

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

REVISION NO. 40 OF 2023

(Arising from the decision of the Commission for Mediation and Arbitration of Dar es Salaam at Ilala, Labour Dispute No. CMA/DSM/ILA/45/21/32 by Hon. Gerald, G.M. Arbitrator dated 27th January, 2023)

BETWEEN

DRT AUTO SPARE PARTS LIMITED APPLICANT

VERSUS

REHEMA MASALAPA RESPONDENT

JUDGEMENT

Date of last Order: *29/05/2023*

Date of Judgement: *16/06/2023*

MLYAMBINA, J.

The Applicant being aggrieved with the Award of the Commission for Mediation and Arbitration (herein CMA) in the *Labour Dispute No. CMA/DSM/ILA/45/21/32* delivered by Hon. Gerald, G.M. Arbitrator on 27th January 2023 opted for this application for revision for this Court to revise and set aside its proceeding and Award and to determine it in appropriate way.

Factually, the Respondent was employed by the Applicant as a Cashier and Accounts Assistant under a fixed term contract of two years starting from 1st September, 2020 and was supposed to end on 30th August, 2022. The Respondent's contract was terminated for the reason of financial

challenges. Being dissatisfied, the Respondent filed a Labour Dispute at CMA. The matter was heard and the Award was in favour of the Respondent. Hence this application which was supported by an affidavit of the Applicant sworn by Raneesh Ittipattavalappil, Principal Officer of the Applicant having the following grounds for revision:

- 1. That, whether it was proper for the honourable Arbitrator ignore and failed to consider documentary evidence tendered and by the Applicant and admitted by the commission.*
- 2. That, the honourable Arbitrator erred in law and fact by ignoring the reason adduced by Applicant for termination of the Respondent contract.*
- 3. That, Arbitrator erred in law and in fact by bias evaluation of evidence and ignoring evidence adduced by both parties without any reasons and basing on heresaying.*
- 4. That, Arbitrator erred in laws and fact by awarding Respondent 6,300,000/= compensations without considering CMA F1 was improper before the commission.*
- 5. That, honourable erred in law and fact for failure to disclosing the reason for the delaying of the award.*

The matter proceeded orally. Only the Applicant was represented by Mr. Antony Kombe, Personal representative who started by abandoning the rest of the grounds for revision and remained with only the fourth ground to the effect that; *the Arbitrator erred in laws and fact by awarding Respondent*

6,300,000/= compensations without considering CMA F1 was improper before the commission.

Antony Kombe submitted that the nature of dispute was on breach of contract but the Respondent filed both parts, A and B while part B is on unfair termination of employment. To his view, the application was improper before CMA which had no jurisdiction to entertain the matter.

According to Mr. Kombe, CMA F1 is a pleading. Thus, a party is bound with such pleading. He then prayed for the Court to nullify and set aside the decision of CMA.

In reply, the Respondent submitted that she had both complaint on breach of contract and unfair termination. She then prayed for the decision of CMA be sustained and for this application to be dismissed.

In rejoinder, Mr. Kombe reiterated what he submitted in chief.

In the light of the afore parties' submissions and CMA records, the issue for determination is; *whether the CMA F1 was defective by being filled on both part A and B on dispute of breach of contract.*

In this application, there is no dispute that the Respondent was the employee of the Applicant. Also, there is no dispute that the Respondent is no longer working with the Applicant as the result of her contract being breached. The only dispute is the CMA F1 which initiate the application as

argued by the personal representative of the Applicant. The same was not raised at CMA but the issue of jurisdiction, as case law provides, can be raised at any time. Therefore, the Court has to satisfy itself if it has jurisdiction to entertain the matter or not. In the case of **Patrick William Magubo v. Lilian Peter Kitali**, Civil Appeal No. 41 of 2019, Court of Appeal at Mwanza (unreported), pp 9-10 it was held that:

From the above extract and considering the fact that jurisdiction of Courts is conferred and prescribed by law, it is therefore a primary duty of every Court, before venturing into a determination of any matter before it, to first satisfy itself that it is vested with the requisite jurisdiction to do so.

As stated earlier on, Mr. Antony Kombe submitted that CMA F1 is a pleading and that parties are bound by their pleadings. On the other hand the Respondent submitted that CMA F1 was proper as her contract was breached and she was unfairly terminated.

In my understanding, termination of employment can happen in either way. It can be by the employer or the employee. It can also be an automatic termination of employment contract or even termination of contract by agreement of both parties, as provided under *Rules, 3,4,5,6,7 and 8 of Employment and Labour Relations (Code of Good Practice) Rules, G.N. No. 42 of 2007*. A fixed term contract or permanent contract is just the duration

of the contract. This can be seen under *Rule 3(3) and (4)(a) and (b) of G.N. No. 42 of 2007* which provides that:

Rule 3(3) The rules regulating the termination of a contract of employment shall depend on the duration of the contract

(4) The agreed duration shall be applicable where there is-

(a) an agreement to work for a fixed term in respect of a fixed time or upon completion of a task: or

(b) an agreement to work without reference to limitation of time or task in accordance to the agreement.

The provisions of *Rule 3(3) and (4)(a) and (b) (supra)* proves that all forms of contract can be terminated. Be it fixed term contract or permanent contract. The same may be acted fairly or unfairly. Then if it was acted unfairly, parties from both contracts be it fixed or permanent can claim for unfair termination. As for the case at hand, there was nothing wrong for the Respondent to fill both parts of the CMA F1 because her contract was on breach of contract, and she was unfairly terminated as it was held in the Award. In the case of **Stella Lyimo v. CFAO Motors Tanzania Limited**, Civil Appeal No. 378 of 2019, Court of Appeal of Tanzania at Dar es Salaam (unreported) pp 15 and 16 it was held that:

First of all, we do not think the learned advocate is correct in his submission that breach of an employment contract is distinct from a complaint based on unfair termination. It is trite, we think, that unfair termination is one and the same as a breach of contract by termination... we find it difficult to follow the appellant whose cause of action was, for all intents and purposes, predicated upon repudiation of the binding contract of employment asserting breach of such contract without regard to unfair termination... it is beyond peradventure that the case before CMA was breach of contract of employment by unfair termination.

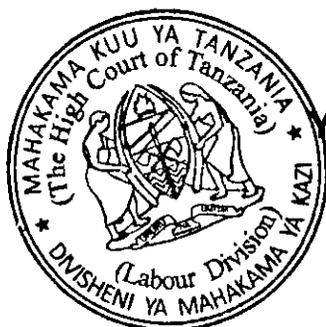
In the premises of the above, I find the CMA F1 was properly filled as it has been elaborated above. This application is dismissed for having no merit. No order as to costs.

Y.J. MLYAMBINA

JUDGE

16/06/2023

Judgement pronounced and dated 16th day of June, 2023 in the presence of Antony Kombe, Personal Representative of the Applicant and the Respondent in person. Right of Appeal fully explained.



Y.J. MLYAMBINA

JUDGE

16/06/2023