

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

LABOUR REVISION NO. 75 OF 2019

(Originating from CMA/MZ/NYAM/ARB/663-192/2018)

BOAZI NAGABONA APPLICANT

VERSUS

**THE REGISTERED TRUSTEE OF
BUGANDO MEDICAL CENTRE..... RESPONDENT**

RULING

12/11/2019 & 06/02/2020

RUMANYIKA, J.:

The application, with respect to award and orders of 17/05/2019 of the Commission for Mediation and Arbitration for Mwanza sitting at Mwanza (the CMA) for revision is brought under Sections 91(1)(a) and (b), (2) (a) and (b) and (4) (a)and (b) 94 (1) (b) (i) of Employment and Labour Relations Act of 2004 (the ELRA) and Rules 24 (1) (2) (a) – (f) (3) (a) – (d) and 28 (1) (c) – (e) of the Labour Court Rules, 2007. It is supported by affidavit of Boazi Nagabona, whose contents Mr. Rinus Munishi learned counsel adopted during the hearing. Mr. Anacret Kamala learned counsel appeared for The Registered Trustees of Bugando Medical Centre (the respondents).

Mr. Rinus advocate submitted that the applicant's termination actually was procedurally and in law unfair. That no doubt's he was on the ground of absenteeism terminated. His employers unreasonably having refused him permission to go for further studies. The employers' reason being that many other employees were still away on leave. Without any explanation how would the respondents be affected by the applicant's absence who nevertheless had applied only for unpaid leave. But the respondents gave him option to resign. What a constructive termination and unfair practice! That contrary to Section 37 (2) of the ELRA the denial of study leave was unreasonable.

Secondly, that as for the procedure adopted, there was no need for the applicant to abide by the law. Much as he hadn't quitted unceremoniously. That although at the time the mode of communication was through emails, yet the applicant had not received copy of the letter of termination until as late as 20/03/2018. Say a year having reported back in writing. All may have been communicated through his members of family yes but contrary to procedure. That he was dissatisfied and his appeal was pending. That's all.

Mr. A. Kamala learned counsel submitted that had the applicant been aggrieved by the employer's refusal, there were under laid procedure to be taken by the former. But he did not. That employer's powers to grant study leave was discretionary where only the studies were beneficial to the employer. The 3rd party Muhimbili National Hospital's request notwithstanding. Leave alone the fact that just previously 2012 – 2014 having been permitted, the applicant had attended studies and was

awarded a Bachelor Degree in Nursing. Yet again this time around in 2016 he applied for a one year course in India. Moreworse upon completion of the course the applicant to cross over, and be engaged and work for Mlonganzila Hospital. That irrespective of the employer' refusal of permission, the applicant just quitted the work place such that the respondents had no option but to terminate him. That logically it sounded like the parties were agreed on the termination. The provisions of Rule 13(ii) of the Court Rules therefore were inapplicable (the case of **Joanitha John V. CMG Investment Ltd**, Revision Application No. 60/2016. The application be dismissed. It lacks merits. Mr. Rinus advocate further contended.

The issue is whether the applicant was unfairly terminated. The answer is actually in the affirmative. Whereas it is an undeniable fact that upon application by the applicant for a year study leave and, for the reason that there was a number of employees still away and, in the meantime the respondent asked him to hold on else one he resigns, was, without leave of the employers, the applicant just quitted. It is common knowledge that alone, unwarranted absenteeism constituted a good ground for termination. Like Mr. Rinus advocate rightly so in my opinion submitted and confessed, the applicant opted to and he went for studies at the expense of his employment. In other words from the ward go, the applicant constructively resigned. The termination therefore was fair and his claims are afterthought. Else, it sounds to me like one is screaming on a self inflicted wound. The Latin **Maxim Volent Non Fit Injuria**.

The respondent employers may have not offered explanation on how could the applicant's absence affect the work place and perhaps their level of productivity yes. However, not only powers of employers to grant study leave were discretionary, but also they had no duty to explain why retain the workers. Just like employers had no duty to give reason for recruiting workers. Much as every individual employee had his own role to play for the institution. After all it is undeniable fact that just two years previously, and with the respondents' permission the applicant had attended course and was awarded Bachelor of Science in Nursing. Leave alone the fact that upon completion of the year course, this time around the applicant planned to quit the place and work for Mloganzila Hospital. A different and new employer all together.

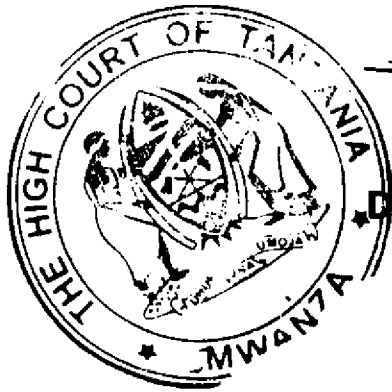
It is for the foregoing reasons that I will dismiss the application as hereby do. The application is dismissed. It is ordered accordingly.



S. M. RUMANYIKA
JUDGE

26/01/2020

Delivered under my hand and seal of the court in chambers. This 06/02/2020 in the presence of Mr. Anacret Kamara learned counsel for the respondent but also holding brief of Mr. Linus for the applicant who is also present in person.



F. MAHIMBALI
DEPUTY REGISTRAR
06/02/2020