IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: MWARIJA, J.A, FIKIRINI, J.A. And MLACHA, J.A)

CIVIL APPEAL NO. 394 OF 2020

EDWARD JONAS ..... APPELLANT

VERSUS

TANZANIA BREWARIES LTD ..... RESPONDENT

(Appeal from the Consolidated Judgment and Decree of the High Court of Tanzania, Labour Division at Dar es Salaam)

(Wambura, J.)

dated the 14th day of August, 2020
in
Consolidated Labour Revisions No. 494 of 2019 and 405 of 2019

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JUDGMENT OF THE COURT

2nd July & 29th July, 2024

MLACHA, J.A.:

The appellant, Edward Jonas, was an employee of the respondent, Tanzania Breweries Ltd from 2000 up to 2018 when he resigned. He later moved to the Commission for Mediation and Arbitration (the CMA) and lodged a case for constructive termination. The CMA found for the appellant and awarded payment for severance allowance and 12 months salaries. Other claims were rejected. This decision was reversed by the High Court on revision hence the appeal now before the Court.

For a better understanding of the appeal, the factual background is reproduced as follows: The appellant was employed on 11/04/2000 as a Management Information Systems Officer (MIS Officer). He was promoted successfully over the years to the post of Reginal Logistics Manager. He was suspended on 27/10/2017 pending investigations on allegations of misconduct. It was alleged that he had conspired with some other people to off load a consignment of Konyagi destined for DRC. He resigned on 23/01/2018. The resignation was accepted by the respondent on 26/01/2018. Feeling agitated, he filed a case for constructive termination at the CMA as alluded to above. He had 5 claims; salary arrears vide section 40(2) of the Employment and Labour Relations Act, 2004 (the ELRA), leave payment due, advocate fees TZS. 10,000,000.00, 2 years salaries for wrongful termination vide section 40 (1) (c) of ELRA and payment of disposal of TBL Employees Trust Assets TZS. 75,188,096.00.

After a failure of mediation, the dispute was placed before the arbitrator (R. William) for arbitration. The arbitrator framed 3 issues. **One**, whether or not the complainant's resignation was a constructive termination at the initiative of the respondent; **two**, if the answer on issue No. 1 is in

the affirmative, whether or not the complainant's termination was by and large unfair; and **three** to what reliefs are the parties entitled.

The arbitrator received evidence from the appellant who had 13 exhibits; temporary employment contracts (A1 collectively), the employment contracts (A2), bonus and salary incentives (A3 collectively), short course certificates (A4 collectively), appointment letter to the post of operations manager - South (A5), notice of suspension (A6), a letter headed 'Call for Explanation' (A7), a reply to the Call for Explanation (A8), a letter headed 'Extension of Time to the Call for Explanation' (A9), a Reply to the 'Call for Explanation' (A10), the letter headed 'Resignation Notice' (A11), a 'Reply to the Resignation Notice' (A12) and the 'Certificate of Service' (A13) to prove his claims. He was the sole witness.

The respondent had two witnesses namely; Huruma Ntahala(DW1) who is the respondent's company secretary and Martin Wolfaard, the director of logistics (DW2). They had no document to tender save that they acknowledged and made reference to documents tendered by the appellant. The gist of their evidence is that the resignation was voluntarily made making the claim for constructive termination baseless.

The arbitrator reviewed the evidence of the appellant viz-viz that of the respondent extensively. He considered the law; rule 7 (1) of the Employment and Labour Relations (Code of Good Practice) Rules, GN. 42 of 2007 (the Code of Good Practice) and two decisions the High Court; **Girango Security Group v. Rajabu Masudi Nzige**, Revision No. 164 of 2013 and **Knight Support (T) Limited v. Chrisprinus S. Kakali**, Revision No. 35 of 2009 (both unreported). After an analysis of the evidence and the record, he made a finding that the appellant's resignation amounted to constructive termination. He ordered payment of severance allowance TZS. 18,037,996.00- and 12-months salaries TZS. 80,397,924.00; total TZS. 98,435,920.00; the rest of the claims were found to be baseless and dismissed.

This decision did not please any of the parties leading to the filing of 2 revisions at the High Court; Revision No. 405 of 2019 (filed by the appellant) and Revisions No. 494 of 2019 (filed by the respondent). The revisions were consolidated and heard together.

After a review of the evidence, the learned Judge differed with the arbitrator. He found that the resignation letter was tendered voluntarily. He had the view that the resignation letter had all the elements of a resignation

letter; a statement of intent, the name of the official and position, date of the last day on the job, gratitude to the employer, highlight of his time while in employment and willingness to remain in contact. He concluded that it was written without any force from the respondent.

On intolerable working conditions, the learned Judge followed two earlier decision of the High Court; **National Bank of Commerce v. Francis Cecil Ramadhani**, Revisions No. 23 of 2015 (unreported) and **Girango Security Group** (supra) where it was stated:

> 1. *"Firstly, the employee must establish that there was no voluntary intention by the employee to resign - the employer must have caused the resignation.*
> 2. *Secondly, the Court must look at the employer's conduct as a whole and determine whether its effects, judged reasonable and sensibility, is such that the employee cannot be expected to put up with it".*

The learned Judge applied the principles in the case at hand and had this to say at page 9 of her judgment, appearing at page 808 of the record of appeal:

(i) The investigations were not completed. No matter how long the investigations were to take, the employee was receiving his salary while on suspension.

(ii) Secondly, it is not on record that he complained anywhere of any mistreatments and the complaints were ignored. Not even in the resignation letter.

(iii) But lastly and worse, he resigned while investigations of misconduct facing him had commenced. He was demanding for the investigation report which could not be served to him as investigations were yet to be concluded. He thus cannot be said to have been constructively terminated."

Making further reference to principles laid down in **David Msangi and Ismail Mbuyu v. National Oil (T) Ltd**, Revision No. 397 of 2015 [2018] TZHCLD, 16 (27th April, 2018) TANZILII and **MS TCDC v. Elda Mtelo**, Revision No. 1 of 2023 (unreported), the learned Judge stated that since disciplinary measures had commenced as evidenced by the suspension, it was prudent for the appellant to wait for the investigations to be conducted and disciplinary hearing concluded and outcome released before taking any step. She pointed out that it was wrong to resign at that stage. Backed by this understanding, he reversed the finding of the CMA hence the appeal.

Five grounds of appeal were presented before the Court. They carry the following complaints; **one**, framing new issues in the course of composing judgment without giving the parties a chance to address the Court; **two**, the finding that the resignation was tendered willingly is contrary to the evidence on record and the law; **three**, the finding that the appellant did not complain of the mistreatment anywhere is contrary to the evidence on record; **four**, failure to find that the resignation amounted to constructive termination; and **five**, in alternative to ground four, unjust interference with the finding and award of the CMA. The first ground was abandoned in the course of submissions. With this move which received our blessing, the appeal remained with 4 grounds.

The appellant was represented by Mr. Elisaria J. Mosha, learned advocate, whereas the respondent had the services of Mr. Godwin Nyaisa, also learned advocate.

Mr. Mosha adopted his written submission earlier on filed in terms of rule 106(1) of the Tanzania Court of Appeal Rules, 2009 as part of his oral submissions. He started with ground two. Making reference to pages 802, 807 and 808 of the record of appeal, he argued that whereas it is possible that the appellant resigned before completion of investigation as alleged, but

there is no indication that he resigned because investigation had taken too long as pointed out by the learned Judge. He urged the Court to appraise the evidence and find that there were intolerable situations facing the appellant which lead to the resignation. He cited to us a portion in exhibit A8 which has a request for a copy of the investigation report. He contended that instead of supplying a copy of the investigation report to the appellant as requested in exhibit A8, the respondent stressed in exhibit A9 that the appellant should give his defence to the charge by 07/11/2017. This forced him to give his defence as appearing in exhibit A10 without a look of the investigation report. He contended further that, the appellant gave his defence on 05/12/2017 but the respondent kept silent up to 23/02/2018 without any feedback. The appellant could not bear the matter anymore and decided to tender his resignation on that date. He implored us to find that these were the forces behind the resignation.

Submitting on ground three, Mr. Mosha intimated to us that the High Court did not discuss the submissions accusing them to be too long. He contended that, failure to examine the submissions denied the Judge a chance to see the mistreatment. This lead to a failure of justice. To fortify his stance, he cited to us our decision in **Tanzania Breweries Limited v.**

Anthony Nyingi [2016] TLS LR 99 where it was stated that if a court of law decides to accept or reject a party's argument, it must demonstrate that it has considered the same and set out the reasons for rejecting or accepting it. Further reference was made to our decision in **Kobil Tanzania Ltd v. Fabrice Ezaovi**, Civil Appeal No. 134 of 2017 [2021] TZCA 477 (16th September, 2021) TANZLII and **Mrisho Omary and Another v. Reheem Nathoo**, Civil Appeal No. 354 of 2019 [2022] TZCA 215 (25th April, 2022) TANZLII where it was stated that mistreatment may lead to constructive termination. He implored us to find that there was a series of unfair treatments in the disciplinary proceedings which, if considered by the High Court, it could not make the decision it made.

In ground four, counsel for the appellant submitted that looking at the import of exhibits A6, A7, A8, A9 and A10 one cannot deny that the appellant was in hardships which led him to write exhibit A11. That, whereas the respondent had promised in exhibit A6 to send him to the disciplinary hearing after completion of investigation, he was required to respond to the charges contained in exhibit A7 without knowing the outcome of the investigation. And when he demanded to be given a copy of it vide exhibit A8, he could not get it and instead he was forced to defend himself without the report.

Further to that, counsel submitted, there was a period of silence which gave the appellant mental torture leading to the resignation. According to him, there was no reason for a quick response to the resignation notice, as it was done by the respondent on 26/1/2018, for there was still a room for negotiation. He contended further that, the appellant's resignation amounted to constructive termination and urged us to hold so.

In ground five, it was submitted that, the decision of the CMA was sound in law and could not be vacated lightly in the manner it was done. Mr. Mosha contended that, the decision of CMA was arrived at after an analysis of evidence unlike that of the High Court which was arrived at without an appraisal of the evidence or a discussion of submissions. That, if the High Court had a look at the evidence and considered submissions, it could find that there was constructive termination. It was added that, the CMA being the trial court was better placed in the assessment of evidence because it had the advantage of seeing the witnesses. To fortify his stance, he cited to us our decision in **Yasin Ramadhani Changa v. R**, [1999] TLR 481. In totality, he urged the Court to vacate the decision of the High Court and restore the decision of the CMA.

Mr. Nyaisa replied grounds to 2 and 3 conjointly. Making reference to pages 805 – 809 of the record of appeal, he submitted that the decision of the High Court is sound in law and must be upheld. He contended that looking at exhibits A6, A7 and A10 one can see no indication that the respondent made the employment of the appellant intolerable. He contended further that the five questions posed by the Court in our decision in **Kobil (T) Ltd** (supra) must be answered affirmatively before concluding that there is a constructive termination. The Court stated thus:

> 1. *Did the employee intend to bring the employment relationship to an end?*
> 2. *Had the working relationship become so unbearable, objectively speaking, that the employee could not fulfil his obligation to work?*
> 3. *Did the employer create an intolerable situation?*
> 4. *Was the intolerable situation likely to continue for a period that justified termination of the relationship by the employee?*
> 5. *Was the termination of the employment contract the only reasonable option open to the employee?*

Mr. Nyaisa made a specific reference to questions 3 and 5; intolerable working situation and resignation as a last resort. He contended that the investigation did not take too long as alleged and if so, the appellant had no

problem because he was under full pay. Further, the appellant did not prove that he had an unbearable working situation. To the contrary, counsel submitted, the respondent lead evidence through DW1 and DW2, as appearing in pages 108 – 109 of the record of appeal, showing that the investigation involved a forensic expert from South Africa (Mr. Donavan Harper), two countries (Tanzania and DRC) and was done in December, a period when most senior officers, including DW2, had to break for Christmas vacations. If there is any delay, which they deny, must be considered in the light of this scenario, he submitted.

Counsel went on to submit that the appellant did not exhaust the existing remedies as provided under rule 7 (2) (b) of the code of Good Practice for there is no evidence that he complained to the senior management about the manner in which the investigation was being done or the time involved. The appellant could not even raise it in his resignation letter. Counsel for the respondent supported the finding of the High Court appearing on page 808 of the record of appeal where it is stated that there cannot be constructive termination if resignation is done while there is a pending investigation. That the appellant should have waited for the outcome of the investigation and resign at a later stage, if need be.

As to the intention of the letter, exhibit A11, counsel submitted that, the wording of the letter are clear that the appellant resigned to get time to '*deal with some other issues*'. He invited us to give it the literal interpretation; reading the letter and following it exactly as it is written without changing anything. Counsel concluded that the fact that there was no complaint made to anybody on the intolerability of the working condition is relevant. He concluded that the resignation was made willingly making ground two and three baseless which he urged the Court to dismiss.

It was the submission of Mr. Nyaisa in ground 4 that what was done in exhibits A7 and A9 was not a formal charge but a mere call for explanation to assist the management to proceed with investigation. He contended that investigation was yet to be finalized so there could not be any investigation report. He went on to submit that it is not true that the Judge ignored the submissions as alleged by counsel for the appellant. Making reference to the judgment as appearing in page 803 of the record of appeal, he argued that the Judge considered the submissions and thanked the parties. He also reviewed the evidence. He urged us to disregard the complaint in ground 4.

Submitting in reply to ground 5, counsel for the respondent contended that the Judge reviewed the evidence and submissions correctly and found

the revision filed by the respondent to be meritorious. Counsel for the respondent supported the finding and decision of the High Court. In totality, he urged us to dismiss the appeal.

In rejoinder, counsel for the appellant reiterated his earlier stance that exhibits A6, A7 and A10 must be interpreted to mean that there was unbearable working conditions before the resignation. He went on to submit that the question on whether investigation was still going on or concluded was supposed to be answered by the investigator who was not called to testify. He argued that all what was said by DW2 on the status of investigation was hearsay. Further to that, the Judge did not discuss the evidence of DW1 and DW2. He reiterated his earlier stance that the appeal has merit.

We think we should start with an examination of the law on constructive termination. Luckily, as pointed out by learned counsel, this area is blessed with sound decisions of the High Court which has been adopted and developed by the Court. We also have several decisions from South Africa with whom we share similar provisions. We think, as correctly pointed out by learned counsel, the relevant law is rule 7 of the Code of Good Practice. It is reproduced in *extenso*, for easy of reference, as under:

"7. – (1) Where an employer makes an ***employment intolerable*** *which may result to a resignation of the employee, that resignation amounts to* ***forced resignation or constructive termination.***

(2) Subject to sub rule (1), the following circumstances may be considered as ***sufficient reasons to justify a forced resignation or constructive termination*** *–*

(a) ***Sexual harassment*** *or the failure to protect an employee from sexual harassment; and*

(b) If an employee has been ***unfairly dealt*** *with, provided that the employee has* ***utilized the available mechanisms*** *to deal with grievances unless there are good reasons for not doing so.*

(3) Where it is established that the employer made the ***employment intolerable*** *as result of resignation of the employee, it shall be legally regarded as termination of employment by the employer." (Emphasis supplied)*

In **Kobil Tanzania Limited** (supra), while taking note of similarities between the law in Tanzania and the law in South Africa, we borrowed with approval the following passage from **Solid Doors (Pty) Ltd v.**

Commissioner Theron and others, (2004) 25 ILJ 2337 (LAC) at page 28 where it was observed:

> *" .... there are three requirements for constructive dismissal to be established. The first is that the employee must have terminated the contract of employment. The second is that the reason for termination of the contract must be that continued employment has become intolerable for the employee. The third is 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 be said that a constructive dismissal has been established.*** *" (Emphasis added)*

The word *intolerability* implies a situation that is more than can be tolerated or endured or insufferable. It is something which is simply too great to bear, not to be put up with or beyond the limits of tolerance. See the South African Case of **Solidarity on behalf of Van Tonder v. Armaments Corporation of SA (SOC) Ltd and others**, (2019) 40 ILJ 1539 page 39, followed in **Kobil (Tanzania) Ltd** (supra). In other words, there must be evidence that the employer made the employment intolerable, that the

termination was caused by the conduct of the employer who forced the employee to have no other option but to resign.

[See also our decision in **Mrisho Omary and Another v. Raheem Nathoo** (supra), **Tanzania Cigarete Company Limited v. Hassan Murua,** Civil Appeal No. 17 of 2018 [2019] TZCA 569 (27th June, 2019) TANZLII and **Margwe Erro and 2 Others v. Moshi Bahaluu**, Civil Appeal No.111 of 2014 [2015] TZCA 282 (25th February, 2015) TANZLII]

Before discussing the grounds of appeal, we find it apposite to point out the principle stated in **Godfrey Elisalia and 3 Others v. The Republic,** Criminal Appeal No. 39 0f 2022 [2023] TZCA 17325 (12th June, 2023) TANZLII that, where the two lower courts did not concur on the findings of facts, the Court is obligated to re-evaluate and analyze the evidence adduced at the trial court and come out with its own findings, if need be, or agree with any of the lower courts.

[See also **D.R. Pandya v. Republic** (1957) E.A. 336, **Joseph Stephen Kimaro and Another v. Republic**, Criminal Appeal No. 340 of 2015 [2015] TZCA 316 (13th October, 2015) TANZLII and **The Director of Public Prosecutions v. Stephen Gerald Sipuka**, Criminal Appeal No. 373 of 2019 [2021] TZCA 330 (20th July, 2021) TANZLII].

As it is obvious that there was no concurrent finding of facts between the CMA and the High Court, an evaluation of the evidence, where need arises, will be done.

Next is a discussion on the grounds of appeal. We will adopt the style of the respondent due to the close nature of the complaints in ground 2 and 3. The two grounds carry the message that the working conditions were unbearable forcing the appellant to resign.

We gather from the evidence and submission of the appellant that resignation was done due to three things; **One**, the appellant was served with a charge sheet and required to make a defence without being supplied with the investigation report, which was requested but denied; **two**, the respondent did not honour the promise to take the appellant to the disciplinary hearing after completion of investigation as per exhibit A6; and **three**, that the appellant submitted his defence to the charges on 05/12/2017 but up to 23/01/2018 there was no any response from the respondent.

The response of the respondent was that the investigation was yet to be finalized as such there was no report to be given to the appellant on 04/12/2027 when he requested for a copy. They denied to have presented

any charge to the appellant. They stated that what is contained in exhibit A7 is not a charge but a call for information to facilitate the investigation. They agreed that they had a plan to send the appellant to the disciplinary committee but the stage was not yet reached. They deny the existence of a prolonged investigation. They have added that, if it will be found to have taken too long as alleged, the appellant must recall that it involved two countries (Tanzania and DRC), an expert from South Africa and was done in December, a month which had Christmas vacations. It was also involving forensic evidence making it complex. They denied to have subjected the appellant to any mental torture so long he had access to the office twice a week and was under full pay. They questioned the reason as to why the appellant did not complain to anybody that he was subjected to mental torture if he had any. This element is not even in his resignation letter making it a mere afterthought.

Having examined exhibits A6, A7, A8, A9, A10 and A11, and considered the submission of the parties carefully, we could not see any indication that the appellant was subjected to any mental torture. There was no any *iota* of evidence proving this element. It is obvious that the appellant who had a duty to prove it did not do so. In the like manner we do not see any

disciplinary charge levelled against the appellant. We agree with the respondent that exhibit A7 was just a letter seeking information needed in the investigation process and not a charge. The investigation was still under way. The respondent cannot therefore, be accused of failing to supply the report because it was not in existence. In the like manner, the respondent could not take the appellant to the disciplinary committee as promised in exhibit A6 because the investigation was yet to be finalized.

We had time look at the record and circumstances of the case closely in our endevour to examine whether there was a prolonged investigation making the working condition intolerable. We have noted that, the appellant was suspended on 27/10/2017 and resigned on 23/01/2028, making a gap of 84 days. In between the respondent had to engage an expert from South Africa who conducted a forensic investigation and noted some elements of fraud touching the appellant for which he needed clarification. The appellant was contacted to give the clarification. He was not ready to supply the information as seen in his letter, exhibit A8. He had to be engaged through another letter, exhibit A9, for him to agree to supply the information which he supplied through his letter dated 05/12/2018, exhibit A10. The respondent worked on the information supplied but before they concluded

the investigation, the appellant resigned on 23/01/2018. We think the period of 84 days in between was not a long period to a person who had access to the office twice a week and who was under full pay. We don't see any unfair working condition. We see him as a person who lost patience for no apparent reasons. Any prudent employee should have waited for the outcome of the investigation before taking any step. That disposes grounds 2 and 3.

We will now move to ground 4; failure to find that the resignation amounted to constructive termination. This will take us to rule 7 of the Code of Good Practice and the questions posed above. As alluded to above, rule 7 put up two reasons; sexual harassment and unfair treatment. Any of them, if proved to exist, may convert a resignation to a constructive termination. But there must be evidence that they made the working condition intolerable in the sense and meaning of the word as intimated above. Further, there must be evidence that the appellant exhausted the available mechanism of complaints within the institution.

We have discussed unfair treatments in the course of examining intolerable working conditions and could not find any fault on the respondent. We could not see any element of unfair treatment to the appellant. The only area left demanding an in-depth consideration is the

requirement to exhaust the available remedy. We will try to explore this area albeit briefly.

The appellant was dealing with DW2 who was his immediate boss. He is the one who wrote exhibits A6, A7 and A9. He was also the one who was supervising the investigation. If there is any delayed investigation or mental torture, it was actually a complaint against this man. The appellant who had worked with the respondent company for 17 years knew that there was authority bigger than DW2; the managing director and the board of directors above him. There was also a branch of workers union. He ought to have complained to any of them that DW2 was mistreating him. He did not do that making the complaint an afterthought. Ground 4 is baseless. It is dismissed.

In ground 5 the complaint is that the award was vacated unjustly for failure to consider the submissions made before the court. The relevant part of the judgement is page 4 appearing at page 803 of the record of appeal. The leaned Judge stated as follows:

> *"Having gone through the submissions filed by the parties herein, I note that the issues which I have been invited to resolve are the following:*

(i) Whether the employee issued a resignation letter or mere intention to resign.

(ii) Whether the employee's resignation can be said to amount to constructive termination.

(iii) The reliefs entitled to each party."

The learned Judge went on to consider the evidence and resolved the questions raised. She is now accused of failure to reproduce the submissions of the parties leading to unjust orders against the award of the CMA. Faced with an akin situation, the Court had this to say in **Jongo Mwikola v. Geita Gold Mining Limited,** Civil Appeal No. 344 of 2020 [2024] TZCA 125 (23rd February, 2024) TANZLII where we stated:

> *"**Regarding omission to consider the written submission,** we wonder what would have been its effect of failure to do so. This is because, it is trite law that **the submission is not a substitute of evidence.** See - The Registered Trustees of the Archdiocese of Dar es Salaam v. The Chairman, Bunju Village Government and 11 Others, Civil Appeal No. 147 of 2006 (unreported), where it was stated that: "... submissions are not evidence. **Submissions are generaiiy meant to reflect the general features of the party's case. They are elaborations or explanations on evidence***

> ***already tendered. They are expected to contain arguments on applicable law. They are not intended to be substitute for evidence.***" *See also: Imani Omari Madega v. Yusuf Mehboob Manji and 3 Others, Civil Appeal No, 135 of 2019; Gulf Concrete & Cement Products Co. Ltd v. D. B. Shaprya & Co. Ltd, Civil Appeal No 88 of 2019; Shadrack Balinago v. Fikiri Mohamed @ Hamza and 2 Others, Civil Application No. 25/8 of 2019; Sunlon General Building Contractors Ltd and 2 Others v. KCB Bank Tanzania Limited, Civil Appeal No. 253 of 2019 and Trade Union Congress of Tanzania (TUCTA) v. Engineering Systems Consultants Ltd and 2 Others, Civil Appeal No. 51 of 2016 (all unreported)." [Emphasis added]*

See also our decision in **Tanzania Breweries Limited** (supra) at page 7 where it was stated thus:

> *"If a court of law decides to accept or reject a party's argument, it must demonstrate that it has considered the same, and set out the reasons for rejecting or accepting it"*

Much as we agree that there is a practice of reproducing the submissions before discussing them, which we encourage, but what was done by the learned Judge is also accepted, depending on the circumstances of each

case. What is important therefore, is not to reproduce the submission of parties in the judgment, but to show that they have been considered and to give reasons for rejecting or accepting them. Based on this understanding, we see nothing wrong in what was done by the learned Judge. Ground 5 is thus baseless and the same is dismissed.

Taking into account the reasons stated above, the appeal is found to be devoid of merits and we thus dismiss it. This being an employment matter, we make no order as to costs.

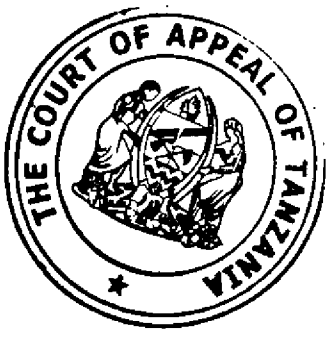
DATED at **DAR ES SALAAM** this 26th day of July, 2024.

A. G. MWARIJA
JUSTICE OF APPEAL

P. S. FIKIRINI
JUSTICE OF APPEAL

L. M. MLACHA
JUSTICE OF APPEAL

The Judgment delivered this 29th day of July, 2024 in the presence of the Appellant in person and Mr. Phillip Lincoin Irungu, learned counsel for the Respondent, is hereby certified as a true copy of the original.



O. H. KINGWELE
DEPUTY REGISTRAR
COURT OF APPEAL