THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE ARUSHA DISTRICT REGISTRY

AT ARUSHA

LABOUR REVISION No. 21 OF 2021

(Originating from Labour Dispute No. CMA/ARS/417/19)

JOSEPH SIMON MWANDAMBO.....APPLICANT

VERSUS

TATA AFRICA HOLDINGS (T) LTD.....RESPONDENT

JUDGMENT

21th July & 18th August, 2022

TIGANGA, J.

The applicant Joseph Simon Mwandambo was aggrieved by the award of the Commission and Mediation of Arusha hereinafter referred to the CMA. The award subject to this revision was from Labour Dispute No. CMA/ARS/417/19 in which the applicant was the complainant while TATA AFRICA HOLDINGS (T) LTD was the respondent. In that dispute, the CMA found against the applicant, the award which aggrieved him, therefore he opted to challenge it by filing this revision. The revision has been brought under section 91(1)(a), 91(2)(b) and 94(1)(b)(i) of the employment and Labour Relations Act No. 6 of 2004 and rules 24(1),

24(2)(a)(b)(c)(d)(e) and (f), 24(3)(a)(b)(c) and (d), 28(1)(b)(c)(d) and (e) all of the Labour Court Rules, GN No. 106 of 2007.

The application for revision was supported by the affidavit duly sworn by the applicant, which pointed out the historical background of the dispute and the grounds for revision.

The application was opposed by the respondent by filing the counter affidavit dully sworn by one First D. Kalugaba who introduced himself as the Principal Officer of the respondent. In that counter affidavit, the respondent disputed all allegations and claims presented by the applicant disputing the award issued by CMA. In fact, she supported the award issued by CMA.

The force behind revision and inspection of the CMA record is centred on the following reasons; that, the applicant was recruited in Dar es Salaam and terminated in Arusha where he was working, unfortunately, he was not repatriated to the place of recruitment and he was also not paid one-month salary of June, 2019. This is in accordance to paragraph 7 of the applicant's affidavit. There is also a complaint that, the award issued by CMA contains material irregularities for being delivered after 30 days without starting any reason for delay. This claim is reflected under paragraph 13 of the applicant's affidavit. The other

complaint was that, the CMA wrongly decided that, there were justifiable reasons for retrenchment while there was no evidence tendered by the respondent to justify economic downfall by the respondent. This is per paragraph 15 of the said affidavit. The other complaint against the award is that, the arbitrator erred in holding that, there was consultation meeting while there was no proof of the same. This claim is reflected at paragraph 16 of the applicant's affidavit. And lastly, there is a complaint that, the Arbitrator failed to discuss the third issue on the unpaid salary of June 2019 and of repatriating the employee to his place of recruitment.

As already pointed out herein above, the counter affidavit by the respondent disputed all these claims and complaints, and supported the award for being fair, legal and reasonable.

Before discussing the substance of the matter before me, I find it important to briefly narrates the historical background of the matter as gathered from the record. Briefly, the applicant was employed by the respondent as Senior Finance Executive Officer, having been employed on 08th July, 2014. This is in accordance to the letter of employment which was received and marked as Exh.D1 by the CMA. In that employment, the applicant was receiving the monthly salary of

1,800,000/=. However, on 05th April, 2019 unexpectedly, the applicant was informed of the alleged retrenchment. This is to say, the tie between the applicant and the respondent as an employee and employer survived for not more that four years.

While the respondent claimed to have followed all the legal procedure for retrenchment and having valid reasons for doing so, the applicant dismissed this argument. He considered the retrenchment to have been reinforced by reasons not legally supported and also the procedure was not followed as per the law.

After the applicant has been unable to agree with the retrenchment, he decided to refer the matter to the CMA by filing the complaints before it. As a matter of procedure, the dispute was mediated, the process which sired no fruitful outcome. It was therefore sent to another step which is arbitration where it was heard on merit whereby the award was given in favour of the respondent. The respondent again, did not find settled and comfortable with the award hence, this revision.

With the leave of the court, hearing was through written submissions. Mr. Stallon Baraka, Personal Representative who appeared representing the applicant filed the submission as scheduled, while

Mr.Joseph Chacha Mukohi, Learned Counsel represented the respondent also filed his submission as ordered.

On the issue of irregularities for the award for being given after 30 days without stating the reasons Mr. Baraka argued with the support of section 88(11) of the Employment and Labour Relations Act (supra) that, arbitrator's failure to comply with this mandatory provision of the law renders the award illegal subject of being revised.

On his part, Mr. Mukohi contended that, the award was given within time. Alternatively, he argued that, if at all, it was not given within time, it did not lead to miscarriage of justice, as Mr Baraka, PR did not argue that it caused any miscarriage of justice.

In rejoinder, Mr. Baraka said, so long as the provision of the law requires the arbitrator to give reasons for not issuing the award on time without giving due consideration of it, amounted to miscarriage of justice to the applicant.

In deliberating to this ground, I will, for purpose of clarity, reproduce the said section 88(11) of the Employment and Labour Relations Act (supra) hereunder; it reads:

88(11) Within thirty days of the conclusion of the arbitration proceedings, the arbitrator shall issue an award with reasons signed by the arbitrator.

It is crystal clear that, the provision quoted above requires the Arbitrator to give a reasoned award within thirty days of the conclusion of the arbitration proceedings. Reading page 11 of the typed impugned proceeding the arbitration proceeding was concluded on 20th November, 2020 when the arbitrator ordered for closing submission to be filed.

However, in my view, it would have been expected the arbitrator to indicate the delivering of the award date which was never indicated. Be it as it may, if we count from the said date to the date of delivering the award which is on 26th February, 2021 the days passed are about or more than 96 days. Within the meaning of the requirement of Section 88(11) of the Labour and Employment Relations Act (supra) the award was given out of time. Now, the question to be answered is whether that makes the award illegal.

The answer to this question is not farfetched. It is found in the case of **Happy Sausages Ltd vs. Revocatus Tarimo & Others**, Lab. Div, ARS, Revision No. 112 of 2015, 30/11/15, reported in the Labour Court Digest of 2015, Nyerere, J. where the court held:

"The law provides that the award has to be procured within 30 days; however, there are case laws which reasoned that where good cause is shown and no party is to be prejudicated, the time for procuring an award can be extended."

In the submission by Mr. Baraka there is no where he has pointed out under what circumstance the applicant has been prejudiced by the delay of issuing the award. I expected for him to show the extend of miscarriage of justice done due to delaying the award which he had completely failed to show. I think the effect of the said provision was aiming at exerting pressure to Arbitrators to expeditiously finalizing disputes before the CMA. The consequences of revising the ward under this provision is even far worse and against the philosophy in the provision in particular and the law generally. This is because, the court will end up returning the dispute for retrial.

In my view, returning it just because the days for delivering the award had passed without significantly indicating failure of justice to either party has nothing to serve than clearly mis interpreting the spirit of the provision. Instead of expeditiously finalizing the disputes, it will delay the same. Thus, this ground is of no merit, it is dismissed.

Having so resolved that ground, let me turn to the issue of repatriating the applicant and non payment of a one-month salary to the applicant. On this issue Mr. Baraka blamed the Arbitrator to conclude that, the retrenchment meeting was conducted in Dar Es Salaam (The Company's headquarter) while there is no proof of it. And also, there is no proof that, the applicant was transported to Dar Es Salaam to attend the said meeting.

Replying to this issue, Mr. Mukohi, was of the view that, there is no proof that the applicant was recruited in Dar es Salaam so that to be repatriated thereto. On the issue of one-month salary, he said that, the issue which was discussed was of the retrenchment process and not payment of salary.

I have taken time to revisit the award issue by the CMA. There is neither the issue of repatriating the applicant to Dar es Salaam nor payment of one-month salary of June which was discussed and hold on. What is noticed at page 2 of the impugned award is that, the Arbitrator was analyzing what the applicant submitted before CMA. Because of that, I also thought important to go to the CMA Form 1 in order to see what the applicant prayed before the CMA. In the said form, the applicant prayed the following;

"Naomba kulipwa kipindi cha mkataba kilichobakia, notice, likizo, kiinua mgongo na cheti cha utumishi, repatriation costs and salary of June, 2019."

These prayers are also reflected in the impugned proceedings when the applicant was conducting examination in chief and cross examination. Unfortunately, the Arbitrator did not say anything about these prayers apart from retrenchment. In my view, this is a great misconception which does not suggest good end of justice. The effect of failure to frame issues or answer to framed issues was discussed by the Court of Appeal of Tanzania in the case of **Abdallah Hassan vs Juma Hamis Sekiboko**, Civil Appeal No. 22 of 2007 where the court said:

And this brings us to our next finding that apart from the error of treating revisional proceedings as an appeal, the court also erred in not determining the legal issue posed as a preliminary objection.

Failure to discuss on the important prayed matters is tantamount to failure to frame issues and resolve them which in is a fatal defect. It would have been expected the arbitrator to give reasons on the prayed reliefs which he decided not to consider. Even if retrenchment would have been considered to be reasonably fair, the arbitrator was duty bound to decide on the prayed reliefs and give remedies thereto.

In the meantime, I agree with the applicant that, the Arbitrator failed to discuss the third issue which is on the repatriation and one-month salary of June 2019. Owing to that, as I have indicated herein above that, those prayers were not discussed and determined by the Arbitrator. This court cannot step into shoes of the Arbitrator and decide upon them, the Arbitrator is still duty bound to decide them because as the person who heard evidence, he is better positioned to make a decision over them. Meanwhile, the remaining issues remain unattended because nothing colorful might be added to change the result.

For the foregoing reasons, I find the omission by the Arbitrator to be fatal to the award, I thus consequently set aside the entire proceedings. I remit the record to the CMA to re-hear the dispute. The matter be placed before another arbitrator with competent jurisdiction. Considering the time taken, I order the hearing to be as expeditious as possible in order to justly conclude the matter within the short time.

It is accordingly ordered.

DATED at **ARUSHA** on 18th day of August 2022.

J.C. TIGANGA

JUDGE.