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LEGAL NEWS

29 August 2024



Court of Appeal Clarifies on Key Elements Constituting Constructive Termination of Employment

The Court of Appeal of Tanzania (the Court), in Civil Appeal No. 394 of 2020 between Edward Jonas and Tanzania Breweries Limited, held that for constructive termination to be established, there must be evidence that the employer made the employment intolerable to the extent that the employee has no other options but to resign from such employment.

Background of the Case

The appellant was an employee of the respondent from 2000 to 2018 as a Management Information Systems Officer (MIS Officer). Later, he was promoted to the post of Regional Logistics Manager. Following allegations of misconduct, he was suspended on 27 October 2017, pending investigation. The respondent alleged that the appellant had conspired with some other people to off-load a consignment destined for the Democratic Republic of Congo (DRC), which led to the appellant's resignation on 23 January 2018. The resignation was accepted by the respondent on 26 January 2018. Feeling agitated, the appellant filed a case at the Commission for Mediation and Arbitration (CMA) alleging constructive termination by the respondent. The CMA ruled in favour of the appellant and ordered payment of severance allowance and 12 months' salary, while other claims were rejected. This decision did not please both parties leading to the filing of 2 revisions at the High Court. The said revisions were consolidated and heard together and the learned Judge differed with the CMA arbitrator. The Judge ruled that the resignation letter was tendered voluntarily and the said letter had all the elements of a valid resignation. The Appellant, being aggrieved by the High Court Decision, preferred his appeal to the Court.

Arguments Raised by the Parties

The appellant argued that there was constructive termination, for the respondent staged intolerable situations and prolonged investigations leading to mental torture, hence the appellant's resignation. Based on such arguments, the appellant claimed several salary arrears, leave payments, advocates fees, 2 years Salaries for wrongful termination

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ECRA Attorneys is a modern and full-fledged law firm based in Dar es Salaam, Tanzania. It is comprised of qualified legal hulks with professional experience of more than a decade in a range of areas of their expertise.

ECRA Attorneys offers professional services in various areas of the law ranging from Taxation (both tax litigation and tax advisory); Corporate; Employment; Immigration; Intellectual property; Litigation, Arbitration and Regulatory; Engineering, Procurement and Construction (EPCs-related Services); Banking and Project Finance, Real Estate; Capital Market and Securities; Oil and Gas, Mining Law; Competition Law; Telecommunications and ICT Law; Payment Systems Law; Insurance Law and International Trade Law and Financing.

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and payment of disposal of TBL Employees Trust Assets amounting to TZS. 75,188,096.00.

On the other hand, the respondent argued and denied to have subjected the appellant to any mental torture as the appellant had access to the office twice a week and was under full pay. Also, the respondent questioned as to why the appellant did not complain to anybody that he was subjected to mental torture if he had any.

Determination of Issues and Decision of the Court

Based on the foregoing, the issue for determination by the Court was whether there was a prolonged investigation making the working condition intolerable. The Court observed that, there must be evidence that the employer made the employment intolerable to the extent that the employee had no other option but to resign. However, in this case, the appellant was suspended with access to the office only for 84 days pending forensic investigation in DRC and Tanzania. Further, the Court observed that the appellant's resignation could be termed as a person who lost patience for no apparent reasons, for any prudent employee should have waited for the outcome of the investigation before taking any step.

Furthermore, the Court added that there must be three elements for constructive dismissal to be established, namely: (i) that the employee must have terminated the contract of employment; (ii) that the reason for termination of the contract must be that continued employment has become intolerable for the employee; and (iii) that it must have been the employee's employer who has made continued employment intolerable. All these three requirements must be present for it to qualify as a constructive dismissal. Finally, the Court concluded that, in this case, alleged constructive termination was not established to the satisfaction of the Court. Taking into account the reasons stated above, the Court found the appeal to be devoid of merits and dismissed the same.

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