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CASE SUMMARY

PAN AFRICAN ENERGY TANZANIA LIMITED v JOHN MSIGALA

(Civil Appeal No. 163 of 2020) [2024] Court of Appeal of Tanzania at Dar es Salaam, delivered on 4 January 2024)

Employers in Tanzania will welcome the Court of Appeal decision in *Pan African Energy v John Msigala*, for the following reasons:

- **It strengthens employers' hand on the need to control the actions of employees both in and outside of the workplace. Employers can take disciplinary action against employees even for misconducts committed outside the workplace, so long as the act complained of has a bearing on the parties' employment relationship.**
- **It re-affirms the principle that the employer can terminate an employee's employment upon proof of any of the various acts of misconduct listed under rule 12 of the Code of Good Practice, even if it is a first offence; and**
- **The rule does not limit any of those disciplinary offences to acts that occur during working hours and at the workplace.**

Mr. Msigala was a Senior Operator and Plant Controller at Pan African Energy's gas plant at Songo Songo Island. Like other employees, he resided in a permanent camp about a kilometer away from the plant, where there was also a dining hall for the employees.

At around 19:30 hours on 13 April, 2016, having signed out of work for the day, Mr. Msigala was in the dining hall for dinner. The Site Manager (his immediate supervisor), approached and queried him for having failed to keep the required standard of gas pressure in the export line, resulting in declining pressure. In the presence of other employees and guests, an exchange of words ensued and Mr. Msigala made disparaging remarks and used disrespectful language against the Site Manager.

Mr. Msigala was formerly charged with four disciplinary offences: poor work performance, gross insubordination, gross disrespect and verbal assault on his

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immediate supervisor. The Disciplinary Committee found him guilty of **gross insubordination, gross disrespect, and verbal assault and consequently terminated his employment**. Mr. Msigala lodged a complaint with the Commission for Mediation and Arbitration ("the CMA"), denying having uttered any disrespectful words against his immediate supervisor and alleging that it was the latter who provoked him with derogatory language.

The CMA dismissed Mr. Msigala's complaint after finding that he was guilty of gross insubordination and that the termination was substantively and procedurally fair. On revision, the High Court ruled that the alleged misconduct was committed off-duty and outside the workplace, hence the employer could not have lawfully disciplined the respondent. Citing rule 12(3) of the Employment and Labour Relations (Code of Good Practice) Rules, 2007, GN No. 42 of 2007, **the High Court held that for any misconduct to form reason for disciplinary action, the misconduct must be committed during working hours and at the workplace, and since the incident did not occur within the workplace, Mr. Msigala could not have been guilty as charged.**

Pan African Energy appealed and the Court of Appeal held that a disciplinary offence under rule 12(1)(a) of the Code of Good Practice must arise from a violation of a rule or standard regulating an employee's conduct relating to his employment, and that there has to be a nexus between the alleged misconduct and the employment relationship. It held further that any of the enumerated disciplinary offences under rule 12(3) can justify termination, even if it is a first offence. **The Court agreed with Pan African Energy that rule 12(3) of the Code does not limit such disciplinary offenses to those that take place during working hours and/or at the workplace.**

The Court took the further view that rule 12 of the Code of Good Practice is not limited to disciplinary offences that occur during working hours or at the work site. Although it agreed that there was a need to separate an employee's personal life from his/her employment life, the Court found a very thin line between them and that in this case, Pan African Energy was entitled to take disciplinary measures against Mr. Msigala, who committed the misconduct in the presence of other staff and guests, thereby weakening his supervisor's authority.

(Link to the decision: <https://tanzlii.org/akn/tz/judgment/tzca/2024/5/eng@2024-01-04>)



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