

TANZANIA / JUDGMENT

REV NO 6934 OF 2024 SARAH MONYO VRS EXIM BANK T LIMITED

COURT
TANZLIIDECIDED
1 January 2024

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

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA (LABOUR DIVISION) AT DAR ES
SALAAM LABOUR REVISION NO. 4934 OF 2024 CASE REFERENCE NUMBER 202403251000006470
SARAH MONYO APPLICANT VERSUS EXIM BANK (T)
LIMITEDRESPONDENT

JUDGEMENT

Date of last Order: 15/ 05/2024 Date of Judgement: 21/ 05/2024 MLYAMBINA, 3 . The application at hand emanates from the following background; the Applicant was employed by the Respondent as a Bank Officer One (BO1) since 15th January, 2014. She was terminated from employment effective from 24th March 2022 on the allegation of gross negligence, the fact of which will be apparent herein. Aggrieved by the termination, the Applicant referred the matter to the Commission for Mediation and Arbitration (herein CMA). After considering the evidence of the parties, the CMA dismissed the Applicant's claim. Again, being unhappy with the CMA's decision, the Applicant approached this Court calling for determination of the following issues:

- i. Whether the Arbitrator erred in fact and law by failing to analyze and consider evidence adduced by the Applicant and thereby erroneously holding termination fair. ii. Whether the Award was made without considering special circumstances as to what was termed as gross negligence. iii. Whether it was proper for Hon. Arbitrator to rule in favour of the Respondent where the Criminal Case was never put to trial and no one including the Applicant was never found guilty beyond reasonable doubt. iv. Whether there is error material to the merits of the said Award occasioning injustice on the part of the Applicant hence this application. The application proceeded by way of written submissions. The Applicant was represented by Counsel Mr. Faraji Mangula, and Mr. John Ignace Laswai, appeared for the Respondent. I have dully considered the rival submissions of the parties. In my view, the grounds at hand can be summarised to two issues namely; whether the Arbitrator properly considered the evidence on record and to what reliefs are the parties entitled. To start with the first issue, it was Mr. Mangula's submission that termination was unfair because since employed the Applicant has never been subjected to any disciplinary actions of any kind. At all times, she was working under the best interest of the Respondent by using the SYBRIN system as directed by the Respondent. Thus, in the course, the SYBRIN

system was supposed to detect and stop any transactions where the client has no money in his/her bank account. He continued to state that the Respondent, without mercy, terminated the employment on account of gross misconduct which led for the loss of TZS 000/= on part of the employer following Applicant's actions to rely on the SYBRIN system and processed two cheque of the client worth the same. Further, Mr. Manguia was of submission that as per the SYBRIN system, it is impossible to process the cheque where the account of the client has no balance. He added that; on the material date, the system allowed the transaction to complete while there was no balance without restriction. Hence, it was difficult for the Applicant to know. He submitted that the system revealed later after the process have completed and the client withdrew all the monies. It was his submission that it is the SYBRIN system which was in default due to malfunction or technical problem. As regards the issue of using other workmate username and password, Mr. Mangula submitted that, the Applicant in her position as Bank Officer, was neither in a superior position nor final decision maker. On material date, the Applicant was working in two positions due to pressure of work. There was no back-office officer on that day. Thus, it was the best practice to facilitate transactions. When the SYBRIN system had already authorized, and if there was no balance, she proceeded to complete the transactions and that does not any in anyway render on her part as gross misconduct. Mr. Mangula continued to state that to date the Respondent has never cooperated with police to arrest and detain the culprit, hence there is no criminal case or judgement of the Court to conclude that there was theft beyond reasonable doubts. He continued to state that Respondent conducted investigation dishonestly by giving false Police Report Book Number ("UD/RB/93/2022 KOSA WIZI") to the Applicant where she later discovered the same has never been registered in Mlimani Police Station, hence it was difficult for the Applicant to use other police officers to arrest the culprits and bring to justice and even pay the amount of money which was procured from the malfunction of the SYBRIN system. He added that, that is why Applicant was honest and in a very special case scenario used PW2 the police officer helped to locate the culprits but that movements were never encouraged by the i Respondent. He continued to state that all these shows that Applicant was acting neither unprofessional nor negligently as it has been proved at page number 10 paragraph number 5 of the typed Award where Respondent's witness (DW2) confirm this position by testifying under oath that when the account of a client has no money, the systems reject. As to what happens when the account had no money, he submitted that DW2 said the system rejects but there are no professional reasons as to why the system allowed transaction to complete where there was no balance in the account of the client. With that, he added; any doubt should be resolved on the part of the Applicant who had clean records. He supported his point by referring to the case of DHL TZ Ltd v. Ramadhani Hamisi, Revision Application No. 4572021 at page No. 17 and 18 (unreported) where the Court was strongly convinced by the case of Twiga Bancorp (T) Ltd v. David Kanyika, Labour Revision No. 346 of 2013 where the Court defined what is gross negligence and the same on page number 18 of the same case the Court was also compelled to be convinced with the case of Tanzania Revenue Authority v. Thabit Milimo And Another, Labour Division No. 246 of 2014 (2015) LCCD 1 (191). He added that in this particular case,

Applicant was diligent as if she was not then she would have processed the same without using SYBRIN system. Then for him that would be gross negligence and for that he prayed for this application to be allowed by quashing and setting aside the CMA Award. In addition, Mr. Mangula submitted that termination was unfair as there was a lot of remedies for an employee who has clean records with no history of fraud or any disciplinary hearing and was terminated while pregnant following several pregnancy miscarriages due to work overwhelming. He stated that Applicant was never given chance to find the culprit and restore the amount withdrawn as provided in the code of conduct guidelines, item number 7 (Viii) provided at annexure EBTL 2 of the Respondent's Counter affidavit which states that where there is loss, the Applicant was required to meet liability in whole or part and the same was never done. He then submitted legal issues number two and three jointly that as per testimony of DW2 the criminal case is still pending for the Applicant as seen at page number 11 paragraph number 3 of the typed Award. He stated that this is double jeopardy as the Applicant will be punished twice contrary to principles of The Constitution of the United Republic of Tanzania, 1977 As Amended Under Article 13(6) b of which the same is prohibited under Section 37(5) of the Employment and Labour Relations [CAR 366 Revised Edition 2019]. Mr. Mangula continued to submit that, by that pending criminal case, the Applicant is innocent until proven guilty. He proceeded to state that; in this case, by terminating the Applicant and waiting for her for another criminal case, is like she is guilty until proven innocent. He stated that; the Arbitrator wrongly dismissed the Applicant's complaint as by malfunction of the SYBRIN system, the Arbitrator ought to have considered the testimony of the Applicant in reaching unjust conclusion. He added that; the testimony of PW2 found at page number 17 of the typed Award was never considered at all in the whole Award. He then supported his point by referring to the case of Abel Masikiti v. The Republic, Criminal Appeal No. 24 of 2015 at page No. 6 (unreported) which held that the Court is not allowed to disregard evidence for analysis. In response to the application, Mr. Laswai strongly submitted that the Arbitrator properly considered the evidence on record and arrived to just decision. It was submitted that the Applicant's negligence caused loss to the bank. Therefore, the misconduct in question justified the termination. In support of his submission, he referred the Court to the case of John Batista v. SOS Children's Village Tanzania, Labour Revision No. 244 of 2023, High Court Labour Division, Tanzania. He also cited numerous cases which elaborates termination on the ground of negligence. He further submitted at length how the misconduct was proved. He therefore urged the Court to dismiss the application for lack of merit. As per the termination letter (exhibit D14), the Applicant was terminated on the ground of gross negligence as per Employment and Labour Relations (Code of Good Practice) Rules, 2007 number 12(3)(d) effective from 24th March 2022. It was alleged that while serving the bank as Bank Officer I at Hillpark Branch, on 26th November 2021, the Applicant authorised two transactions with Cheque numbers 000123 and 000124 amounting to TZS. 30,000,000/= each from account number 0140013063 maintained by SHAMAH LOGISTICS LTD to account number 0011055311 maintained by ALIASGHER AKHTER KHAKOO without considering proper cheque confirmation procedures. Before being summoned to disciplinary hearing, the Applicant was served with

the demand letter (exhibit D4), where she was asked to respond to the above allegations. In her reply to the demand letter (exhibit D5), the Applicant admitted the following:

- i. That, she was involved in the transaction of the mentioned cheques and accounts. ii. She also admitted that due to pressure of work, she thought the cheques was worth TZS 3,000,000/=. Therefore, she made a call for verification from the customer. iii. That, after she noticed the discrepancies on the figures, she put the cheques pending waiting to send them to the Domain branch via email as per the regulations but unfortunately and due to pressure of work she did not send them and instead forwarded them together with other many documents to the inputter one SUZANE JOSEPH for initiation of the payment. iv. That, the two cheques together with other documents were received by the inputter as usual for the initiation of payment. That, she did not know what happened exactly on that day, the inputter also blindly proceeded with transaction process despite the fact that the same had neither confirmation seal nor signature at the back of the cheque and they were sent back for the approval together with other cheque she blindly approved them
- v. That, due to pressure of work, she admitted to have requested the SYBRIN password/user right from her colleague one Winnie Materu as there was no any person due to time factor, that if she would have waited to use the user rights of the inputter who was available on that day, they could not finish the task of the day. The above facts were also admitted by the Applicant during disciplinary hearing. The question to be addressed by the Court is; whether the above conducts amounted to gross negligence. The misconduct was defined in the case of Twiga Bancorp (T) Ltd. v. David Kanyika, Lab. Rev. No. 346 of 2013 Dar es Salaam where Rweyemamu X (as she then was) defined the same to mean: a serious careless, a person is gross negligent if he falls far below the ordinary standard of care that one can expect. It differs from ordinary negligence in terms of degree. The elements to be considered in measuring negligence were established in the famous case of Donoghue v. Stevenson [1992] UHKL, 100 which are as follows:
 - i. That there was a duty of care, ii. That there was a breach of that duty, iii. That the breach of the duty caused loss. The above elements were also elaborated in the Tanzania case of Tanzania Revenue Authority v. Thabit Milimo and Another, Labour Division at Dar es Salaam, Revision No. 246 of 2014 [2015] LCCD 1 (191) where Nyerere X (as She then was) held that: In the law of negligence liability arises where:
 - i. There is a duty of care and a person breaches that duty as a result of which, the other person suffers loss or injury/damage. ii. A person acts negligently, when he fails to exercise that degree of care which a reasonable man/person of ordinary prudence, would exercise under the same circumstances. iii. Negligence is the opposite of diligence or being careful. In the instant case, it is undisputed fact the Applicant had a duty to look properly at the cheques presented to her and she breached such duty by mistakenly thinking the cheque was for TZS 3,000,000/=. The Applicant also admitted that her negligence amounted to the loss and she asked for the loss caused. During the disciplinary hearing, the Applicant admitted for the loss and apologized for the loss occasioned to the bank. This is reflected in the disciplinary

minutes (exhibit D8), which I hereunder quote part of the Applicant's mitigation on her own verbatim: Mlalamikiwa alisema kwamba anaomba asamehewe, yeye kama Mfanyakazi wa Exim anasikitika kwa kuingizia hasara Bank. Under such circumstance, it is my view that any error occasioned to the bank cannot be treated as a human error basing on the nature of the business. Thus, the Applicant's allegation regarding human error could have legal stance if it had not occasioned loss. The Applicant went further by requesting the password of her fellow employee so as to facilitate the transaction. Such action also raises doubt why did she conduct herself in such manner? Therefore, the misconduct of negligence was proved in this case. I Furthermore, when appealing against the findings of the disciplinary committee, the Applicant admitted the misconducts committed. This is evidenced by the Letter of appeal against the disciplinary hearing (exhibit D 11), where at paragraph 5 the Applicant stated as follows: That, on the ground of the circumstances in which the misconduct occurred, your esteemed office should have taken into consideration the fact that on the material day of the misconduct, I was alone in the Branch as a supervisor while on normal day there are supposed to be 4 supervisors at the Branch namely Branch Manager, Assistant Branch Manager, Chief Cashier and BOI Supervisor, hence in their absence, as a BOI, I was overwhelmed by the workload that was present at the Branch during that day which hindered my work perfection rate and ultimately led to the misconduct which occurred. I have also noted the Applicant's contention that the Respondent did not report the matter to the police. Let alone the fact that such an issue was not raised before the CMA, such allegation is baseless because even in absence of police case, negligence is one of the misconducts which amounts to termination as it is provided under Rule 12(3)(d) of GN. No. 42 of 2007. Therefore, on the basis of the above analysis, it is my view that the Respondent proved the misconduct levelled against the Applicant and rightly found by the Arbitrator. Turning to the last issue, as to the reliefs of the parties, it is my view that, since the Applicant did not adduce sufficient reason for this Court to fault the CMA's Award. In the end, the application at hand is hereby dismissed on its entirety for lack of merits. It is so ordered. Y.X MLYAMBINA JUDGE 21/05/2024 judgement pronounced and dated 21st May, 2024 in the presence of Counsel Khamisa Nkya holding brief of Faraji Mangula for the Applicant and Khamisa Nkya for the Respondent. Right of appeal Explained. Y J. MLYAMBINA JUDGE 21/05/2024

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/312062/source_file/REV_NO_6934_OF_2024_SARAH_MONYO_VRS_EXIM_BANK_T_LIMITED.pdf

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/sarah-monyo-v-exim-bank-t-limited-UnfairTermination-tanzlii-2024--6a3ea52d3b1caa9129826a57>

Prepared on 13 October 2026 · Esheria