

TANZANIA / JUDGMENT

hamis uledi makumbuli 147 others vs lsg sky chefs 2023 tzhcld 1428 25 september 2023

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25 September 2023

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IN THE HIGH COURT OF UNITED REPUBLIC TANZANIA LABOUR DIVISION AT DAR ES SALAAM
LABOUR DISPUTE NO. 04 OF 2022 HAMIS ULEDI MAKUMBULI AND 147
OTHERS.....COMPLAINANTS VERSUS L.S.G. SKY CHEFS.....
RESPONDENT

JUDGEMENT

Date of first order: 01st Sept. 2023 Date of judgement: 25th Sept. 2023 OPIYO, J. The complainant filed this Labour dispute before this Court so as the order could be issued against the respondent to accomplish a negotiation regarding salary increment for the year 2014 and 2015 as per Collective Agreement between CHODAWU and LSG SKY Chefs. The brief background which gave rise to the complaint at hand is that, on 16th May 2012, the complainant being workers' union had a discussion with employer on improving social welfare of the workers, including salary increment, subject to the condition that salary increase will be once in two years' time and will commence on the 1st of April of 1 each year. On process of implementing negotiation, the employer intended to implement the 12.5% increase effective from 01st November 2014 backdated to April 2014, the further 12.5% increase will be implemented on 01st April 2015 [See Exhibit P-3]. Aggrieved with the decision, the complainants filed a Labour Dispute No. CMA/DSM/TEM17/2015 to the Commission, at this level the Mediation failed, hence the present application. In hearing the complainant called one witnesses, namely, Hamis Uledi Makumbuli, who testified as PW1, also tendered exhibits P1, namely Memorandum of Agreement, exhibit P2, a wage Negotiations dated 07th November 2014, exhibit P3 employer's letter regarding wage negotiations. The respondent called only one witness Elia Patrick Mshana who testified as DW1. In his testimony, PW1 testified that he is working with inflight catering services by the name of LSG Sky chefs as a menu development Sous Chef. Apart from being a sous chef, he is also a Chairperson of CHODAWU branch at employers working place. He stated that the branch has 15 members, as a leader of Trade Union one of their roles is to negotiate with the employer on rights of worker and having collective 2 agreements. He added that they had a collective agreement with the employer it was ending with the existence of another agreement. On the issue of salary

increment he testified that at item 9.4 they agreed for annual increment for two consecutive years, as per collective agreement of 2012. He went on to testify that between 16th September to 17th September 2014 and 21st and 22nd October 2014 they had a negotiation about salary increment. In the negotiation the increment was 25% for two consecutive years covering 2014 and 2015. The implementation was done by paying 12.5% for the year 2014 and 12.5% for the year 2015. According to him, this was contrary to what they negotiated regarding the increment of 25% percent annually for the two consecutive years, which was as per practice in implementation of all the previous agreements as per letter issued by respondent dated 07th November 2014 which was admitted as exhibit P2. He added that after receiving the letter they replied via email to object the division of the percentage contrary to the agreement. But, the employer replied by insisting on her position by paying 12.5% in the first year and 12.5% in the following year. She tendered as exhibit P3, the said reply by respondent of 20th November 2014 insisting on position of 3 not increasing 25% percent in wholesome. She stated that, such reply was wrong as it breached what they had agreed. They thus, prayed for this court to order the respondent to award the 12.5% salary increment that was reduced from their salaries in the year 2014. In cross examination, he stated that the tendered agreement of 2012/2014 as exhibit P1 and the exhibit does not state anything relating to 25% increment. According to him he did not tender any other collective agreement before the court than that. He further added that there is no such agreement stipulating 25% increment. Regarding the validity of collective agreement, he averred that, he was not sure whether it should be signed by both sides to be effective, although he knew that contract is an agreement, and every agreement is a contract. In further cross examination, he said that the title of the letter in exhibit P2 is a reply regarding wage negotiations styled in Swahili as 'Mrejesho wa Majadiliano ya Mshahara'. He said according the respondent, what was going on between the parties was negotiation and her reply letter issued by the respondent was a decision that she will pay 12.5% in the 4 first year and 12.5% on the following year. He further added that he is not sure if the negotiations reached the agreement. But they brought the dispute because there was reduction of 12.5% percent from their 2014 salaries. In re-examination, he voiced that, the gist of their agreement for 25% increment is the agreement of 2012, and they saw no need to enter into a new agreement. The end of the complainants' case was straight away followed by the defense case in which only one witness DW1, respondent's Human Resource testified. He stated that, in his position he worked for more than 10 years. In the year 2012-2014 there was collective agreement between the parties signed on 16th May 2023 as per exhibit P1. That According to this agreement at item 4.3 it is stated that, the contract would expire upon substitution with another agreement, after parties signed this contract in 2012 the next one was in 2016. But in 2014 no any contract was entered. According to that agreement that had been submitted as exhibit P1, it does not show any increment of salary up to 25%, what was going on was just negotiation between them for the increase. The negotiations did not reach conclusion. Therefore, they had 5 no agreement signed by both sides, as per exhibit P2 and P3. According to him, exhibit P2 and P3 shows continuation of negotiations and what was to be implemented and so far no contract is talking about salary increment of 25% at once. He is of the view that since there is no such agreement, he prayed for this court to dismiss this application for lacking merits. In cross examination he testified that, he was employed by respondent from 11th March 2023. He

added that the negotiations did not reach consensus as no contract was signed by both sides as the result of the negotiations. According to him, the negotiations reached a deadlock; he declared that he does not know when there is deadlock what should happen. In further cross examination he said that exhibit P2 were written by the respondent, they agreed on the payment of 25% but the position of respondent was that the 25% be paid in form of 12.5% on the 1st year and 12.5% in the following year. He added that, the negotiations that ended in agreement is the one implementable. That the employer decided to pay based on exhibit P2 awaiting the conclusion of 6 negotiation by having a binding agreement. In re-examination he stated that, the negotiations between the parties were on 25% but they never concluded for the same to acquire a status of being a contractual agreement. He therefore prayed for the suit to be dismissed for lack of merits. After the defence case was marked closed, the complainant's advocate filed their final closing submissions which will be considered in the course of answering the issues as they become particularly relevant. Now having considered pleadings and evidence adduced by the parties the issue which requires this court's determination is whether the complainants qualified to be paid the alleged unpaid 12.5% salary increment for the year 2014? In answering the disputed question, the evidence available included Exhibit P1 (Memorandum of Agreement) and exhibit P2 and P3 (Letter of wage Negotiations). The three documents considered together with the oral testimony of both sides justify that there was negotiations between the parties regarding the salary increment of 25% percent. However, the alleged increment has neither been stipulated nor agreed by the 7 parties in a Memorandum of Agreement between CHODAWU and LSG SKY Chefs of 2012/2014. On that basis, till 20th November 2014 there was no settled agreement between them on the same. That's means there was no consensus ad idem between the parties regarding how the negotiated salary increment of 25% was to be implemented. Since the complainants in this matter pleaded the negotiable salary increment of 25% percent was to be implemented in wholesome, that means, they are bound by that averment in conformity to the general rule that the parties are bound by their pleadings. In the case of *Astepro Investment Co. Ltd v. Jawinga Investment Limited*, Civil Appeal No.8 of 2015 (unreported) it was held that:- "...parties are bound by their own pleadings...the function of the pleading is to give notice of the case to a party must therefore, so state his case that his opponent will not be taken by surprise. It is also to define with precision the matters on which the parties differ and the points on which they agree, thereby to identify with clarity the issues on which the court will be called upon to adjudicate and determine the matter in dispute." Since that is what they set as their case, they ought to prove the same to the balance of probability. It is a general rule that, one who alleges 8 must prove as per section 110 of the Law of Evidence Act, Cap. 6 RE

2019. From the evidence available, the basis of the complainants' claim that the salary increment of 25% was to be paid in whole from the first year is not documented anywhere. The clause 9.4 of the exhibit P1, Collective Agreement which Mr. Nzowa rely on as an enabling clause justifying the claim does not talk of that fact. it only documented that there would be salary increase once in two years' time that was to commerce on 1st April of each year. It means the amount of increase and the mode of increase was left to the subsequent negotiations. As exhibit P2 and P3 shows that the negotiations were not finalised, I hesitate to conclude

that splitting the increment to two phases was in breach of the above clause as argued by Mr. Nzowa in his final submission. I would confidently see merit in the claim if the alleged salary increment deduction were initiated as per vivid agreed terms. But, as there is no such record, I have no hesitation to say that complainants' claim regarding application of an agreement between CHODAWU and LSG SKY Chefs as contested by the complainants in initiating payment of 25% as a salary increment lacks merits. This is especially because according to clause 9.5 of exhibit P3 the salary increment was subjected to employer's performance and country's economic performance, so it was prone to further negotiations depending on the two performances. 9 From the above discussion, I find the whole case to have not been proved at the required standard. Hence, the suit dismissed for lack of merits. It is so ordered. M. P. OPIYO, JUDGE 25/9/2023 10 11

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Prepared on 14 October 2026 · Esheria