

IN THE COURT OF APPEAL OF TANZANIA

AT KIGOMA

(CORAM: MUGASHA, J.A., SEHEL, J.A. And MWAMPASHI, J.A.)

CIVIL APPEAL NO. 309 OF 2022

DAUDI JEREMIA MAGEZI..... APPELLANT

VERSUS

SINOHYDRO CORPORATION LIMITED..... RESPONDENT

**(Appeal from the decision of the High Court of Tanzania
at Kigoma)**

(Mlacha, J.)

dated the 24th day of January, 2022

in

Labour Revision No. 05 of 2021

JUDGMENT OF THE COURT

05th & 13th June, 2021

MWAMPASHI, J.A.:

The appellant, Daudi Jeremia Magezi, was a losing party, firstly, in Labour Dispute No. CMA/KIG/202/2020 before the Commission for Mediation and Arbitration for Kigoma (the CMA) and then before the High Court of Tanzania at Kigoma, in Labour Revision No. 05 of 2021, hence the instant appeal.

Briefly, the historical background from which this appeal arises, is as follows; The appellant, was on 07.03.2020 engaged by the respondent as a casual labourer. After serving for about two months, he and others

were laid off on 02.05.2020 due to the COVID 19 pandemic. He resumed work on 11.06.2020 but not as a store keeper as it was before. This time he was engaged as an occupational health officer. On 12.08.2020 the appellant was arrested by security guards on accusations of stealing diesel. He was arraigned before the Primary Court of Kibondo facing the offence of theft and when bailed out, he, on 15.08.2020 reported to work but was allegedly blocked by the security guards at the gate. After being acquitted by the Primary Court of the charges he had been facing, the appellant did on 29.08/2020, present a copy of the judgment to the respondent but he was not accepted back on account that he had absconded since 13.08.2020.

After his efforts to get back to work had proved futile, the appellant presented his claims before the CMA. In his claim which was based on unfair termination, the appellant claimed for payment of unpaid salaries, twelve months' salaries for the respondent's failure to comply with the law and for a certificate of service. The CMA found that the appellant had worked for the respondent for less than six (6) months and that, in accordance with section 35 of the Employment and Labour Relations Act [Cap. 366 R.E.2019] (the ELRA), he could not sue the respondent for

unfair termination. For that reason, the CMA dismissed the appellant's claims save for the certificate of service.

The appeal by the appellant to the High Court was dismissed on the same reason that, having worked for less than six months, the appellant could not sue for unfair termination. Dissatisfied with the High Court decision and undaunted, the appellant has knocked the door of this Court vide the instant appeal on five (5) grounds of complaint as follows:

- 1. That, like the Arbitrator, the Honourable High Court Judge, having failed to analyse and evaluate evidence on record properly, erred in fact and in law by deciding to the effect that there was no letter of appointment or records of service despite the fact that there was no dispute that the appellant was employed by the respondent until when his employment was suspended and illegally terminated after the institution of a criminal case by the respondent.*
- 2. That, like the Arbitrator, the Honourable High Court Judge, having failed to analyse and evaluate evidence on record properly, erred in fact and in law by deciding to the effect that the Appellant at the time of termination of the Appellant's employment contract, he had not worked for the Respondent for six months despite the fact that he was suspended after the institution of a criminal case by the respondent and until in October 2020, the respondent expressed the intention of filing an appeal against the judgment in the criminal case.*

3. *That, like the Arbitrator, the Honourable High Court Judge, having failed to analyse and evaluate evidence on record properly, erred in fact and in law by not considering the fact that the Appellant was denied access to the work place by the respondent after the appellant being charged with a criminal case and there was no evidence to prove that the Respondent initiated disciplinary proceedings against the Appellant for the alleged misconduct of being absent from work without leave.*
4. *That, like the Arbitrator, the Honourable High Court Judge, having failed to analyse and evaluate evidence on record properly, erred in fact and in law by relying on the hearsay evidence of the Respondent's witness without any substantial documentary evidence and ignored the Appellant's evidence.*
5. *That, like the Arbitrator, the Honourable High Court Judge, having failed to analyse and evaluate evidence on record properly, erred in fact and in law by not considering the arguments raised by the Appellant during the hearing of the Revision Application.*

When this appeal came on for hearing, the appellant appeared in person unrepresented while the respondent had the services of Mr. Michael Mwangati, learned advocate.

Mindful of section 57 of the Labour Institutions Act No. 07 of 2004 (LIA) under which it is provided that appeals to this Court from the Labour Court, lie only on points of law and having examined the five grounds of appeal as reproduced above, we found that the grounds of appeal could

be combined into one cluster, to wit, whether the two lower courts erred in law in concluding that the appellant had worked for less than six months and therefore that he could not sue for unfair termination. We thus directed the parties to address us on that single ground.

Upon taking the floor, the appellant argued that he worked for the respondent for more than six months on a five years oral contract. He further contended that despite being charged with a criminal case, he was paid his salary for the month of August, 2020 and that he was unfairly terminated on 09.11.2020. The appellant insisted that he is entitled to terminal benefits and prayed for the appeal to be allowed.

Mr. Mwangati prefaced his submission by pointing out that the main issue is whether the appellant was terminated on 13.08.2020 or 09.11.2020. He then argued that, in fact, the appellant was not terminated as such but he absconded from work on 12.08.2020. He referred us to the appellant's letter dated 29.09.2020 appearing at page 78 of the record of appeal in which the appellant put it clear that he was terminated on 13.08.2020. Mr. Mwangati further submitted that the appellant was paid half of the salary of the month of August, 2020 because he had only worked for 12 days as admitted by him in his letter

to the District Commissioner of Kibondo (Exhibit D3) appearing at page 81 of the record of appeal.

Finally, Mr. Mwangati submitted that since it was not disputed that the appellant worked for the respondent from 07.03.2020 to 13.08.2020, the period which is less than 60 days, then according to section 35 of the LIA, he could not sue for unfair termination. He thus urged us to dismiss the appeal for being baseless.

In his brief rejoinder, the appellant maintained that he was blocked to get back to work at the gate on 15.08.2020 and that the respondent had notice of the criminal case he was charged with. He reiterated his earlier prayer for the appeal to be allowed.

Having heard the submissions made by the parties and examined the record of appeal, we agree with Mr. Mwangati that the determination of this appeal centres on the issue whether the appellant worked for the respondent for less than six (6) months or not. This calls for ascertainment of the date of the engagement and that of the termination. Since, in the instant case, the date the appellant was engaged is not disputed, that is, 07.03.2020, then the only narrowed down issue for our determination is on the date the appellant was terminated.

Before we begin our determination of the above issue, we should, in the passing, point out that the complaint by the appellant that he could not get back to work on 15.08.2020 because he was blocked by security guards at the gate, is a non-starter to us. Apart from the fact that the complaint is based on facts and therefore not within our mandate, it was sufficiently dealt with by the two lower courts which found it settled that there was no evidence proving that the appellant was blocked as complained by him. It was also found that even if it is true that the appellant was blocked, it was not the respondent who blocked him. We find no reason to interfere with the two lower courts in that respect.

As on what was the date the appellant stopped working for the respondent, if we have to say so, because there is no evidence that he was terminated as claimed by him, we agree with Mr. Mwangati that from the evidence on record, the last day the appellant worked for the respondent was on 12.08.2020. There is evidence in abundance, some from the appellant himself, which show that the appellant never worked for the respondent beyond 12.08.2020. Firstly, in his letter dated 29.09.2020 to the respondent's Manager which was tendered in evidence by him as Exhibit D1 appearing at pages 78 and 129 of the record of

appeal, the appellant admitted that he was dismissed on 13.08.2020. Part of the said letter reads as follows:

"Hivyo kwa kuwa tuhuma zilizokuwa zinanikabili zilisababisha mimi kuondolewa kazini tokea tarehe 13.08.2020 na nimeshinda kesi, hivyo kwa barua hii ninaomba kampuni yako inilipe stahiki zangu za tokea wakati huo hadi sasa".

[Emphasis supplied]

Apart from the above admission by the appellant that he was sacked on 13.08.2020, another piece of evidence, suggesting that by 13.08.2020 the appellant had stopped working for the respondent, as also argued by Mr. Mwangati, comes from the letter the appellant sent to the Kibondo District Commissioner dated 16.10.2020 appearing at page 131 of the record of appeal. Through that letter the appellant complained to the District Commissioner that he was paid half of the salary for the month of August, 2020. This proved the fact that the last day for the appellant to work for the respondent was 12.08.2020.

Basing on the undisputed fact that the appellant was engaged on 07.03.2020 and having established that the last day he worked for the respondent was 12.08.2020, our elementary and simple arithmetic

could not sue for unfair termination. The two lower courts did not err in dismissing the appellant's claims. The instant appeal is baseless and it is hereby dismissed in its entirety. This matter being on a labour dispute, we make no order as to costs.

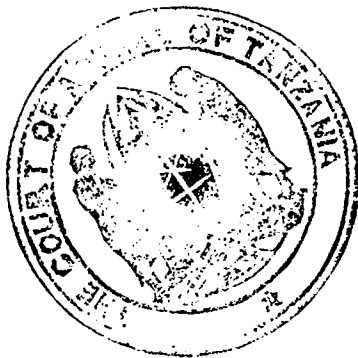
DATED at KIGOMA this 12th day of June, 2023.

S. E. A. MUGASHA
JUSTICE OF APPEAL

B. M. A. SEHEL
JUSTICE OF APPEAL

A. M. MWAMPASHI
JUSTICE OF APPEAL

The judgment delivered this 13th day of June, 2023 in the presence of the appellant in person and Mr. Michael Mwangati, learned advocate for the respondent is hereby certified as a true copy of the original.




D. R. LYIMO
DEPUTY REGISTRAR
COURT OF APPEAL