

TANZANIA / JUDGMENT

ULTIMATE SECURITY TANZANIA LIMITED V

COURT
TANZLIIDECIDED
1 January 2024

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

IN THE HIGH COURT OF TANZANIA LABOUR DIVISION AT DAR ES SALAAM REVISION
APPLICATION NO. 19639 OF 2024 (Arising from an Award issued on 04/7/2024 by Hon.
Makanyaga, A.A., Arbitrator, in Labour Dispute No. CMA/DSM/KIN/250/2023/117/2023 at
Kinondoni) ULTIMATE SECURITY TANZANIA LIMITED..... APPLICANT VERSUS
KAROLI FRANCIS MORANDI RESPONDENT

JUDGMENT

Date of Last Order: 26/09/2024 Date of Judgement: 17/10/2024 B. E. K. Mganga, J. On 29th April 2004, Ultimate Security Tanzania Limited, the abovenamed applicant entered two years fixed term contract of employment with Karoli Francis Morandi, the abovenamed respondent. In the said employment relationship, applicant employed the respondent as a security officer. The said two-year fixed term contract was renewed several times. In July 2020, the two changed the said two-year fixed contract of employment into unspecified contract of employment with effect from 1st August 2020. After signing of the said unspecified period contract of 1 employment, the parties continued to enjoy their good employment relationship. Their relationship turned into sour on 31st March 2023 when applicant terminated employment contract of the respondent by way of retrenchment allegedly due to financial difficulties. Dissatisfied with the said retrenchment, on 25th April 2023, respondent filled Labour Dispute No. CMA/DSM/KIN/250/2023/117/2023 before the Commission for Mediation and Arbitration henceforth CMA. On fairness of reason, in the referral form(CMA F1) respondent indicated that, no reasons were availed to him during termination. On procedural fairness, he indicated that, procedures were not followed during termination. Based on the foregoing, respondent indicated in the said CMA F1 that he was claiming to be paid 24 months' salary compensation, one month salary in lieu of notice, six months accrued leave within 6 years, severance pay, fare and costs for luggage transport and handshake. On 4th July 2024, Hon. Makanyaga, A.A., Arbitrator, having heard evidence of the parties, issued an award in favour of the respondent that termination was unfair for want of reason but fair procedurally. In the said award, arbitrator awarded respondent to be paid TZS 2,664,000/= being 12 months' salary compensation for substantive unfair termination. 2 Applicant was aggrieved with the said award hence this application for revision. In support of the notice of application, applicant filed the affidavit of Tatu Elias her Human Resource Manager

raising four grounds namely: -

1. The trial arbitrator erred to hold that applicant had no valid reason for conducting retrenchment.
2. The trial arbitrator erred in law and fact for failure to take notice of new minimum wages order which is public document.
3. The trial arbitrator erred for failing to evaluate evidence on record.
4. The trial arbitrator erred in law and in fact in awarding 12 month's salaries to the respondent for substantive unfairness without justification for so holding. In opposing the application, respondent filed both the Notice of Opposition and the Counter affidavit. By consent of the parties, the application was disposed by way of written submissions. In complying with submission ordered issued on 09th September 2024, applicant enjoyed the service of Ms. Neema Ndossi, learned advocate while respondent did not engage an advocate. Arguing the 1st and 3rd ground, Ndossi submitted that applicant had valid reason for termination of employment of the respondent. It was Ndossi's submission that applicant was in financial constraint after the new wage order that was issued by the government on 25th November 2022 3 that increased monthly salary for private employees from TZS 150,000 to 220,200/= with effect from January 2023. She further submitted that, due to the said new wage order, applicant attempted to increase charges to her customers, but some refused and terminated service. She added that, that led applicant to be in economic crisis due to increased expenditure caused by increase in monthly salary. Counsel relied on the provisions of Rule 23 of the Employment and Labour Relations (code of Good Practice) Rules, GN. No. 42 of 2007 and the case of Secretary General: ELCT – North Western Diocese vs Edward Mugurubi, Labour Revision (2013) LCCD 87 to implore the court to hold that, there was valid reason for retrenchment. Arguing the 2nd ground, Counsel for the applicant submitted that the arbitrator erred for her failure to take notice of the New wage Order that was published in the Government Gazette No. 685 dated 25th November 2022 that is a public document. She further submitted that, arbitrator held that the said new wage order was not tendered as evidence and erroneously concluded that applicant failed to prove reasons for retrenchment. She added that, arbitrator was supposed to take note of the 4 said New wage Order, that is a public document without requiring applicant to tender it in her evidence. On the 4th ground, Ms. Ndossi submitted that termination was fair hence the arbitrator erred to award respondent 12 month's salary compensation. She added that, the award of 12 month's salary compensation was ultra vires considering that the arbitrator held that termination was fair procedurally. She cited the provisions of section 40(1)
(c) of the Employment and Labour Relations Act [Cap. 366 R.E. 2019] and section 53(1) of the Interpretation of Laws Act [Cap. 1 R.E. 2020] to stress her point that the award of 12 months is discretionary upon finding that termination was unfair. She further submitted that the circumstances of this application did not justify the award of 12 months' salary compensation. To implore the court to accept submissions that arbitrator was supposed to

award less than 12 months' salary compensation, Ms. Ndossi cited rule 32(5) of GN. No. 42 of 2007(supra) and the case of Deus Wambura vs Mtibwa Sugar Estates Limited (Revision No. 3 of 2014) LCCD 120. With those submissions, counsel for the applicant prayed the court to allow the application and set aside the CMA award. 5 Responding to the 1st and 3rd grounds, respondent submitted that, arbitrator legally and properly evaluated evidence brought. He also submitted that; applicant had a duty to prove allegations that termination was due to economic hardship due to new wage Order. That, the mere presence of the said new Wage Order was not a conclusive that it led applicant to be in economic hardship. He further submitted that applicant was supposed to tender the said New Wage order and prove that the said new Wage order caused economic hardship. He cited the provisions of sections 110 and 112 of the Law of Evidence Act [Cap. 6 R.E. 2022] to support his submissions that he who alleges must prove. He added that, in terms of section 39 of Cap. 366 R.E.2019(supra), applicant had legal duty to prove fairness of but failed to discharge that duty because she to tender auditor report showing that she was facing economic hardship. He went on that; applicant did not adduce evidence proving that her customers terminated service after the said New Wage order. Not only that but also that, applicant was supposed to tender the said new wage order but failed. He also submitted that Mugurubi's case(supra) is inapplicable in the circumstances of this application because there is no proof that applicant 6 was under economic constraint unlike to the said case where there was dependence on donor funds. Resisting the 4th ground, applicant submitted that section 40(1)(c) of Cap. 366 R.E. 2019 (Supra) provides minimum months an employee should be compensated when it is found that termination was unfair and that, submissions made on behalf of the applicant are misleading. He added that, rule 32(5) of GN. No. 67 of 2007(supra) and Wambura's case (supra) are irrelevant in the circumstances of this application. In rejoinder written submissions, Ms. Ndossi reiterated her submissions in chief and prayed the award be revised and set aside as termination was fair. I have examined evidence of the parties in the CMA record and considered their rival submissions in this application and find that the main issues to be resolved are whether termination was fair and the reliefs the parties are entitled to. It was testified by Tatu Mussa Elias (DW2) for the applicant that, respondent was terminated due to financial constraint applicant was facing after issuance of New Wage Order that increased monthly salary of employees hence high expenditure. It was also testified by DW2 that, some 7 customers of the applicant terminated service as they were not ready to pay more hence decrease of applicant's customers. In the bid to prove that termination was due to the said New Wage Order and that some customers of the applicant terminated service, DW2 tendered a list of "Ultimate Security Tanzania Limited clients before January 2023" as exhibit U3. Exhibit U3 has nothing to do with termination of the respondent as it was correctly observed by the arbitrator. I am of that view because, it does not show clients who terminated service with the applicant after issuance of the New Wage Order on 25th November 2022. More so, there is no record showing the list of applicant's clients after issuance of the sad New Wage Order. It was submitted on behalf of the applicant that the arbitrator erred for not taking judicial notice of the said New Wage Order, which is a public document, as good reason that led applicant to be in economic constraint leading to

retrenchment of the respondent. The said New Wage Order, GN. 685 of 2022 published on 25th November 2022 was not tendered at CMA to enable the arbitrator to conclude that it was issued or not. In fact, in his evidence, DW2 did not state that it was GN. No. 685 of 2022. In her evidence, DW2 simply stated that there was an order that was issued by the government raising salary from TZS 170,000/= to TZS 220,200/=. In 8 that situation, criticism against the arbitrator for her failure to take judicial notice of GN. No. 685 of 2022 which was not placed before her is unjustifiable. More so, counsel for the applicant, in her written submissions, failed to attach the said GN. No. 685 of 2022 for this court to take judicial notice of the matters stated therein. The possibility is that she was not in possession of the said GN, and or that, she has not come across with the said GN. I have done efforts to trace the said GN and find that, it is not GN. No. 685 of 2022 rather, it is GN. No. 687 of 2022 published on the same date namely 25th November 2022. Much as I agree with counsel for the applicant that, in terms of section 59(1)(a) of the Evidence Act, Cap. 6 R.E. 2019, the arbitrator and or this court can take judicial notice of the matters stated therein, both CMA and this Court cannot take judicial notice that the said GN. No. 687 of 2022 caused applicant to be in financial crisis leading to termination of the respondent. I am of that view because, financial crisis of the applicant is not a matter which judicial notice can be taken. That said, applicant was duty bound, in terms of section 38 and 39 both of Cap. 366 R.E. 2019(supra) and rule 23 of GN. No. 42 of 2007(supra) to prove that she was in financial crisis hence valid reason for termination of employment of the respondent. 9 Since applicant alleged that she was in financial crisis after issuance of GN. No. 687 of 2022 that increased monthly salary to her employees from TZS 170,000/=to TZS 220,200/= she had the duty to prove how she was affected by the said GN. I am of that view because there is a litany of case laws that he who alleges must prove. See the case of Oliva James Sadatally vs Stanbic Bank Tanzania Limited (Civil Appeal 84 of 2019)

[2022] TZCA 388, Tryphone Elias @ Ryphone Elias & Another vs Majaliwa Daudi Mayaya (Civil Appeal No. 125 of 2020) [2023] TZCA 18014, Malaki Mmari & Others vs Moshi Municipal Council (Civil Appeal No.200 of 2020) [2023] TZCA 17383, Crescent Impex (T) Limited vs Mtibwa Sugar Estates Limited (Civil Appeal No.455 of

2020) [2023] TZCA 17501, Nuru Finance & Business Services Co. Ltd vs Benjamin Adamson Masuba (Civil Appeal No. 284 of 2020) [2024] TZCA 169, Registered Trustees of the Evangelical Lutheran Church in Tanzania, Eastern & Coastal Diocese vs Grace William & Others (Civil Appeal No.366 of 2020) [2023] TZCA 17469 to mention just a few. It was not enough, in my view, for the applicant just to state that, the said GN. No. 687 of 2022 caused her to be in financial crisis leading to retrenchment of the respondent without proving how she came into 10 financial crisis. I have carefully examined evidence of Phabian Joachim Rweyemamu(DW1) and Tatu Mussa Elias(DW2), the only witnesses who testified on behalf of the applicant and find that applicant did not prove that she was in financial crisis and that the same was caused by GN. No. 687 of 2022. It was testified by DW2 that the customer at which respondent was working terminated service with the applicant hence respondent has no place to work. In her evidence, DW2 stated that respondent's place of

work was at Agakhan Foundation rotating at Mikocheni and that, applicant ceased to operate at the said on ground that “lindo Lake lilikufa”. On the other hand, Karoli Francis Morandi (PW1) testified that he was working at Akiba bank at Machinga complex, Ilala. It was further evidence of PW1 that, on 4th March 2023 at 09:00 hrs while on duty at Machinga complex, came one Lusendele and ordered him to handover his duties to another employee who was in company of the said Lusendele. PW1 added that he was thereafter ordered by the said Lusendele to report at Mikocheni, the headquarters and that he complied. That, at Mikocheni, he asked Partick Rweyemamu (DW1) as to why he was ordered to report at the headquarters, but the latter had no idea as a result, he continued to 11 report at Mikocheni but on 31st March 2023 he was served with termination letter without being informed reasons thereof. PW1 further testified that his place of work at Akiba bank at Machinga complex is still operating to date. That piece of respondent’s evidence was not challenged during cross examination. It is my findings that applicant had no valid reason for termination of employment contract of the respondent. As pointed hereinabove, applicant did not prove that she was facing economic crisis due to increase of monthly salary because of the new wage Order, GN. No.687 of 2022. Again, it was not proved that customers of applicant terminated service with the applicant leading some working stations including the one respondent was working at to be redundant. I therefore conclude that termination was unfair for want of reason. On procedurally fairness, the arbitrator held that termination was fair. It was also submitted by Ms. Ndossi on behalf of the applicant that termination was fair procedurally. With due respect to both the arbitrator and counsel for the applicant. It was testified by both DW1 and DW2 on behalf of the applicant that applicant served employees including respondent with notice of retrenchment (exhibit U4), the Tanzania Union of 12 Private Security Employees (TUPSE), trade union in which respondent is a member participated in a meeting that was held on 20th January 2023 and 26th January 2023(exhibit U6). It was further testified that, respondent participated in consultative meeting that was held on 26th January 2023. I have examined retrenchment notice (exhibit U4) dated 16th January 2023 titled “NOTICE YA ZOEZI LA KUPUNGUZA WAFANYAKAZI” and find that it reads in part: - “Kwa masikitiko, uongozi wa Kenya Kazi Tanzania Limited, Ultimate Security Tanzania Limited & Gardaworld West Security (the Company of Gardaworld) inatoa notice kuwajulisha wafanyakazi wake juu ya kusudio la kampuni kuanzisha mchakato wa zoezi la kupunguza wafanyakazi. Kusudio la kuanzisha mchakato wa kupunguza wafanyakazi linatokana na mtikisiko wa kiuchumi uliosababishwa na ongezeko la gharama za uendeshaji wa kampuni na wateja kushindwa kukubaliana na bei mpya za huduma zetu na hivyo kusitisha mikataba ambayo ni chanzo cha fedha...Hivyo kampuni inawataarifu imekwisha wajulisha vyama vya wafanyakazi na tumewaalika kwenye vikao vya majadiliano...mikutano hii itafanyika katika ofisi za Makao Makuu ya Kampuni, Dar es Salaam jumatano ya tarehe 18 Januari 2023 saa Nne(4) asubuhi, Mkutano mwingine umepangwa Alhamisi ya tarehe 19 January 2023 saa nne asubuhi...” Exhibit U4 is dated 16th January 2023 and required employees including respondent to attend the meeting on 18th January 2023 and 19th January

2023. It is my view that employees were not afforded sufficient time to make an informed decision prior to attending the said meeting. More importantly, there is no evidence showing that respondent participated in the said meeting. In further bid to comply with procedural fairness, on 18th January 2023, applicant wrote a letter with reference No. USTL/HR/0466/LET/2023 dated 18th January 2023 addressed to Chama cha Wafanyakazi Walinzi Binasfi(sic) Tanzania (TUPSE) as a notice to attend consultation meeting on 19th January 2023(exhibit U1). I have examined exhibit U1 and find that it purports to show that it was received on 17/01/2023 by Aurea Aaron the owner of mobile No. 0762666366. It is my view that there is something fishy because in no way the said exhibit was received on 17th January 2023 a day prior it was written. I have also examined the notice dated 24th January 2024 (exhibit U6) requiring employees to attend retrenchment meeting on 26th January 2023 at 10 hrs at Mikocheni headquarters and minutes of the meeting that was held on 26th January 2023(exhibit U7) and find that respondent was not part. Exhibit U7 is titled “MUHTASARI WA KIKAO CHA PAMOJA BAINA YA UONGOZI WA KAMPUNI YA GARDAWORLD TANZANIA, WAWAKILISHI WA WAFANYAKAZI WA GARDAWORLD TANZANIA 14 PAMOJA NA VYAMA VYA WAFANYAKAZI AMBAVYO NI TUPSE, CHODAWU, NA TUICO JUU YA KUSUDIO LA KUPUNGUZA WAFANYAKAZI KILICHOFANYIKA TAREHE 26 JANUARI 2023”. The said meeting as the title shows it was meeting by the applicant and representatives of the employees and not employees themselves with their representatives namely trade unions. Applicant further relied on the agreement of retrenchment exhibit U8) that was signed on 1st February 2023 by trade unions including TUPSE to show that she complied with procedural fairness of retrenchment. The said exhibit U8 reads in part: - “MKATABA WA KUPUNGUZA WAFANYAKAZI BAINA YA GARDAWORLD TANZANIA (KENYA KAZI SECURITY TANZANIA LTD) & ULTIMATE SECURITY TANZANIA LTD NA VYAMA VYA WAFANYAKAZI (TUPSE, TUICO NA CHODAWU) KWA NIABA YA WAFANYAKAZI JANUARI 2023 UFUATAO NI MKATABA WA MAKUBALIANO YA PAMOJA KATI YA GARDAWORLD TANZANIA AMBAO NI MWAMVULI WA MAKAMPUNI YA KENYA KAZI SECURITY TANZANIA LIMITED NA ULTIMATE SECURITY TANZANIA LIMITED PAMOJA NA VYAMA VYA WAFANYAKAZI AMBAVYO NI TUPSE, TUICO 15 NA CHODAWU JUU YA UPUNGUZWAJI WAFANYAKAZI WAPATAO 3,000 KATI YA WAFANYAKAZI 9,000: -
1. Makubaliano haya yamefanywa kwa ukamilifu baada ya kufuata utaratibu na mashauriano kati ya uongozi upande wa mwajiri na vyama vya wafanyakazi ambavyo ni TUPSE, TUICO, na CHODAWU ambapo yalifanyika tarehe 26/1/2023.
 2. Kwamba, TUPSE, TUICO na CHODAWU ni vyama vya wafanyakazi vinavyotambulika kuwawakilisha wafanyakazi.
 3. Uongozi upande wa mwajiri na vyama vya wafanyakazi (TUPSE, TUICO na CHODAWU) umewataarifu wafanyakazi wote kuhusiana na utaratibu ulioshauriwa kutumika katika zoezi la kupunguza wafanyakazi.

4.” It is my considered opinion that exhibit U8 cannot bind respondent because he was not a party to that agreement. More so, it was not proved that the aforementioned trade union were exclusive bargaining agents of the employees in terms of section 71(3) of Cap. 366 R.2019(supra). In addition to all discussed hereinabove, there was no consultation so to speak. I am of that view because, clause 2(1) of Retrenchment procedures that is a schedule to GN. No. 42 of 2007(supra) provides inter-alia that: - “2.-(1) Where an employer contemplates to retrench the employee for operational requirements, the management shall notify in 16 writing the employees likely to be affected and to consult with the trade union which includes-
- (a) any union recognized as the exclusive bargaining agent if retrenchment is contemplated within the bargaining unit;
 - (b) any other union having members who will be affected, if they do not fall within a bargaining unit for which a union is recognized as the exclusive bargaining agent; and
 - (c) any affected employee who are not represented under (a) or (b) above.” The bolded words in the quoted Clause 2(1) above is loud and clear that the management must notify in writing an employee likely to be affected with retrenchment so that consultation can be done. In the application at hand, no evidence was tendered or adduced on behalf of the applicant showing that respondent was notified in writing that he was likely to be retrenched. On top of that, rule 23(6) of GN. No. 42 of 2007(supra) provides that, consultation process must commence as soon as employer contemplates retrenchment. Going by all exhibits mentioned hereinabove, I am of the view that applicant did not comply with this rule. Not only that but also, the notice that were served to TUPSE and allegedly served to the employees did not comply with the said rule. The provisions of clause 2(2) of retrenchment procedures, a schedule to GN. No. 42 of 2007(supra) was not complied with as it did not state measures 17 taken by the applicant to avoid retrenchment, selection criteria and timing of retrenchment. For all discussed hereinabove, it is my view that applicant did not comply with the provisions of section 38(1) of Cap. 366 R.E. 2019(supra) and rule 23 of GN. No. 42 of 2007(supra) hence termination was unfairly also procedurally. On the last issue relating to relief, since it has been proved that the termination of respondent’s employment contract was unfair both substantively and procedurally, the same attracted heavier penalty as it was held in the case of Veneranda Maro & Another vs Arusha International Conference Center (Civil Appeal No. 322 of 2020) [2022] TZCA 37 (18 February 2022). I therefore find that the award of 12 months salary compensation is justifiable because that is the minimum period the arbitrator can award when termination is unfair substantively. Arbitrator had no option to award less than 12 months salary compensation after holding that termination was unfair substantively. The arbitrator or this court can only award below 12 months salary compensation when termination is fair substantively but unfair procedurally as it was held by the Court of Appeal in the case of Felician Rutwaza vs World Vision 18 Tanzania (Civil Appeal No. 213 of 2019) [2021] TZCA 2 (2 February 2021). For the foregoing, I find that the application is unmerited and dismiss it. Dated at Dar es Salaam on this 17th October 2024 B.

E. K. Mganga JUDGE Judgment delivered on 17th October 2024 in chambers in presence of Neema Ndossi, Advocate for the Applicant and Karoli Francis Morandi, the Respondent. B. E. K. Mganga JUDGE 19

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/320166/source_file/1e3fb459607e3cc9/ULTIMATE_SECURITY_TANZANIA_LIMITED_V._KAROLI_FRANCIS_MORANDI_REVISION_APPLICATION_NO._1963_9_OF_2024_.pdf
CASE PAGE	https://chat.esheria.ai/case-law/tanzania/ultimate-security-tanzania-limited-v-karoli-francis-morandi-UnfairTermination-tanzlii-2024--6a3ea52d3b1caa9129826eb2

Prepared on 13 October 2026 · Esheria