IN THE COURT OF APPEAL OF TANZANIA
AT ARUSHA

(CORAM: LUGAKINGIRA,J.A.; MUNUO, J.A.; and NSEKELA, J.A.)

CIVIL APPEAL NO. 53 OF 2001

BETWEEN

JOSEPH M. MUTASHOBYA ..... APPELLANT

AND

M/S KIBO MATCH GROUP LIMITED ..... RESPONDENT

(Appeal from the Judgment and Decree of the High Court of Tanzania At Moshi)

(Mushi, J.)

dated this 30th day of December, 1998 in Civil Case No. 9 of 1996

JUDGMENT OF THE COURT

NSEKELA, J.A.:

The appellant, Joseph M. Mutashobya, who had been employed as a Sales/Marketing Manager by the respondent, Kibo Match Group Limited, instituted a suit in the High Court claiming a declaration that

the termination of his employment was wrongful and void and also claimed certain "entitlements" amounting to Shs.38,703,862/=. The facts are straightforward. The appellant was employed by the respondent for a period of three years with effect from 6/8/1995 subject to renewal after mutual agreement. It is not in dispute that the respondent terminated the agreement before the expiry of the prescribed period. The High Court (Mushi, J.) dismissed the suit with costs, hence the appeal to this Court. At the hearing of the appeal, Mr. Kimomogoro, learned advocate, represented the appellant and Mr. Chadha, learned advocate, represented the respondent. The appellant advanced three grounds of appeal, namely –

1. That the Honourable trial judge erred in holding that the "agreement had been fulfilled" when the same was terminated unilaterally and prematurely by the respondent.

2. That the Honourable trial judge erred in holding that to read in the agreement a requirement of giving reasons before

termination of the employees services would "certainly alter the terms of the agreement" signed by the appellant and the respondent.

3. That the Honourable trial judge erred in failing to invoke Tanzania laws in his interpretation of the agreement.

Mr. Kimomogoro consolidated grounds one and two in arguing the appeal. The basic complaint by the appellant is that the agreement that governed their relationship provided for a fixed term of three years. The respondent however, unilaterally terminated the agreement without assigning any reasons whatsoever for the course of action he had taken. This was unlawful. The appellant had been denied of his livelihood, he added and this was in breach of clauses 12 and 13 of the agreement. In the words of the learned advocate, "the appellant had a legitimate expectation that he would be employed for three years", and cited the cases of Mohamed Jawaf Mrouch v. Minister for Home Affairs [1996] TLR 142; Tanzania Air Services v. Minister for Labour; Attorney General [1996] TLR 217;

Twikasyege Mwaigombe v. Mbeya Regional Trading Company Ltd. [1988] TLR 237. The second ground of appeal revolved around clause 20 which reads –

> "This agreement shall be governed by and construed in accordance with the laws of Tanzania".

The learned advocate submitted that the right to work is a constitutional right and cannot be taken away without being heard. To bolster his argument, he cited Articles 13 (6) (a) and 22 (1) of the Constitution of the United Republic. On his part Mr. Chadha, learned advocate for the respondent, submitted that the agreement that the parties had entered into provided under clause 13 (b) for early termination of the appellant's employment with the respondent. He added that in the said agreement, there is no provision for giving of reasons in order to terminate the agreement.

Having heard the rival contentions of the learned advocates, we are of the settled view that the answer to Mr. Kimomogoro's spirited

submissions lie in a proper construction of clauses 13 and 14 which provide as follows:-

> "13. Termination of contract.
> KMGL may terminate the contract prior to the end of the period by:-
> (a) Summary dismissal for breach of contract or if the employee is guilty of serious misconduct.
>
> (b) By giving at least three months notice in writing or payment of three months salary in lieu. (emphasis supplied)
>
> (c) As in clause 12 (h) above.
>
> 14. The employee may terminate the contract prior to the end of the contract by giving three months (sic) in writing".

We have omitted clause 12 (h) because it is not relevant for our purposes. Clauses 13 and 14 above are in very plain language and we are enjoined to give effect to those plain words. Clause 13 gives

to the respondent an escape route to disentangle from the contractual obligations under the agreement. In similar vein, the appellant could do the same by invoking clause 14 if he so desired. We do not read anything in clause 13 (b) which dictates that the respondent must give reasons for invoking it in order to pre-maturely terminate the employment of the appellant with the respondent. The opening words of clause 13 clearly anticipated the possibility of the respondent terminating the agreement before the expiry of three years. It was not a hidden agenda. It would appear to us that the anchor of Mr. Kimomogoro's submissions is that the respondent did not give any reasons for invoking clause 13 (b). He referred us to a couple of cases which are irrelevant including Tanzania Air Services Limited v. Minister for Labour (supra). In this case, the applicant was seeking for an order of certiorari to quash a decision of a Minister because of his failure to give reasons. His Lordship, Samatta, J.K. (as he then was) made the following important observations at page 222 D-F. He stated thus –

"It seems to me that the interests of justice call for the existence, in common law, of a general rule making it mandatory in matters of importance for public authorities, a term I use to include statutory and domestic bodies, to give reasons for their decisions. But what are matters of importance? It is neither desirable nor possible to define that term, but certainly it should be taken to include all matters in which liberty livelihood or reputation of the individual is concerned or in which proprietary or pecuniary rights or interests are at stake. In any other situation the decision-maker should be bound to give reasons only if he is requested by a party to do so". (emphasis supplied).

And at page 224, His Lordship continued –

"In my considered opinion, a duty to give reasons and a right to them should be recognized by our law and treated as being of decisive importance in administrative justice". (emphasis supplied)

It will be noted that His Lordship's observations were not meant to be of general application. They were limited to public authorities which included statutory and domestic bodies. This is in the field of administrative law. The issue here is the construction of an agreement made between the appellant and the respondent (not being a public authority). Such concepts as the duty to give reasons for decisions made by public authorities are not applicable to contractual relationships in the field of private law unless of course they are embodied in the agreement itself. As regards the second ground of appeal, Mr. Kimomogoro sought to invoke Articles 13 (6) (a) and 22 (1) of the Constitution of the United Republic of Tanzania. The learned advocate complained that the appellant was denied the right to work. Our brief response to this is that the violation of these provisions of the Constitution was not one of the two issues framed by the trial court on the 20.3.1998. Understandably, the trial court did not discuss the alleged violation of the Constitution and make a decision upon it. The issue is not properly before us.

In the result, we are of the settled view that the respondent validly exercised his rights to terminate the appellant's employment under clause 13 (b) of the agreement by payment of three months' salary in lieu of notice. There was no breach of the contract of employment and the appellant is not entitled to any damages.

We accordingly dismissed the appeal in its entirety with costs.

DATED AT DAR ES SALAAM THIS DAY 11th OF June, 2003.

S. K. S LUGAKINGIRA
JUSTICE OF APPEAL

E. N. MUNUO
JUSTICE OF APPEAL

H. R. NSEKELA
JUSTICE OF APPEAL

I certify that this is a true copy of the original.

A. G. Mwarija
Ag. REGISTRAR