IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: SEHEL, J.A., KENTE, J.A., And MASOUD, J.A.)

CIVIL APPEAL NO. 161 OF 2021

PIUS SECONDARY SCHOOL..APPELLANT

VERSUS

OBADIA MWAMBAPA..RESPONDENT

(Appeal from the decision of the High Court of Tanzania, Labour Division at Dar es Salaam)

(Mwipopo, J.)

dated the 20th day of November, 2018

in

Revision No. 833 of 2018

JUDGMENT OF THE COURT

6th February & 1st March, 2024

MASOUD, J.A.:

It is common ground in the appeal before us that the appellant and the respondent were in the employer-employee relationship which commenced on 9th March, 2016 under a two years fixed term contract of employment. The relationship ended on 2nd March, 2017 when the appellant terminated the employment before its expiry on ground of misconduct.

As the respondent was aggrieved by the termination, he referred a labour dispute at the CMA. His complaint was that the appellant

breached the contract of employment when she terminated him before expiry of the two years duration of the contract. In CMA Form No.1 for a referral of a dispute to the CMA, the respondent summarized the facts on the basis of which his complaint and claims were founded. The summary is evident at page 8 of the record of appeal where the respondent, after indicating that the nature of the dispute was, among other things, on application/interpretation /implementation of agreement relating to employment, termination of employment, and on breach of contract, stated that:

> *"That, the employer had no substantive reason to terminate my contract of employment and that I was not called for any consultation meeting. That the employer terminated my contract of employment without any consultation. The employer changed my position without following fair procedure".*

The outcome that he sought at the CMA is found at page 9 of the record. It is couched as follow:

> *"An order for employer to be reinstated without loss of employment rights (remuneration and other benefits) or to be paid any remuneration from the date of unlawful termination up to the date of end of the contract [and] to order*

payment of general damages of TZS. 150,000.00".

Having heard the parties, the arbitrator at the CMA resolved the dispute in the favour of the respondent. He was satisfied at page 109 of the record of appeal that, the appellant breached the contract and as a result unfairly terminated the respondent's employment. Save for general damages which the CMA declined to award for lack of evidence, the respondent was awarded a total of TZS. 1,188,462.00, being monthly salary compensation for the unexpired term of his two year fixed term contract which was 11 months and 23 days.

Since the respondent was not satisfied by the decision of the CMA that declined to award him general damages, he applied for a revision of the decision in the High Court Labour Division in Labour Revision No. 833 of 2018. Notably, the respondent did not challenge the finding of the CMA that his cause of action against the appellant was unfair termination arising from the breach of the two year fixed term contract of employment by the appellant.

At the end of the revision, the High Court found that the respondent proved general damages. As a result, it awarded him general damages to the tune of TZS. 10,000,000.00. The damages were

over and above the other relief that the CMA awarded the respondent. In his decision to award general damages, the High Court from page 170 up to 171 of the record of appeal stated that:

> *"Regarding the general damages, the Arbitrator decided not to award the general damages on the ground that there is no evidence to prove the injuries to the Applicant. The Respondent supported the Arbitrator's position. The Applicant was of the view that he was tortured mentally and his reputation was injured. Reading the testimony of the Applicant, he stated that the Respondent tortured and humiliated him. He was left with no income for all the time and the other teachers who are subordinate to him were told that the Applicant has made the students fail. The Applicant testified that even the disciplinary committee was composed of teachers whom he was supervising. This evidence was not disputed before the Commission. I'm of the opinion that this evidence is sufficient to prove that the Applicant suffered humiliation before his subordinates by the accusation that he made the students fail to his subordinates. Therefore, in the special circumstances of this case I hereby award the Applicant to be paid by*

> *Respondent general damages to the tune of shillings 10,000,000/= in addition to the compensation of shillings 1,188,462/= awarded by the Commission".*

Believing that the High Court erred in awarding the general damages to the respondent, the appellant lodged the instant appeal. She raised only one ground of appeal which sought to fault the High Court's decision to award general damages to the respondent despite the absence of proof of the same. The ground was couched by the appellant in the following words:

> *"The learned judge erred in law and fact to hold that the respondent should be awarded TZS. 10,000,000.00 as general damages without any proof".*

At the hearing of the appeal Mr. Peter Nyangi, learned advocate, represented the appellant and Mr. Gilbert Mushi, learned advocate, represented the respondent. Mr. Nyangi adopted written submissions which were lodged on behalf of the appellant with some clarifications. He argued that the respondent did not prove any damage suffered. There was, therefore, no justification for the award of general damages. In addition, he argued that a relief for general damages is not amongst the remedies under section 40 of the Employment and Labour Relations

Act, [Cap.366 R.E 2019] (ELRA) which can be awarded by the court for unfair termination. The relief was, therefore, wrongfully awarded by the High Court.

On the other hand, Mr. Mushi argued orally that the respondent proved by evidence that he suffered from breach of the contract by the appellant and is on that account entitled to general damages. And that, the High Court is entitled under the law to award general damages once they are claimed and established by a party. He relied on section 52(1) of the Labour Institutions Act, [Cap. 300 R.E 2019] and section 95 of the Civil Procedure Code, [Cap. 33 R.E 2022]. He further argued that, since the respondent's complaint was not based on unfair termination, the remedies under section 40(1)(c) of the ELRA would not apply. Accordingly, the High Court, he submitted, was right in awarding general damages to the respondent.

We have thoroughly considered the competing arguments. We should at the outset say that, since the respondent did not at the High Court challenge the finding by the CMA that the appellant had unfairly terminated the respondent from his employment by breaching the contract, it was not open to him to argue that his case was not based on unfair termination under the ELRA. With the foregoing in mind, there

are therefore only two issues that arise from the rival arguments of the learned advocates. The first question is on the power of the High Court to award general damages for unfair termination. And the second is on whether the High Court was justified in awarding general damages to the respondent to the tune of TZS. 10,000,000.00.

In our earlier decisions, we had opportunity to consider the question of compensation for unfair termination and award of damages where a party's cause of action in a labour dispute is unfair termination. See, **Felician Rutwaza v. World Vision Tanzania**, Civil Appeal No. 213 of 2019, **Pangae Minerals Ltd v. Gwandu Majali**, Civil Appeal No. 504 of 2020, **Veneranda Maro and Another v. AICC**, Civil Appeal No. 322 of 2020; **Stanbic Bank Ltd v. Sophia Majamba**, Civil Appeal No. 31 of 2020; and **Flavio Ndesanyo v. Serengeti Breweries Ltd**, Civil Appeal No. 357 of 2020 (all unreported).

In **Flavio Ndesanyo** (supra), which we handed down on 27th September, 2023, we held at pages 4 and 5 that:

> *"We shall first address the question in relation to the award of nominal damages which was quashed in its entirety because it was not founded on any evidence....This aspect cannot detain much of our precious time. The reasons*

being that in her referral to the CMA, the appellant's cause of action was apparently unfair termination. The remedies for such a cause of action are expressly provided for under section 40 of the ELRA. In the said provision, the amount of compensation is quantified by monthly salaries. In our view, loss of reputation cannot attract a separate relief under unfair termination in terms of the provision just referred. It can perhaps be the basis for raising the quantum of compensation for unfair termination beyond the minimum amount of twelve month's salaries. Otherwise, it can form a separate tortious action. In any event, the Labour Court was right in holding that no evidence was adduced to support such a claim".

In the light of the foregoing, we considered the contents of CMA Form No.1 which initiated the dispute against the appellant for breaching the contract of employment and unfairly terminating the respondent's employment. It is quite obvious that the contents of CMA Form No.1 run short of pleadings relating to the evidence allegedly establishing torture and humiliation of the respondent by the appellant as the sufferings that he experienced, and the respondent being responsible for the massive failure of the students at the school. We

neither find such pleadings at page 8 of the record of appeal bearing the contents of page 3 of the said CMA Form No.1 on facts about the nature of the dispute, nor do we find such pleadings at page 10 of the record bearing the contents of page 5 of the CMA Form No.1 on facts about special features/additional information on the cause of action. With such omission, we think that the finding by the High Court, that there was sufficient evidence adduced proving the respondent's sufferings from unfair termination justifying the award of general damages, has no basis. Even if such evidence was truly adduced, it must be disregarded for being extraneous to the CMA Form No.1.

We have no doubt, therefore, that the High Court took into account extraneous matters which it ought not to have taken into account and thereby arrived at a wrong decision. With this finding, the alleged sufferings by the respondent which were not pleaded could not, in terms of what we held in **Flavio Ndesanyo** (supra), be the basis in this case for raising the quantum of compensation for the unfair termination beyond the unexpired term of the two year term fixed contract breached by the appellant. Be it as it may, we also hold that the alleged sufferings, such as torture and humiliation, cannot attract a separate relief in the framework of unfair termination under the ELRA.

For reasons stated above, we find merit in the appeal and we allow it. Consequently, we quash and set aside the judgment of the High Court, Labour Division, in Labour Revision No. 833 of 2018. We, henceforth, restore and uphold the award of the CMA in Labour Dispute No. CMA/DSM/TEM/149/2017/120/2017 delivered on 19th October, 2018.

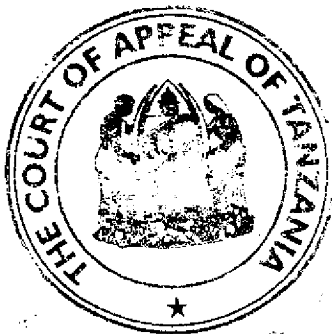
DATED at **DAR ES SALAAM** this 29th day of February, 2024.

B. M. A. SEHEL
JUSTICE OF APPEAL

P. M. KENTE
JUSTICE OF APPEAL

B. S. MASOUD
JUSTICE OF APPEAL

The judgment delivered this 1st day of March, 2024 in the presence of Mr. Peter Nyangi, learned advocate for the appellant also holding brief for Mr. Gilbert Mushi, learned advocate for the respondent is hereby certified as a true copy of the original.



W. A. HAMZA
DEPUTY REGISTRAR
COURT OF APPEAL