

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

**REVISION NO. 376 OF 2021**

**C.S.I ELECTRICAL LIMITED ..... APPLICANT**

**VERSUS**

**FLORDELIZA BRAVO ..... RESPONDENT**

*(From the decision of the Commission for Mediation & Arbitration of DSM at Ubungo)*

(Igogo: Arbitrator)

Dated 06<sup>th</sup> August, 2021

in

**REF: No. CMA/DSM/UBG/R.30/19/36**

**JUDGEMENT**

10<sup>th</sup> August & 17<sup>th</sup> August 2022

**Rwizile, J**

The applicant **C.S.I ELECTRICAL LIMITED** filed to this Court an application for revision of the award of the Commission for Mediation and Arbitration (CMA). She has advanced grounds for revision as hereunder:

- a. Whether CMA has jurisdiction to entertain a matter instituted by a non- citizen with an expired work permit?*
- b. Whether the arbitrator can award a relief not prayed for under the CMA Form No. 1?*

- c. Whether it was correct for the arbitrator to determine breach of contract while the nature of dispute referred to by the respondent under CMA Form No. 1 was unfair termination?*
- d. Whether it was correct for the arbitrator to correct the award after lapse of 14 days as prescribed by the law?*
- e. Whether it was correct for the arbitrator to correct the award without providing written explanation (reasons) for such correction?*
- f. Whether it was correct for the witnesses not to sign the witness statement after testifying?*

The applicant had an employment contract with the respondent that commenced on 15<sup>th</sup> July 2014 to end on 14<sup>th</sup> July, 2016 as EDSM Integrator. She had a work and a residence permit, which allowed her to reside in Tanzania and work for the applicant.

On 24<sup>th</sup> June, 2015 the respondent signed another contract with the applicant that commenced on 01<sup>st</sup> July, 2015 to end on 30<sup>th</sup> July, 2017 as an HSE QAQC Manager. She used the work and residence permit of the previously issued job.

Sometimes in 2018, the respondent after handing over the applicant's properties, she got an opportunity to work with CSI Energy Group (a sister

company of the applicant) in Mauritius. She was paid her full and final entitlements and was also paid relocation fee.

She went for leave from 17<sup>th</sup> December, 2018 to 07<sup>th</sup> January, 2019 but did not report at work on the reason that her children were sick. The respondent, on January, 2019 asked for her salary to buy a ticket to Mauritius. She was provided with USD 3,637.00, deposited in her account but did not turn up.

It seems, she was terminated. Not satisfied with termination, she filed a dispute at CMA for unfair termination. The matter was determined in favour of the respondent. He was paid 16 months salaries equal to USD 123,024.00. The applicant was aggrieved by the decision, hence this application.

The application is supported by the affidavit of Annette Kanora, Principal Officer of the applicant. Both parties were represented. The applicant was represented by Miss Tunu Alawdin learned Counsel while the respondent enjoyed the services of Mr. Kheri Kusekwa, learned Advocate from TEWUTA. The hearing was conducted orally. Miss Tunu argued only three grounds namely (a), (d) and (e) as shown above, the rest were abandoned.

On ground (a) she submitted that the respondent is a foreigner and that she instituted a complaint at CMA without having valid permit. She said, the respondent's employment contract was valid until 30<sup>th</sup> June, 2020 and that her permit expired in January, 2019. In her view, without a valid work permit, the contract of employment becomes void, it cannot be enforced. In support to her submission, she cited cases of **Victor Emmanuel Shubin v Ernest & Young**, Revision No. 406 of 2020, High Court at Dar es Salaam at page 16, **Rock City Tours Ltd v Andy Murray**, Revision No. 69 of 2013, High Court at Mwanza, at page 6, **Alice M. Kalemela v Enaboishu Secondary School**, Revision No. 63 of 2019, High Court at Arusha at page 8 and **Serengeti Breweries Limited v Hector Sequeira**, Civil Application No. 373/18/2018, Court of Appeal of Tanzania at Dar es Salaam at page 14.

Submitting on ground (d), she said, section 90 of Employment and Labour Relations Act, [CAP. 366 R.E. 2019] (ELRA) and rule 33(2) of The Labour Institutions (Mediation and Arbitrations Guidelines) Rules, G.N. No. 67 of 2007 enjoins the arbitrator to correct an award if it is found with errors. She argued, rule 30(1) and (2) of the Labour Institutions (Mediation and Arbitration) Rules, G.N. No. 64 of 2007 provide 14 days as time limit to

correct an award. She added, since the award was corrected after 18 days, it should be set aside.

Lastly, on ground (e), the learned counsel stated, the award was corrected without assigning any reasons. She stated that the award dated 23<sup>rd</sup> August, 2021 did not have reasons for corrections contrary to rule 30(2) of G.N. No. 64 of 2007. The applicant therefore, asked this court to set it aside.

In reply Mr. Kusekwa started to submit, on ground (e) that the correction of the award dated 23<sup>rd</sup> August, 2021 was because the award had clerical errors on the salary.

On ground (d), Mr. Kusekwa submitted that, according to rule 33(1) and (2) of G.N. No. 67 of 2007 and rule 30 (2) of G.N. No. 64 of 2007, time limit is 14 days. He stated that the award was delivered on 06<sup>th</sup> August, 2021 and on 17<sup>th</sup> August, 2021 parties were issued with summons to appear before CMA for corrections. He argued further that they were to appear on 24<sup>th</sup> August, 2021 and was delivered on 23<sup>rd</sup> August, 2021. According to Mr. Kheri, it was corrected in 11 days. He was of the view that, the corrections were done in time and so the law was complied with.

Mr. Kusekwa on ground (a) submitted that, work and residence permit were new facts.

To him, since the point was not raised at the CMA, it should not be entertained at this juncture. He stated that in the cases of **Victor Emmanuel** (supra) at page 5, **Kalemela** (supra) at page 2 and **Rock city's** (supra) at page 2 and also in the case of **Serengeti** (supra). Apart from not raising the matter at the CMA, still, he said, there was no evidence tendered to prove it. To support his argument, Mr. Kusekwa cited the case of **Hotel Traveltime Ltd. & 2 Others v National Bank of Commerce**, [2006] 133 at page 12.

In a rejoinder, Miss Tunu submitted that the respondent did not dispute that the same did not have a residence and work permit. She stated that the issue of jurisdiction was discussed in the case of **Rock City** (supra). It can be raised at any time even at this stage. She held the view that employment with the foreigner is contingent and it depends on the validity of the permit. The learned counsel was of the view that there was no valid contract which can be enforced.

Having heard the parties, it is important to determine, if the CMA had jurisdiction to entertain the dispute. In the case of **Tanzania Revenue**

**Authority v Tango Transport Company Ltd**, Civil Appeal No. 84 of 2009 (unreported) it was held that:

*"Jurisdiction is the bedrock on which the Court's authority and competence to entertain and decide matters rests.*

There is evidence that the permit which the respondent had was for two years to expire on 12<sup>th</sup> January, 2019. In the case of **Rock City Tours Ltd** (supra) it was held that: -

*"The law in Tanzania prohibits and penalizes employment of a non-citizen who has not obtained class B work permit issued in accordance with the National Employment and Promotion Services Act, [CAP. 243 R.E. 2002] (NEPSA)."*

My perusal of exhibits tendered at CMA which are C1 (Contract of Employment) and C3 (Renewal of Contract of Employment) it is shown that, under exhibit C1, the employment contract between the applicant and the respondent was for two years. It was entered on 15<sup>th</sup> July, 2014 and ended on 14<sup>th</sup> July, 2016. Under exhibit C3, it shows that the renewed contract, was also for two years that commenced on 01<sup>st</sup> July, 2017 to 30<sup>th</sup> June, 2020. There is evidence also that the work and residence permit was for two years, commencing from 13<sup>th</sup> January, 2017 and was

supposed to end on 12<sup>th</sup> January, 2019. This shows that the whole first contract was valid.

The respondent continued to work until termination on 18<sup>th</sup> February, 2019. This means, the contract entered by the parties was void from the very start. This is so because the work and residence permit, clearly stated when the respondent was supposed to be in Tanzania legally. But instead of following the terms of the permit, they entered into an agreement which exceeded the time limit of the respondent to stay in Tanzania.

According to section 26 of the National Employment and Promotion Services Act as cited in the case of **Rock City Tours Ltd** (supra) it states that:

*26(1) No person shall employ any foreigner, and no foreigner shall take up any employment with any employer, except under and in accordance with a work permit issued to such foreigner.*

*(2) Any person who contravenes the provisions of this section commits an offence and is liable on conviction, to a fine not less than one million shillings or to imprisonment for a term not less than six months or both such fine and imprisonment."*



The law is therefore clear that, it is not only illegal to work in Tanzania without a valid work permit, but also an offence to accept employment or to employ someone without the permit. It is from the foregoing, that I am of the firm view that the CMA had to deal with this matter. Failure to do so, rendered it venture into a matter that it had no jurisdiction to deal with. That being the case, and for the foregoing reasons, the first ground has merit.

Having said so, I do not think, I have to deal with other grounds, since the first one disposes of the matter. The application has merit, it is allowed. The CMA award is quashed and orders set aside. No order as to costs.



**A. K. Rwizile**

**JUDGE**

**17.08.2022**