

- A General Meeting of CUF Party is void for being illegal and unconstitutional. The same is quashed and set aside.
- B (2) that the plaintiff is still a bonafide and lawful member of the Civil United Front Party and a Member of Parliament of the United Republic of Tanzania.
- (3) that costs of the suit be awarded to the plaintiff against the defendants.

JOSEPH M. MUTASHOBYA v. M/S KIBO MATCH GROUP LIMITED

**COURT OF APPEAL OF TANZANIA
AT ARUSHA**

(Lugakingira, Munuo and Nsekela, JJ.A.)

CIVIL APPEAL No. 53 OF 2001

(From the Judgment and Decree of the High Court of Tanzania at Moshi, Mushi, J.) dated 30 December 1998, in Civil Cause Number 9 of 1996)

Labour Law – Contract of Employment – Termination of contract of employment – Termination of employment contract entered into for specified period – Whether Employer may terminate it before expiry of the specified period.

Labour Law – Contract of Employment – Termination of contract of employment – Whether employer may decide to terminate it without giving reasons – Article 13(6) of the Constitution.

Basic Rights – Right to Work – Whether termination of employment by employer is violative of the employee's constitutional right to work – Article 22(1) of the Constitution.

The appellant was employed by the respondent for a specific period of three years, subject to renewal upon mutual agreement. This was made in writing, which had

clause 13(b) of the contract provided for early termination of the employment. The respondent unilaterally terminated the employment without assigning any reasons. Aggrieved, the appellant instituted a suit in the High Court, claiming TZS.38 703 862 for wrongful termination of the agreement by the respondent. The High Court dismissed the suit, hence this appeal.

Held: (i) The open words of clause 13 of the Employment Agreement clearly gave right to the respondent to prematurely terminate the agreement without giving reasons for the decision;

(ii) Judicial observation that reasons must be given whenever anybody acts or decides any matter is not of general application but is limited to public authorities.

Appeal dismissed

Cases referred to:

- (1) *Mohamed Jawaf Mrouch v. Minister for Home Affairs* [1996] T.L.R. 142
- (2) *Tanzania Air Services v. Minister for Labour and A.G.* [1996] T.L.R. 217
- (3) *Twiakegye Mwaigombe v. Mbeya Regional Trading Co Ltd* [1988] T.L.R. 237

Statutory provision referred to:

- (1) Constitution of the United Republic of Tanzania 1977, articles 13(6)(a), 22(1)
- Mr Kimomogoro*, for the Appellant
- Mr Chadha*, for the Respondent

JUDGMENT

(Dated 11 June 2003)

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 TZS.38 703 862. The facts are straight forward. The appellant was employed by the respondent for a period of three years with effect from 6

A August 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

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

F 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* (1), *Tanzania Air Services v. Minister for Labour; Attorney General* (2) and *Twikasyege Mwaigombe v. Mbeya Regional Trading Company Ltd* (3). The second ground of appeal revolved around clause 20 which reads

I 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:

- E (a) Summary dismissal for breach of contract or if the employee is guilty of serious misconduct.
- F (b) By giving at least three months notice in writing or payment of three months salary in lieu. [emphasis supplied]
- G (c) As in clause 12(h) above.

- H 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 esChaptere 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

A 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
 B 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 (2). In this case, the applicant was seeking
 for an order of certiorari to quash a decision of a Minister because
 C 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:

D 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?
 E 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
 F added].

And at page 224, His Lordship continued:

G 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].

H 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
 I 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
 B 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. C

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
 D and the appellant is not entitled to any damages.

We accordingly dismiss the appeal in its entirety with costs.

IN RE: M (AN INFANT)

HIGH COURT OF TANZANIA AT DAR ES SALAAM

(Massati, J.)

MISCELLANEOUS CIVIL CASE No. 138 OF 2003

*Adoption – Adoption order – Effect of the adoption order on the relationship
 between infant and parent.*

*Adoption – Purpose of adoption – Purpose of adoption must be to promote the
 welfare of the child better than the existing arrangement.*

The applicant who was a maternal aunt applied to adopt M, an infant, in order to
 assist the family to bring up and educate the said infant. The guardian of the infant I