)(ii) of ELRA. He submitted that on the basis of the evidence on record, the Arbitrator was right to hold that the applicants were not entitled to notice payment. Mr. Moshi further submitted that during cross examination at the CMA, the applicants' witness testified that no applicant stopped attending work after being served with the notice of

termination. He insisted that the applicants were not terminated on 02nd January, 2016 as alleged.

On the second ground, Mr. Moshi submitted that the applicants' employment contracts were terminated on the agreed term thus, they are not entitled to severance payment in terms of section 42(3)(c) of ELRA. As for the last ground, it was submitted that at the CMA, the applicants were at liberty to bring their witnesses but they did not do so hence, the Arbitrator should not be blamed for their fault. He added that the notion that the Arbitrator ordered the applicants to be represented by one person is baseless and unfounded as the parties themselves are in control of their case. He stated that the cited cases of **Bakari Salehe** (supra) and **Kijakazi Mbegu** (supra) are irrelevant and distinguishable to the circumstance at hand. He therefore urged the court to dismiss the application for lack of merit.

In rejoinder Mr. Kilimba reiterated his submissions in chief and insisted that the notice of termination was issued on 02nd January, 2016 which was the same date of termination contrary to section 41(1)(b) of ELRA. He reiterated his prayer for the court to allow the application.

After considering the rival submissions of the parties, and the records herein, I am inclined to begin determination of the third ground

which touches the legality of the CMA's decision on the whether all the applicants were afforded opportunity to be heard. Mr. Kilimba alleges that since only one applicant testified on behalf of others, then other applicants were denied the right to be heard. On this argument I join hands with Mr. Moshi's submissions that it is not the duty of the Arbitrator to appoint who should testify on behalf of others. Indeed, it is the duty of the party himself/herself referring the dispute to prove his/her own case. This is in accordance with Rule 25(1) of the Labour Institutions (Mediation and Arbitration Guidelines) Rules, GN No. 67 of 2007 ('GN No. 67 of 2007') which provides as follows: -

'Rule 25(1) The parties shall attempt to prove their respective cases through evidence and witnesses ....'

In this application, it is undisputed that Mr. Morris Daniel Ng'ondo appeared on behalf and represented all applicants. The named applicant was granted powers by others to represent them in terms of Rule 5(2), (3) of G.N No. 64 of 2007. In the said notice of representation, the applicants specifically stated as follows:-

'Walalamikaji watajwa hapo juu kwa pamoja tume mteua Bw. MORRICE NGONDO mmoja wetu kutuwakilisha kwenye shauri hili. Tumempa uwezo wa kuingia wakati wa kutajwa shauri hili,

kutuwakilisha, kusaini na kuwasilisha waraka wowote utakaohitajika kisheria.'

In my view, the above granted powers did not extend to the powers to testify on behalf of others, contrary to what happened at the CMA. It is therefore conclusive that the applicant acted without the mandate to do so. Furthermore, as it was argued and reflected in the records, the parties were employed on different dates and at different salaries. Under such circumstances in my view, it was crucial for each applicant to prove his/her own case. The records reflect that Mr. Morris Daniel Ng'ondo testified only on his own salary and an end of his employment contract. The employment contracts of other applicants were not tendered to enable the court to assess the terms of their employment. Under such circumstances, I join hands with the holdings in the case of **Reli Asset Holding Company Ltd. Vs. Japhet Casmir Mkoba & 1500 others, Revision No. 6 of 2015,** where it was held that: -

"It is also evident that only 5 employees appeared to prove the case..... because the employees had to prove their claims each in his own basing on the reason that the 1500 were employed on different dates, at different salary rates and

different other employment benefits differing from one employee to another hence a very great need of each to prove the respective claims."

Furthermore, in the case of **Manson Shaba and Others Vs. The Ministry of Works and another, Land Case No. 201 of 2005** (unreported) it was held that: -

"The leave to the plaintiffs to lodge the representative suit does not dispense with the onus in each plaintiff to prove his or her own claim in respect of land in dispute."

There is also the decision of the Court of Appeal in the case of **The Attorney General Vs. Mathias Ndyuki and 15 others, Civil Appeal No. 31 of 2006** (unreported) where the court held that: -

'...it was not enough for the respondents back up their claim for the alleged underpayment of salaries based on the evidence of PW. I, referring to the case of Marcky Mhango v. Tanzania Shoes Company Ltd. and another, Civil Appeal No. 36 of 1996 12(unreported) it was held further that it was not enough to the Appellants in the present case to make generalized claims on accumulative entitlements.'

On the basis of the above discussion, it is my view that apart from Mr. Morris Daniel Ng'ondo; other applicants did not prove their case. The evidence of PW1 was not sufficient to prove all applicants' claims because each applicant had an obligation to prove his/her claim against the respondent something which they failed to do. Under such circumstances, the remaining applicants were condemned unheard making the CMA award a nullity.

Having the third ground dispose the application I find no need relevance to labour on the remained grounds. Consequently, the application is hereby allowed, the proceedings and award procured thereto are hereby nullified. The matter is remitted back to the CMA for the evidence of the remaining applicants to be heard.

It is so ordered.

Dated at Dar es Salaam this 11th day of July, 2022.

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S.M. MAGHIMBI
JUDGE