

TANZANIA / JUDGMENT

tpb bank plc vs justin stephen nandonde 2021 tzhcld 104 30 april 2021

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IN THE HIGH COURT OF TANZANIA LABOUR DIVISION AT PAR ES SALAAM REVISION NO. 830 OF 2019 BETWEEN TPB BANK PLC..... / ^.....rf ^PPLICANT v \X x\ VERSUS %/> JUSTIN STEPHEN NANDONDE..... ./M?..... RESPONDENT \X JUDGMENT ^ M Date of Last Order: 10/02/2021 Date of Judgment: 30/04/2021 Cf % Z. G, Muruke. J. ---- r"- XX Justin Nandonde ,was\employed "by applicant on July, 1995 as Banking operation officer?;hawig served in different capacity and branches, he wa\$" ^?er%rom ^ted to the position of Branch Manager, working stationxbejhg ^hzibar Branch. Having worked for 23 years he was terminatedhgn K March, 2018 after being charged and found guilty of three courts snarriely: % 0)F/x> Issuin9 TPB Bank guarantee letters to MKM Zanzibar Investment Company Ltd contrary to TPB Bank lending manual, Section 4.2 and Section 6.2. (ii) Act of gross dishonest by providing misleading statement/information to MKM Zanzibar Investment Company Ltd contrary to Rule 12(3)(a) of Employment and Labour Relations Code of Good Practice GN 42/2007 read together with TPB Bank Staff Regulation, Regulation 7.28.7. Act of gross negligence contrary to Rule 12(3) (d) of Employment and Labour Relations Code of Good Practice GN 42/2007 as read together with TPB Bank Staff Regulation, Regulation 7.28.7. 'A Respondent was served with the above Charge sheet, dri> 8th 'Xz<> February, 2018 and required to attend disciplinary h ^aringkibn 12th February, 2018. He was accompanied by threefFUICO representative, Mr. Florence Lugimbo, Charles Warioba and Sagarra Madjpgu. After fully hearing, respondent was found guilty of all the>three counts mentioned. On 28th February, 2018 respondent appealed ^toWie Chief Executive Officer on unfairness of the outcomeXpf disciplinary hearing, however, on 1st March, 2018, his appeal wasrejected,jh'us terminated on same day, after having served with the outcome of the appeal. On 5th March, 201|l'-responderi&was paid his terminal benefit as follows:

- (i) ^Transportation ohpersonal effect. X ^J, (ii) . ^Packing and Unpacking allowance. %(iii) Sea ^Bus fr6rh Zanzibar - Dar es Salaam (iv)\ Unused> accrued annual leave. "XX (V) xX Certificate of service. Respondent filed dispute at CMA within 3 weeks of his termination and served applicant on 28th March, 2018. After hearing both parties, Arbitrator ruled in favour of the respondent on account of failure by applicant (the bank) to adduce sufficient cause for termination. Same 2 dissatisfied applicant, thus preferred present revision raising following grounds: That the arbitrator erred in law and fact for awarding in favour of the respondent without considering the evidence and arguments adduced by applicant that the

respondent did not prove that the reason for termination is gross misconduct. Vvs \\\

- v. /' That the learned arbitrator erred in fact and law for deciding' that the termination was not fair as the applicant has no valid reason for terminating the respondent. That the learned arbitrator erred in fact and law for deciding valid reason for terminating the respondent. (iv) That the learned arbitrator erred in fact and law by delivered illogical and improper award. h According to the findings, and CMA records the issue for determination is Whether there was sufficient cause to terminate respondent. The dispute is the letter written and signed by the respondent to MKPP Zanzibar Investment Company Limited same is reproduced for reference. REF. RWA TO ISSUE A BANK GUARANTEE, CLIENT'S ACCOUNT NUMBER ,CCA 091-0000073 We, TPB BANK PLC, ZANZIBAR TANZANIA, addressed at UAB "INVESTICDOS STATYBOS PLETRA", hereby confirm with full bank responsibility, that by order and on behalf of our client MKM Zanzibar investment: Company Limited, represented by Mr. AU MOHAMMED HAMMED, are ready willing and able to issue a bank guarantee, ICC 758 formal, and full banking confirmed by TPB Bank PLC, to one year maturity date and extended year to year until twenty -five (25) years with face value of 142m. Euro, (One hundred and forty two million) Euro at our client first demand. 3 The aforementioned bank guarantee is assignable, divisible, negotiable and freely transferable from our client's account and that's In good standing with our bank and this asset to be good, clean and cleared asset of non-criminal and non -terrorist origin and are free from any liens and encumbrances. Hereby confirms that we are ready to transfer, to block and/or reserve the aforementioned bank guarantee, via a binding callable and authenticated S.W.I.F.T.MT 799 AND MT 760 upon first demand from our client MKM Zanzibar Investment Company Limited in favour of the beneficiary UAB "INVESTICDOS STATYBOS PLETRA" and /or designed by him. This letter is valid from the above issued date and may be verifiable on a bank to bank basis by contacting either of the bank officers below undersigned. ■>/ Sincerely yours, Signed: Abubakar Abuu BurhanMoh'd CREDIT OFFICER: CASHIER: Branch Managing director of TPB Bank PLC, Zanzibar Branch, Mr. NANDONDE JUSTICE Sgd: s. 21st November, 2017 Clear scrutiny of the letter above reveals the following:- one; Justin Nandonde 'respondent' signed as Branch Managing director of TPB Zanzibar Branch though proceedings, respondent himself admitted that he is a mere branch manager not Managing Director of the Branch as the two; Two persons who counter signed the letter Mr. Abubakar Abuu (credit officer) and Mr. Burhan Mohamed (cashier) are not employees of the bank (applicant) as they are not amongst the list of employee exhibit D13. While being cross examined at CMA by applicant counsel from page 44 of CMA typed proceedings he admitted the second count as follows:- S/J: Je kulikuwa na appointment nyingine ya wewe kuwa branch managing director. S/J: Ni sahihi hiyo barua ambayo ulisaini kama branch Managing Director (PS) ilitolewa na Bank. Jibu: Ni sahihi 4 Swali: Wewe ndiye uliandaa P5 Jibu: Ndio Swali: Haya majina kwenye hii barua uliweka wewe. Jibu: Hapana Swali: Angalia P5 kuna mtu mwenye cheo Branch Managing Director of TPB Bank, Zanzibar Jibu: Hakuna Z/' From the cross examination above, respondent admitted to have signed exhibit P5 as Branch Managing director & following he said not and

there is no such position. Again respondents in evidence examination in chief, at CMA he admitted count number two as set out from page 40-41 of CMA typed proceedings as follows:-

Swali: Eleza uhalalai wa makosa yako. » & /ft Jibu: Tatu niliposaini kama Branch Manager Managing Director haikuwa lengo langu ila \$*X x'%. nilikuwa nteain Ex^kanja Managing Director ndiyo maana niliweka mstari/standi hgor^u, kwa niaba ya Managing Director. Hili neno Branch lilijitokeza kutawafati^wa kutaypu kwenye Kompyuta na mi mi kupitia Xkufahyasediting.) "Abubakar Abuu na Burhani Mohamed siwatambui kabisa \y: /Tjna siwafahamu? \K DW1 thejljiR. Manager of TPB BANK PLC testified that at TPB Bank Zanzibar Branch they don't have a credit officer by the name Abubakar Abuu and also they don't have a cashier by the name of Burhan Moh'd. So the respondents act to sign a letter with names of people who are not staff of the Bank in those positions amounts to gross dishonesty of the respondent to the applicant. Further during hearing DW2 tendered a list of Zanzibar Branch Staffs which was admitted and marked as Exhibit D13, DW2 testified that the two names are not in the list and they are not employees of the applicant. The Act of Gross Dishonesty under the Code of Good Practice (GN No. 42 of 2007) Rule 12(3)(a) contains/ provides for the acts of misconduct which may justify termination, the rule provides that Gross dishonesty may result into termination. The respondent failed to attend to the applicant which is primary duty to the staff of the Bank. ^A<rcordir}'g/to the case of Vedastus S. Ntulanyenka & 6 Others vs. Mohamed Trans Ltd Revision No. 4 of 2014 (unreported) It was clearly stated at page 17 of the judgment that 'the serious misconduct which may result in a disciplinary enquiry and possible termination of employment for a first occurrence include the following (i) Gross dishonest (ii) ddt>. Hence according to the provision of the law count number two in the charge sheet exhibit D1 which the respondent was found guilty justifies the applicant's reason for terminating the respondent. % xx The; > learned arbitrator "disregarded the applicant's evidence on this count that the; respondent's acts amounted to gross dishonesty. More so, the act of providing wrong contact information to the customers and the act of preparing and signing bank guarantee letters without the approval of \ X' the management, the act of preparing a letter with a title which is not known to the applicant, while respondent admitting that he worked with the applicant for 23 years he exactly knows that at TPB Bank have a CHIEF EXECUTIVE OFFICER and not a Branch Managing Director. Also signed a letter including the names of a cashier and a credit officer who are not employees amounts to Gross Dishonesty. In Vedastus S. Ntulanyenka 6 case supra, the court stated at page 19 of the judgment that the applicants therefore were not acting in good faith towards their employer respondent and were thus not promoting the employer's business in that regard. Hence the employer lost faith and trust relationship with the applicants due to applicant's gross dishonesty and gross insubordination and hence this constitutes a valid and fair reason/ to terminate the applicants. In the case of COUNCIL SCIENTIFIC AND INDUSTRIAL RESEARCH VS. FIJEN [1996] 17 ILJ 18(A) AT 26 D-E [PER-AARNS J.A]. The South African Court of Appeal held^z%.ive// established that the relationship between, employer and employees is^ in^ essence one of trust and confidence and that the common law, conduct clearly inconsistent therewith entitled the innocent party to cancel the agreement.}. it does<seerirto

me that in our law, it is not necessary to work with the concept of 'an, ImpHed term. The duties referred to simply flow naturalia contractus.... r.' In another case of NATIONAL MICROFINANCE BANK (NMB) Vs. DAVID BERNARD HAULE, [2014] LCCD, 259 Labour Division, SBWG, Revision No. 5 of 2013 of 28 of 1172014, Mipawa, J. It was held that therefore in view of the 'foregone there, was gross negligence of the respondent employee as evidence in records shows and hence a misconduct. There was breach of the Bank rule C M 2. as shown inhuman "Resource Policy in the Human Resource Manual of the applicant 2009 and also breach of the common law because ...in common law the employee must act in good faith towards the employer. An employee who is guilty of misconduct breaches the common law duty to act in good faith towards the employer. According to the principles of the law and practice the employer has a discretion to terminate his employee but the termination must be fair. In the case at hand the applicant exercised the discretion fairly as all the 7 procedures were followed and the reason was fair. In the case NATIONAL MICROFINANCE BANK (NMB) Vs. DAVID BERNARD HAULE, (Supra) the court also held that.... It is a trite law and practice that the discretion for employer to terminate must be exercised judiciously, they have to be fair in the circumstances. In the instant case I have found that the employer applicant was fair in terminating the respondent and the Commission for Mediation and Arbitration was wrong to interfere with the employers sanction. Clearly respondent demonstrated negligence of highest kind by signing letter on behalf of the Bank (TPB) with people not known to him. It is astonishing for a person who has, worked for 23 years as a Banker, to do such act. Clearly it is to put the applicant in to serious disrepute. No doubt that this (is act of Gross. Dishonest under the code of Good Practice GN (42 of 2007) Gross dishonest is provided under Rule 12(3)(a) of the code (supra) as a misconduct, which justify termination. Clearly count number two in the charge sheet exhibit DI was proved by the applicant. Through proceedings at CMA and even at disciplinary hearing the parties produced formal guarantee letter that, suppose to be used by the bank. I have failed short of evidence to rule out whether it is a formal guarantee letter used by applicant. On those grounds number one not proved to the required standard. Before winding up, I wish to say something by passing on employee of financial Institutions. They should be reminded that all the money held by the banks are deposits of their clients. They are trusted to all deposits and withdraw, upon request by the owner. The deposits play very important role in economy. Thus keeping safe and use the same in accordance with Banking Regulations is to safe guard the economy. If Banks guarantee, clients in a manner demonstrated by Mr. Nandonde in this case is to Jeopardize financial institutions, which if not taken seriously, most banks will be shortlisted for Bankruptcy. Redness of Mr. Nandonde, as branch manager to issue letter of guaranteeing loan to MKM Zanzibar Investment Company for the amount of EURO 142,000,000.00, without approve of his superior was unimaginable to any Bank. Equally so, MKM Zanzibar Investment just registered newly company with no fixed place of business, was glared at defrauding applicant's case of failure to pay by MKM Zanzibar Investment Company Limited. Banks as custodian of the clients deposits, must be proactive, not only to stop financial crime Thus, evidence available at CMA proceedings proves that

respondent misconducted in terms of exhibit P5. Therefore, there was sufficient reason to warrant termination of the contract. Finding by arbitrator that, there was no reason to terminate the contract as respondent is not right, thus CMA award is quashed and set aside. Revision application allowed. Ordered accordingly. JUDGE 30/04/2021 9 Judgment delivered in the presence of Haanspo Josephat holding brief of E. Mwego for applicant and Shiza Ahmed, Advocate for respondent. 10

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CASE PAGE	https://chat.esheria.ai/case-law/tanzania/tpb-bank-plc-v-justin-stephen-nandonde-unfairtermination-tanzlil-2021

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