IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LABOUR DIVISION

AT ARUSHA

LABOUR REVISION NO. 47 OF 2022

(Arising from the award of the Commission for mediation and Arbitration at Arusha in CMA/ARS/ARS/308/19/02/20)

MOBILSOL UK LIMITED.....APPLICANT

VERSUS

STEPHEN WILSON KANGALA.....1ST RESPONDENT

BEST NGAO.....2ND RESPONDENT

ISAACK PETRO NKARANGU.....3RD RESPONDENT

YASIN IDD MSANGI.....4TH RESPONDENT

JUDGMENT

11/12/2023 & 24/01/2024

GWAE, J

The applicant, Mobisol UK Limited has preferred this application under provisions of the Employment and Labour Relation Act, Cap 366, Revised Edition, 2019 and Labour Court Rules, GN No. 106 of 2007 praying for orders of the court revising and quashing of the arbitration award procured on 6th June 2022.

Brief background of the parties' dispute is as follows; the applicant employed all respondents herein on the diverse dates for Fixed Terms of Contract. Eventually, the applicant opined to retrench the respondents' fixed terms of contracts due to the operational requirements. According to the applicant, the 1st, 2nd and 3rd respondents as well as other employees who were to be affected by the intended retrenchment were consulted and subsequent to the consultation, they received their termination letters on 21st September 2018 and that, they were paid terminal benefits and certificates of service. However, it is the stance of the applicant that the 4th respondent's period of service lapsed since 31st August 2018 and that there was no extension of contract.

According to the CMA F1, the respondents were terminated effectively from 30th September 2018 vide termination letters dated 20th September 2018. The records of this dispute further reveal that, subsequent to the termination, the respondents referred their dispute on 12th October 2018 to the CMA complaining that, the applicant has breached their contracts of employment.

However, the former dispute (KESI NO. CMA/ARS/ 582/ 2018 was struck out with leave to re-file on 22nd day of October 2018 and subsequent

to the order striking out the former dispute on the ground that, the respondents claimed both unfair termination and breach of contract (omnibus claims).

In the impugned award, the Commission for Mediation and Arbitration of Arusha (CMA) in its conclusion held that, the termination was substantively and procedural unfair. Thus, the Honourable Arbitrator proceeded awarding the respondents herein compensation of monthly salary for the remaining period of their respective contracts of employment. Aggrieved by the Commission award, the applicant is now seeking a revision by the court on the following grounds;

1. That, the Honourable Arbitrator for CMA erred in law as it had no jurisdiction to hear and determine the dispute that was time barred
2. That, the Honourable Arbitrator for CMA erred in law as it had no jurisdiction to hear and determine the dispute for unfair termination over employees, the respondents who had been employed on fixed term contracts
3. That, the proceedings of the honorable CMA are grossly irregular and utterly flawed

4. That, the Honourable Arbitrator for CMA erred in law in shifting the burden of proof to the applicant in the faulted award for alleged breach of contract
5. That, the proceedings and award of the CMA are utterly flawed as there are no reasons of change of Hon. Arbitrator in the course of hearing
6. That, the Honourable Arbitrator for CMA erred in law and fact in failing to uphold sanctity of the employment contracts and the respondents unequivocal waiver of any cause of action from termination due to operational requirements/retrenchment.
7. That, the Honourable Arbitrator for CMA erred in law and fact in failing to properly assess that the Complainants/respondent are vexation litigants
8. That, the Honourable Arbitrator for CMA erred in law and fact in failing to properly assess the evidence on record
9. That, the Honourable Arbitrator for CMA erred in law and fact in allowing the 4th respondent to file an affidavit in substitute of his oral testimony while there were no justifiable reasons to do so
10. That, the Honourable Arbitrator for CMA erred in law and fact by awarding damages/compensation

The respondents filed their counter affidavit through their advocate one Yoyo Asubuhi, strenuously resisting the applicant's application by stating enter alia that, the arbitrator was justified to hold that the termination was both substantively and procedural unfair. That, the CMA properly analyzed

the evidence and the affidavit substituting oral evidence was procedurally admitted. He further argued that, the 4th respondent had an employment contract with the applicant by default after its expiry on 30th August 2018 as opposed by the applicant's version.

On 30th October 2023 when this matter was called on for hearing before me, Mr. Mnyiwala Mapembe and Mr. Asubuhi Yoyo, both the learned advocates who appeared for the applicant and respondents respectively sought and obtained leave to argue the application in writing. Subsequent to the court's order granting leave, the parties' advocates filed their respective written submissions in accordance with the court's filing schedule. I shall however consider the parties' rival submissions while determining the applicant's grounds for revision as presented and argued.

In the 1st ground, that, the Honourable Arbitrator for CMA erred in law as it had no jurisdiction to hear and determine the dispute that was time barred

It is the applicant's submission that, the respondents re-filed their dispute 67 days after the order of the Commission striking out their former dispute since he became aware of the termination on 21st September 2018. Hence, out of time. He cited Rule 10 (2) of the Labour Institutions (Mediation

and Arbitration) Rules) GN. 64 of 2007 also the case of Emmanuel **Eliazry vs. Ezironk Nyabakari,** Land Appeal No. 56 of 2018 (unreported) where this court held that once the suit is struck out or withdrawn with leave to re-file, the party become subjected to time limitation whether or not such words were used in the order of the court. He also referred to **Sofia vs. Bamm Solution (T) Limited and another,** Civil Case No. 127 of 2022 (unreported) and **Reuben Josia Mwanri and 10 others vs. Kinondoni Municipal Director and 2 others,** Miscellaneous Application No. 25 of 2023 (unreported). He therefore argued that, the CMA wrongly entertained the time barred complaints and thus its award is illegal and of no effect in the eye of law.

Mr. Yoyo on his part argued regarding the 1st ground by stating that the applicant's submission is nothing but misapprehension of the law. He argued that mere omission by the CMA to specify the date on which the dispute would be refiled is excusable in the context of the labour dispute. He further stated that the respondent's dispute was rescued under item 21 of the 1st schedule to the law of Limitation Act, Cap 89 Revised Edition, 2019 (LLA) and the fact that the labour court is the court of equity.

In his rejoinder, the learned counsel for the applicant reiteratedly stated that the time started to accrue from the date of receipt of termination letters on 21st September 2018. He argued that, this court should not to be guided by sympathy or equity but by the law as it will be inequitable if we allow one party to an employment contract to disregard time in instituting a complaint against the other party. He referred this court to the decision of this court **(Kalegeya,** J as he then was) **John Cornel vs. A. Grevo (T),** Civil Case No. 70 of 1998 (unreported).

Court's determination on the 1st ground

It is trite law that a dispute or suit filed out of the prescribed period is subject to be being dismissed under section 3 (1) of the LLA or struck out by virtue of other written law. I am not unsound of the principle that, any application where no period expressly stated in statute, may be filed within 60 days from the date the cause of action arose as per item 21 to the schedule of the LLA.

In our instant dispute, it is plainly clear that, the Commission (**Keffa-Esq)** exercised his discretion granting leave to re-file the dispute in favour of the respondents. However, he did not specify the date on which the

respondents would have re-filed their dispute. In my view, if the mediator found the former dispute incompetently filed, he would either strike it out without an order granting leave to refile or strike it out with leave to re-file. If the latter order is preferred then, a mediator or arbitrator as the case may be, ought to have expressly and specifically stated the period within which to re-file. However, in both ways, the complainants would still have an opportunity to file their dispute afresh. Due to the omission done by the mediator to specifically state the period within which the dispute would be re-filed, in the situation, the error is not on the party of the complainants now respondents. Therefore, the court ought to be lenient in the circumstances.

Nonetheless, I am not persuaded by the learned counsel, for the applicant that, the cause of action arose on the date the respondents received their termination letters on 21st September 2018. I am holding so simply because, the termination letters tendered and admitted in evidence are clear and to the effect that, their termination would be with effect from 30th September 2018 (See DE4). The position in labour disputes in my considered opinion is contrary to normal civil cases where cause of action accrues when a person becomes aware of a wrongful act. In **Salim Lakhani**

vs. Ishfaque, Civil Appeal No. 237 of 2019 (unreported), the Court of Appeal when faced the similar situation had these to say;

> *"That law is further settled that; the right of action begins to run when one becomes aware of the said transaction or act which is complained."*

I am therefore of the considered view that the cause of action in this matter accrued on the date of effective termination that is on 30th September 2018 and not on the date of issuance of termination letters. Thus, the case of **Salim** (supra) cited above is distinguishable with the present one. How could the respondents complain before the date of termination? Obviously, the dispute would have been prematurely preferred.

More so, the since the cause of action is breach of contract, thus the period within which to file the dispute is within 60 days and not thirty days and that is in accordance with Rule 10 of GN. 64 of 2007 but that would the case if the alleged breach did not construe unfair termination in the eye of the law. It follows therefore even if one starts counting from 30th day of September 2018 to 27th day of October 2018, the period of 30 days had not yet lapsed by then.

Moreover, the period when the respondents' dispute was pending before the Commission ought to be automatically excluded in terms of provisions of section 21 of the LLA that is from 12th October 2018 when the former dispute was filed to 22nd October 2018 when the same was struck out with leave to refile. I subscribe to the case cited by the plaintiffs' counsel of **Geita Gold Mining vs. Antony Karangwa**, (Civil Appeal No. 42 of 2020) TZA 28) (Tanzlii) where the Court of Appeal held;

> *"The above-cited provision takes us back to section 21 (2) of the same Act, which as opposed to Mr. Gilias argument requires the court automatically exclude the time spent by the applicant in prosecuting other proceedings against the same party for the same relief, other thing being equal. It goes without saying therefore, that the section 21 (2) of the Law of Limitation Act does not require a party who intends to rely on it to move the court by way of application for extension of time before he can have the time spent in prosecuting another proceeding against the same party excluded when computing the period of Limitation. That is the law, which though not fixed, is well settled.*
>
> *The above being the position of the law which we have no reason to disturb the same, since the first application lodged by the applicant lasted in court from 21st November 2018 to 22nd February 2019, a period which has to be excluded in terms of section 21 (2) of the LLA*

After I have carefully examined the parties' competing arguments, I am in agreement with the applicant's counsel that, the CMA Form 1 filled in terms of Rule 5 (1) of GN. 64 of 2007 instituting a labour dispute is equal to a plaint, which institutes a civil suit. (See N**gorongoro Conservation Area** Authority's case (Supra). I have further noted that the respondents plainly filled the CMA Form 1 in both parts. Nevertheless, I am of different opinion that, the error made by the respondent did not occasion any miscarriage of justice taking into account that on 14th March 2019 the CMA framed the issues regarding unfair termination.

Similarly, on the 13th 2019 when the matter was called for arbitration, it was the employer, applicant who started adducing evidence. Thus, an indication that, the matter was for unfair termination where burden of proof lies upon an employer to prove that, the termination was fair pursuant to Rule 9 of the Code of Good Practice, GN. 42 of 2007. I am thus persuaded that, the filling of Part "A" of CMA Form 1 is defective but such defect alone does not render the proceedings and arbitration award a nullity since the parties properly knew the nature of the dispute as earlier alluded. More so, in the case of **Ngorongoro's** case the proceedings and the impugned were nullified basing not only in the filling of CMA Form 1 ("....also other procedural

Being guided by the above provisions of the law and judicial decision cited and reasons herein above, I am justified to hold that the respondents' complaint was not time barred. Therefore, the 1st ground of revision is devoid of merit.

In the 3rd ground; that, the proceedings of the honorable CMA are grossly irregular and utterly flawed

Supporting the 3rd ground herein, the applicant's advocate argued this ground as follows; that the respondents filled CMA Form 1 in Part "A" and "B" relating to breach of contract and unfair termination respectively. He supported his arguments by the decisions of this court in the following cases, **Marie Stopes Tanzania (MST) vs. Bernard Paul Mtumbika,** Labour Revision No. 368 of 2022, **Bosco Stephen vs. Ng'amba Secondary School,** Labour Revision No. 38 of 20217 and **Ngorongoro Conservation Area vs. Amiyo Tlaa Amiyo and another,** Revision No. 28 of 2019, (all unreported).

In his replying submission, the respondents' counsel submitted that, in the dispensation of justice in employment disputes liberal thought is vitally

required to foster expeditious dispensation of justice as was stipulated in **Serengeti Brewaries Limited vs. Hector Sequeiraa,** Revision No. 287 of 2015 (Unreported). He went on arguing that breach of contract due to unfair termination is the same and one thing with unfair termination. He bolstered his decision by the decision of the Court of Appeal in **Stella Lymo vs. CFAO Motors Tanzania Limited,** Civil Appeal No. 378 of 2019 where the Court of Appeal Held;

> *"....we do not think the learned advocate is correct in his submission that breach of employment contract is distinct from complaint based on unfair termination. It is trite, unfair termination is one and the same as a breach of contract by termination other than what is regarded as fair termination under section 36 (a) (i) of the Act.*
>
> *Obviously, there could be various forms of breaches of an employment contract not necessarily based on unfair termination."*

In his rejoinder, the applicant's counsel stated that this court is bound to adhere to the best practice of our courts being guided by the most recent court's decision where there are conflicting decisions.

Court's finding on the 3rd ground,

irregularities ("Using a defective CMA Form 1,.....Not only that, in this case, I have that, there are fatal procedural irregularities in the conduct of hearing"). In the final analysis, the 3rd ground fails.

> *In the 4th ground of revision; that, the Honourable Arbitrator for CMA erred in law in shifting the burden of proof to the applicant in the faulted award for alleged breach of contract*

I would not like being repetitive, it therefore follows that, filling of both Parts in the CMA Form 1 did not prejudice the applicant since he was aware of the complaint and reliefs sought therein. I also hold the view that, the word breach of an employment contract may also constitute unfair termination though not always the case since breach may include claims on payment of salaries less than what was agreed, given works different from job descriptions, non-payment of allowances indicated in the contract and so and so forth.

In our case, the word breach of contract was lucidly inferred to unfair termination where it was stated that there was no reasons for operational requirements and that, section 38 of ELRA was not complied with. In the circumstances of the dispute under consideration, I am bound to adhere to

the decision of the Court of Appeal in **Stella Lymo vs. CFAO Motors Tanzania Limited** and hold that, the term used "breach of contract meant unfair termination. Hence, placing the burden of proof on the shoulders of the applicant as provided under the proviso of Rule 24 (3) of the Labour Institutions (Mediation and Arbitration) Rules, GN. 67 OF 2007, which reads;

> *"The first party to make opening statement shall present its case first throughout the proceedings, if the parties do not agree on who to start, the arbitrator shall make a ruling*
>
> ***Provided that, in a dispute over alieged unfair termination of the employment, the employer shall be required to start as it has to prove that the termination was fair."*** *(Emphasis supplied)*

Having discussed as herein and basing on the above settled position of the law, the 4th ground is dismissed.

Coming to the 6th and 7th ground of revision, which read;

> 6. *That, the Honourable Arbitrator for CMA erred in law and fact in failing to uphold sanctity of the employment contracts and the respondents unequivocal waiver of any cause of action from termination due to operational requirements/retrenchment.*

7. *That, the Honourable Arbitrator for CMA erred in law and fact in failing to properly assess that the Complainants/respondent are vexation litigants*

It is the submission of the applicant's advocate that, the Commission misdirected itself by awarding the respondents compensation while they unequivocally agreed to be paid one-month salary in lieu of notice. He urged this court to refer to Clause No. 9:1:1:2. He then relied on the principle of sanctity of contract by citing the case of **Abually Alibhai Azizi vs. Bhatiaa Brothers Limited** (2000) TLR 288 where it was stated;

> *"The principle of sanctity of contract is consistently reluctant to admit excuses for non-performance where there is no incapacity or fraud (actual or constructive) or misrepresentation and no principle of public prohibiting enforcement"*

The applicant's counsel went on arguing that, the respondents are vexatious litigants on the reason that, they were paid in terms of the parties' employment agreements.

Mr. Asubuhi on his part made a reply to the effect that, the right to work being a constructional right could not be easily taken away by an employer without valid and fair reasons. He also argued that, assuming that

there was contract duly signed by the parties to that effect yet there were never agreement that the applicant would do labour replacement and call it retrenchment in a situation where there was new employment, salary increment, massive expansion of investment, increased income as per the respondents' evidence. He added that, the applicability of paragraph 9 of the parties' employment contract was never tested before the Commission, thus it cannot be subject of the sought revision by the court. He invited the court to refer to **Hassan Bundalam Swaga vs. Republic**, Criminal Appeal No. 416 of 2013 where the Court of Appeal held that an appellate court will only look on the matters which came up in the lower court and were decided and not on the matters that were not raised and decided

In his rejoinder submission, the applicant stated that the this court has power to inspect the entire CMA proceedings and its award and inspect their legality

Court's determination on 6th and 7th ground.

It is as argued by the parties' advocates that, parties to contract are bound by the terms and conditions in the agreement they freely entered into unless established otherwise. Thus, our courts are not allowed to entefere

parties' valid contract but to enforce the same. My reading of Paragraph 9:1:1:2 of the parties' employment contract plainly prohibits an employee terminated under operational requirements and who has unequivocally accepted it from instituting a case. Nonetheless, applicability of paragraph 9:1:1:2 was never raised by the parties and determined by the Commission as rightly argued by the respondents' counsel. Thus, this court is tied up to hear and determine the same. Assuming it was raised yet if the respondents disputed to have unequivocally accepted the termination based on the operational requirement, the respondents would still have a remedy of referring their dispute to CMA. This ground of revision is also devoid of merit, it is dismissed.

In the 10th ground of revision; that the Honourable Commission erred in law and fact by awarding damages/compensation

Arguing this ground, Mr. Mapembe was of the view that it was wrong for the Commission to award compensation to the respondents for the remaining period of their contracts. It was therefore his opinion that, the respondents would be compensated in terms of section 40 (1) of Employment and Labour Relations Act (ELRA)

In his response, the respondents' counsel stated that, the arbitrator properly award the respondent as required under law since the arbitrator is conferred with discretionary power to award even a compensation of more than 12 months' salary. He referred the court to the case of **National Miscrofinance Bank (NMB) vs. Neema Akeyo,** Civil Appeal No. 511 of 2020 (unreported) where the Court of Appeal Tanzania indorsed the concurrent decisions of the Commission and High Court 36 months' salary compensation

Court's decision on the 10th ground

In my view, the remedies for breach of employment contract arising out of unfair termination is no other than those provided under provisions of section 40 of ELRA since breach of contract and unfair termination of employment in the dispute under consideration is one and the same thing. Hence, as argued by the applicant's counsel that, remedies for unfair termination of employment contracts are provided for under section 40 of the ELRA, which reads;

> *"40.-(1) Where an arbitrator or Labour Court finds a termination is unfair, the arbitrator or Court may order the employer –*

(a) To reinstate the employee from the date the employee was terminated without loss of remuneration during the period that the employee was absent from work due to the unfair termination; or

(b) To re-engage the employee on any terms that the arbitrator or Court may decide; or

(c) To pay compensation to the employee of not less than twelve months remuneration.

(2) An order for compensation made under this section shall be in addition to, and not a substitute for, any other amount to which the employee may be entitled in terms of any law or agreement.

(3) Where an order of reinstatement or reengagement is made by an arbitrator or Court and the employer decides not to reinstate or re-engage the employee, the employer shall pay compensation of twelve months wages in addition to wages due and other benefits from the date of unfair termination to the date of final payment."

According to the wording of the statutory provision quoted above, it goes without saying that, this court and the CMA have discretionary power for awarding compensation of not less than 12 months' compensation when termination of employment is found unfair in terms of section 40 (1) (c) of ELRA. Therefore, it is general principle of the law that whenever termination

of employment contract founded in unspecified term contract is found unfair in terms of both substantive and procedural requirement, the CMA or Labour Court may reinstate or re-engage or order a payment of compensation in favour of an employee.

However, it has been the practice of the court that once a termination of fixed term contract is found unfair; the remedy available is to award an employee compensation equal to the remaining period. I thus find myself bound by the decisions in **Joakim Mwinukwa vs. Golden Tulip,** Revision No. 268 of 2013 (unreported-CAT), **Saruji vs. Mago Co. Ltd** (2004) TLR 155 and **Good Samaritan vs. Joseph Robert Savari Muntha,** Lab. Division 165/2011 (2013) LCCD 1. It is so simply because the probable and foreseeable consequence for the employee's action is loss of salary for the remaining period of his or her employment. Above all, the principles in unspecified and fixed terms are quite different as was correctly articulated in **Mtambua Shamte and 64 others vs. Care Sanitation and Supplies,** Revision No. 154 of 2010, unreported) in which it was stated that;

> *"Principles of unfair termination do not apply to specific tasks or fixed term contracts which come to an end on the specified time or completion of specific task."*

Consequently, basing on the courts' decisions and reason given herein, the 10th ground is found baseless.

> *Now to the determination of the 8th ground which reads; that, the Honourable Arbitrator for CMA erred in law and fact in failing to properly assess the evidence on record*

It is the submission of the applicant's counsel that, it was improper for the Commission to award the 4th respondent, Yasin Idd Msangi Tshs. 34, 500, 000/= as compensation for unfair termination since his fixed term contract expired since 31st August 2018. He also argued that the court should issue an order of re-trial since 3rd respondent's testimony is found nowhere in the CMA's proceedings.

Mr. Asubuhi's rely to the applicant's submission is to the effect that the 4th respondent's contract of employment was renewed by applicant's default as per Rule 4 3) GN. 42 of 2007. He further argued that, the applicant's contention that, the 3rd respondent never gave his testimony is unfounded since he personally led the respondent that is why his evidence is extracted in the judgment.

The learned counsel for the applicant made his rejoinder by stating that, the issue of expected renewal of employment contract of the 4th respondent by the applicant's default was not raised and determined. Hence, according to him, it was wrong for the CMA to award him compensation. He also reiterated that the evidence of 1st respondent, Stephen Wilson Kangala is missing both in handwritten and typed proceeding.

Examining he record of the CMA, it is true as argued by the applicant that the 4th respondent's contract of employment (DE40 entered on the 1st September 2016 was to come to an end on 31st August 2018. Nonetheless, the applicant, in my considered view, had renewed it automatically when he failed to notify him of the end of the contract. In lieu thereof, she wrote the termination letter (DE4) dated 20th September 2018 terminating the 4th respondent's employment just like other respondents. If truly, the 4th respondent's fixed term contract expired on 31st August 2018, there was no need to terminate him due to operational requirements as depicted in the termination letter.

In the light of the above court's findings, it follows therefore, the applicant must be considered to have automatically renewed the 4th respondent's contract. Henceforth, renewal of the fixed term contract of the

4th respondent by default. The applicant's argument that, the issue of the applicability of the renewal by default was not raised and determined does stand since, the applicant herself issued the termination letter dated 20th September 2018.

I have perused the CMA both hand written and typed proceedings and come up with the following observations;

a. That, on 15th July 2019 the hearing of the dispute commenced before Hon. Lomayan
b. That, the scheduled hearing (3/2/2021) was adjourned before Hon. Lomayan until on 13/3/2021 due to the absence of the 1st respondent, Stephen Wilson Kangala who was reported to have been bereaved by his mother
c. That, on the arbitration successor (Hon. Mwebuga) informed the parties and their advocates of the reason of him taking over the matter (transfer of Hon. Lomayan) to another duty station)
d. That, on 28TH October 2021 When the matter was called on for hearing of the 1st respondent's evidence, the respondents' advocate informed the CMA that, his client was outside the

country, he thus prayed to present their closing submissions and it fixed the date of delivery of its award on 25th February

e. That, the 1st respondent's testimony was not recorded as it is seen nowhere

f. That, the testimony of 4th respondent in form of an affidavit was not procedurally produced and admitted in court. It is also not dated

Having observed as alluded herein, the arbitrator who succeeded the matter wrongly closed the hearing. Equally, the learned advocates for the parties ought to have assisted the Commission in adhering to mandatory procedure especially right to be heard. In the circumstances, I am therefore of settled mind that an order directing retrial or fresh referral to the Commission is the best option. (See **Aliki Falanga vs. The Registered Trustee of St. Elizabeth Sisters and another,** Civil Appeal No. 256 of 2020 (unreported-CAT). I have also noted the irregularities as discussed in the 3rd ground, though considered not fatal as well as irregularity in the 4th respondent's testimony, the respondents' dispute should therefore be filed afresh notwithstanding that I have determined all grounds since the same did not touch analysis of the evidence adduced during arbitration by the

parties. Therefore, in my firm view, re-filing of the parties' dispute will not be prejudicial to any party.

Consequently, the CMA's proceedings and the impugned award are hereby quashed and set aside. For the interest of justice, the respondents, if still desire, are given **thirty (30) days** from the date of delivery of this judgment to refer the dispute to the Commission. Given the fact that the parties' dispute is employment one, I therefore refrain from making an order as to costs.

Order accordingly.

M. R. GWAE
JUDGE
24/01/2024