

TANZANIA / JUDGMENT

heri pius lwena vs ruvuma coal limited 2023 tzhc 17965 15 june 2023

COURT
TZHCDECIDED
15 June 2023

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF TANZANIA (SONGEA DISTRICT REGISTRY) ATSONGEA LABOUR
REVISION NO. 6 OF 2022 (Originated from Labour Case No. CMA/RUV/MB/37/2022/ARB/16,
Songea) HERI PIUS LWENA..... ,..... APPLICANT VERSUS RUVUMA COAL
LIMITED..... RESPONDENT

JUDGEMENT

26/05/2023 & 15/06/2023 E.B. LU VAN DA, J. The Applicant above mentioned aggrieved with the decision entered by the Commission for Mediation and Arbitration (CMA), moved this court by chamber summons supported by an affidavit to call upon the record of CMA to satisfy itself as to the correctness, legality or propriety of its findings, decision and award entered. The CMA dismissed the Applicant's claim for being baseless. Hence this application. A brief fact of the dispute which led to the application are as follows: the Applicant was employed by the Respondent as excavator or machine operator on 1st January, 2022 for a fixed employment of a year, monthly salary of TZs 1,008,148/=. His contract of employment was terminated on 10th June, 2022 under mutual separation agreement entered between the Applicant and the respondent. The Applicant challenged the termination before CMA, but unfortunately his application was dismissed for want of proof, hence this application. The matter was argued by way of written submission. In his submission, the Applicant argued that he signed the mutual separation agreement without free consent and knowledge, on explanation that there was fraud, trick and undue influence, on the ground that, the mutual separation agreement was not signed by the witness on Vicent Nyanda Gakula, who attended a meeting; Two, the motion was initiated by the Respondent because a one month salary in lieu of notice was paid by the Respondent instead of the Applicant; Three, the mutual separation agreement ought to be signed by all parties in all pages, after reading it, he cited the case of Yara Tanzania Limited v. Catherine Assenga, Revision No. 88/2020 HC Labour Division Dar es Salaam. In reply, the Respondent submitted that there was no any trick, force used to induce the Applicant to sign the mutual separation agreement, rather the same was signed freely by the Applicant when he voluntarily and wilful opted to exit the employment to attend family issues. He submitted that on 10/6/2022 the Applicant notified verbally the Respondent on his desire to exit the employment which resulted for the Respondent to convening a meeting (01) which was followed by a mutual

separation agreement (Pl). He submitted that there is no legal requirement for mutual separation agreement to be signed by a witness. That the alleged Vicent Gakula attended a meeting as an observer and not as a witness as alleged by Applicant. He submitted that a one month salary paid by the Respondent to the Applicant was not in relation to paragraph 13(a) of exhibit P2, but specifically confined within the scope of the mutual separation agreement. He submitted that there is no any specific provision of the law which requires mutual separation agreement to be signed in all pages or by all parties. According to the evidence presented at the CM A, there were two versions of story regarding facts and reasons culminating to the termination of the Applicants contract of employment. Sebastian Mpemba who is human resource and testified for the Respondent, asserted that he was approached by the Applicant who explained his intention to quit job citing family problem at Madaba which needs his personal attention. On the other hand, the Applicant alleged to have been hood wicked by the human resource to sign papers with empty contents. 3 One could ask, why the Respondent did not ask the Applicant to deduce into writings his desire to terminate the employment, instead of going around and embarking into a procedure of convening a meeting and crafting minute with agenda exhibit D2, doing codification of what otherwise could have been done by the Applicant himself. Be as it may, the Applicant is still caught under his own web by his deed appended in minutes, exhibit D2 and letter of mutual termination exhibit Pl. A plea by the Applicant that he was lured by the human resource to append signatures on papers with empty statements or contents, is uncalled for. It is awkward to say the Applicant who is literate could be made easily to append signatures on empty papers, one signature at the top and the other at the bottom, as alleged. Above all, when he was cross examined, the Applicant said he signed believing it to be a letter for terminating his employment. As alluded by the Arbitrator, the Applicant story was marred by discrepancy, at first alleged he was stopped by one Rayan who is a director, because of dust occasioned by shortage of water. Later asserted his accusation was speed. Thereafter disowned contents in exhibit D2 and Pl, on the explanation that, content therein were fraudulently inserted thereafter post signing. 4 The alleged particulars of fraud grounding that the documents ought to be signed by a witness, namely Vicent Nyanda Gukalu, are baseless. As alluded by the Respondent, that there is no legal requirement that mutual separation agreement, need to be signed by a witness. All in all, as I have said earlier, the Applicant is now estopped denying his own deed. In the case of Simon Kichele v. Aveline M. Kila we, Civil Appeal No. 160 of 2018, Court of Appeal of Tanzania at Mwanza, the court said that: 'It is settled law that parties are bound by the agreements they freely entered into and this is the cardinal principle of the law of contract. That "is, there should be a sanctity of the contract as lucidly stated in Abualy Abhai Azizi v. Bhatia Brothers Ltd [2000] T.L.R 288 at page 289, thus:- "The principle of sanctity of contract is consistently reluctant to admit excuses for non-performance where there is no incapacity no fraud (actual or constructive) of contract is consistently reluctant to admit excuses for non-performance where there is no incapacity no fraud (actual or constructive) or misrepresentation, 5 and no principle of public policy prohibiting enforcement' It is to be noted that, termination of the contract by mutual agreement are one among the legal ways of terminating an agreement, as provided under the provision of Rule 3(2)(a) and 4 of the Employment and Labour Relations (Code of Good Practice) GN No. 42 of 2007. For easy reference rules 3(2)(a) and 4(1) provides inter alia that: '5.- (1) NA

- (2) a lawful termination of employment under the common law shall be as follows-
- (a) termination of employment by agreement, 4.-(1) An employer and employee shall agree to terminate the contract in accordance to agreement' From the quoted provision of the law, the act of the Applicant to enter into mutual agreement to terminate his contract of employment with the Respondent, is legally acceptable. Further to that, even the contract of employment tendered by the Applicant exhibit P2 at clause 13(a) allows the parties to enter into mutual separation agreement. Therefore, the termination was within the dictate of the terms and condition of the contract entered between them. 6 In labour matters It is upon the employer to prove if the employee allegation that he was terminated unfairly is false, as provided under the provision of section 39 of the Employment and Labour Relation Act {supra}. To this end the employer tendered minutes for mutual separation, exhibits DI and agreement for mutual separation exhibit PI to prove that the Applicant contract of employment exhibit P2 had come to an end. Therefore, the question of consent and knowledge pleaded by the Applicant, is an unbearable. A complaint by Applicant that exhibit PI ought to be signed on all pages, is legally unfounded. Regarding an argument that the act of the Respondent to pay one month salary, portray the motion was initiated by the Respondent. Certainly true, but as I have said above, the Applicant is bound by the terms of exhibit PI as contemplated under clause 4(b). Therefore, he is estopped in law to twist on the other way round. This is because the evidence suggest the Applicant was fairly terminated through a mutual agreement entered by them. In a totality, the Applicant failed to prove the allegation of use of undue influence or fraudulent or trick on the mutual separation agreement between him and the Respondent. In other word, he willingly signed the contract as a result he is bound with the terms and condition in the 7 agreement including the payment of TZs 1,836,268.86/= and certificate of service, exhibit D2. The Applicant claim of seven months' salary for breach of contract, is baseless. The decision of CM A is hereby upheld. The Applicant application is dismissed for lack of merit. No order as to cost. 8

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://media.tanzlii.org/media/judgment/177127/source_file/heri-pius-lwena-vs-ruvuma-coal-limited-2023-tzhc-17965-15-june-2023.pdf

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/heri-pius-lwena-v-ruvuma-coal-limited-mutualseparationagreement-tzhc-2023>

Prepared on 14 October 2026 · Esheria