IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LABOUR DIVISION

AT ARUSHA

LABOUR REVISION NO. 32 OF 2020

(Original CMA/ARS/ARS/106/19)

GILBERT PETER KIMBI ..... 1st APPLICANT

GODWIN JOSEPH NGASSA ..... 2ND APPLICANT

JULIUS PETER MBOYA ..... 3RD APPLICANT

FRANCIS JOSEPH MTUI ..... 4TH APPLICANT

JOHN PETER MBOYA ..... 5TH APPLICANT

JUMBE ABISALOM OSSERE ..... 6TH APPLICANT

ISACK NGOIRA LAIZER ..... 7TH APPLICANT

JORDAN JOHN MDIMA ..... 8TH APPLICANT

RAMADHANI HAJI SAMWESONGO ..... 9TH APPLICANT

EXAUD ONESMO NKO .....10TH APPLICANT

VICENT FLORENCE MALLYA ..... 11TH APPLICANT

JOACHIM JOHN MASAMU .....12TH APPLICANT

HONEST ELKARDO MSHANGA ..... 13TH APPLICANT

FRANK ALOYCE OLOMI ..... 14TH APPLICANT

HABIBU JUMANNE MNALILIA ..... 15TH APPLICANT

IBRAHIM BONIFACE NTANDU ..... 16TH APPLICANT

MOKIYA LESILONGOI SIRIA ..... 17TH APPLICANT

VERSUS

TANZANITE AFRICA LTD. ..... RESPONDENT

JUDGMENT

28/10/2021 & 16/12/2021

KAMUZORA, J

In this application the applicants are challenging the award issued by the Commission for Mediation and Arbitration (CMA) in CMA/ ARS/106/2019 which was in favour of the respondent Tanzanite Africa Ltd. The application is brought under the provision of Rule 24 (1), (2)(a)(b)(c)(d), (3)(a)(b)(c)(d) and 28 (1)(a)(b)(c)(e) of the Labour Court Rules, GN No. 106 of 2007, section 91 (1)(a), (2)(b) and 94 (1)(b)(i) of the Employment and Labour Relations Act, No. 6 of 2004. The application was made by way of chamber summons supported by joint affidavit deponed by all 17 applicants and was contested by a counter affidavit deponed by Jeremia Philip Mollel, the Principal Officer of the respondent.

The applicants' claim for unfair termination of their employment contracts. Their claim before CMA was dismissed because the learned arbitrator after hearing evidence from both sides found that the applicants were not the employees of the respondent. It was decided that if the applicants had any claim, they ought to have claimed against Manpower Solution to which the respondent had subcontracted the job

which was done by the applicants including cleaning, mining activities, just to mention a few.

Aggrieved, the applicants preferred this revision. The legal issues raised by the applicants for the consideration of this court are as follows: -

1) *That, the trial commission erred in law and in fact for failure to evaluate and to give consideration the evidence, grounds and reasons presented before the CMA by the Applicants.*
2) *That the trial commission erred both in law and facts by involving a wrong party in the mediation which hindered justice to the applicants.*

During hearing of the revision application, the applicants had no legal representation but three applicants Gilberth Peter Kimbi, Godwin Joseph Ngasa and Francis Joseph Mtui appeared and submitted on behalf of other applicants. The respondent enjoyed the service of Mr. Emmanuel Matondo, learned advocate. There is no submission made regarding the second reason on why the claim that the mediation involved a wrong party thus I will not bother much to discuss that reason.

Going through the submission by the parties, the main issues calling for the determination of this court are: - **First** whether there was

an employer and employee relationship between the parties; If the first issue is answered in the affirmative; **Second** whether the termination of the applicants' employment was substantively and procedurally fair; **third,** reliefs to which the parties are entitled to.

Starting with the first issue on whether employment relationship existed between the parties to this application, the applicants briefly claimed that they were working with Tanzanite Africa, and they were transferred to another company without being paid their entitlements.

Submitting on behalf of other applicants' Gilbert Peter Kimbi argued that the evidence of the statements of NSSF showing the company to which they were complaining of was not reflected in the CMA decision. He complained also that the respondent asked the applicants to sign the contract without following the procedure and the applicants were transferred to another company without being paid their entitlements.

That was strongly opposed by the counsel for the respondent Mr. Matondo who insisted that the applicants were not employees of the respondent rather the employees for Manpower Solution. He submitted that the respondent is the owner of the mine for extraction of minerals at Mererani. That, the respondent entered into a contract with

Manpower solution for Manpower solution to execute some of the duties in that mine including cleaning, mining activities, and other activities. That, Manpower employed the applicants to perform the day-to-day jobs in the respondent's mine and thus, the applicants were responsible to Manpower solution. He insisted that, the applicants and the respondent had no relationship of the employer and employee as the applicants were working at the respondents mine but for Manpower solution.

Mr. Matondo further submitted that, the respondent had no powers over the applicants and was not supervising their works. He averred that, it was well proved before the CMA by witness Zakaria Nyaki who is the HR at Manpower solution as he acknowledged the applicants as the employees of Manpower solution, and he is the one who used to assign them the works. That, Zakari Nyaki had power for the applicants' ethical conducts thus responsible for paying their entitlements or for their termination. Mr. Matondo maintained that the respondent was never the employer of the applicants.

The rejoinder was made jointly by Gilbert Peter Kimbi and Godwin Joseph. In rejoinder, the applicants' representatives reiterated that the applicants were employee of the respondent from 09/01/2007 to 01/07/2018 when they were made to sign a contract to be transferred

to another company called Manpower solution without following procedures. He however admitted that they did not submit any contract to prove that fact as they were not issued with any contract for the whole period they worked with the respondent. He insisted that the statement from NSSF and the identity cards proved that the applicants were working for the respondent. That, as the contract between the respondent and Manpower was signed on 01/07/2018, it proves that the applicants were working with the respondent until that date. That even after signing the contract with Manpower, the applicants were paid salary by the respondent Tanzanite Africa. He insisted that the employer was the same but only changed the name as employee supervision was done by the respondent.

I have considered the submission and the evidence in record. On the claim that the applicants were working for the respondent before they were illegally transferred to another company by the name of Manpower solution, there is no contract of employment or evidence that was submitted before the CMA proving the existence of any agreement between the applicants and the respondent.

The records shows that the respondent entered a contract with manpower solution to provide services in the mining areas as per Exhibit

D1. Manpower solution signed fixed term contracts of employment with the applicants as per exhibit D5. Exhibit D2 and D3 reflect the salary payment records and NSSF deductions of the applicants by Manpower solution. As per exhibit D4 the termination notices of the applicants were issued by Manpower solution. With that in mind, it is clear that the applicants were more connected to Manpower solution than it could be with the respondent.

The applicant believed that the work ID and NSSF contributions proved that they were employed by the respondent, but no NSSF statement was admitted in court as exhibit indicating that the respondent was paying NSSF contributions for the applicant. Likewise, the work ID and NSSF ID that were admitted in court does not reflect the respondent as employer of the applicants.

I therefore agree with the CMA finding that there was no employment contract between the applicants and the respondent within the meaning of section 61 (a) -(g) of the Labour Institutions Act, No. 7 of 2004. I was also held by this court in the case **Noah Musangire Vs Tanzania Breweries Ltd, Labour Division Mbeya, Consolidated Revision No. 19 & 20 of 2015, Labour Court (Case Digest) Part II of 2015** cited by the counsel for the respondent, the applicants were

employed by Manpower solution, a company that which has contractual relationship to perform services in the respondent's mine. Manpower solution employed the applicants for purpose of performing the contractual obligation in the respondent's mine. Thus, the fact that the applicants were working in the respondent's mine does not shift the employment relationship from Manpower solution to the respondent. And the fact that the contract of employment indicated that the applicants would have to adhere to the rules of the respondent and be under health care of the respondent does not mean that the respondent undertook the responsibility of being their employer. The employment contracts were very clear and were signed between the applicants and Manpower solution and not the respondent. If there is any illegal transfer of the employment that could only be justified by proving the existence of the prior contract with the respondent before shifting to Manpower solution. As there is no such proof, that argument is baseless. That being the case, I am convinced to say that the arbitrator was correct in holding that as between the applicants and the respondent, there existed no employer and employee relationship.

Having said so, other issues become inconsequential. As the respondent was not the applicants' employer, no claim could be properly

raised by the applicants against the respondent. The application is therefore meritless hence dismissed without costs considering that this is a labour dispute.

DATED at **ARUSHA** this 16th Day of December 2021

D. C. KAMUZORA

JUDGE