

IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT DAR ES SALAAM

REVISION APPLICATION NO. 395 OF 2022

*(Arising from an Award issued on 21/10/2022 by Hon. G.M. Gerald, Arbitrator in Labour dispute No.
CMA/DSM/KIN/496/2020 at Kinondoni)*

G4S SECURE SOLUTIONS (T) LIMITED APPLICANT

VERSUS

KASSIM RASHID MAIBA RESPONDENT

JUDGMENT

*Date of: 27/02/2023
Date of Judgment: 10/3/2023*

B. E. K. Mganga, J.

On 9th January 2019 applicant employed the respondent for a fixed contract of one year expiring on 8th January 2020. The said contract was renewed automatically. It happened that employment relationship between the two did not go well as a result, on 24th April 2020, applicant suspended the respondent and two others from employment pending investigation. On 19th May 2020, disciplinary hearing was conducted against the respondent and another employee who is not a party to this application. On 29th May 2020 applicant served the respondent with

termination letter showing that his employment was terminated with effect from 20th May 2020 due to gross negligence and dishonest.

Respondent was aggrieved with the said termination as a result, he filed Labour dispute No. CMA/DSM/KIN/496/2020 before the Commission for Mediation and Arbitration (CMA) at Kinondoni claiming to be paid TZS 30,000,000/= for unfair termination. On 21st October 2022, Hon. G.M. Gerald, Arbitrator having heard evidence of both sides, issued an award that termination was both substantively and procedurally unfair and awarded respondent to be paid salary for seven months' remaining period of the contract of employment.

Applicant was aggrieved with the award hence this application for revision. In the affidavit sworn by Elifariji Kisaka, principal officer of the applicant in support of the Notice of Application raised six grounds namely:-

- 1. The award is tainted with illegality that is apparent.*
- 2. That, the Arbitrator erred in law for refusing to admit into evidence documents of the applicant.*
- 3. That the Arbitrator erred by his failure to analyze evidence as a result reached a wrong conclusion on termination of the respondent.*
- 4. That the Arbitrator erred in law in holding that respondent was unfairly terminated contrary to the evidence adduced.*

5. That the arbitrator did not exercise his discretion powers properly in awarding respondent to be paid salary for ten months' by disregarding the remaining period of the contract.

6. That, the Arbitrator erred in law for his failure to afford applicant right to cross examine the respondent.

In opposing the application, respondent filed his counter affidavit.

When the application was called on for hearing, Mr. Mosses Kiondo, learned Advocate appeared and argued for the applicant while Herry Kimaro, learned Advocate, appeared, and argued for and on behalf of the respondent.

In arguing the application, Mr. Kiondo learned counsel for the applicant argue the 1st, 3rd, and 5th grounds together. Counsel submitted that in CMA F1, respondent indicated that he was unfairly terminated instead of breach of contract. He went on that, under a fixed term contract, an employee cannot file the dispute relating to unfair termination. He submitted further that, respondent was terminated after he had worked for 5 months only and that 7 months of the contract was remaining. He concluded that the Arbitrator erred to award respondent 10 months instead of 7 months.

Arguing the 2nd ground, counsel for the applicant submitted that the arbitrator erred in law for not admitting into evidence the investigation

report because it was not attached to the list of documents to be relied upon by the applicant. He however, after being probed by the court, conceded that the said investigation report was not filed by the applicant as amongst the documents to be relied upon.

Arguing the 4th ground, counsel for the applicant submitted that the arbitrator erred to hold that procedures were not complied with. He submitted further that; it was proved that respondent committed misconduct. He added that respondent was served with the notice and was heard before the disciplinary hearing. He therefore strongly submitted that; procedures were complied with. He went on that, in the award, respondent was awarded to be paid notice while in terms of Sections 40, 41 and 42 of the Employment and Labour Relations Act[Cap. 366 R.E. 2019], notice is payable only for unfair termination which is not the case in the application at hand.

Having argued the foregoing grounds, upon reflection, counsel for the applicant, abandoned the 6th ground.

Responding to submissions by counsel for the applicant, Mr. Kimaro learned counsel for the respondent submitted to the 1st, 3rd, and 5th grounds that the nature of the dispute filed by the respondent was unfair

termination and not breach of contract. He added that in CMA F1, respondent indicated that the dispute is for unfair termination. However, when probed by the court he readily conceded that respondent did not fill Part B of CMA F1 especially on substantive issue. He submitted further that respondent worked with the applicant for two months' only and that only 10 months of the contract were remaining.

Submitting to the 2nd ground namely, failure of the arbitrator to admit the investigation report, Mr. Kimaro submitted strongly that the investigation report was not amongst the list of documents filed by the applicant hence that issue cannot be raised at this moment.

Submitting to the 4th ground, counsel for the respondent argued that termination was unfair because respondent was not told reasons thereof.

In rejoinder, counsel for the applicant maintained that respondent worked for five months' only and that he was informed reasons for termination of his employment.

I have examined evidence adduced in the CMA record and considered submissions of both counsel in this application and wish to state that it is undisputed by the parties that on 9th January 2019 they entered into one-

year fixed term contract of employment. The said contract expired on 8th January 2020. It is further undisputed that the said contract was renewed automatically for another one year. It is undisputed that the new one-year fixed term contract of employment commenced automatically on 9th January 2020 and was expected to expire on 8th January 2021. It is also undisputed that on 20th May 2020, applicant terminated employment of the respondent. Therefore, employment of the respondent was terminated after he had worked for four months' and 11 days only. It is my view that, submissions by counsel for the applicant that respondent was terminated after he had worked for five months' is not correct. Again, submissions by counsel for the respondent that respondent worked for two months' prior termination of his employment cannot be valid. In the same vein, it was not correct for the arbitrator to award the respondent to be paid 10 months' salaries as the remaining period of the contract while respondent had worked for four months' and 11 days.

It was submitted by both counsel that respondent indicated in the CMA F1, that he was unfairly terminated and conceded by counsel for the respondent that the latter did not fill part B of the said CMA F1 relating to termination of employment only. It was further argued on behalf of the

applicant that under a fixed term contract, an employee cannot file the dispute relating to unfair termination.

I have examined the CMA F1 and find, as correctly submitted by both counsel that, respondent indicated in the Referral Form(CMA F1) that the nature of the dispute was termination of employment. I have found, as correctly conceded by counsel for the respondent, that respondent did not fill part B of the said CMA F1 that relates to termination of employment only. Failure of the respondent to fill part B of CMA F1, made the said CMA F1, that is a pleading to be defective and the whole dispute became incompetent. This court had a similar view in the case of [Bosco Stephen vs Ng'amba Secondary School](#) (Revision 38 of 2017) [2020] TZHC 390 and [Ngorongoro Conservation Area Authority vs Amiyo Tlaa Amiyo and Another](#) (Labour Revision Application 28 of 2019) [2022] TZHC 3078.

As pointed hereinabove, respondent's employment was terminated after he had worked for four months' and eleven days only. Therefore, in terms of section 35 of Cap. 366 R.E. 2019(supra), he was not supposed to file the dispute relating to unfair termination because he worked for less than six months'. See the case of [Stella Lyimo vs CFAO Motors Tanzania Limited](#) (Civil Appeal 378 of 2019) [2022] TZCA 742 and

Serenity on the Lake Ltd vs Dorcas Martin Nyanda (Civil Appeal 33 of

2018) [2019] TZCA 64. In **CFAO's case** (supra) the Court of Appeal held:-

*"...We had occasion to pronounce ourselves on this aspect in **Serenity on the Lake Ltd v. Dorcas Martin Nyanda**, Civil Appeal No. 33 of 2018 (unreported) and held that a challenge on unfair termination is not available to an employee with less than six months' contract and we reiterate that stance here..."*

In my view, Submissions by counsel for the applicant that an employee with a fixed term contract cannot file a dispute for unfair termination is not correct. Because termination of employment includes failure to renew a fixed term contract on the same or similar terms if there was a reasonable expectation of renewal as provided for under section 36(a)(iii) of Cap. 366 R.E. 2019 (supra). The only limitation available for an employee to file the dispute relating to unfair termination is the period worked for, namely, not less than six months'.

From the foregoing, since respondent worked for less than six months', it was improper for him to file the dispute for unfair termination. Again, for the reasons pointed hereinabove, the CMA F1 was defective making the whole pleading incompetent and the whole CMA proceedings

was nullity. I therefore allow the application, nullify CMA proceedings, quash, and set aside the award arising therefrom.

Dated in Dar es Salaam on this 10th March 2023.



B. E. K. Mganga
JUDGE

Judgment delivered on this 10th March 2023 in chambers in the presence of Japhet Kyando, Advocate for the Respondent but in the absence of the Applicant.



B. E. K. Mganga
JUDGE