

TANZANIA / JUDGMENT

MONIC PAUL MASANJA V

COURT
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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA SHINYANGA SUB REGISTRY AT SHINYANGA LABOUR REVISION NO. 13 OF 2022 (Arising from Labour Dispute No. CMA/KHM/07/2022 delivered on 28th October 2022) BETWEEN MONICA PAUL MASANJA..... APPLICANT VERSUS KAHAMA PLASTIC INVESTMENT (T) LTD.....RESPONDENT

JUDGMENT

6th March & 5th April 2024 MASSAM, J.: Dissatisfied by the decision of the Commission for Mediation and Arbitration (CMA) in Application No. CMA/KHM/07/2022, the applicant has filed this revision seeking revision of the CMA proceedings and award. The application is further supported by an affidavit of the applicant and the same was opposed by the counter affidavit of the respondent. The applicant's affidavit is to the effect that, she was employed by the respondent as Sewing Machine Operator in a two-year contract from 1/10/2020 up to 30/9/2022. She was supposed to produce 4,000 plastic 1 sacks per day at the remuneration of Tshs. 222,500/=. On 29/9/2021 the respondent changed the target from 4,000 sacks to 4,500 sacks which was not part of the contract. The applicant informed the respondent that she will not be able to meet the new target due to health problems and gave him medical report from Kahama Hospital dated 13/2/2021. However, the respondent decided to transfer her to another position which was more dangerous to her health than the previous one called "Operator wa Machine ya Kusaga Plastic". She asked the respondent to return her to the former position he refused and on 4/1/2022 a disciplinary hearing was conducted which led to her termination on 12/1/2021. Aggrieved by the termination, she referred the matter at CMA where it was decided in favour of the respondent that there were valid reasons for her termination due to a series of misconducts conducted by the applicant. Being dissatisfied with the award of the CMA, she preferred the present application for revision based on the following grounds: I quote

1. That, the Arbitrator erroneously failed to observe that I did not showcase any misconduct rather than further requested the 2 Respondent to comply with prior contract which did not come to an end given health conditions.
2. That, the Arbitrator had failed to see that it was Respondent's unpleasant action that forcefully and pressurized me to seek for my benefit out of my voluntary. When the matter was called on for hearing, Mr. Abas Mkiramweni from TIPAWU represented the applicant,

whereas the respondent enjoyed legal services of advocate Happy Mgalla. The application was argued by way of written submissions. Submitting in support of the application, on the 1st ground, counsel for the applicant argued that when the respondent changed the target from 4,000 sacks to 4,500 sacks, the applicant informed him that she will not be able to meet the target due to her health problems and gave him a medical report. She submitted further that the respondent decided to transfer her to a new position which was more dangerous to her health, and when she requested to be returned to her former position, there was a misunderstanding which led to her termination. The said act led the Arbitrator to term it as insubordination and a refusal to report to a new working station. It was his further submission that during the disciplinary hearing no investigation was conducted, and no report was submitted before the committee as required by Rule 13 (1) of the Employment and Labour Relations (Code of Good Practice) GN No. 42 of 2007. Thus, he was of the view that the decision of the Arbitrator was improper and in favour of the respondent. In her reply, Ms. Mgalla submitted that the respondent followed all the procedures as required by the law before terminating the applicant that's why the Arbitrator confirmed their decision. She argued further that when the respondent changed the target from 4,000 to 4,500 sacks the applicant refused to meet the new target alleging that she was sick. Thereafter to avoid confusion among other workers the respondent decided to transfer her to another new position which does not need special skills or knowledge, but she refused to work there without any justifiable reasons. It was her further submission that, the issue of procedure and misconduct was not raised and determined at CMA, thus, to raise the same at this stage it will be just an afterthought. As Rule 12 (2) (3)

- (f) of GN No. 42 of 2007 pronounce insubordination as a serious misconduct, that's why the applicant was terminated after showing misconduct. He supported his argument with the case of Poly Oak Packaging (PTY) Limited v. Siquibo No. & Others, case No. 236 of 4 2008 (Unreported) as cited in the case of Samwu obo Lungile Felicia
- v. Commissioner for Conciliation, Mediation and Arbitration and Others, case No. JR 2195/14 (Unreported). Regarding the 2nd ground of application, counsel for the applicant submitted that the Arbitrator failed to see that the respondent was forcefully and pressured the applicant to demand her benefit. He added that this was not on record as the Arbitrator disregarded the evidence of the applicant when he was testifying at the CMA. So, he prayed for the whole proceedings of the CMA to be set aside, to announce that the applicant's termination was unfair and to allow the application. Responding to this ground, Ms. Mgalla submitted that the applicant failed to submit any evidence to support this allegation. further, the respondent tried his best to continue with the employment relationship with the applicant after the allegation of illness which was never communicated to him prior to the entering of the contract. she submitted further that the respondent conducted a disciplinary hearing to see if the applicant will change her mind, but she refused to do so, Thus, she prayed for the application to be dismissed for want of merit. 5 Before determining this application, I wish to look at the issues framed at CMA as they are reflected in the proceedings, the issues framed were as follows; -

1. Whether there was valid cause for termination.
 2. Whether fair procedures for termination were followed.
 3. Reliefs parties are entitled. I now proceed to determine the application, and the following issue will guide my determination. First, whether the arbitrator was justified to hold that the applicant was fairly terminated. Second, whether the arbitrator was justified to hold that the procedures were properly followed. Starting with the first issue of whether the arbitrator was justified to hold that the applicant was fairly terminated, the law on termination of employment contracts in Tanzania is largely governed by the Employment and Labour Relations Act No. 6 of 2004 (ELRA) and the Employment and Labour Relations (Code of Good Practice) Rules, 2007 (Code of Good Practice). Section 37 of the Act provides that: 6 "37 (1) It shall be unlawful for an employer to terminate the employment of an employee unfairly.
- (2) A termination of employment by an employer is unfair if the employer fails to prove:
- (a) that the reason for the termination is valid
 - (b) that the reason is a fair reason:
 - (i) related to the employee's conduct, capacity, or compatibility, or". Further Rule 12 (2) (3) (f) of GN No. 42 f 2007 provides that: "(2) first offence of an employee shall not justify termination unless it is provided that the misconduct is so serious that it makes a continued employment relationship intolerable.
 - (3) the acts which may justify termination are –
 - (f) gross insubordination." See also the case of Jimson Security Service v. Joseph Mdegela, Civil Appeal No. 152 of 2019 (CAT at Iringa, Unreported). 7 In our present application, the main reasons that led the respondent to terminate the applicant was his refusal to report to his new position after she alleged, that she was sick and she will not be able to meet the new target of producing 4,500 sacks per day she said that she had a health problem of back pain. At the CMA, DW1 tendered exhibit D2 (Letter for clarification) an exhibit D3 (which allow the applicant to attend medical treatment) however the applicant prayed to be retained in the previous work. On 11/11/2021 the applicant was transferred to another position which is based on teamwork due to her health problems, but she refused to attend until 17/11/2022 when they wrote her another letter asking her if she will report or not. See exhibit D5. But she refused to report and insisted to be retain to his previous work or be dismissed, see exhibit D6 and 7. Later she was called in disciplinary hearing, and she was terminated due to insubordination and refusal to accept new work position. On her side, the applicant alleged that she did not refuse to work in a new position, but she insisted the respondent to return her to previous position. Thus, as she refused to report to a new position she was alleged in a disciplinary hearing and later she was terminated. 8 Based on the above evidence, it is clearly that there was a valid reason for the respondent to terminate the applicant due to her refusal to report to a new working position as respondent was considerate by changing her from individual work target to the team work target after the applicant submitted medical

report that she was suffering from back pain and she could not be able to meet the new target, but she refused to report which led to her termination that refusal of the applicant can be termed as insubordination as the respondent was her employer so it was not right for her to refuse to follow her employers direction without a good cause, what applicant was required to do was to report to her new working position and if she find any difficult on it she was supposed to report it to her employer and not to refuse to report as she did, regarding that she was the one who complained to her boss that she could not meet the target to her previous working place as she was sick so how could her again insisted to be returned to that working place .For those reasons, this court do agree with the CMA that the respondent had a valid reason to terminate the applicant as per Rule 12 (2) (3) (f) of GN 42 of 2007. Coming to the second ground of whether the procedures were followed, this court is of the view that since the applicant admitted 9 herself that she did not attend to her new position as she wanted to return to his previous position. And because she gave no reasons of doing so .Thus, there was no need for investigation on the matter which does not need to be investigated as everything was straight forward so, the respondent did not violate Rule 13 (1) of GN No. 42 of 2007 and this court was in view that the procedures were well followed. As for the last issue of what reliefs parties are entitled, since the termination was both substantively and procedurally fair and the applicant was already given her entitlements upon termination, there is no reliefs which she is entitled to from the respondent. Basing on the above deliberations, this application is found with no merit. The award of the tribunal is left undisturbed. As this matter is labour dispute, I would refrain from giving orders as to costs. It is so ordered. DATED at SHINYANGA this 5th day of April, 2024. R.B. Massam JUDGE 5/4/2024 10 11

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