

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LABOUR DIVISION)**

AT ARUSHA

REVISION APPLICATION NO. 26 OF 2020

(Originating from CMA/ARS/ARB/174/2018)

ULTRAVETIS LTD..... APPLICANT

Versus

BARAKA EMMANUEL LEMA.....RESPONDENT

JUDGMENT

16/08/2020 & 18/10/2021

GWAE, J

On the 28th March 2018 the respondent, Baraka Emmanuel Lema referred a dispute against his employer, Ultravetis Limited in the Commission for Mediation and Arbitration complaining that he was unfairly terminated from his employment.

He prayed to be paid compensation and other terminal benefits totaling Tshs.74,428,000/= The Commission through its award dated 17th March 2020 awarded the respondent 12 months' compensation, severance pay leave due but paid, severance pay (all making a total of Tshs. 11, 480,615/= and certificate of service.

The CMA's award aggrieved the applicant, thus this application for revision brought under the provisions of the Labour and Employment Relations Act No. 6 of 2004 ("Act") and the Labour Court Rules, 2007 (Rules) praying for the Court's

orders revising and setting aside the proceedings and award procured by the Commission on the ground that, his fair termination reasons and procedures were not considered or in other words that, the arbitration award is not reflected by evidence on record.

At the hearing of this application, Mr. Charles Adiel, the learned advocate appeared representing the applicant whilst advocate Ahmed Hamis represented the respondent.

Vigorously supporting the applicant's application, Mr. Adiel argued that had the arbitrator considered the applicant's notice of hearing to the respondent through e-mail (DE3) he could not have held that the respondent was not served. He further submitted that the arbitrator also erred in law for his failure to consider that the respondent was paid his terminal benefits as a result he ordered payment that were already paid.

The applicant's counsel also argued that, it was wrong for the arbitrator to order compensation of 12 months' salary whereas it was observed that the termination was unfair only in terms of procedural aspect. Bolstering his arguments, he urged this court to make a reference to a case of **Bartholomeo A. Gunza vs. Da Ceramica Centre (2001) Ltd**, Labour Revision No. 742 of 2019 (unreported) where compensation awarded in favour of the applicant was less than 12 months' compensation than ordinarily ordered by the court pursuant

to section 40 (1) (c) of the Act as there was a valid for termination save procedural law which was not followed.

In his response, the counsel for the respondent argued that there was neither valid reason for the termination as no offence was proved nor was there adherence to the termination procedure. He added that one Laagie Mungaya who played a role of Chairperson in the Disciplinary Hearing Committee was also a complainant/ prosecutor. Hence not fair hearing.

Admittedly, the counsel for the respondent strongly stated that though the respondent was paid his terminal benefits but the same were unjustifiably deducted. Lastly, the applicant's advocate stated that the compensation awarded is of high side due to economic crisis and that the applicant's act of paying the respondent his terminal benefits ought to have judicially been considered.

In his rejoinder, Mr. Charles stated that there was fair reason since the respondent admitted to have no experience in the field and his apology for being rude (DE1).

Having briefly explained what transpired before the Commission and in this court on revision, I am now duty bound to determine whether the Commission was justified by evidence on record in holding that, **firstly**, that, there was no reason for termination, **secondly**, that, termination procedures were grossly

violated and **thirdly**, that, the respondent was entitled to compensation of not less than 12 months' salary.

i. **In the first issue, whether, there was no reason for termination,**

It is common ground that, an employer must have a valid and fair reason before he terminates an employee's employment. That reason (s) must be known to the employee prior to termination. Considering the evidence on record and the CMA's award, I am not convinced if the impugned termination was substantively fair since the applicant is found to have merely complained that the respondent had caused loss of certain products and wrote a letter (DE3) requesting the respondent to explain but that alone does not substantiate the alleged loss without clear stock taking which would establish stocks received and those issued and remaining stock. The said loss, in the circumstances, remains mere assertion. It follows therefore provisions of section 37 (2) (a) & (b) of the Act were violated. More so, the allegation that the respondent admitted the offence especially that he lacked experience and rude offence is not reflected by the CMA's record.

ii. **Whether procedures in terminating were not followed**

Despite the fact that, the employer is supposed to have fair and valid reason in terms of section 37 (2) (a) (b) of the Act yet he has to follow fair procedures in

terms of section 37 (2) (c) of the Act, namely; give an employee notice of hearing of the disciplinary hearing, give him a fair hearing including right to prepare his defence and defend, right to cross examine a witness, right to representation, right of being availed an outcome of the Disciplinary Hearing Committee, right to make mitigation, right to appeal if found guilty of a disciplinary hearing and so on and so forth.

Examining the award and the evidence on record, it is evidently clear that there were violations of the termination procedures as rightly determined by the Commission. To be more specific, the respondent was not served and if served was only informed of one disciplinary offence whereas the Disciplinary Hearing Form indicates that there were five offences against the respondent. The applicant also contravened the principles of natural justice particularly, rules against bias as the said Laagie Mungaya who lodged complaints against the respondent and the who subsequently became a member of the Disciplinary Hearing Committee.

Generally, the Disciplinary Hearing Committee lacked some basic attributes as to the principles of fair hearing as lucidly depicted in DE1, the respondent was therefore not fairly heard. The importance of fair hearing was stressed in **Mbeya Rukwa Auto Part & Transport Limited v. Jestica George Mwakyma**, Civil Appeal No. 45 of 2000 (unreported) where the Court of Appeal of Tanzania held that fair hearing is among the attributes of equality before the law.

While the arbitrator ought to have considered the terminal benefits that were paid to the respondent immediately after termination as rightly complained by the applicant's counsel but nothing like terminal benefits that were paid pursuant to the pay slip (DE2) that was subsequently ordered to be paid by the Commission.

Moreover, it is in my view that it was wrong to deduct certain amount relying on the alleged loss while the respondent was already terminated. Therefore, the purported deduction amounted to double jeopardy to the respondent. That is quite wrong unless he was still an employee. Basing on the foregoing, the finding by the learned arbitrator that, the procedural law was not fundamentally followed, is thus maintained

ii. **As to the terminal benefits or reliefs available in favour
of the respondent**

Having considered that the applicant worked with the respondent (not more than 3 years). This dispute and the former dispute in the case of **Bartholomeo A. Gunza vs. Da Ceramica Centre (2001) Ltd** (supra) are different in terms of services and strength of evidence adduced by the applicant as far as his sickness is concern. More so, it must be known that an award of less than 12 months' salary compensation must pertain with special reason as compensation of 12 months' salary in terms of section 40 (1) (c) of the Act is minimum. Hence, an award of

less than 12 months' salary compensation ought to awarded in special circumstances pertaining with judicious reason to be recorded in the judgment Nevertheless, our eyes should also be a reflection to the outbreak of the Pandemic disease (Corona-19) followed by economic crisis worldwide, the applicant is therefore entitled to 8 months' salary compensation, severance pay, leave pay and certificate of service.

In the upshot, this application is dismissed save to the reduction of respondent's compensation in the above extent. I refrain from ordering costs of this application since this application is not frivolous and vexatious

It is so ordered.


M. R. Gwae
Judge
18/10/2021

Court: Right of appeal to the Court of Appeal of Tanzania is open and fully explained for any aggrieved party.




M. R. Gwae
Judge
18/10/2021