

IN THE HIGH COURT OF TANZANIA
(LABOUR DIVISION)
AT DAR ES SALAAM
LABOUR REVISION NO. 2 OF 2020

SURESH LAVINGIA T/A SWISS WATCH STORE..... APPLICANT

AND

ATHUMANI HASSAN..... RESPONDENT

JUDGMENT

Date of Last order: 2/8/2021

Date of Ruling: 20/8/2021

B.E.K. MGANGA, J.

On 26th June 2012, the Applicant employed the Respondent in the position of driver. On the 21st December 2018 Applicant terminated the contract of employment and paid the Respondent a total sum of Eight Hundred Sixty-Five Thousand Tanzanian Shillings (TZS 865,000/=) only being severance payment for the seven years the Respondent worked for the Applicant and the unpaid leave. Aggrieved with that decision, the Respondent registered with the Commission for Mediation and Arbitration hereinafter referred to as CMA, Labour Dispute No. CMA/DSM/ILA/40/19/52 for unfair termination. At CMA, Applicant argued that there was mutual agreement between the parties to terminate

employment. On 13th December 2019 the Arbitrator issued an award in favour of the Respondent on ground that he was terminated unfairly. Applicant was ordered to pay the Respondent Three Million Six Hundred Thousand Tanzanian Shillings (TZS 3,600,000/=) only, being compensation for twelve (12) months salaries and Three Hundred Thousand Tanzanian Shillings (TZS 300,000/=) only, in lieu of a one-month notice. Applicant was aggrieved by the said award hence this Application seeking this court to review that award. In the application, applicant has raised five issues namely:-

1. That, the Arbitrators and ignoring evidence adduced by the applicant without any reason.

2. Whether it is legally correct for the honourable arbitrator to consider the dispute was (sic) preferred by the complainant challenging unfair termination contrary to section 38(1) of the Employment and Labour Relations Act, Act No. 6 of 2004.

3. That, whether it was proper for the honourable arbitrator to consider respondent's evidence that he was force(sic) to sign the termination agreement without corroborative evidence and without conducting a trial within a trial to determine as such.

4. That, whether it was proper for the honourable arbitrator ignore (sic) and failed to consider documentary evidence tendered and the applicant and admitted by the commission.

5. That, whether it was proper for the honourable arbitrator to grant 12 months remuneration and notice pay while termination of employment was by mutual agreement between the parties.

This matter was disposed by way of written submissions. In his written submissions, the Applicant abandoned issues number 2 to 4 hence remaining with number 1 and 5. In his written submissions, the Applicant submitted that the Respondent failed to appear at work from 13th December 2018 to 20th December 2018 and that when he appeared, he orally prayed for termination of his employment and payment of his rights. That based on that prayer, the Respondent was issued with termination letter, received Eight Hundred Sixty-Five Thousand Tanzanian Shillings (TZS 865,000/=) only being severance payment for the seven years he worked for the Applicant and the unpaid leave. Reliance by the Applicant was made to the evidence of Anthony Kombe (DW1) the only witness who testified at CMA on his behalf.

In his written submission, the Respondent submitted that one day in October 2018, he discovered mechanical defect in the motor vehicle he was driving and reported the incidence to the Applicant. That, he was told to park the vehicle and go at home on ground that it will be repaired once money obtained of which he obeyed. That, he stayed at home from October 2018 up to 21st December 2018 when he went at work. That, on

the same day, his employment was unfairly terminated as there was no mutual agreement of termination of his employment.

The main point of controversy between the parties is whether, termination of employment of the Respondent was based on mutual agreement or not. This is the centre of complaint in the issue raised by the Applicant that the Arbitrator ignored evidence adduced by the respondent.

I have read evidence of the parties and find that there is no dispute that, the only motor vehicle owned by the Applicant, that was being driven by the Respondent, got mechanical defects as a result the Applicant was ordered to park it for lack of funds for repair. This is clearly stated in evidence of the only two persons who testified at CMA namely; Anthony Kombe (DW1) for the Applicant and the Respondent Athumani Hassani (PW1) the applicant. The area of departure in evidence of these witnesses is that the Applicant prayed to terminate employment by resigning as stated by DW1 but PW1 refutes that claim. The claim by DW1 that the Respondent resigned or that his employment was terminated on mutual agreement is based on hearsay as he was not present on that day. DW1 conceded during cross examination that on 21st December 2018 he did not witness the agreement between the Applicant and the Respondent as he

was in Moshi. He stated that the same was witnessed by Suresh and Millan Rothod, who, unfortunately did not testify. Therefore, the only evidence available is that of the Respondent that there was no mutual agreement on termination of his employment. The complaint that the Arbitrator ignored evidence of the Applicant has no merit.

As pointed out herein above, the Applicant abandoned other issues that was raised in his application including the one relating to unfair termination. By abandoning it, he concedes that the termination was unfair. One of the remedy available for unfair termination is payment of twelve months remuneration as compensation to the employee as provided for under section 40(1)(c) of the Employment and Labour Relations Act [Cap. 366 R.E. 2019]. I therefore hold that; the Arbitrator was justified to order the Applicant to pay 12 months remuneration and one month salary in lieu of notice. For the foregoing, I hereby uphold the award and dismiss this application for lack of merit.

It is so ordered.




B.E.K. MGANGA
JUDGE
20/08/2021