

TANZANIA / JUDGMENT

20140917 TZHC Dar es Salaam

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TZHCDECIDED
17 September 2014

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'i IN THE HIGH COURT ·oF TANZANIA LABOUR DIVISION r AT DAR ES SALAAM i I i REVISION
NO.19.3 OF 2013 II I\ i ISSA ALLY MASUKUZI & 169 OTHERS 1 VERSUS I I TAKOPA
CONSTRUCTION CO. LTD I 'Yiisr RESPONDENT SUMA JKT
I ... 2ND RESPONDENT SHINWOO & CHUNGMOO CO • 3RD RESPONDENT (Original/ ~1
·UDGEMENT ·i~ 1· 'plication is made ~nder section 91 (1) and (2) of I the , ent and Labour
Relations Act, No.6 of 2004 which will be referred as the Act in this Ju8gement and Rules 24 (1),
(2) I

- (d) and Rule 28 (1) & (2) of the Labour Court Rules, GN.106 of 2007 and any other enabling proviton of the law. The applicant calls upon this court to revise th~ proceedings and arbitration 1 award passed by the Commission for Mediation and Arbitration (herein the CMA) with reference number CMA/DSM/KIN/803/2010 by Hon. Massay, Arbitrator on 21 st May, 2012 on two grounds as reflected in paragraphs 2 and 3 of the affidavit in support of the Chamber Summons, that; ti
1. The award of terminal benefits was p -, er ? uti4 'jir;• it was improper for the Arbitrator to. orde :spondent to pay the applicants instead of the . ::QsJent.
 2. That, the testimony of the :: was not recorded properly. That the if,i r: _ is the one who is supposed to pay the a) -lican Shortly are the of the rnatter. The applicants were employees of th ent on a contract for a specific task. nd The 1st ~- a Joint venture company with the 2 and r road construction from Bagamoyo to Msata. employment was· terminated by a letter of hich was effectively from 8/1/2010 on the basis of operation requirements of the employer. The applicants filed a dispute for unfair termination at the CMA and claiming to be paid their terminal benefits. The CMA decided that the termination claim of compensation of 12 months' salary for unfair termination 2 . i had no basis because the 1st respondent's contract with TANROADS was rescinded thus the ,1 st respondent under normal circumstances could not continue employing the applicants. He ordered the 1st respondent to pay the applicants all their entitlements according to Section 44 of the _Act, peing leave payment, severance payment, notice and rervice. The applicants came to this court prayi revise the decision and order the 2nd respond , the applicants as per the CMA award. The hearing proceed "... cause the respondent Im defaulted appearance. The ~ti were represented by Mr. Haonga, personal re .. ~ Mr. Haonga · ~·· of the application submitted that the applican yea by the 1st

respondent, a joint venture by the 2nd and 3rd respondents. He submitted that the applicants' employment came to an end when TA rescinded the contract with the 1st respondent. He said the 3rd respondent is a company incorporated abroad and to date the applicants are not paid their entitlements, therefore the second respondent as one of the founders of the 1st respondent is the one responsible to pay the applicants. He contended that the Arbitrator misdirected himself to order the 1st respondent to pay the applicants instead of the 2nd respondent. He finally prayed for the court to order the 2nd respondent (SUMA JKT) to pay the 11 applicants as provided under Section 44 of the Act and per the CMA award. Having gone through the records submission with eyes of caution, the applicants are disputing as to who has to pay their entitlements as per the CMA award. In his decision the Arbitrator / the 1st respondent as an employer is the one liable to pay the applicants and order the 2nd respondent under the law to pay the same to pay the applicants accordingly. He stated in the typed award first paragraph, a record which shows that the applicants are 2nd respondent. Under section 44 (1) and (2) provides clear that; "In the termination of employment, an employer shall pay an employee-

- (a) any remuneration for work done before the termination;
- (b) any annual leave pay due to an employee under section 31 for leave that the employee has not taken; (c) any annual leave pay accrued during any incomplete 11.4 leave cycle determined in accordance with section 31(1);
- (d) any notice pay due under section 41(5); and
- (e) any severance pay due under section 42;
- (f) any transport allowance that may be due under section

43. I

- (b) On termination, the employer shall issue a prescribed certificate of service. It is clear from the above provision that, on termination of employment an employer is required to provide the terminal benefits as illustrated above. It is prudent to define who is an employer and who is an employee. According to section 4 of the Act, "employer" includes an executive agency, a person who employs an individual who—
- (a) has entered into a contract of employment; or
- (b) has entered into any other contract under which—
- (i) the individual undertakes to work personally for the other party to the contract; and (ii) the other party is not a client or customer of any profession, business, or undertaking carried on by the individual; or (c) is deemed to be an employer by the Minister under section 98(3). In looking at the records, it is not in dispute that the applicants entered into a contract of employment with the respondent who is an employer in terms of the above provision. According to the law, that is The Companies Act, 1970 (Act No. 112 of 1970) under Section 15, the respondent is a legal personality, being the Registered company cooperative body.

with capacity to sue and be sued. Since the applicants entered into the contract with the respondent, and according to the law, section 44 of the Act the respondent as an employer is the one legally required to be correctly decided by the court. I would have held otherwise if the applicants before the court that the respondent is a liquidated company. As long as it still exists the applicants should make follow-up of their entitlement through the right channel to execute the Decree as per the CMA award. In the circumstances I find no reason to fault the Arbitrator's award basing on the records before the court. In the result application is dismissed accordingly. It is so ordered. I, I.D.ABOUD, JUDGE, 17/09/2014 • Date: 17/9/2014 Coram: Hon. I.D.Aboud, Applicant: Issa Ally Masukuzi For Applicant Respondent: }Absent For Respondent: CC: G. Mushi Order: Ruling delivered on 17/9/2014. In the presence of Mr. Issa Ally Masukuzi, 1st Applicant and the Respondents are absent. I, I.D.Aboud JUDGE: 11,0912J14 8

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