

TANZANIA / JUDGMENT

SAMU SECURICOR INTERNATIONAL LABOUR SALARY ARREARS 22

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6 June 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB - REGISTRY OF SHINYANGA AT SHINYANGA LABOUR REVISION NO. 202403131000005319 SAMU SECURICOR INTERNATIONAL LTD.....APPLICANT VERSUS

1. MARTIN MSENGI KINGU
2. SHABAN HAMISRESPONDENTS
3. HAMFREY MUGUNDA [Application from the decision of the Commission for Mediation and Arbitration for Shinyanga at Shinyanga.] (Hon. A. Massay.) dated the 15th day of December, 2023 in CMA/SHY/81/2022

JUDGMENT

8th May & 6th June, 2024. F.H. MAHIMBALI, J.: 1 This labour application, has been filed by the Applicant by way of chamber summons and notice of application, in terms of the provisions of sections 91 (1) (a) & (b) (2) (a) & (b)(3) 91(3) and section 94(1)(b)(i) of the Employment and Labour Relations Act, 2004, Act No. 6 of 2004 Cap. 366 RE 2019 and Rule 28 (1) (c) and Rule 24 (1), 24(2) (a) (b)(c)(d)(e)(f) and 24(3)(a)(b)(c) of the Labour Court Rules, 2007, G.N. No. 106 of 2007. In the chamber summons, the Applicant firstly, prays for this Court to revise the decision of the Commission for Mediation and Arbitration at Shinyanga, in dispute No. CMA/SHY/81/2022 which was delivered on 15th December, 2023. Secondly, the applicant prays for stay of execution of the said Award, pending revision application of the same. The application is supported by an affidavit sworn by the Deputy Managing Director of the applicant on 27th December, 2023. Brief facts of the matter as can be gathered from the records is to the effect that, respondents were working for the applicant in a position of security guards. Sometimes in July 2023, respondents came to learn that, as per the introduction of the Minimum Wage Order Regulation GN 687 of 2022 which came into operation on 1st January, 2023, their salaries ought to have been not less than Tshs. 148,000/=. Consequently, respondents started claiming for their salary arrears. 2 Despite the claim, the applicant did not heed to it. Learning that the applicant does not want to pay them, respondents resorted into referring their dispute to the labour officer, who after conversation with the

applicant, the labour officer issued a compliance letter of 25th July, 2023 which informed and ordered the applicant among other things that, one, as from 1st July, 2023 respondents were entitled to be paid salaries of not less than Tsh. 148,000/= and two, required the applicant to pay respondents' salary arrears that came into existence after the introduction of the Minimum Wage Order Regulation GN 687 of 2022. The records provide further that, instead of adhering to the compliance letter by the labour officer, only after a lapse of six days, the applicant decided to terminate the respondents. Eagerly to get their salary arrears' right, respondents decided to file this dispute to CMA. At CMA, the matter was heard and finally decided in respondents' favor, whereby, the applicant was ordered to pay respondents' salary arrears in the sum of Tshs. 798,000/= That decision by the CMA aggrieved the applicant, hence this application for revision. On 8th May, 2024 the application came for hearing. On that day Ms. Grace Egha, Advocate, represented the applicant whereas respondents appeared unrepresented. 3 In support of the application Ms. Egha firstly prayed for the applicant's affidavit be adopted, to form part of her submissions. Then she stated that, all respondents are not entitled for the salary arrears claims. Expounding to that position, she gave the reasons that, the first respondent had already resigned since way back before the introduction of the Minimum Wage Order Regulation GN 687 of 2022. However, she stated that, the 1st applicant was then working with the applicant under special arrangement whereby he was paid instantly. With this submissions Ms. Egha meant that, the 1st respondent was just a casual worker not intended to benefit from the introduced Minimum Wage Order Regulation GN 687 of 2022. As for the 2nd and 3rd respondents Ms. Egha submitted that, the same agreed to sign a contract which stated that they would be paid Tshs 110,000/= monthly. With their signing the contract, Ms. Egha is of views that, these respondents are estopped from claiming for a higher salary than the agreed ones and thus, they should not get benefit from the introduction of the Minimum Wage Order Regulation GN 687 of 2022. In reply to the applicant's submissions, the best that respondents could do, was firstly, to deny the allegations put by the applicant's counsel and secondly, prayed to adopt their counter affidavits, to form 4 part of their submissions. Rejoining to the respondents' replies, Ms. Egha just reiterated her submission in chief. I have keenly gone through parties' submissions and the entire records concerning this case. I have also taken into consideration the rival issues between parties. From the submissions by Ms. Egha it is vivid that, the applicant does not object that the 2nd and 3rd respondents were employed by the applicant. Only what the applicant disputes is that, these respondents are not entitled to a higher salary than what they agreed and signed its contract. What the applicant should understand is that, relationship between employer and employee is regulated by laws of the country which includes the Employment and Labour relations Act, (ELRA) the Labour Institutions Act (LIA) and others. Section 35 of the Labour Institutions Act empowers the Minister to appoint a wage body. Section 36(1)(C) of the same Act provides for functions of the wage board which includes making recommendations to the Minister on a minimum wage and conditions of employment on different sectors. The recommendations made by the wage board to the Minister is what gives birth to the wage order as per section 39(1) of the same Act. 39.-(1) After considering the report and recommendations of the wage board and the Council, 5 the Minister shall make a wage order determining the minimum wage and other conditions of employment for employees in any sector and area of economy. It follows then that, the introduction of the minimum wages

order binds all employers in a particular sector and they are required to inform their employees on it as per section 39(7) of the LIA. 39(7) Every employer shall keep workers informed of the minimum wage rates in force by posting notices at the workplace or by any other more effective means. As the current Minimum Wage Order Regulation GN 687 of 2022 has set a minimum remuneration for employees in some sectors including private security service of Tshs. 148,000/= then, it follows therefore that, no matter any payment, employer and employees had agreed as their remuneration, introduction of the Minimum wage order raises it and binds all employers in that sector, to meet it. On that account, these respondents, were entitled to be paid salary according to the new minimum wage order. Concerning the 1st respondent that, he had resigned and later continued working for the applicant as a casual worker. These allegations were denied by the 1st respondent. The 1st respondent maintained that, by the time that the new wage order was introduced, he was an employee of the applicant till his job got terminated. 6 It should be known that; these same parties, once had a labour dispute at CMA and this court, concerning the issue of unfair termination. That case is LABOUR REVISION NO. 20231229000028639 OF 2024. Under the dictates of section 59 of the Evidence Act, I had to take judicial notice by earnestly passing through that former case between these parties herein. Proceedings in that former dispute between parties as regards unfair termination, this applicant herein is seen on the following averments; Firstly, the applicant does not dispute that all respondents were her employees, secondly, the applicant avers to have needed respondents to submit their personal details to keep proper their employment details and lastly, the applicant is seen to have blamed that it is the respondents who have terminated their employment by absconding from job after they were demanded to keep their employment details properly. With the above endeavor, had the 1st respondent been a casual worker then, the applicant would have maintained that position in that former case. It follows therefore that, these changes by the applicant are just a mere tack ticks to hide the truth concerning employment status of her employees. 7 On that account, I am of firm views that, the 1st respondent like the 2nd and 3rd ones, also deserves to benefit from the new wage order. On that note, I find no point to fault the award by the CMA. Thus, this applicant's application for revision is meritless, hence dismissed. It is so ordered. DATED at SHINYANGA this 06th day of June, 2024. F.H. Mahimbali Judge 8

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