IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

REVISION APPLICATION NO. 4709 OF 2024

REFERENCE CASE NO. 202403061000004709

BETWEEN

MUSSA HUSSEIN SHABANI ..... APPLICANT

VERSUS

TIMES RADIO FM LIMITED ..... RESPONDENT

JUDGEMENT

Date of last Order: *22/04/2024*
Date of Judgement: *24/05/2024*

MLYAMBINA, J.

From the records and trends of nature of labour disputes filed at the Commission for Mediation and Arbitration (herein CMA) and revisions applications entertained by this Court, the case at hand is one of the rarely cases to be determined. The matter was referred to the CMA by the employer (the Respondent herein) after the Applicant breached the employment contract. It is the Respondent's allegation that he entered into employment contract with the Applicant for a fixed term of two years commencing from 01/01/2022. That, without any notice to the Respondent, the Applicant breached the terms of the contract. Aggrieved by such breach, the Respondent referred the matter to the CMA. Upon consideration of the parties' evidence, the CMA concluded that the parties herein entered into employment

contract which was breached by the Applicant. Consequently, the Applicant was ordered to pay the Respondent a total of Ten Million (TZS 10,000,000/=) as general damages for breach of contract.

Being unhappy with the CMA's Award, the Applicant filed the present application on the following grounds:

a. That, the Arbitrator erred in law and facts by deciding that the Applicant breached the employment contract of the Respondent without legal justification or any proof meanwhile the Respondent had never entered into the employment relationship with the Applicant in whatsoever means.
b. That, the Arbitrator erred in law and facts by formulating facts that the Applicant along with receiving the offer of Employment had shown an intention to be employed and work for the Respondent, the facts that are not true; as the Applicant never consented to the offer of employment offered by the Respondent neither did he attempt to start the said employment.
c. That, the Arbitrator erred in law by awarding general damages of TZS 10,000,000/= to the Respondent which is not amongst the list of relief(s) under the Fix Term Employment Contract and without considering that the Respondent failed to prove the general damages occasioned by the alleged breach of employment contract by the Applicant.
d. That, the Arbitrator erred in law and fact in assessing the evidence on record and thereby reaching the erroneous

finding that the Applicant had signed the employment offer, hence there was the binding contract that was breached by the Applicant.

e. That, the Arbitrator erred in law and fact in assessing the evidence and determining that the Applicant's act of not appearing to work on the 1st of January, 2022, as was shown on the offer of employment was the breach of employment contract.

f. That, the Arbitrator erred in law and fact in assessing the evidence on record and thereby reaching an erroneous finding that the Respondent's contract was breached, meanwhile there was reliable evidence that shows there was never a complete and performed contract between the parties.

g. That, the Arbitrator erred in law and facts by taking into consideration the facts and testimonies formulated by the Respondent, while the Arbitrator neglected important testimony from the Applicant while the witness had with enough information that was presented to the Arbitrator on the unavailability of the employment contract between the parties as the offer letter was not legally signed but was neglected.

h. That, in the circumstances and in the interest of justice, the intervention of this Court is of utmost importance to call for and examine records of the Arbitration Proceedings and Arbitrator's conduct, set aside the decision and award of the Arbitrator and order that the there was no valid contract entered between the parties.

The application was argued orally. In the conduct of the matter at hand, the Applicant was represented by Mr. Datius Faustine, learned Counsel. The Respondent enjoyed the services of learned Counsel Antipas Lakamu.

In his submissions, Mr. Faustine submitted only on the first and last grounds. Thus, the remaining grounds were deemed to have been abandoned.

Arguing in support of the first ground, Mr. Faustine submitted that there was never a concluded employment contract signed between the parties herein. It was his argument that the offer of employment (exhibit T1), was not a concluded employment agreed between the parties. He stated that there were details on exhibit T1 at part II, which were supposed to be dully filled by the Applicant but the said exhibit was admitted at CMA blank without any filled information in part II except the signature which was deemed to be of the Applicant.

It was Mr. Faustine's argument that despite being a labour matter, the contracts must adhere to the general principles of contract as provided under *Section 7 of the Law of Contract Act [Chapter 345 Revised Edition 2019]* (herein LCA) which provides for

the nature of acceptance to be taken into consideration to make a proposal a promise.

Mr. Faustine was of the strong view that there was never acceptance of offer of Contract. Hence, there was no any breach of the terms of contract as alleged by the Arbitrator.

In response, Mr. Lakamu maintained that there was a written contract signed by the parties. (Exhibit T1). He added that; the Applicant signed in every page signifying acceptance of the offer. Thus, the Applicant did perform on creating Radio program called the Starter which was essentially set to begin on 4th of January, 2022. He said, the process of creating the Radio Program called the Starter began on 28th December, 2021 after the Applicant had signed and accepted the offer.

He added that PW3 testified that the Applicant proposed a segment in that radio program called connection. It was the further evidence of PW3 that the Applicant was introduced to them as a fellow employee by PW2, Mr. Lakamu Maloto.

It was Mr. Lakamu's strong position that considering the evidence on record, the offer of employment was absolutely accepted in terms of *Section 7 of LCA (supra)*. He added that; the Applicant

went on performing as to the terms of the proposal which signifies that the performance was absolute in terms of *Section 8 of LCA (supra).* In support of his submission, Mr. Lakamu referred the Court to the case of **Mbeya Urban Water and Sewage Authority v. Lilian Sifael**, Civil Appeal No. 300 of 2022, Court of Appeal at Mbeya where at page 5 of the decision, the Court of Appeal stated that once an offer is accepted forms a binding employment contract.

I have dully considered the rival submissions of both counsel. It was the Arbitrator's findings that the parties entered into employment contract. In the labour laws, there is no direct s as to what is an employment contract. The same can simply be defined as a contract which defines rights and responsibilities of the parties in the particular employment. It can also be defined as a legally binding agreement between an employer and an employee used to define the working relationship. The particulars of employment contract are provided under *Section 15(1) of the Employment and Labour Relations Act [Cap 366 RE 2019] (herein ELRA*) which are as follows:

a) Name, age, permanent address and sex of the employee

b) Place of recruitment

c) Job description

d) Date of commencement

e) Form and duration of the contract

f) Place of work

g) Hours of work

h) Remuneration, the method of its calculation and its details of any benefits or payment in kind

i) Any other prescribed matter

In the application at hand, exhibit T1 is what is termed as the employment contract. I have examined the exhibit in question, it is titled as offer of employment dated 23rd December 2021 entered by the parties herein. In the relevant document the parties also agreed for the term of the contract which was two years, hour of work, remuneration, duties and responsibilities as well as other details as they are provided under *Section 15(1) (supra*). As rightly found by the Arbitrator, exhibit T1 was signed by the Applicant on every page thus, signifying acceptance of the offer.

I take note of the Applicant's submission that he did not sign the offer in question. However, the record reveals that such allegation was raised by the Applicant during cross examination. To the contrary, when exhibit T1 was tendered by PW1, the Applicant had no any objection. Therefore, bringing the allegation of not signing the contract in question during cross examination, is an

afterthought, hence cannot be considered by the Court. Therefore, in the absence of any other evidence to disapprove exhibit T1, the exhibit in question stands as a valid offer of employment agreed by the parties.

I have also noted the Applicant's submission that he did not fill part II of exhibit T1. In the alleged part, the Applicant was supposed to fill the information such as his name, postal address, his marital status and other personal information. It is my view that his contention would have merit if the Applicant's name was not appearing anywhere in exhibit T1. Thus, failure of filling part II does not invalidate the contract where terms were clearly agreed by the parties. I therefore join hands with the Arbitrator's findings that there was a valid employment contract entered by the parties.

Turning to the last ground, Mr. Faustine submitted that the Arbitrator erred in law by awarding general damages of Ten Million (TZS 10,000,000) to the Respondent as originating from breach of Contract. He stated that the general damages are offered at the discretion of the Court or the Tribunal, however, such discretion must fall on the circumstances of the case. He was of the considered view that since the Applicant neither entered into any agreement with the Respondent, nor did he even perform the said agreement even for a

day, there was no need of awarding such general damages. He therefore urged the Court to revise and set aside the CMA's Award.

Responding to the last ground, Mr. Lakamu submitted that the award of general damages was appropriate since the Applicant did breach the terms of contract by refusing to work. He stated that the Respondent incurred loss due to a need of finding his replacement to have a Radio Program called the Starter which could be aired by the Respondent.

It was added by Mr. Lakamu that; the act of the Applicant caused two more Radio Presenters to resign from their position as employees. The said consequences caused by the Applicant was reasonable for the CMA to award general damages. It was also submitted that the offer of employment contained a clause that allowed the Applicant to issue 28 days notice of resignation, if he wished not to continue. That, the alleged term was breached.

In the first ground, it is found that the parties had valid contract hence they were bound by the terms of the contract. This is also the Court of Appeal position in the case of **Mbeya Urban Water** (supra). Again, this is the Court's position in the case of **Salkaiya Khamis v. JMD Travel Services (SATGURU)**, Revision No. 658 of 2018 which took the position in the case of **Univeler Tanzania Ltd**

v. Benedict Mkasa Bema Enterprises, Civil Application No. 41 of 2009 where it was held that:

> Parties are bound by the agreements they freely entered into. No party would therefore be permitted to go outside of that agreement for remedy.

Moreover, in the case of **Hotel Sultan Palace Zanzibar v. Daniel Laizer and Another**, Civ. Appl. No. 104 of 2004 (unreported), it was held that:

> It is elementary that the employer and employee have to be guided by agreed terms governing employment. Otherwise, it would be a chaotic state of affair if employees or employers were left to freely do as they like regarding the employment in issue.

Exhibit T1 provided the mode of termination of the contract in question. Where at clause 6.0, it was clearly stated that the Applicant may terminate the contract by giving one month written notice in order to enable the management to recruit replacement. As the record speaks, the clause in question was not honoured by the Applicant, thus it amounted to breach of the contract which entitled the Respondent to be awarded compensation.

In the premises, it is my view that the award of TZS 10,000,000/= was justifiable for the disturbance incurred by the Respondent to find replacement of the Applicant.

On the basis of the above analysis, it is my finding that the application at hand has no merit. The Applicant failed to demonstrate justifiable reason to depart from the Arbitrator's findings. Consequently, the application is dismissed accordingly. The CMA's Award is hereby upheld. It is so ordered.

Y.J. MLYAMBINA

JUDGE

24/05/2024

Judgement pronounced and dated 24th May, 2024 in the absence of the Applicant and in the presence of Counsel Richard Magaigwa for the Respondent.

MAHAKAMA KUU YA TANZANIA (The High Court of Tanzania) DIVISHENI YA MAHAKAMA YA KAZI (Labour Division)

Y.J. MLYAMBINA

JUDGE

24/05/2024