

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
[IN THE DISTRICT REGISTRY]**

AT ARUSHA

LABOUR REVISION NO. 111 OF 2018

(C/F CMA/ARS/ARB/271/2017)

JOHN PETER MOLLEL.....APPLICANT

Versus

THE IMPALA HOTEL.....RESPONDENT

JUDGMENT EX PARTE

03/09/2020 & 01/10/2020

MZUNA, J.:

John Peter Mollel, **the applicant**, was employed by the Impala Hotel, **the respondent**, in the position of a security guard from 10th July, 1989 to 3rd November, 2016 when his services were terminated by the respondent on compulsory retirement by reason of age. The applicant was not happy so he approached the Commission for Mediation and Arbitration (**the CMA**) in pursuit for his claim on unfair termination. He claimed for 24 months' compensation for remuneration, payment of notice, overtime and severance pay.

The CMA found that claim for overtime must be proved. That he was not entitled for severance payment being an employee whose contract

ended by reason of retirement. Similarly, it found that even the claim for payment of overtime was not proved to the required standard.

Being aggrieved, the applicant, an unrepresented fellow, preferred the present appeal which proceeded ex parte as the respondent defaulted to appear though served. The application is supported by an affidavit sworn by the applicant.

There are two grounds of appeal. The following issues emanates therefrom; *First, whether there were valid reasons for termination? Second, whether he was procedurally fairly terminated, if so what are the entitled reliefs?*

The question relevant for the first issue is, was there valid reasons for termination?

The applicant said during hearing, relying as well on the filed affidavit that his termination was based on retirement age. He argued that he was due for retirement on 1st October, 2014 but was retired on 5th November, 2016 beyond 60 years' retirement age while his employment contract had no definite term for retirement. In essence he says he has the vigour to continue working. He even connected his termination with the accident he

suffered on 15th November, 2014 while at his work place. These are the factors he described as unfair termination.

The respondent's case led by Amina Said Hassan, the Human Resource Assistant was to the effect that the applicant was employed while aged 34 years (*exhibit R1, employment contract*). He worked for a while and later on they realized that he had exceeded his retirement age. That was on 30th April, 2016 when he was 61 years. The respondent therefore notified the applicant of his intended retirement (*exhibit R2*). In that he was given six (6) months extra time to prepare for retirement after which he was officially retired vide a letter dated 2nd November, 2016 (*exhibit R3*). He received all his terminal benefits (*exhibit R4*) at the tune of Tshs 1,332,000/=. He was given an addition of Tshs 1,000,000/= (*exhibit R6*) after referring to CHODAWU (Trade Union).

This case necessarily requires me to say something on the contemplated mode of termination of the contract in their relationship. My close reading of the employment contract between the applicant and respondent clearly shows, it was an unspecified time contract with six months probation period. Again, it could be terminated upon issuance of three months' notice.

The said contract is silent on when to retire. The governing law is Rule 5 (3) of the Code of Good Practice Rules, G.N No. 42 of 2007, which provides that:-

*“Unless the contract of employment provides otherwise, a contract of employment **may terminate automatically when the employee reaches the agreed or normal age of retirement.**”* [Emphasis supplied]

In our case, there was no agreed retirement age. The respondents witness testified during cross examination that it has been their policy and practice to retire employees upon attaining 60 years of age.

The question is what happens when an employee continues to work upon attaining the retirement age?

The provision of Rule 5 (5) of the Code of Good Practice (supra) provides that:-

*“Where the employee continues to work after attaining the retirement age, **the contract shall be renewed and the normal rules of termination of employment apply,***

unless the employee and the employer agreed to something different.” [Emphasis added]

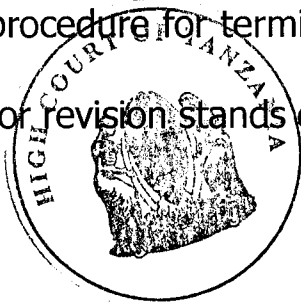
In our case, the applicant’s employment was “renewed” after attaining 60 years of age and another six months extended.


The remaining issue is whether the procedure for termination was fair?

Rule 8 (1) (c) of the Code of Good Practice provides that an employer may terminate an employee if he/she follows a fair procedure. It is not disputed that the respondent was given extra six months after the retirement age. He accepted the renewal of his employment without any complaint. Even after the expiry of the six (6) months period, the applicant was paid all his terminal dues, including the notice. He admitted as well that he was informed of his retirement even before the alleged accident. There was therefore compliance with the provisions of sections 41 to 44 of the Employment and Labour Relations Act, No. 6 of 2004 as well stated under Rule 8 (1) (b) of the Code of Good Practice Rules. The employer, the respondent herein, paid the applicant his terminal benefits and dues.

He was therefore, procedurally fairly terminated. The allegation in Form No. 1 that "*Mwajiri hakunipa sababu za msingi za kuniachisha kazi*" while he knew that he was retired based on compulsory retirement and another six months extended and paid for, is without any merit. Similarly the argument that he was retired at the time when he was sick while he has exceeded the retirement age is without merit.

Having found that there were valid/fair reasons as well as fair procedure for termination, the CMA award is hereby confirmed. Application for revision stands dismissed with no order for costs.




M. G. MZUNA,
JUDGE.
01. 10. 2020