IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY)

AT ARUSHA

LABOUR REVISION NO. 12 OF 2018

(Original CMA/ARS/ARB/305/2016)

SHANGRI-LA ESTATE LIMITED.....APPLICANT

Versus

SCOLASTICA MARTIN..... ..... 1ST RESPONDENT

ANTONIA AYTA.....2ND RESPONDENT

RAHEL PATRICE.....3RD RESPONDENT

JUDGMENT

14/6/2021 & 23/08/2021

GWAE, J

Through the applicant's chamber summons and the court being moved by provisions of the Employment and Labour relations Act, No. 6 of 2004 (ELRA) and Labour Court Rules GN. No. 106 2007, I am requested to revise the proceedings, award of the Commission for Mediation and Arbitration of Arusha at Arusha and quash the award on the ground that it was wrong on the part of the arbitrator to hold that the respondents were employees for unspecified period thus, they are protected by provisions of the law under unfair termination while the respondents were under the contract for a specific task.

Material facts giving rise to the respondents' institution of this labour dispute and which were either non-contentious or contentious before the Commission can be briefly recapitulated as follows; **firstly**, non-contentious; facts; that, the respondents named herein above were employed by the applicant, Shangri-La Estate Limited and being weekly paid. That, the respondents were employed at diversity dates, scolastica-1997, Antonia Ayta 2004 and Rahel-2008 and that, the respondents' alleged termination was immediately after their returns from maternity leave and

Secondly, contentious matters between the parties were; that, according to the respondents, the applicant unfairly terminated the respondents' services on the 21st August 2016 due to the alleged fact that they were in a maternity leave and when they resumed to their work, they were told to go back home and wait till when notified of duties' availability but in vain. According to the applicant, the respondents were not terminated but they were told to wait till when the works were available and that, at the time respondents reported on duty it was drought season when no casual jobs were available and, that, it was the contention by the applicant that the respondents were merely casual employees not protected by provisions of the law regarding unfair termination.

Upon hearing the parties, the Commission found that, the respondents were employed under contract for unspecified period and that the tendered contract of employment allegedly for specific period would not constitute a legal contract of employment for, it is not between an employer and an employee but between the employer and a group of employees, that the term casual employee was being used during colonial era, therefore, not founded in our current labour laws. It was also the view of the Commission, according to the deemed contract of employment, an end of contract is unknown and what was actually being implemented is different from what is indicated in the said contract of employment. Ultimately, the Commission came into a conclusion that the respondents were not casual employees. Thus, they are therefore protected by unfair termination provisions of the labour laws.

The learned arbitrator went on holding that, the utterance of the words by the employer that, the delivery of a child (childbirth) by an employee was the leisure of the employee which is not connected with the employer's business was discriminatory and against the international labour standards which we have ratified. In his arbitral award, each respondent was

awarded the followings; Monthly salary, severance pay, leave pay and 12 months' salary compensation.

Aggrieved by the award procured by the Commission, the applicant has filed this application complaining that, the arbitrator erred in law by holding that the respondents were employed for unspecific period thereby arriving at erroneous award whereas the respondents were employed for specific task, neither they issued statutory notice for maternity leave nor did they claim for the maternity leave.

The application was disposed of by way of written submission after the parties' representatives had entered appearance before me, sought and obtained leave on the 3rd May 2021. Supporting this application, the applicant's advocate reiterated what is contained in the affidavit and relying on the collective contract or enrollment form dated 5th September 2015 as well as the judicial decisions arguing that, the respondents are not protected by provisions of law regarding unfair termination. The cases that this court was urged to refer are; **Omary Mkele and 20 others vs. M/s Shipping Freight Consultant**, Revision No. 6 of 2008, This court (Mandia, J as he then was now rtd JA) had these to say;

> "Complainants were therefore employed under an oral contract for specific task under section 14 (1) (c) and tasks ended at each

of ending day, they do not therefore qualify for severance pay under section 42 of the ELRA"

And

Hussein Juma Ngobele vs. China Railway Jiaching Engineering Co. Ltd Revision 67 of 2015, this court (Nyerere, J) stated;

> "It is undisputed fact that the applicant was a casual employee who was paid Tshs. 8,000/= per day and good enough the applicant was not claiming he was permanent employee so as to have protection under unfair termination "

The respondents' representative, on the other hand strongly resisted this application by arguing that, the cases cited by the applicant are not relevant and that, employees who are not covered by the provisions of unfair termination are those with less than 6 months' services as provided for under section 35 of the Act (ELRA).

Having briefly explained what transpired before the Commission and during hearing this court, I am now legally bound to determine, whether the commission erred in holding that the respondents were employed under unspecific contract and therefore protected by the provisions of the ELRA. According to the evidence on record specifically on the said Daily Contract of Employment (RE1) the respondents were employed for the following

tasks, weeding, pruning, slashing, chemical spraying and general work. However, when I carefully looked at the RE1 it lacks some necessary credentials; it is collective contract thus, impossible to have necessary information pursuant to section 15 of ELRA such as job description, place of recruitment, duration of contract, these are not indicated thereof. Worse still, RE1 was a mere proposal which is indicative that, the same was not final a contract of employment between the parties.

I have also considered the testimony of the applicant's sole witness (RW1), who was not certain of the dates of employment of each respondent, thus the evidence of the respondents is found to be credible in the regard as to the dates of their respective commencement of their employment since it was the burden of the employer to prove when she employed the employees as required by the Rule 9 (3) of the Employment and Labour Relation (Code of Good Conduct) GN. No. 42 of 2007 (Code). Hence, the finding of the learned arbitrator was correct as the same is founded from the parties' evidence. Even if I was to look at RE1, yet it is not specific as when the contract would end.

Similarly, if I were to consider that, the respondents were daily workers or their contracts of employment were for a specific task whose salary was

on daily basis yet in my view the evidence of RW1 is contradictory since he plainly testified that the respondents were weekly paid while they worked on daily basis. Therefore, the respondents' employment cannot be said to have in each ending day as was found in **Omary Mkele and 20 others v. M/s Shipping Freight Consultant** (supra). Furthermore, the respondents have seriously and lucidly disputed being casual employees or employees who worked for specific work. Therefore, the holdings of the above quoted cases were necessitated by facts which are distinguishable from our present labour dispute.

Therefore, I am of the view that the respondents were not employees for specific task, this is so after I have closely considered the length of service rendered by the respondents who had worked with the applicant for not less than 12 years as no evidence to the contrary as earlier explained and the applicant's conduct of gender discrimination and a legal need to eliminate discrimination at the place of work as provided under section 7 (1) of the Act which reads;

> "7 (1) Every employer shall ensure that he promotes an equal opportunity in employment and strives to eliminate discrimination in any employment policy or practice".

All the respondents in this matter are females who undisputedly went for maternity leave but on their resumption to the work, they were merely told to go home and wait and or others were told to wait for a resolution of a labour dispute at TPAWU's office. Examining the evidence adduced by the parties and on record, I am persuaded that, the act of the applicant was no more than discrimination at the place of work and unfriendly with maternity leave.

Furthermore, considering the clear facts that, the contract of employment between the parties was not documented in other words it was oral contract, it follows therefore even maternity leave notice was issued by the respondents as required under section 31 (1) of the Act. (see testimony of 2nd respondent when cross examined "Q-when did you notified (sic) him, Ans-on 26/10/2015, Q-when did you deliver Ans: 13/11/2015). After such questions being asked to the 2nd respondent, the same questions were not repeated to other respondents (1st and 3rd respondent) by the applicant's advocate which, in my opinion, by necessary implications convinces me that, the applicant was orally notified of the respondents' maternity leave.

Basing on the above discussions, I find no reason to interfere with the findings of the arbitrator. The award of CMA is consequently upheld. This application is entirely dismissed. Given the fact that, this is the labour matter, each party shall bear its own costs.

It is ordered.

M. R. GWAE
JUDGE
23/08/2021