

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

DAR ES SALAAM

REVISION NO. 525 OF 2020

BETWEEN

FIVE STAR PRINTERS LIMITED APPLICANT

AND

BAKARI MAJALIWA..... RESPONDENT

JUDGMENT

Date of last order: 10/03/2022
Date of Judgement: 22/03/2022

B. E. K. Mganga, J.

On 1st March 2015 respondent secured employment with the applicant in the sewing department. Employment relationship between the two continued until on 24th April 2019 when the respondent filed a referral of a dispute to the Commission for Mediation and Arbitration (CMA) alleging that applicant terminated his employment on 15th April 2019. In the CMA F1, respondent showed that he was unfairly terminated. Based on unfair termination, respondent claimed to be paid TZS 2,560,000/= being 12 months' salary as compensation and one-month salary in lieu of notice. Respondent claimed also to be issued with a certificate of service and any other relief as CMA may deem fit to

grant. On 22nd November 2020, Lomayan Stepheno, arbitrator, issued an award that termination of employment of the respondent was unfair both substantively and procedurally and ordered applicant to pay TZS 1,920,000/= as 12 months' salary compensation, TZS 160,000/= as one-month salary in lieu of notice and TZS 215,384/= as severance pay for five years all amounting to TZS 2,455,384/=.

Applicant was aggrieved by the said award, as a result, she filed this application seeking the court to revise the said award. In the affidavit affirmed by Asha A. Salum, the supervisor in the binding section, on behalf of the applicant, raised two grounds namely:-

- 1. That the arbitrator erred in law and in fact by bias evaluation of evidence and ignoring evidence adduced by the applicant.*
- 2. That the arbitrator erred in law and fact by disregarding statutory payments that were already made by the applicant to the respondent.*

The respondent filed a counter affidavit stating that the application has no merit.

When the application was called for hearing, Ms. Christine Williams Walala, advocate appeared and argued for and on behalf of the applicant while the respondent appeared in person.

Arguing the 1st ground of revision, Ms. Walala, counsel for the applicant submitted that, evidence of the applicant was disregarded by

the arbitrator. Counsel for the applicant submitted that, it was testified by Asha Salum (DW1) that respondent threatened his supervisor after he was required to work during night shift. Counsel submitted that, DW1 was eye witness. Counsel submitted that in the award, the arbitrator held that respondent was not informed the alleged misconduct and was not afforded time to prepare his defence before attending disciplinary hearing. Counsel submitted that, contrary to what the arbitrator held, as a proof that respondent was afforded that right, DW1 tendered a letter (exh. D2) requiring the respondent to attend disciplinary hearing. Counsel for the applicant submitted further that the said exhibit D2 contains allegations respondent was facing and that respondent attended the said disciplinary hearing as shown in exhibit D3. Counsel for the applicant submitted further that, the notice was served to the respondent on 12th April 2019 and the disciplinary hearing was conducted on 15th April 2019.

On the 2nd ground, counsel for the applicant submitted that on 15th April 2019, respondent was paid 15 days salary and issued with a certificate of Service. Counsel for the applicant submitted that arbitrator ordered respondent be paid severance and 12 months' salary compensation which he was not entitled. Counsel for the applicant

submitted that since termination of employment of respondent was due to misconduct, in terms of section 42(3) of the Employment and Labour Relations Act [Cap. 366 R. E. 2019], he was not supposed to be awarded severance pay. Counsel prayed the application be allowed by quashing and setting aside the award.

On his side, Mr. Bakari Majaliwa, the respondent, submitted that his supervisor required him to work during the night shift but he left the work place because he (respondent) was feeling unwell. That, on 11th April 2019 he was directed to go back at home and came on 15th April 2019 to attend the disciplinary hearing, but he was not afforded right to be heard. Respondent submitted that during the disciplinary hearing, he was told to sign minutes without knowing contents thereof. Respondent conceded that he was paid TZS 68,000/= as payment of 15 days he worked for the month of April 2019 and was issued with a certificate of service.

Respondent submitted further that the arbitrator considered evidence of both sides and correctly applied the law. Respondent submitted further that applicant had no valid reasons for termination of his employment and that procedures were not followed. He concluded

that he was entitled to be paid 12th months' compensation and prayed the application be dismissed for want of merit.

In rejoinder, Ms. Walala, counsel for the applicant reiterated her submission in chief and prayed the application be allowed.

I have examined submissions of the parties and evidence on CMA record and find that the main rival issue is whether; termination of employment of the applicant was fair or not, and what reliefs are the parties entitled to.

It was evidence of Asha Abdu Salum (DW1), the Human Resources Manager who is the only witness who testified on behalf of the applicant that, on 10th April 2019 respondent refused to work during night shift and quarrelled with his supervisor, one Jermia. DW1 testified further that, on 15th April 2019, respondent was called and attended the disciplinary hearing. That, in the disciplinary hearing, respondent stated that he refused to work during the night shift because he was unwell as shown in the disciplinary hearing minutes (Exh.D3). DW1 testified further that, during the disciplinary hearing, respondent did not tender evidence to prove that on 10th April 2019 he was unwell. DW1 concluded her evidence by stating that respondent was paid his entitlements and tendered patty cash voucher (exh D5) valued TZS. 68,800/= for 15 days

the respondent worked for the month of April 2019. While under cross examination, DW1 testified that, the disciplinary hearing committee did not recommend termination of employment of the respondent.

On the other hand, Mr. Bakari Majaliwa (PW1), testified that on 10th April 2019 at 16: 45 hrs having worked the day shift, he was told by his supervisor that he was supposed to continue to work in the night shift. PW1 testified further that, he informed his supervisor that he will not manage to work during the night shift because he was not feeling well and that he left the workplace. That, on 11th April 2019, when he attended at workplace, he was told to go back home and was issued with a notice requiring him to attend the disciplinary hearing. PW1 testified further that, during disciplinary hearing, he was not afforded right of being heard. He admitted that he was paid TZS 68,800/= and prayed to be reinstated. In both examination in chief and cross examination, respondent (PW1) maintained that he was not afforded right to be heard.

The main issue that comes in my mind is whether; there was valid reason for termination of employment of the respondent or not. The letter for termination of employment of the respondent (exh.D4) sets grounds for termination of employment of the respondent as follows:-

"...kwamba siku ya Jumatano tarehe 10.04.2019 ulionyesha utovu wa nidhamu kwa kubishana na uongozi wa kampuni yaani supervisor, Human Resources Manager na operation Manager pale ulipokuwa ukielekezwa kuhusu utaratibu wa kufanya kazi zamu ya usiku uliopangiwa. Ulipewa barua ya onyo kwa utovu huo wa nidhamu ambalo ulikataa kupokea na kuweka sahihi yako.

Kutokana na kikao tulichokaa na wewe na kwa kuwa hutaki kukubaliana na masharti ya kazi ya kampuni ya Five Star Printers Ltd, kampuni inakuachisha kazi kuanzia leo hii wewe siyo mfanyakazi wa Five Star Printers kwa mujibu wa Sheria ya Ajira na Mahusiano Kazini ya Mwaka 2004..."

I should point out that, in her evidence, DW1 did not state that the alleged misconduct was committed against herself contrary to what was recorded in the termination letter (Exh. D4). More so, DW1 did not state that the alleged misconduct was also committed against the operation Manager. It is my opinion therefore that, there was no valid reasons for termination. I am of that view taking into consideration of the evidence of the respondent who testified that on the material date, he was unwell, which is why, having worked for the day shift, he refused to work during the night shift. In fact, DW1 testified that she was told by the respondent that he was unwell on that date. My conclusion that there was no valid reason for termination is further supported by the findings of the minutes of the disciplinary hearing Committee (exh.D3) which reads in part:-

"... Mwenyekiti alimsomea mashtaka yake mlalamikaji na ambapo alitakiwa kujitetea. Mlalamikaji alisema kuwa yeye hajakataa kuingia shift ya usiku isipokuwa ni mgonjwa huwa anasikia kizunguzungu na kichwa kuuma. Ameomba kwa sasa hivi aruhusiwe kufanya kazi mchana tu kwa kuwa hana pesa za kwenda hospitali ataenda mwishoni mwa mwezi wa nne na kuleta vyeti vya daktari. Tarehe ya mwezi wan ne (April) 05/5/2019 ataleta cheti cha daktari.

Kila mjumbe alitoa maoni yake na wote waliafikiana kuwa Bakari Majaliwa apewe nafasi nyingine na akubaliwe kufanya kazi usiku. Asipoleta vyeti tarehe 05/05/2019 basi atakuwa kama amedharau na kudanganya kikao na hatua zaidi za kinidhamuzitachukuliwa dhidi yake.

Hata hivyo amekataa kusema kama atajirekebisha na kukataa kusaini onyo...

Kwa kuwa amekataa kusaini onyo amekataa kuahidi atajirekebisha basi kamati inaacha uongozi was Five Star Printers Ltd uchukue hatua zinazofuata za kisheria..."

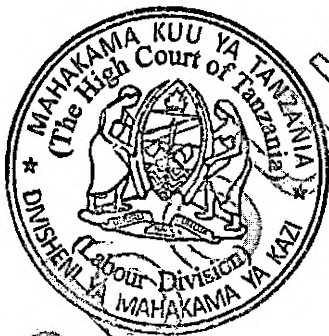
It is clear from the above quoted minutes of the disciplinary hearing committee that, termination was not one of the recommendations. In other words, the disciplinary hearing committee did not find the respondent guilty of the alleged misconduct. Therefore, applicant had no valid reason for terminating employment of the respondent and hereby uphold the CMA award.

It was submitted by counsel for the applicant that arbitrator erred to award 12 months' salary as compensation and severance which he was not entitled. According to petty cash voucher (exh.D5), respondent

was paid TZS 68,800/= only for 15 days he worked for the month of April 2019. This is the only money that was paid to the respondent by the applicant after termination of employment. It is my view that, the arbitrator was justified to award respondent to be paid TZS 1,920,000/= as 12 months' salary compensation, TZS 160,000/= as one-month salary in lieu of notice and TZS 215,384/= as severance pay for five years all amounting to TZS 2,455,384/=. I therefore dismiss the second ground of revision and uphold CMA award.

In the upshot, I hereby dismiss the application for lack of merit.

Dated at Dar es Salaam this 22nd March 2022.




B.E.K. Mganga
JUDGE