

**IN THE HIGH COURT OF TANZANIA**

**LABOUR DIVISION**

**DAR ES SALAAM**

**REVISION APPLICATION NO. 277 OF 2020**

**BETWEEN**

**TANZANIA SOCIAL ACTION FUND..... APPLICANT**

**AND**

**GEOFFREY LEONARD NYAMWIHULA..... RESPONDENT**

**JUDGMENT**

Date of the last order: 01/11/2021

Date of judgment: 13/12/2021

**B.E.K.Mganga, J**

On 1<sup>st</sup> January 2015 the applicant entered into a two-year fixed contract of employment with the respondent subject to renewal. The said contract was expiring on 31<sup>st</sup> December 2016. Prior entering into this contract, parties had earlier on entered into several contracts renewable. On 22<sup>nd</sup> December 2016, the applicant wrote a letter informing the respondent that the contract entered on 1<sup>st</sup> January 2015 will not be renewed. Following non-renewal of the contract, on 5<sup>th</sup> December 2017 respondent wrote a letter to the Minister of State, President's Office, Public Service complaining that his employment contract was unfairly terminated. On 6<sup>th</sup> April 2018 respondent referred

the dispute to the Commission for Mediation and Arbitration henceforth CMA claiming compensation and damages for breach of contract. In the CMA F.1, respondent indicated that the dispute arose on 11<sup>th</sup> March 2018.

On 14<sup>th</sup> June 2018 while at CMA, the applicant raised two preliminary objections that; (i) the commission does not have jurisdiction to entertain the matter as per section 32A of the Public service Act, No. 8 of 2012 and that (ii) the commission does not have jurisdiction to grant the reliefs sought. On 26<sup>th</sup> July 2018 Mahindi, P.P, Mediator, dismissed the preliminary objections holding that CMA had jurisdiction to deal with cases filed by Public Servants. After the said ruling, on 27<sup>th</sup> July 2018, the applicant raised another preliminary objection that the dispute was filed out of time as the dispute arose on 22<sup>nd</sup> December 2016, but it was referred to CMA on 6<sup>th</sup> April 2018. On 17<sup>th</sup> September 2018, Mahindi, P.P, mediator delivered a ruling dismissing the preliminary objection. In the 2<sup>nd</sup> ruling, the mediator stated that, it is true that the respondent terminated the applicant on 31<sup>st</sup> December 2016 as per exhibit D1, and that applicant appealed against such decision to the Ministry of Public Service Management Good Governance and its outcome was pronounced on 22<sup>nd</sup> December 2017, which was delivered to the applicant on 11<sup>th</sup> March 2018, therefore the

dispute was referred to this commission within time. The mediator held that the decision of termination of respondent's employment was upheld by the employer on 11<sup>th</sup> March 2018 and according to form No. CMA F.1 the dispute was referred to the commission on 6<sup>th</sup> April 2018 which is almost 26 days from the date the decision was upheld.

After the aforementioned two ruling, the dispute was assigned to Chacha, arbitrator who heard and recorded evidence of the respondent while in chief thereafter the matter was handled by Mbena, arbitrator as the said Chacha, arbitrator was unable to finalize it due to medical reasons and transfer to another duty station. Hon. Mbena, arbitrator heard and recorded evidence of both parties starting from cross examination of the respondent to conclusion of evidence by the applicant and issued an award. In the award dated 29<sup>th</sup> March 2021, Mbena. M.S, arbitrator, held that there was legitimate expectation by the respondent that the contract will be renewed and failure to renew amounted to breach of contract. Arbitrator therefore, awarded respondent be paid 24 months' salary of his two years contract of employment which is equivalent to USD 63,960, USD 2,665 as one month's salary in lieu of notice, USD 666.25 as gratuity as per article 5.52 of the contract of employment all total amounting to USD 67,291.25.

Applicant was aggrieved with the award as a result she filed this application requesting the Court to revise the said award. In the affidavit in support of the application, Janeth Madulu, legal officer of the applicant deponed that respondent was a Public Servant as such he was required to exhaust all the remedies available before filing the complaint to CMA and further that the dispute was time barred. She therefore raised the following grounds:-

1. *1. That the award delivered by the Commission is illegal for failure to consider the law and interpret that, the respondent Labour dispute on breach of contract was filed out of time.*
2. *2. The Commission for Mediation and Arbitration has acted illegally by failing to consider that the limitation of period started running from the date on which the respondent was notified that his contract of employment would not be renewed, and not otherwise.*
3. *3. The Commission for Mediation and Arbitration acted illegally by not considering on the appropriateness of the complaint before the commission, since the respondent herein was a Public servant.*

*4. 4. The Commission for Mediation and Arbitration erred in law in determining that there was a breach of contract on the ground that there was legitimate expectation of renewal while there was no contract capable of breach.*

Respondent filed both the notice of opposition and a counter affidavit resisting the application. In his counter affidavit, respondent deponed that he was employed by the applicant as a coordinator and technical support officer from 1<sup>st</sup> January 2015 to 31<sup>st</sup> December 2016 under written contract renewable on the basis of excellent performance and availability of funds. That the applicant served the respondent with 8 days non-renewal notice contrary to the terms of the contract which pegged automatic renewal based on good performance and availability of funds. Respondent deponed that he exhausted all internal remedies including getting approval from the Chief Secretary that the dispute may be filed at CMA. Respondent deponed that CMA decided the preliminary objections in his favour and further that the total amount awarded is USD 82,615.

The application was argued by way of written submissions whereas Daniel Nyakiha, a State Attorney from the Office of the Solicitor



General represented the applicant while David Ndossi, advocate represented the respondent.

Arguing the ground relating to limitation of time, Mr. Nyakiha, State Attorney submitted that the two-year contract between the applicant and the respondent commenced on 1<sup>st</sup> January 2015 and ended on 31<sup>st</sup> December 2016. He submitted that on 22<sup>nd</sup> December 2016 applicant was notified that there would be no renewal of contract. That almost a year later i.e., on 6<sup>th</sup> December 2017 respondent wrote a letter to Hon. George Huruma Mkuchika (MP), the then Minister of State, President's Office Public Service Management and Good Governance complaining about termination of his employment. That, on 22<sup>nd</sup> December 2017, the Acting Permanent Secretary Ministry of State, President's Office Public Service Management and Good Governance informed the respondent that he may take up the matter to court as there was no termination. State Attorney submitted that the dispute was referred to CMA on 6<sup>th</sup> April 2018 almost one year and four months from 22<sup>nd</sup> December 2016. State Attorney submitted that applicant was supposed to file the dispute within 60 days in terms of Rule 10(2) of the Labour Institutions (Mediation and Arbitration) Rules GN. No. 64 of 2007 but he filed the dispute on 6<sup>th</sup> April 2018 and that the same was heard

without condonation. He concluded that CMA had no jurisdiction to deal with the matter.

On the second ground, Nyakiha, State Attorney submitted that respondent was a Public Servant. In terms of section 32A of the Public Service Act [ Cap. 298 R.E. 2019], prior to seeking remedies provided under the Labour Laws, respondent was supposed to exhaust remedies provided for under the Public Service Act. State Attorney submitted that respondent was supposed to seek remedies from the Head of Independent Department then the Public Service Commission and lastly the President of the United Republic of Tanzania whose decision is final. He submitted that there is no record submitted by the respondent showing that the dispute was dealt with by the Public Service Commission or the President of the United Republic of Tanzania. The case of ***Dar es salaam City Council v. Generose Gaspar Chambi***, Revision No. 584 of 2018, (unreported) wherein this Court, (Z.G. Muroke, J) held that failure of the employee to take steps to the Public Service Commission and go straight to CMA vitiates all proceedings and the award arising therefrom. State Attorney also cited the case of ***Thadeus J. Medukenya v. Urambo District Council***, labour Revision No. 3 of 2020

(unreported) wherein this court (Bahati J,) held that CMA had no jurisdiction over Public Servants. He further cited this court's judgment (W.R. Mashauri, J) in the case of ***National Housing Corporation v. Evodius Emmanuel Mutabuzi***, labour revision No 3 of 2019, (unreported) that Public Service employees are officially excluded from the category of employees to approach CMA directly.

Responding to the issue of limitation of time, Mr. David Ndossi, counsel for the respondent submitted that the dispute was filed within 26 days from exhausting the remedies in the Public Service. Counsel submitted that the decision upholding termination was given by the Chief Secretary and communicated to the respondent on 11<sup>th</sup> March 2018 and that, when the respondent filed the dispute on 6<sup>th</sup> April 2018 he was within time in terms of Rule 10(1) of the Labour Institutions (Mediation and Arbitration) Rules, GN. No. 64 of 2007. Counsel submitted that there is no proof that the said decision was communicated to the respondent on 22<sup>nd</sup> December 2017.

Responding on the issue whether CMA had jurisdiction over Public Servants, Mr. Ndossi submitted that respondent is not a Public Servant. Counsel submitted that applicant is run by development partners and



the President's office, but her employees are not Public Servants hence respondent is not a Public Servant. In alternative, counsel submitted that, even if it is assumed that respondent is a Public Servant, he exhausted all remedies as he knocked the doors of the Chief Secretary, the highest and superior Disciplinary Authority for Public Servants as he was informed that he can pursue his rights in court. Mr. Ndossi, counsel for the respondent argued that Regulation 60(2) of the Public Service Regulation uses the word may to connote that it is not mandatory but that it is optional for the Public Servants to go direct to CMA or follow the procedure under the Public Service Act. He cited the decision of this court (Mashaka J, as she then was) in the case of **Mbozi District Council v. Michael Simbeye**, Labour Revision No. 47 of 2015 to that effect. Counsel for the respondent argued that section 2(1) of the Employment and Labour Relations Act [cap. 366 R.E. 2019] applies to both employees including those in Public Service in Tanzania Mainland and that sections 86 and 88 of the same Act requires dispute be first resolved through mediation followed by arbitration. Counsel submitted that as section 2 of cap. 366, supra, was not amended, CMA still have jurisdiction over Public Servants. He cited this court's judgment (Z.G. Muruke, J) in the case of **Deogratus John Lyakwipa and Another v. Tanzania Zambia Railway Authority**, Revision application No. 68 of

2019 to support his argument. Counsel cited also the case of ***Jeremia Mwandi v. Tanzania Posts Corporation***, Labour Revision No. 6 of 2019 wherein this court (A. Matuma, J) held that CMA had jurisdiction over Public Servants.

Having carefully examined submissions of counsels of both sides, I have decided to deal with jurisdictional issue together namely jurisdiction based on limitation of time and jurisdiction based on category of employee. I have done so because in their written submissions, the two jurisdictional issues were intertwined. When submitting on jurisdictional issue relating to limitation of time, counsel for the respondent argued that time started to run from the date the decision of the Chief Secretary, the highest disciplinary authority was communicated to the respondent. But when submitting on jurisdiction based on category of employee, counsel for the respondent submitted that respondent was not a Public Servant, in alternative that even if he is, then, CMA still have jurisdiction.

There is no doubt in my mind that respondent was a Public Servant and was covered by the provisions of the Public Service Act, supra, and Regulations made thereunder. My conclusion is supported by what respondent testified at CMA while both in chief and under cross

examination. In his evidence, while in chief, Geoffrey Leonard Nyamwihula (AW1) is recorded stating:-

*"Nilikuwa nafanyakazi Ofisi ya Rais Ikulu chini ya mpango wa TASAF...kama afisa uratibu yaani Coordination and Technical Officer kwa mkataba wa miaka miwili renewable..."*

While on cross examination, respondent (AW1) is recorded stating:-

***"Mimi ni mtumishi wa umma niliajiriwa na taasisi ya serikali".***

On the other hand, Mary Linda Bawazili (DW1) testifying on behalf of the applicant is recorded stating:-

***"Watumishi wa TASAF ni watumishi wa umma"***

From the quoted evidence of the respondent and that of the applicant, respondent was a Public Servant as I have concluded herein above. It was argued on behalf of the respondent that CMA had jurisdiction to deal with complaints by Public Servants because Regulation 60(2) of the Public Service Regulation gives option to the Public Servants to go direct to CMA or to follow procedures under the Public Service Act. It was further argued on behalf of the respondent that section 2(1) of cap. 366, supra, applies to both employees including those in Public Service in Tanzania Mainland and that sections 86 and 88

of the same statute requires mediation and arbitrator to be applied in resolving disputes of employees. With due respect to counsel for the respondent, that position is not correct in my view. Since the respondent was a Public Servant, he was covered by the provision of Section 32A of the Public Service Act. The said section provides:-

***"32A. A Public servant shall, prior to seeking remedies provided for in labour laws, exhaust all remedies as provided for under this Act."***

The said section was added in the Public Service Act in 2016 by section 26 of the Written Laws (Miscellaneous Amendments) (No. 3) Act, 2016 that came into force on 16<sup>th</sup> November 2016. By that time, the said two-year fixed contract between the applicant and respondent had not expired. Section 32A of the public Service Act quoted above is clear that Public Servant shall prior to seeking remedies **provided for in labour laws**, exhaust all remedies provided under the Public Service Act. In my view, all provisions of any Labour Statute or Regulation, is subject to section 32A of the Public Service Act, (supra). Failure to amend the aforementioned provisions of the Employment and Relations Act, supra, does not oust the operation of the Public Service Act to Public Servants on labour disputes or complaints. I respect all decisions of my learned brother and sisters in the cases cited to me by the respondent, but from where I am standing and from my interpretation of the law, I find that

CMA had no jurisdiction over public servants prior to exhausting all remedies available under the Public Service Act, supra. The **Mbozi District Council case** (supra) is no longer a correct position of the law after amendments that were done in the Public Service Act in 2016 as pointed out hereinabove.

It was submitted on behalf of the respondent that respondent exhausted all remedies provided for under the Public Service Act. In his evidence while under cross examination, Geoffrey Leonard Nyamwihula (AW1), the respondent, testified:-

*s. Nakuonesha kwenye mkataba wa ajira A1, je mkataba huu ukiisha unapewa mwingine?*

*J. kifungu cha kuisha kipo ila sio kwamba mkataba ukiisha unapewa mwingine.*

*s. naomba nikuoneshe kwenye A10 expiry of contract*

*J. Hii haikusitisha mkataba bali imetoa taarifa kuwa mkataba umeisha.*

*s. ulisema kuwa ulikata rufaa ya kuonana na Waziri*

*J. Nilianza kwa Mkurugenzi mtendaji...*

*S. ulichukua muda gani mpaka kwenda kulalamika kwa Waziri?*

*S. Baada ya jitihada ya kumuona Waziri collectively nilimwandikia waziri tarehe 6/9/2017 ila hakujiibu.*

*s. kipindi cha miezi 9 ulikuwa unafanya nini ulienda kudai haki yako wapi kuhusiana na kusitisha mkataba wako?*



*J. Hakuna sehemu niliyoenda kulalamika zaidi ya hii barua.*

*s. Barua ulimwandikai nani A13*

*j. Huyu niliyemwandikia, hivyo Katibu Mkuu Kiongozi alijibu kwa maelekezo ya Waziri kama ushauri.*

*s. uliwahi kumwandikia barua Mkurugenzi Mkuu wa TASAF kuwa haukuridhika na maamuzi yake?*

*j. sikumuandikia barua nilienda physically.*

*s. kwa nini haukufungua shauri baada ya kupewa barua ya ukomo wa mkataba wako 2016 ukafungua shauri 2018?*

*j. ilikuwa afterthought aliponipa tuhuma baada ya performance appraisal ytangu na yeye alinipa matumaini ya kwenda kwa Waziri na zile tuhuma zilienterfere mkataba wangu*

...

Exhibit A13 is a letter written by the respondent on 5<sup>th</sup> December 2017 to Hon. George Huruma Mkuchika (MP), the then Minister of State, President's Office Public Service Management and Good Governance complaining about termination of his employment. A letter itself was written by the respondent one year after coming to an end the contract of employment between the applicant and the respondent. The said letter and a reply thereof (exh. P1) by the Minister was made in December 2017 but the dispute was referred to CMA on 6<sup>th</sup> April 2018 that is 105 days thereafter.

On the other hand, Mary Linda Bawazili (DW1) for the applicant testified that:-

*"Taratibu kama mtumishi wa umma, mlalamikaji ailitakiwa kuandika barua kwa mkurugenzi wa TASAF then angeandika malalamiko kwa waziri mwisho kwa Rais lakini mlalamikaji hakufuata hizo taratibu hakuandika kwa mkurugenzi mtendaji ila aliandika barua kwa waziri kama nilivyosema awali...Hatukusitisha ajira ya m/kaji ila mkataba wake wa ajira uliisha."*

It is my view that the provisions of the Public Service Act [Cap. 298 R.E. 201] and Regulations made thereon were not complied with.

Even if we assume for sake of argument that the procedure provided for under the Public service Act(supra) was complied with, the application will fail for another reason. It was filed out of time. It was argued by counsel for the respondent that the dispute arose on the date a final decision of termination was communicated to the respondent. It was argued by counsel for the respondent that the final decision in exhibit P1 dated 22<sup>nd</sup> December 2017 was communicated to the respondent on 11<sup>th</sup> March 2018 and that the dispute arose on the later date. In my view, this argument is not correct for the reason that there is no evidence that was tendered at CMA showing that the said decision was communicated to the respondent on 11<sup>th</sup> March 2018. Respondent wants to rely on the endorsement made on exhibit P1 that "**imepokelewa** 11/3/2018". It is not known as who made that endorsement. More so, in his evidence, respondent did not explain when

and how he got that letter. I should also point out that the said letter was tendered during mediation at the time of arguing a preliminary objection raised by the respondent. Nothing was adduced during arbitration as evidence by the respondent showing the date he received the said letter. All matters relating to mediation has to remain there and if a party is of the view that a certain evidence can help him during arbitration, is duty bound to adduce or tender it during arbitration. My decision is fortified by the provisions of Rule 8(2) of the Labour Institutions (Mediation and Arbitrations Guidelines) Rules GN. No. 67 of 2007 which provides that:-

*"8(2) Information disclosed during mediation may not be used as evidence in any other proceedings, unless the party disclosing that information states otherwise".*

As held hereinabove, the letter that is said communicated the final decision to the respondent is dated 22<sup>nd</sup> December 2017 responding to the applicant's letter dated 5<sup>th</sup> December 2017 does not prove that the same was served to the respondent on 11<sup>th</sup> March 2018. In my view, the mediator erred to hold that the dispute was filed within 30 days after termination of employment. As there was no proof that the said letter was received on 11<sup>th</sup> March 2018, the dispute was filed out of 60 days provided for under rule 10(2) of Labour Institutions (Mediation and

Arbitrations) Rules, GN. No. 64 of 2007 because in the CMA F. respondent indicated that the dispute relates to breach of contract and not termination as both counsel for the respondent and the mediator thought. The dispute was filed on 6<sup>th</sup> April 2018 that 105 days thereafter being out of time for 45 days. If we accept the argument by the respondent that he was not a Public Servant hence not covered by the provisions of the Public service Act, he is out of time as he was supposed to file the dispute to CMA within 60 days from the day he was informed that there will be no renewal of his contract of employment.

What I have held hereinabove has sufficiently disposed the whole application. But for completeness I will, albeit briefly, cover the issue whether there was breach of contract of the respondent or not. It was not disputed by the parties that the two-year contract of the respondent expired on 31<sup>st</sup> December 2016. Therefore, in terms of Rule 4(2) of the Employment and Labour Relations (Code of Good Practice) GN. No. 42 of 2007, the contract came to an end automatically. The said Rule provides:-

*"Where the contract is a fixed term contract, the contract shall terminate automatically when the agreed period expires, unless the contract provides otherwise."*

In the case of ***Serenity on the lake Ltd v. Dorcus Martin Nyanda***, Civil Appeal No. 33 of 2018, (Unreported), the Court of Appeal held:-

*"the law is clear that, where the contract of employment is for a fixed term, the contract expires automatically when the contract period expires unless the employee breaches the contract before the expiry in which case the employer may terminate the contract. On the other hand, the employer must have a fair reason to terminate the contract in case of the indefinite contract of employment and must follow a fair procedure in that regard."*

The contract between the applicant and the respondent was fixed one and expired automatically on 31<sup>st</sup> December 2016.

In the award, the arbitrator held that there was reasonable expectation of renewal of the contract which is considered unfair termination of contract and that since the expected contract was a fixed one, it amounted to breach of that contract. The applicant criticized the holding that there was legitimate expectation. It was submitted on behalf of the applicant that for legitimate expectation to exist, the expectation has to be reasonable in the objective sense and according to the circumstances of the case and further that representation underlying the expectation has to be clear, unambiguous and devoid of relevant qualifications. State attorney cited this court's decisions in the case of



***National Oil (T) Limited v. Jaffery Dotto Msensemi & 3 Others***, Revision No. 554 of 2016 (unreported) and ***Onesphory J. Mbina and 2 others v. Tanzania Youth Alliance (TAYOA)***, revision Application No. 222 of 2020 (unreported) to support his argument.

Counsel for the respondent submitted that there was legitimate expectation and that the same is based on (i) contract of employment (exh. A1) and (ii) performance appraisal form (exh. A3). Counsel for respondent submitted that cases cited by State Attorney for the applicant are distinguishable.

It seems to me that respondent is of the view that his contract was terminated unfairly as his contract was not renewed. Counsel has in mind section 36(a)(iii) of the Employment and labour Relations [Cap. 366 R.E. 2019] that provide:-

*"Section 36 (a) Termination of employment includes*

*(iii) a failure to renew a fixed term contract on the same or similar terms, if there was **reasonable expectation of renewal**".*

In the application at hand, respondent did not indicate in the CMA F.1 that there was unfair termination of his employment for him to rely on the aforementioned provision on reasonable expectation. It is a cardinal principle in litigation that parties are bound by their own pleadings. In CMA F.1 respondent indicated only that there was breach

of contract. In my view, he did so as he was aware that the contract come to an end automatically and that it was not unfairly terminated.

Whatever the case, for the reasonable expectation of renewal to exist, some conditions have to be met. In ***Onesphory Mbina's case***, supra, this court quoted a South African case of ***Armcor Dockyard vs CCMA and 2 others***, ***case No. C853/15*** and held:-

***"...that the expectation must be reasonable in the objective sense. The question that one has to ask is whether the circumstances were such that any reasonable employee would, in the circumstances, have expected the contract to be renewed ...here the court has to conduct a two-stage enquiry. The first stage is to determine what the applicant's subjective expectation actually was in relation to renewal. This is a question of fact. Once the subjective expectation has been established...the court then go on to decide the second stage, namely whether this expectation was reasonable in the circumstance..."***

The court went on to state that:

***"...The law does not protect every expectation but only those which are legitimate. The requirements for legitimacy of expectation include the following:***

***(i) The representation underlying the expectation must be 'clear, unambiguous and devoid of relevant qualification'. The requirement is a sensible one. It accords with the principle of fairness in public administration, fairness both to the administration and the subject. It protects public officials against the risk that their unwitting ambiguous statements may create legitimate expectations. It is also not unfair to those who choose to rely on such statements. It is always open to them to seek clarification before they do so, failing of which they act at their peril.***

***(ii) The expectation must be reasonable***

***(iii) The representation must have been induced by the decision maker and***

***(iv) The representation must be one which it was competent and lawful for the decision-maker to make without which reliance cannot be legitimate."***

I have read contract of employment (Exh.A1) specifically on renewal, and find that it provides as follows:-

***"...this Agreement may be renewed for another period which will be agreed upon by the Employer and the Employee subject to excellent performance of the Employment during the term of this Agreement".*** (emphasis is mine)

From the quoted paragraph, it is clear in my mind that (i) parties were supposed to agree on the period of renewal and (ii) that was also subject to performance of the respondent. These two conditions were supposed to be met for renewal to occur. It was therefore not an automatic renewal for another two years. Only one condition of performance as per performance appraisal (exh. A3) was met. It was an error on part of the arbitrator to order respondent to be paid 24 months' salary as compensation on ground that there was legitimate expectation for renewal. In the CMA F.1 respondent did not indicate that he was entitled to be paid 24 months' salary as compensation and one-month salary in lieu of notice due to breach of his contract of employment. He just indicated that applicant breached the contract without specifying how. In my view, the arbitrator erred to order respondent to be paid compensation and notice that was not claimed by the respondent. In the case of **Melchiades John Mwenda v. Gizelle Mbaga (Administratrix of the Estate of John Japhet Mbaga - deceased) & 2 Others**, Civil Appeal No. 57 of 2018 (unreported) the court of Appeal was confronted with a similar issue and held that:-


*"It is elementary law which is settled in our jurisdiction that the Court will grant only a relief which has been prayed for-see also James Funke*

*Gwagilo v. Attorney General [2004] T.L.R. 161 and Hotel Travertine Limited & 2 Others v. National Bank of Commerce [2006] T.L.R. 133."*

For all what I have pointed hereinabove, I hold that the arbitrator had no jurisdiction as the respondent did not exhaust all remedies available under the Public Service Act and as the dispute was filed out of time. I further hold that there was no legitimate expectation and that the arbitrator erred in awarding the respondent to be paid a total of USD 67,291.25.

For the foregoing I hereby allow the application, quash the CMA proceedings and set aside the award arising therefrom.



  
B.E.K. Mganga  
**JUDGE**  
13/12/2021