

TANZANIA / JUDGMENT

REV NO 5607 OF 2024 AMINA JUMA MOHAMED VRS LAKE OIL LIMITED

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IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA LABOUR DIVISION AT PAR ES
SALAAM REVISION APPLICATION NO. 5607 OF 2024 REF. NO. 202403181000005607 (Arising from
the Labour Dispute No. CMA/DM/TMK/115/2021/39/2021) AMINA JUMA
MOHAMED..... APPLICANT VERSUS LAKE OIL
LIMITED.....RESPONDENT

JUDGEMENT

Date of last order; 13th May 2024 Date of Judgement; Sst June 2024 OPIYO, J This Revision application emanates from the award of the Commission for Mediation and Arbitration. The Applicant herein is seeking for this Court to call for the record of Labour Dispute No. CMA/DM/TMK/115/2021/39/2021 from the Commission for Mediation and Arbitration of Dar es salaam (herein CMA). The object is to revise and set aside the CMA award. The applicant further prayed for this court to make any other orders as it may deem just and convenient in the circumstances. The facts leading to this application as traced from CMA records are that; the applicant was employed by the respondent as a pump attendant on permanent basis. It was alleged by the respondent that parties to the contract agreed on mutual termination of employment agreement triggered by sickness. Aggrieved with the termination, the applicant filed the matter at CMA, claiming for unfair termination and her terminal benefits. At CMA the matter was determined on respondent's favor on the reason that the termination was fair as there was mutual separation of employment contract. This resulted to the present application, the applicant advancing the following grounds of revision:-

1. The arbitrator erred in law and facts by failure to examine well the doctors medical chit as there is nowhere the Doctor recommended for applicants termination on ground of ill health.
2. The arbitrator erred in in law and facts by failure to look properly on termination contract and the amount of payments the applicant was paid which were different as the applicant was terminated while she was sick from work related decease.

3. The arbitrator erred in facts and law for considering evidence of one side, employer that someone with Asthma cannot work as pump attendant regardless of the fact that the applicant did the same job since 2008 to 2021.
4. The arbitrator erred in law in deciding that the applicant failed to prove her claim. The application proceeded orally, the Applicant was represented by Mr. Nehemia Munga, Personal Representative whereas the Respondent was represented by Mr. Eliolutu Boniface. Arguing in support of the application, Mr. Munga submitted on 1st, 2nd and 3rd ground jointly, by stating that, the doctor's report did not instruct the respondent to terminate the applicant, it just explained applicant's illness, but the employer acted otherwise. According to him, the respondent could have given the applicant light duties as she proceeded with medication as she has been with the company for over 14 years, therefore, getting sick while she was on duty could not have been a reason for terminating the applicant, but see her through with treatment. Mr. Munga continued to submit that, the termination agreement was not valid because the contract shows terminal benefits without stating that the reason for termination was due to sickness which is work related. It only shows severance pay, while before signing agreement, they had agreed that if she will be terminated, she will be paid 6 million, but she was only paid 1,129,000/=. Regarding the proof of claim, Mr. Munga submitted that, the same was justified by medical report which was tendered showing that the applicant was sick. He further asserted that, the arbitrator failed to differentiate between what the applicant was paid due to work related sickness and the one related to termination of a person who is not sick. On the last ground, it was submitted that, the applicant's agreement does not show that she was terminated due to illness and what ought to be paid in initiating termination resulting from sickness. Mr. Eliolote submitted that the applicant's medical chit was brought to the employer for the purpose of consideration for termination as pump attendant, suffering from asthma, therefore, she could not proceed with work. He stated that, basing on her education background there was not a different jobs he could have been allocated by the employer Mr. Eliolote contended that, the parties agreed to terminate the contract through agreement signed on 4th June 2021 by both sides as per Annexure AJM 2 to the affidavit, and on 20th June 2021, the applicant was paid all her statutory dues. He added that, he agrees that asthma is not a sickness denying one to work as pump attendant, but it should be noted that, it is the applicant who asked to be terminated due to sickness. That, the other side lamented that the medical chit did not recommend applicants termination, but she made a request herself for termination and the agreement was valid as the same was signed by both sides. He further challenged applicant's allegation regarding mutual agreement they entered into, on the reason that if the applicant could have seen that the contract was not valid, she could have not accepted the payments that was made to her at a later date after the agreement was signed, that is 6 days from the date of signing the agreement. He argued that, in his view, the applicant does not dispute the agreement, but refute the amount paid, that she was supposed to be paid 6,000,000/= instead of what she was paid. This answers ground No.4 that the claim that was not proved is a claim for 6,000,000/= not regarding sickness or anything else, since in all documents submitted at

CMA, none was showing the basis of Tshs 6,000,000/= claimed by the applicant. On the fifth issue, Mr. Eliolote submitted that, the agreement did not show amount to be paid. There is no law requiring enumeration of what was to be paid. It is left to statutory payments regulations. He further added that the applicant agreed and signed the agreement, how come today she come forward to dispute the same. Supporting his position, he cited the case of Siwema Hemed Mikongo Vs. Dhahir and Hussein, Rev. No. 39/2022 High Court Labour Division at 12 referring to the Civil case No. 11/197 CA of Sluis Brothers EA Ltd Vs. Mathias Tawari on the principle that one who signs cannot call it back. Therefore, the claim that termination agreement was not valid has no legal basis. He thus concluded that, these grounds are baseless, they deserve being dismissed. Mr. Munga was quick to rejoin by submitting that, the medical chit was just for informing the employer of applicant's status of sickness, but she did not pray to be terminated. He further added that, as the employer's business is huge, he could have given applicant any other section to continue working while recovering. On the issue of terminal benefits, he submitted that the applicant was paid only the statutory entitlements, which are payable to any employee even if he/she is not sick. From parties' submissions, this Court is called upon to look into whether the grounds raised by the applicant warrant this court to exercise its revisional powers against the CMA award and examine the reliefs each party is entitled to. In resolving the issues, the first question for the court is whether the separation agreement was valid? In addressing the question, the relevant provision is Rule 4(1) of G.N No. 42 of 2007 which recognize termination by agreement. In this application, it is undisputed that, the parties terminated contract on 4th June 2021 as per exhibit D1 by signing separation agreement and on 20th June 2021 the applicant was paid what was termed as her statutory dues as per exhibit P4. It is a well expounded principle that, parties are bound by their own agreed terms. This principle was well addressed in the case of Benda Kasanda Ndassi Vs. Makafuli Motors Ltd, Rev. No. 25/2011 HC Labour Division DSM (unreported), also In the case of Hotel Sultan Palace Zanzibar vs. Daniel Laizer & Another, Civil. Appl. No. 104 of 2004, where it was held that:- "It is elementary that the employer and employee have to be guided by agreed terms governing employment Otherwise, it would be a chaotic state of affairs if employees or employers were left to freely do as they like regarding the employment in issue." Examining our case based in the gist of the above authority, since the respondent was afforded with an opportunity to think of the agreement by having enough time to dispute the same, if at all she was not ready to proceed with it, up to 20th June 2021 when she received payments, she can hardly dispute the same now. If she signed against her will as she later seemed to insinuate, she could have reacted differently during payment of the agreed dues. The act of signing and claiming a different amount from what is on the signed paper is baseless. Mr. Munga at some point argued that the applicant was not involved in any way in the agreement, but that was contradicted by the applicant's own testimony when she stated that, she was made to sign the alleged agreement and promised to be paid six million, just to be surprised by being paid less amount. This kind of assertion shows the applicant does not dispute existence of agreement but rather the amount paid in the end as being contrary to what they had agreed to. This makes the latter claim that there was no agreement to terminate a mere

afterthought and refusal to be bound by the terms voluntarily signed and instead come up with new claim of 6 million. According to the terms in the separation agreement, the applicant was to be paid Tshs. 1129,000/-. The calculation for the said entitlement as per Exhibit P4 (terminal benefits in termination) included; salary arrears (50,769), pay in lieu of leave (177,000), severance allowance (888,462) and pay in lieu of leave (330,000/-). The fact that he accepted the above sum he had signed makes her claim for 6,000,000/ unproven and baseless. It is a cardinal principle of fair hearing that one who alleges must prove the allegations by producing evidence proving the same (see Security Group Limited V Livingstone Lyanga Michael, Labour Revision No. 56 of 2017, High Court (Labour Division) at Mbeya). From the above authority, since the applicant failed to prove her allegation regarding compensation of TZS 6,000,000/= the same could not stand. The CMA was correct in dismissing the claim. In such circumstances, where it is seen that the applicant consented to terminate her employment contract by separation, impliedly she barred her chance of retirement for sickness. In this case, sickness is the reason that made them to reach the agreement to terminated, in which case, it is the agreement to terminate that stands as a basis of how the contract was terminated, not sickness anymore. However, this court finds it prudent to extended its keen eyes in examining the correctness of the calculations of the amount of entitlement the applicant was paid. It is on record that the applicant was paid 177,000/ instead of 330,000/ (one month salary) as leave allowance for the whole month of leave she was entitled to. Also, the amount of severance pay that the applicant was paid is 888,462/ instead of 1,066,153/- (monthly salary (330,000)/26 x 7 x number of years of service (12years). The other remaining payments were correctly made. That means, the applicant is still entitled to the balance payment of 330,071/- Application is allowed to the extent explained. No orders as to costs. M. P. OPIYO JUDGE 3/6/2024

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