Managerial Employee in a Labour Division Courts

Description

By DMLF Team

Introduction

This is a summary of a managerial employee case. The case is between Applicant Ato Daniel Suse and Respondent Aspire Elicom PLC. The case has been decided by the Federal Supreme Court Cassation Division on Seber File No 214112 on 6/5/2022. The case is about which division i.e. labour division or civil matter division has jurisdiction to see a managerial employee's case where the employee and employer agreed in their employment contract the application of the labour proclamation.

Federal First Instance Court Labour Division

The case has started in the Federal First Instance Court Labour Division. The Applicant filed a case stating he has been hired as a contract administrator section head. The Applicant's employment agreement mentions that his leaves, benefits and notice of termination of employment follow that of the Labour Proclamation No 377/2003. However, the deputy manager of the Respondent informed the Applicant the termination of his employment with only 1 month salary. The Applicant however demanded a three month salary. Due to the refusal of the Respondent to give a three month salary, the Applicant filed for unlawful termination of employment and consequential payments to the labour division of the Federal First Instance Court.

The Respondent gave a statement of defense stating first a preliminary objection. The labour division does not have the jurisdiction to see the case as the Applicant is a managerial employee. For the defense, the Respondent argued that the Applicant's employment is terminated due to the fact that the Applicant is absent from work regularly, the Applicant does not execute his task on time and fails to report as expected on his tasks and similar other reasons and argued the termination is lawful.

The Federal First Instance Court ruled on the case first by refusing to accept the preliminary objection of the Respondent. The court then ruled in favor of the Applicant. The absence of agreement to terminate the employment contract between the employer and employee makes the termination unlawful. As a result, the Respondent has to pay severance, notice period and compensation to the Applicant.

Federal High Court

The Respondent appealed the case to the Federal High Court. The court accepted the appeal and heard the parties. The court framed the issue of whether or not the Applicant is a managerial employee or not. The court then confirmed that the Applicant is a managerial employee. The fact that certain provisions of the labour law are mentioned to apply in the employment agreement doesn't make the case a labou division case, the court said. The appellate court continued, since the Applicant is a managerial employee, the labour division's ruling is dismissed due to the fact that the labour division

does not have the mandate in the first place to entertain the case.

Federal Supreme Court Cassation Division

Dissatisfied with the Federal High Court decision, the Applicant filed an application to the Federal Supreme Court Cassation Division. The Applicant stated that the employment agreement mentions the application of the labour law. Disregarding our agreement by the Federal High Court is a basic error of law, argued the Applicant.

The Cassation Division to which the application is referred to concludes that the case has a merit and framed an issue. The fact that the case cannot be presented to labour division even where the employment agreement mentions the application of Proclamation no 377/2003 for employment issues is subject to be investigated by the Cassation Division.

The Respondent is given a chance to reply. The Respondent argued that the Applicant fulfills the definition of a managerial employee. The Applicant signed by mistake an employment contract of an ordinary employee. This doesn't make him non-managerial employee. Hence the Federal High Court decision is correct and should be upheld. Similarly the Applicant gave a counter-reply. In the Applicant's counter reply, the Applicant argued supporting his application.

The Federal Supreme Court Cassation Division investigated the case. The Cassation Division commenced its reasoning from the fact that the Applicant is a managerial employee. The Federal High Court has confirmed this fact. The Cassation Division said the argument of the Applicant is not whether the Applicant is or is not a managerial employee. The Applicant's argument is that since the employment agreement mentions the application of the labour law provisions, the labour division does have jurisdiction to see the Applicant's case. Then the issue is: does the labour division have a mandate to entertain a managerial employee's labour claim by the mere fact that there is a mention of labour law provisions in the agreement of the employer and employee?

The Labour Proclamation No 1156/2019 Art.3(2)(c) provides that the labour proclamation does not apply to managerial employees. Art. 138(1) of the same proclamation states that the labour division sees cases falling under the labour proclamation. Therefore since managerial employees are outside the scope of the labour proclamation, their case cannot be referred to labour benches. The fact that the employer and managerial employee mention in their agreement the application of labour law provisions, doesn't render a mandate to the labour division to see the case. Parties to a case do not have the power to choose which court or which division accepts and sees their case. Rather the power to determine which court sees which case rests and is assigned by the law or the court administration. For the case at hand, the civil matter divisions have jurisdiction to see managerial employee labour matters and not labour divisions. The civil matter bench shall determine the application of labour law provisions as appropriate. The Cassation Division concluded, the fact that the Applicant is a managerial employee makes the labour division not to accept and see the case even where there is reference in the employment agreement the application of labour law provisions. Therefore the Federal High Court decision is upheld.

Conclusion

Managerial employees labour matters are seen not by labour divisions but by civil matter divisions. The content of the employment agreement mentioning the application of labour law provisions doesn't

guarantee the fact that the case can be seen by labour divisions. Where the employee is a managerial employee, even if there is an employment agreement that the labour law provisions are cited to apply, the case is presented to civil benches and not labour divisions.

For any labour matters, contact us at info@dmethiolawyers.com

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